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# An Bord Pleanála



## Inspector's Report

Ref.: PL08.247425

Development: To construct a new access road from the existing N70 / N22 roundabout at Camp, Tralee to connect with the existing Manor Retail Park internal road.

Manor West, Tralee, Co. Kerry.

### **PLANNING APPLICATION**

Planning Authority: Kerry County Council

Planning Authority Ref.: 15/1173

Applicant: Boyle Bros. Construction 2004 Ltd.

Type of Application: Permission

Planning Authority Decision: Grant subject to conditions

### **APPEAL**

Type of Appeal: Third Party v. Decision

Appellant: Tommy Moynihan

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 23<sup>rd</sup> January, 2017

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## **1.0 SITE LOCATION AND DESCRIPTION**

1.1 The proposed development site extends between the Manor West Retail Park and the existing N70 / N22 roundabout junction (known locally as the 'Rose Roundabout') on the Tralee bypass at Camp, Tralee, Co. Kerry, approximately 2.2km southeast of the town centre and on the periphery of the built-up area. The lands to the north are dominated by the Manor West Retail Park, which encompasses a variety of convenience and comparison retail units in addition to retail warehousing and a car showroom, with access to same presently available via either the N21 National Road to the north or the Killierisk Road to the west. The remainder of the immediate site surrounds are generally characterised by a combination of undeveloped greenfield lands to the east, brownfield lands seemingly in use as a builder's compound to the west, and the Tralee bypass to the south. The site itself has a stated site area of 0.49 hectares, follows an approximate north-south alignment, and is presently in use as an informal access track serving the adjacent brownfield lands, which include a significant amount of builder's rubble / waste / excavated material, that then terminates at a gated compound to the south which is used for the secure storage of construction machinery etc. Beyond the aforementioned compound is the River Lee which lies between it and the Tralee bypass whilst the Ballynabrennagh (Ballybeggan) River flows southwards to the immediate east of the application site (*N.B.* It is my understanding that the Ballynabrennagh River was relatively recently subjected to channelisation works for the purposes of flood relief).

## **2.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

2.1 The proposed development, as initially submitted to the Planning Authority, consists of the construction of a new access road between the existing N70 / N22 National Roads roundabout junction on the Tralee bypass and an internal service roadway within the existing Manor West Retail Park. The proposed link road will have a carriageway width of 7m and will also include for the provision of a 2m footpath along the eastern side of the same in addition to an associated bridge crossing over the River Lee to the south. The planning application has also been accompanied by an indicative 'Master Plan' for the future development of the remainder of those lands within the applicant's ownership at Manor West which could be facilitated by the proposed access road, although it has been emphasised that this masterplan does not form part of the subject application.

2.2 In response to a request for further information, revised proposals were submitted to the Planning Authority on 12<sup>th</sup> August, 2016 which detailed an

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amended road design that included for a series of internal vehicular access points to the adjacent lands to the east and west of the carriageway with provision also having been made for a dedicated right-hand turning lane for north-bound traffic entering 'Internal Access No. 1'. The revised design also includes for a 1m wide grassed verge along the western side of the carriageway (in addition to the 2m footpath to the east) and the modification of an existing agricultural access to adjacent lands. Additional design specifications with regard to the proposed bridge construction were also submitted.

### **3.0 RELEVANT PLANNING HISTORY**

#### **3.1 On Site:**

None.

#### **3.2 On Adjacent Sites:**

ABP Ref. No. PL08.KA0010. Was determined on 18<sup>th</sup> September, 2009 confirming a compulsory purchase order dated the 16<sup>th</sup> day of July, 2008 by Kerry County Council which concerned the compulsory acquisition of lands and was entitled the N22 Tralee Bypass / Tralee to Bealagrellagh Road Improvement Scheme Compulsory Purchase Order of 2008.

ABP Ref. No. PL08.HA0016. Was determined on 18<sup>th</sup> September, 2009 approving a proposed road development consisting of (a) an eight kilometre eastern bypass of Tralee town, comprising a Type 2 dual carriageway road, linking the N69 Tralee-Listowel Road with the N70 Tralee-Killorglin Road via the N21 Tralee-Limerick Road and including four structures consisting of a crossing of the River Lee, a grade-separated crossing of the Tralee-Mallow Railway Line, a crossing of the L-2020 Ballinorig County Road over the mainline and a crossing of the L-6510 Knockawaddra County Road over the mainline, as well as five mainline roundabout junctions, a 'Left-in Only' compact grade-separated junction, a number of stream crossings and other minor ancillary structures; (b) a 5.5 kilometre N22 access route, comprising a standard single carriageway road, from the proposed Tralee Bypass to the existing improved N22 Tralee-Killarney Road at Bealagrellagh, and including one structure consisting of a crossing of the L-6547 Ballyseedy County Road, as well as four at-grade priority junctions, a number of stream crossings and other minor ancillary structures, Tralee, Co. Kerry.

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## **4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION**

### **4.1 Decision:**

Following the receipt of a response to a request for further information, on 26<sup>th</sup> September, 2016 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 6 No. conditions which can be summarised as follows:

- Condition No. 1 – Refers to the submitted plans and particulars.
- Condition No. 2 – Requires the commissioning of a Road Safety Audit and the implementation of its recommendations in agreement with the Local Authority and the National Roads Design Office.
- Condition No. 3 – Refers to drainage, the requirement for a Road Opening Licence, the maintenance of the public road during construction works, and the repair of any damage to the public road upon completion of the proposed development.
- Condition No. 4 – Refers to the upgrading of approach signage to the N22 / N70 roundabout.
- Condition No. 5 – Requires the provision of an agreed underpass beneath the proposed access road in order to accommodate the proposed Ballymullen to Ballyseedy Greenway Amenity Trail.
- Condition No. 6 – Refers to archaeological monitoring of all ground disturbance.

### **4.2 Objections / Observations:**

A single submission was received from an interested party and the principle grounds of objection contained therein can be summarised as follows:

- Prior to the compulsory acquisition of part of his land, the objector was denied permission to access said lands from the roundabout by the National Roads Authority and, therefore, it would seem unfair to subsequently permit access to a developer's lands.
- The existing road arrangement poses difficulties to the objector's farming activities and the subject proposal would contribute to traffic congestion.
- Due to flooding of an underpass serving the objector's farm, it is necessary to move cattle across the main roadway and, therefore, any additional traffic in the immediate area will serve to increase the danger posed to both the objector and his livestock.

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### 4.3 Internal Reports:

*Executive Planner: Flooding (Mr. D. Ginty):* An initial report recommended that the proposed development should be refused permission having regard to the following:

- The site location within an area at known risk of flooding.
- The request by Kerry County Council for a review of the hydrology under the CFRAM study to accurately reflect flooding witnessed in the area which exceeded the predicted 1 in 1,000-year flood event level.
- The location of the proposed access at a critical juncture between the River Lee and Ballybeggan River.
- The absence of any details regarding the proposed bridge crossing.
- The absence of any consent pursuant to Section 50 of the EU (Assessment and Management of Flood Risks) Regulations S.I. 122 of 2010.

Following the receipt of a response to a request for further information (which included the submission of a Flood Impact Assessment), a further report was prepared which concluded that the impact of the proposed development on flooding would be minimal and that the bridge soffit level would also be adequate. Accordingly, it was considered that the proposed development would be acceptable from a flood risk perspective.

*Kerry National Roads Design Office:* An initial report recommended the submission of further information, including a Flood Risk Assessment (given the site location in an area at risk of flooding), constructional details of the river crossing and the junction with the existing public road and roundabout, and proposals to prevent the back-up of traffic from the proposed road onto the existing public road and roundabout.

Following the receipt of a response to a request for further information, a further report was prepared which recommended that pollution control measures should be incorporated into the proposed drainage outfalls and that the Flood Risk Assessment should be referred for assessment by a competent person whilst the entire further information submission should be referred to Transport Infrastructure Ireland.

A final report was subsequently compiled which noted that an existing agricultural access was proposed to be modified in order to tie into the access road without setback. Notwithstanding the fact that this access track is currently very lightly

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trafficked, the report proceeds to state that the details of amended arrangements should be examined closely as part of a Road Safety Audit so as to ensure that the gate in question does not become a hazard along the proposed access road given its close proximity to the roundabout. Therefore, it is recommended that a Road Safety Audit be required as a condition of any grant of permission.

*Tralee Municipal District Office (Operations Department):* Makes a series of general recommendations with regard to site drainage, the provision of suitable approach signage, and the carrying out of any works within the public roadway.

*Capital Infrastructure Unit:* An initial report recommended the inclusion of a condition in any grant of permission requiring the incorporation of an agreed cycle pathway into the final design of the proposed access road.

Following the receipt of a response to a request for further information, a further report was prepared which noted that Kerry County Council had obtained planning approval for a Greenway Amenity Trail linking Ballymullen to Ballyseedy Wood which would cross the route of the proposed link road. It proceeds to state that given the vertical alignment and width of the proposed roadway, in addition to the projected peak hour traffic volumes, an 'at grade' crossing of the roadway by the greenway would not be satisfactory and thus an underpass should be provided to accommodate the greenway with the design of same to be approved by the Local Authority.

*Fire Authority / Building Control Officer:* No objection.

#### **4.4 Prescribed Bodies / Other Consultees:**

*Transport Infrastructure Ireland:* An initial report stated that the subject application was at variance with official policy in relation to the control of development on / affecting national roads as outlined in the DoECLG's 'Spatial Planning and National Roads, Guidelines for Planning Authorities, 2012' as the proposed development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network for the following reasons:

- The Authority is of the opinion that insufficient data has been submitted with the planning application to demonstrate that the proposed development will not have a detrimental impact on the capacity, safety or operational efficiency of the national road network in the vicinity of the site.

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- The application indicates inappropriate standards which are not in accordance with those set out in the Authority's Design Manual for Roads and Bridges.
  - The impact of the proposed development on the road drainage regime needs to be clarified.
  - The details of the proposed link road and separation distances of any associated spur roads needs to be established and assessed. This assessment should include for a sensitivity analysis with increased flows of 25% and 50% on the proposed junction links for high growth scenarios in the design year.

Following the receipt of a response to a request for further information, a further report was prepared which similarly concluded that the subject application was at variance with official policy in relation to the control of development on / affecting national roads for the following reasons:

- The application indicates inappropriate standards which are not in accordance with those set out in the Authority's Design Manual for Roads and Bridges.
- The application involves alterations to an existing agricultural access currently facilitated at the N22 / N70 roundabout. The proposed development should provide the requisite separation distances for the access from the existing roundabout in line with TII standards.
- The Authority recommends that a Road Safety Audit (RSA) should be carried out in accordance with the NRA DMRB for the revised proposal. The developer shall be responsible for the cost of the audit, which shall be undertaken by an independent qualified engineer. Any recommendations arising shall be incorporated into the proposed development by amendment to the existing planning application or as conditions of the permission, if granted. Any additional works required as a result of the RSA should be funded by the developer.

## **5.0 GROUNDS OF APPEAL**

The grounds of appeal are summarised as follows:

- The subject application has been accompanied by a draft masterplan of the lands adjacent to the proposed access road for the expansion of the retail park, although it has been suggested by the applicant that this masterplan is for information / context purposes only and does not form

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part of the development proposal. In this respect it is submitted that the proposal to develop the access road in relative isolation from the retail park to the north gives rise to 'application-splitting' in that there is clearly a functional relationship between the provision of the roadway and the potential expansion of the retail park. The proposal, when considered cumulatively, requires an EIS given its potential to facilitate the expansion of the retail park and the relevant provision of Classes 13 & 15 of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended.

- There is a case to be made that the subject proposal should only be presented as part of an application to expand the retail park. In this respect it is submitted that whilst the proposed development will facilitate traffic relief to the north, it will also open up lands to retail proposals that may otherwise have been refused due to traffic impact. Accordingly, there is a clear material link between the proposed roadway and the 'masterplan' retail areas that have yet to receive consent and thus the proposal amounts to 'application splitting'.
- The issue of 'application splitting' was not considered by the Planning Authority and, therefore, the subject proposal should be refused permission or, alternatively, an EIS should be requested in order to permit the consideration of the entire development.
- The proposed development is premature pending the implementation of the masterplan lands which have not been developed to date or been the subject of any planning application.
- The proposed development is premature by reference to physical constraints (i.e. the absence of any consent for the submitted masterplan) and pending the making of a development plan. The proposal should be refused permission pending an application for the masterplan lands.
- The development of the access road should be plan-led, however, there does not appear to be any objective in either the Tralee Town Development Plan, 2009-2015 or the Kerry County Development Plan, 2015-2021 which aims to develop an access road at the location proposed. Therefore, the submitted proposal is considered to be premature pending the incorporation of the proposed access roadway into the development plan or the adoption of a new development plan.
- The proposed roadway will simply magnify the potential for local inter-urban traffic use of the national road network and any such impact should be considered at a strategic level.
- The provision of the proposed access road is contrary to the Core Strategy of the Kerry County Development Plan, 2015, including Objective



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- CS-6, in that it will promote use of the private car and does not support modal changes to more sustainable means of transport.
- The proposed development will not assist in achieving Government policy in terms of promoting a modal shift towards more sustainable transport as set out in *'Smarter Travel'*.
  - The proposed access road will contribute to local traffic congestion along a national primary route and is also contrary to guidance issued by Transport Infrastructure Ireland.
  - The provision of an access roadway at the location proposed is not an objective of the Tralee Town Development Plan. Accordingly, the submitted proposal should be refused permission on the grounds of prematurity pending the adoption of a new development plan which includes a specific objective pertaining to the provision of such an access road.
  - The proposed development materially contravenes the Tralee Town Development Plan and the Tralee / Killarney Hub Functional Area Local Area Plan.
  - The proposed development does not comply with the applicable land use zoning objectives contained in the Tralee Town Development Plan and the Tralee / Killarney Hub Functional Area Local Area Plan and in this respect it is submitted that part of the site is zoned as *'parks / recreational'* with the stated land use zoning objective:

*'To protect open parklands and to provide for recreational and amenity purposes and any ancillary structures in these areas'.*

This zoning objective allows for the provision of development that is considered to be ancillary to the main use of any such lands for parks / recreational purposes e.g. a clubhouse or car park. However, the zoning matrix does not state that the provision of an access road is either 'permitted in principle' or 'open for consideration' within this land use zoning.

- It is considered that lands zoned as *'parks / recreational'* should be safeguarded for parkland / recreational use. With regard to the subject proposal, at the very least, there should be an allocation made for additional lands to be set aside for parkland / recreational use in order to compensate for the loss of same consequent on the development of the proposed access road. A buffer zone should also be provided around the

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- access road thereby encroaching further into the parkland / recreational land use zoning.
- The proposed development materially contravenes the '*parks / recreational*' land use zoning objective of the Tralee Town Development Plan.
  - The remainder of the proposed development is zoned for the development of retail warehousing with the stated land use zoning objective '*To provide for retail warehousing and the sale of bulky goods*' which does not provide for the provision of an access road.
  - Contrary to the provisions of the Kerry County Development Plan, 2015, the proposed development will have an adverse effect on the carrying capacity of the N70 and N21 National Routes through the introduction of additional local urban traffic onto the national road network.
  - Transport Infrastructure Ireland has indicated that the proposed development fails to comply with the requirements of the '*Spatial Planning and National Roads, Guidelines for Planning Authorities*', 2012. In this respect the Board is referred to Section 2.5 of the aforementioned guidelines which states the following:

*'Lands adjoining National Roads to which speed limits greater than 60kmh apply:*

*The policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kmh apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant'.*

The N70 National Road is subject to a speed limit of 100kph and, therefore, the subject proposal fails to comply with the foregoing provision as it will result in additional local traffic accessing the national road network.

- Whilst Section 2.6 of the '*Spatial Planning and National Roads, Guidelines for Planning Authorities*' provides for a less restrictive approach as regards access to national roads in the case of developments of national and regional strategic importance, it is submitted that the subject proposal cannot be considered to be of either national or regional strategic importance.

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- In considering whether exceptional circumstances arise pursuant to Section 2.6 of the '*Spatial Planning and National Roads, Guidelines for Planning Authorities*', the planning authority should take the following into account:

*'the requirements of other planning guidelines issued under section 28 of the Act including the Retail Planning Guidelines (2005), which include a general presumption against large retail centres being located adjacent or close to existing, new or planned national roads, including motorways'.*

Therefore, as the proposed access road is clearly intended to facilitate the expansion of a retail park, it does not accord with the aforementioned provision.

- A Road Safety Audit should have been submitted as part of the planning application as it could have implications as regards the design of the proposed access road which would necessitate further consideration.
- The final submission received from Transport Infrastructure Ireland states that the proposed development would have an adverse impact on the operation and safety of the national road network on the basis that it does not adhere to the appropriate design standards as set out in the Design Manual for Roads and Bridges.
- The proposed access road will result in local urban traffic using the national road network and has the potential to negatively impact on same.

## **6.0 RESPONSE TO GROUNDS OF APPEAL**

### **6.1 Response of the Planning Authority:**

None.

### **6.2 Response of the Applicant:**

- It is considered that the subject appeal is a belated attempt to revisit issues (i.e. the potential sale of the appellant's residual lands) previously raised and recorded by the reporting inspector in their assessment of ABP Ref. Nos. PL08.KA0010 & PL08.HA0016 and, therefore, it should be dismissed pursuant to Section 138(1)(a)(ii) of the Planning and Development Act, 2000, as amended, whereby the Board has the discretion to dismiss an appeal in instances where it is of the opinion that the appeal is, inter alia, '*made with the intention of delaying the development*'. Alternatively, the Board made also dismiss an appeal under

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Section 138(1)(b) of the Act where it is satisfied that, in the circumstances, the appeal should not be further considered having regard to (i) the nature of the appeal, or (ii) any previous submission which in its opinion is relevant.

- Environmental Impact Assessment is not a mandatory requirement for the proposed development.
- The subject proposal does not involve ‘project-splitting’ and is based on the frontloading of infrastructure which will benefit not only the applicant’s land, but also the wider area in accordance with best planning practice
- The applicant is not in a position to present plans for the development of its wider landbank, however, it wishes to provide the requisite infrastructure upfront so as to facilitate the development of those lands once an appropriate commercial environment arises.
- The proposed access road does not involve a class of development prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, as set out in Parts 1 & 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and, therefore, it does not necessitate the mandatory submission of an Environmental Impact Statement.
- In terms of ‘sub-threshold’ development, having regard to the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, it is considered that the proposed development would not be likely to have significant effects on the environment and that, consequently, the preparation and submission of an environmental impact statement is not required.
- The suggestion that the frontloading of infrastructure is premature pending the implementation of a master plan for the adjacent lands demonstrates a lack of understanding of the development and planning process. Indeed, to suggest that the upfront provision of infrastructure is premature is the antithesis of proper planning and sustainable development.
- Whilst the applicant’s lands are zoned for development purposes in the local area plan, this does not impose any immediate obligation to ‘implement’ these zonings. The development of these lands will occur on a sequential and orderly basis with the first step being the preparation of a masterplan by Newenhan Mulligan & Associates which was submitted to the Planning Authority as part of the subject application. The next stage will involve the upfront provision of roads / access infrastructure before the subsequent lodgement of a planning application for development. This is a typical and orderly sequence of development for any larger site.

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- The grounds of appeal make a confused argument by stating that the proposed access road is premature pending the implementation of the masterplan before subsequently suggesting that the development of the masterplan area is premature due to infrastructure / access deficiencies.
  - The applicant's lands are also accessible via the existing entrance arrangement to the Manor Retail Park from the R875 Regional Road and, therefore, the appellant's argument of prematurity on the basis of infrastructure provision is irrelevant.
  - The proposed development will provide an alternative access route to the applicant's lands which will in turn serve to open them up to future development thereby achieving the zoning and development objectives of the Tralee Town Development Plan.
  - The proposed access road is not premature (in any way) pending the implementation of a masterplan for the adjacent lands.
  - The subject proposal is based on a plan-led approach and accords in full with the various policy documents governing the area.
  - The provision of the proposed roadway will improve access to lands zoned for *'Retail Warehousing'* and will in turn help deliver the vision and planning strategy set out in the Tralee Town Development Plan, 2009.
  - With regard to the suggestion that the proposed development will encourage private car usage and thus conflicts with Objective CS-6 of the County Development Plan which seeks to *'Promote the integration of land use and transportation policy and to prioritise provision for sustainable cycling and walking travel modes and the strengthening of public transport'*, the Board is advised that the subject proposal includes for a 3m wide footpath / cycleway at the river crossing which will serve to encourage *'cycling and walking travel modes'*.
  - The proposed access road will help to achieve the vision set out in *'A Sustainable Transport Future – Smarter Travel, 2009-2020'* for the following reasons:
    - The access road will help reduce existing levels of traffic congestion in addition to lowering travel times.
    - The roadway will serve to enhance Ireland's economic competitiveness by allowing access to commercially zoned lands.
    - It will result in increased efficiency in the transport sector which will reduce greenhouse gas emissions.
  - The *'front-loading of infrastructure'* is one of 3 No. key objectives identified for Tralee in the National Spatial Strategy as follows:

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- Focus of significant economic and investment strategy on employment creation;
  - Front-loading of infrastructure to facilitate NSS growth; and
  - Implementation of an integrated transport strategy for the area.
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- The construction of the N70 / N22 Tralee bypass included for a number of roundabouts in order to provide for the development of additional link roads which would connect to the new bypass. Indeed, the existing roundabout on the N22 at Camp, Tralee, is one location where provision was made in the original road scheme for a subsequent link road to connect with the existing Manor Retail Park. In fact, the link road to connect with the existing roundabout to the north at Manor Retail Park was partially included in earlier versions of the scheme but was dropped due to funding issues.
  - By assuming responsibility for the provision of the link road, the applicant is negating any need for public investment in order to provide this piece of infrastructure.
  - The provision of the link road is an important component of the overall Tralee bypass infrastructure and is fully consistent with the objectives of the National Spatial Strategy, the Regional Planning Guidelines and the County Development Plan.
  - With regard to that part of the site zoned for *'retail warehousing'*, the proposal is consistent with the applicable land use zoning objective as it will enable access to the commercially zoned lands which will in turn allow the zoning objective to be achieved.
  - In relation to that part of the application site zoned as *'Parks / Recreational'*, the Area Planner has stated that the proposed access road *'would not encroach to any significant degree on the Parks / Recreational zoned land and would not compromise the use of the land for recreational and amenity purposes'*.
  - The proposed river crossing includes for a 3m wide footpath / cycleway in order to facilitate the development of the Ballymullen to Ballyseedy Amenity Trail and is therefore consistent with the *'Parks / Recreational'* land use zoning.
  - The proposed development will also facilitate access to those lands to the east which are zoned as *'Strategic Industrial / Business'* in the Tralee Killarney Hub Functional Area Local Area Plan.
  - The Traffic and Transport Assessment which accompanied the application concluded that the proposed development will result in a significant

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reduction in peak hour traffic volumes along the existing local urban road network and that it will not have a significant negative impact on the N70 and N21 National Routes.

- The TTA has concluded that the Tralee bypass will continue to operate well within capacity and that the proposed development will not have any negative impacts on the safety or operational efficiency of the national road network within the vicinity of the site.
- It is noteworthy that Transport Infrastructure Ireland did not object to or appeal the notification of the decision to grant permission for the proposed development.
- With regard to the appellant's reference to Section 7.2.1.1 of the Kerry County Development Plan, 2015, it is submitted that the provision of the proposed access road will aid in facilitating job creation in the area, particularly as it will provide for access to lands zoned for strategic industrial / business and commercial purposes.
- Section 2.5 of the '*Spatial Planning and National Roads, Guidelines for Planning Authorities*' relates to private access points. In this instance, the proposed development is not a private or new access point on the basis that the construction of the Tralee bypass included for a number of roundabout junctions thereby making provision for the subsequent development of additional spurs or link roads to connect to the new bypass. The existing roundabout on the N22 at Camp, Tralee, is one such location where provision was made in the original road scheme for a subsequent link road to connect with the existing Manor Retail Park.
- A Road Safety Audit has been prepared and submitted for consideration as part of this response. The recommendations of this audit have been accepted by the designers and will be addressed at the detailed design stage of the scheme.
- The proposed development is fully compliant with transport guidance, will not negatively impact on the carrying capacity of the N70 and N22 national roads, and will not result in an increased traffic hazard in the area.
- The provision of the proposed link road is an important component of the wider Tralee bypass infrastructure and is fully consistent with the strategic objectives for the town and DoECLG guidance.

## **7.0 RESPONSE TO CIRCULATION OF APPLICANT'S SUBMISSION**

### **7.1 Response of the Appellant:**

- The suggestion that the subject appeal is commercially motivated so as to require the applicant to '*access the new roundabout via the appellant's*

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*residual lands at the roundabout* is considered to be disingenuous and is subsequently undermined by the applicant's stated position that the lands needed to access the roundabout were in any event acquired as part of the N22 CPO scheme.

- It is accepted that a portion of the appellant's lands were acquired by Kerry County Council by way of CPO for the N22 Tralee Bypass Scheme, however, the applicant is clearly suggesting that the lands acquired were, if anything, undervalued in that not only were they required to provide for the N22, but are also providing access to Manor West. During the assessment of ABP Ref. No. PL08.HA0016 the applicant made clear its desire to have access provided to Manor West, however, the reporting inspector noted that:

*'The Council considers that the purpose of providing a roundabout at this junction is to mark the intersection of two primary roads. It is the appropriate junction type as required by the DMRB'*.

The assessment by the reporting inspector subsequently concluded as follows:

*'The opening up of the proposed Bypass to traffic to and from the Retail Park would have significant consequences for the Bypass in terms of impacts on the safety and free flow of traffic on that road. This Bypass is intended for the use which its name suggests and any additional points of entry/exit for traffic would diminish this, particularly the scale of traffic which would arise from the Retail Park which is currently serviced by the existing road network. As previously stated, the number of junctions on the Bypass should be kept to the minimum necessary to maximise the use of the road in terms of its design function. Access to online roundabouts should also be restricted in order to maintain the safety and traffic capacity characteristics of the roundabouts. In this particular case no additional access should be provided for safety and traffic flow reasons. The lands identified to provide the proposed spur road do not form part of the current proposals'*.

Therefore, the Board is requested to abide by its previously stated position given that the appellant's concerns as regards the creation of an access to the roundabout to serve Manor West, which have been raised since 2002 onwards, have now come to pass with the advantage now being taken by Kerry County Council of the acquisition of a portion of land as part of a



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CPO to facilitate access to Manor West despite the position of the Board's previous inspector with regard to the *'opening up of the proposed bypass to traffic from the retail park'*.

- The applicant has asserted that it is *'frontloading'* infrastructural investment and that it is not in a position to present plans for the development of its wider lands, however, environmental impact assessment cannot be screened out in the presence of such a statement as it clearly indicates that the application is premature, at least in the absence of facts as to what the applicant wishes to do with its lands.
- Without clarity as to the applicant's intentions for its lands, the assumptions made in the submitted Traffic and Transport Assessment are questionable.
- The proposed development clearly raises the prospect of *'application-splitting'*.
- The Board is referred to its determination of ABP Ref. No. PL26.243865 wherein issues were raised as regards Environmental Impact Assessment in the context of a retail development. In that instance, material linkages between developments were considered:

*'In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered that the proposal represented a stand-alone site, that it did not influence the adjacent shopping centre site to the extent that it could be considered part of the same development and that it did not of itself or because of its impact on the adjacent site require an EIS'.*

It is considered that the foregoing statement supports the appellant's submission that any requirement for an EIS needs to be addressed as there is a material relationship between the proposed access roadway, the retail park and any potential expansion of the retail park.

- The Tralee Bypass required an EIS and the subject proposal is now seeking to amend that scheme and also to allow for access to another scheme subject to EIA review. There is a clearer functional relationship between the provision of the access road and the potential expansion of the retail park / residual lands. It is a proposal, when considered cumulatively, that requires an EIS given its potential to facilitate the expansion of the retail park and having regard to the provisions of Classes

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13 & 15 of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended.

- There is a valid case to be made that the subject proposal should only be presented as part of an application to expand the retail park. Whilst the proposed development will facilitate traffic relief to the north, it will also open up lands to retail proposals that may otherwise have been refused permission due to traffic impacts. Therefore, there is a material link between the proposed road and those ‘masterplan’ areas that have yet to receive consent. This is the essence of ‘application-splitting’.
- There are questions as to what the planning unit (i.e. the ‘red line’) should encompass. The principles established by the ‘Burdle’ Ruling would appear to suggest that there is a case to maintain that the redline for the site extends to the entire retail park and access road provisions.
- The proposed development does not accord with planning policy and the suggestion that the provision of a link road to a retail park is a requirement of the National Spatial Strategy is rejected.
- There does not appear to be any objective in either the Tralee Town Development Plan, 2009 or the Kerry County Development Plan, 2015 which aims to provide an access road at the location proposed. Therefore, the subject proposal is premature pending the incorporation of such an objective into the existing plans or the adoption of a new development plan.
- The applicant has stated the following in response to the grounds of appeal:

*‘in this instance, the proposed development is not a private or new access point. As part of the construction of the Tralee Bypass a number of the roundabout junctions made provision for the subsequent provision of additional spurs or link roads to connect to the new bypass. The existing roundabout on the N22 at Camp. Tralee, is one such location where the provision for a subsequent link road to connect with the existing Manor Retail Park in Tralee was envisaged in the original road scheme’.*

This statement cannot be reconciled with the following:

- The applicant’s comments that the lands required to access the roundabout ‘as it turned out’ were acquired as part of the N22 CPO scheme in any case – this does not suggest any deliberate planning to provide such an access.

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- The commentary by the reporting inspector on the CPO with respect to an access to Manor West that *'In this particular case no additional access should be provided for safety and traffic flow reasons. The lands identified to provide the proposed spur road do not form part of the current proposals'*.
  - The statement by Kerry County Council that *'the purpose of providing a roundabout at this location is to mark the intersection of two primary roads. It is the appropriate junction type as required by the DMRB'*.

## **8.0 NATIONAL AND REGIONAL POLICY**

The *'Spatial Planning and National Roads, Guidelines for Planning Authorities'*, 2012 set out the planning policy considerations relating to development affecting national primary and secondary roads, including motorways and associated junctions, outside the 50-60kph speed limit zones for cities, towns and villages. They replace the document, Policy and Planning Framework for Roads, published by the Department in 1985, supplement other policy guidance on roads-related matters in other Ministerial guidelines in relation to retail planning and sustainable rural housing, and replace the National Roads Authority policy statement on national roads published in May, 2006.

The *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* published by the Department of the Environment, Heritage and Local Government in November, 2009 introduce comprehensive mechanisms for the incorporation of flood risk identification, assessment and management into the planning process. The core objectives of the Guidelines are to:

- Avoid inappropriate development in areas at risk of flooding;
- Avoid new developments increasing flood risk elsewhere, including that which may arise from surface water run-off;
- Ensure effective management of residual risks for development permitted in floodplains;
- Avoid unnecessary restriction of national, regional or local economic and social growth;
- Improve the understanding of flood risk among relevant stakeholders; and
- Ensure that the requirements of the EU and national law in relation to the natural environment and nature conservation are complied with at all stages of flood risk management.

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In achieving the aims and objectives of the Guidelines the key principles to be adopted should be to:

- Avoid the risk, where possible,
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

The Guidelines outline the need to identify flood zones and to categorise these according to their probability of flood events. Notably, these should be determined ignoring the presence of flood protection structures as such areas still carry a residual risk of flooding from overtopping or breach of defences and as there is no guarantee that the defences will be maintained in perpetuity.

A staged approach to Flood Risk Assessment is advocated with only such appraisal and / or assessment as is needed to be carried out for the purposes of decision-making at the regional, development and local area plan levels, and also at the site specific level. Stage 1 entails the identification of flood risk by way of screening of the plan / project in order to determine whether there are any flooding or surface water management issues related to the area or the site that may warrant further investigation. This is followed by Stage 2 (Initial flood risk assessment) which seeks to confirm the sources of flooding that may affect a plan area or site, to appraise the adequacy of existing information and to scope the extent of the risk of flooding which may involve preparing indicative flood zone maps. Where hydraulic models exist the potential impact of a development on flooding elsewhere and of the scope of possible mitigation measures can also be assessed. The third and final stage (Stage 3: Detailed flood risk assessment) aims to assess flood risk issues in sufficient detail and to provide a quantitative appraisal of potential flood risk to a proposed or existing development or land to be zoned, its potential impact on flood risk elsewhere and of the effectiveness of any proposed mitigation measures.

Chapter 3 of the Guidelines states that the key principles of a risk-based sequential approach to managing flood risk in the planning system are to:

- Avoid development in areas at risk of flooding;

If this is not possible, consider substituting a land use that is less vulnerable to flooding.

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Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.

- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.
- Exceptions to the restriction of development due to potential flood risks are provided for through the use of a Justification Test, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

It is a key instrument of the Guidelines to undertake a sequential approach in order to guide development away from areas at risk from flooding such as through the use of flood zones and the vulnerability of different development types, however, it is recognised that several towns and cities whose continued growth and development is being encouraged (through the National Development Plan, Regional Planning Guidelines etc.) in order to bring about compact and sustainable urban development and more balanced regional development, contain areas which may be at risk of flooding. Where a planning authority is considering the future development of areas at a high or moderate probability of flooding that would include types of development that are inappropriate in terms of their vulnerability, the 'Justification test' set out in Box 5.1 of the Guidelines should be employed.

The vulnerability of development to flooding depends on the nature of the development, its occupation and the construction methods used. The classification of different land uses and types of development as highly vulnerable, less vulnerable and water-compatible is influenced by various factors including the ability to manage the safety of people in flood events and the long-term implications for the recovery of the function and structure of buildings.

## **9.0 DEVELOPMENT PLAN**

### **Tralee Town Council Development Plan, 2009-2015:-**

#### **Land Use Zoning:**

Within the town boundary the northern extent of the proposed development site is zoned as 'Retail Warehouse' with the stated land use zoning objective 'To provide retail warehousing and sale of bulky goods' whilst the intended use of this zone is stated as 'Primarily retail warehousing'. The remaining southernmost extent of the site area contained within the town boundary (and north of the River Lee) is zoned as 'Parks / Recreational' with the stated land use zoning objective

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*'To protect open space and to provide for recreational and amenity purposes and any ancillary structure' whilst the intended use of same is stated as 'Solely recreational and amenity use'.*

*Other Relevant Sections / Policies:*

*Chapter 2: Strategic Context:*

*Section 2.8: Tralee Land Use and Transportation Study (LUTS), 2001*

*Section 2.9: Tralee LUTS Strategic Concepts and Key Considerations*

*Chapter 3: Economy, Employment, Tourism and Commercial Development:*

*Section 3.2: Employment Creation and Future Economic Development*

*EPO3:* Ensure that an adequate quantity and range of land is available for economic development and that the appropriate infrastructure is provided, including roads, to ensure ease of access between areas of employment, housing and recreational facilities.

*EPO15:* Ensure that new developments proposing new accesses onto the national road network where the 50kph speed limit is exceeded, should be accommodated on the local road network.

*Section 3.5: Retail Introduction*

*Section 3.9.3: Retail Parks and Retail Warehouses*

*RPO2:* Adopt the retail objectives and strategies contained within the Land Use and Transportation Study (LUTS) and Kerry Hub Strategy pertaining to Tralee

*RPO7:* Restrict the development of large scale convenience or comparison retail outlets outside the retail hierarchy/retail expansion areas. There shall be a presumption against such developments adjacent or close to, existing, new or planned national roads and major relief roads, including the proposed Northern Ring Road and the Western Relief Road unless it can be shown that there would be no undue negative impact on the national road network.

*Chapter 4: Social Infrastructure and Amenity:*

*Section 4.7: Recreation, Amenity and Open Space*

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*RAOSPO1:* Manage and improve public recreational open spaces to meet the social, recreational and environmental needs of the town.

*RAOSPO10:* Continue the development of riverside walks as opportunities arise along the banks of the River Lee to Ballyseedy Wood and along the Big River.

*Chapter 5: Transportation:*

*Section 5.2: Tralee Land Use Transportation Study (LUTS), 2001*

*Section 5.3: Public Transport*

*PTPO7:* Have regard to Smarter Travel: A Sustainable Transport Future, New Transport Policy for Ireland 2009-2020, in the assessment of applications and policies.

*Section 5.7: Road Transport and Traffic Management*

*RDPO1:* Continue to foster the development of the National Road Network in conjunction with Kerry County Council, in accordance with the National Development Plan and in accordance with the policy of the National Roads Authority.

*RDPO2:* Support the construction of the Tralee Eastern Ring Road and associated routes in conjunction with Kerry County Council.

*RDPO3:* Support and facilitate the construction of the following roads:

- Knockanacuig to Ballyvelly Road
- Knockanacuig Cross to Caherslee Road
- Croogorts to Caherslee Road
- Ballyard to Cloghers relief road
- Ballyard Road Roundabout and Ballyard Road to Kearney's Road
- Cloonmore to Cloonbeg Road

*RDPO8:* Refer applications for developments accessing national routes to the National Roads Authority for their recommendations. Development proposals shall be assessed in accordance with the National Roads Authority's Policy Statement on Development Management and Access to National Roads, 2006 and the National

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Roads Authority's Traffic and Transport Assessment Guidelines, 2007. Applicants will be required to comply with the recommendations of the National Roads Authority.

*RDPO9:* Require all developments that have potential trip generation that could adversely affect the performance of the national road network, to be accompanied by a Transport Assessment in accordance with the provisions of the NRA Traffic and Transport Assessment Guidelines, 2007 and Road Safety Audits in accordance with the National Roads Authority's Policy Statement on Development Management and Access to National Roads, 2006. Assessments and audits shall include an assessment of the cumulative impact with neighbouring developments on the road network.

*RDPO12:* Encourage the carrying out of a comprehensive constraints and route selection study for the southern sector of Tralee Ring Road by Kerry County Council and other relevant authorities.

*RDPO13:* Have regard to the provisions of the Spatial Planning and National Roads (Consultation Draft) Guidelines for Planning Authorities.

*RDPO14:* Maximise the beneficial return on investment in transport infrastructure by protecting the carrying capacity of all routes in the interest of value for money and public safety.

*Chapter 6: Environmental Management:*

*Section 6.4: Drainage and Wastewater Treatment*

*Section 6.5: Flood Risk Management:*

*FRPO2:* Prohibit inappropriate development in areas at risk of flooding.

*FRPO3:* Avoid new developments increasing flood risk elsewhere, including flooding that may arise from surface water run-off.

*FRPO7:* Implement the recommendations and provisions of the Planning Guidelines on the Planning System and Flood Risk Management (DoEHLG 2009) and the OPW Flood Risk Appraisal Maps and to Catchment Flood Risk Management Plans (CFRAM) when available and ensure that flood risk assessment policies, plans or



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projects are compliant with Article 6 of the Habitats Directive and avoid or mitigate negative impacts on Natura 2000 sites.

*Chapter 8: Built Environment and Urban Design:*

*Section 8.2: Archaeology*

*Chapter 9: Natural Environment:*

*Section 9.2: Natural Heritage and Biodiversity*

*Section 9.3: International / European and National Designated Sites*

*Section 9.6: The Rivers and Ship Canal*

*WRPO1:* Provide for public access to the riverbanks of the River Lee and Big River where feasible and to reserve lands free from development to facilitate such access.

*WRPO2:* Provide for a continuous riverside walk and cycleway along both banks of the River Lee from the Town Council boundary at Manor to the Dingle Road with additional tree planting, signage, lighting along the routes and directional signage for pedestrians and cyclists.

*WRPO6:* Facilitate a river walkway from the Town Council area to Ballyseedy Woods in conjunction with Kerry County Council.

*WRPO8:* Require that developments adjacent to riverwalks or planned riverwalks are designed to promote passive and active surveillance of the riverwalks.

*Chapter 10: Action Area Plans:*

*Section 10.4: Manor West Action Area Plan, 2000*

*AAPFMPO1:* Require all relevant developments to comply with the terms, conditions and provisions of the adopted area action plans, framework plans and masterplans adopted by the Council.

*AAPFMPO2:* Develop and implement proposals to realise the potential of the study areas to cater for development in a planned and coherent fashion.

*Chapter 11: Zoning Policy and Objectives:*

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Section 11.13: *Parks / Recreation*

Section 11.15: *Retail Warehousing:*

The purpose of this zoning objective is to facilitate the recent trend in retailing patterns towards large stores on large plots with associated surface level car parking, selling bulky goods and other goods not traditionally provided within the town centre. Lands at Manor West have been zoned for this purpose to facilitate expansion to the existing retail warehouse park in an area that is well served by transport links.

Section 11.26:

Notwithstanding the zoning of a site, where infrastructure listed in Objective RDP03 is proposed, these works will be considered on their own merits on a case by case basis in accordance with the proper planning and the sustainable development of the area.

Chapter 12: *Development Management Guidelines*

*N.B.* The duration of the Tralee Town Development Plan, 2009-2015 has been extended until such time as it is superseded by a Municipal District Plan.

**Manor West Action Area Plan, 2000:-**

Section 4.4: *Access and Accessibility*

Sections 4.5-4.10: *Site Circulation and Layout*

**Tralee / Killarney Hub Functional Area Local Area Plan, 2013-2019:-**

*Section 2: Overall Strategy:*

Section 2.2 *Development Strategy*

Section 2.3.3: *Growth Strategy*

Section 2.4: *Economic Development and Employment*

Section 2.7: *Flood Risk Management*

Section 2.8: *Transportation and Infrastructure:*

*TI-2:* Ensure compliance with the Spatial Planning and National Roads Guidelines, DoECLG 2012.

*Section 3: Hub Towns Environs Plans:*

Section 3.1: *Tralee Environs:*

In order to secure its position as the premier retail destination in the County and Region, the plan provides for an extension to the existing retail park at Manor West. Here the sale of goods should be restricted to retailers whose principal

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sales in this area relate to large-scale bulky goods. General retail, convenience stores shall be prohibited so as to safeguard the vitality and viability of Tralee Town Centre. The sequential test should be applied to the identification of suitable sites for retail development, with a focus on town centre sites first, then failing this, brownfield and edge-of-centre sites, followed by greenfield sites at the edge of the town.

Given the current economic downturn and the number of vacant warehouses it is proposed that any new retail warehousing will be provided at Manor West. Certain restrictions will apply to the provision of retail warehousing here.

*Relevant Land Use Zonings in the Vicinity of the Application Site:*

*RW-1:* Reserve land at appropriate locations for the sale of goods restricted to retailers whose principal sales related to large-scale bulky goods (retail warehousing), car showroom, garden centres and car parking.

*SS-1:* Reserve lands at appropriate locations for Strategic Industrial / Business Site. Such uses might include light industry, manufacturing, medical/pharmaceutical use, laboratory, IT and/or knowledge based activities.

*SS-2:* Ensure that the development of these lands is contingent on the provision of an overall masterplan which makes provision for a high standard of design at this landmark location. In addition, pedestrian permeability within the site and to existing and proposed recreational trails / greenways in the wider area should be provided for in a sustainable manner compatible with the conservational objectives of the Natura 2000 designations.

Development proposals will also be required to incorporate sustainable flood risk management designs and practices as recommended in the DoEHLG (2009) publications 'The Planning System and Flood Risk Management – Guidelines for Planning Authorities and Technical Appendices'. As part of this full assessment of the potential risk of displacing flood waters to other sites, or the potential flooding of the site itself should be carried out together with project level flood risk management and justification tests. Proposals for infilling as part of flood risk management

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measures shall not result in adverse impacts on designated coastal habitats (coastal squeeze issues shall be taken into consideration).

**Kerry County Development Plan, 2015-2021:-**

*Chapter 7: Transport & Infrastructure:*

*Section 7.2: Land use Integration and Sustainable Transport:*

*RD-1:* Seek to protect and safeguard the significant investment made in strategic economic infrastructure, in particular the network of roads, the existing rail line to Tralee and major water and wastewater projects, through the promotion of appropriate development and settlement patterns and the integration of land use and transportation activities.

*RD-7:* Support and promote an integrated approach to land-use planning and transportation through the implementation of the Local Area Plans.

*Section 7.2.1: Roads:*

*Section 7.2.1.1: National Primary and Secondary Routes*

*Section 7.2.1.2: Access onto the National Routes*

*RD-17:* Protect the capacity and safety of the national road and strategically important regional road network in the County and ensure compliance with the Spatial Planning and National Roads Planning Guidelines (January 2012) and the NRA Traffic & Transport Assessment Guidelines (2007).

*Chapter 13: Development Management – Standards & Guidelines:*

*Section 13.2: Development Standards/General*

**10.0 ASSESSMENT**

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The nature of the grounds of appeal
- The principle of the proposed development
- Traffic implications

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- Flooding implications
  - Archaeological considerations
  - Appropriate assessment
  - Other issues

These are assessed as follows:

**10.1 The Nature of the Grounds of Appeal:**

10.1.1 With regard to the suggestion that the Board may wish to dismiss the subject appeal pursuant to the provisions of Section 138 of the Planning and Development Act, 2000, as amended, on the basis that it has been lodged '*with the sole intention of delaying the development*', having considered the grounds of appeal, I am satisfied that it raises legitimate material planning considerations and thus I propose to assess same accordingly.

**10.2 The Principle of the Proposed Development:**

10.2.1 The proposed development involves the construction of a new access road between the existing N70 / N22 National Roads roundabout junction on the Tralee bypass and an internal service roadway within the Manor West Retail Park for the purposes of providing an alternative access route to the existing retail park and also as a means of opening up the remainder of those lands within the applicant's ownership at Manor West for future development as indicatively set out in the accompanying 'Master Plan'. In this respect various concerns have been raised in the grounds of appeal with regard to the overall principle of the proposed development given the applicable land-use zonings and the wider implications for the development of surrounding lands, however, particular reference has been made to the need for a 'plan-led' approach to be implemented in relation to the development of the wider area and the absence of any specific policy objective in the Development Plan as regards the provision of a new access point onto the Tralee bypass at the location proposed.

10.2.2 At the outset, I would advise the Board that the subject application can perhaps be described as 'cross-jurisdictional' in that the site area encompasses lands which traverse the former town boundary of Tralee Town Council (since subsumed into Kerry County Council) and thus the proposed development site is in part subject to the respective land use zoning provisions contained in both the Tralee Town Council Development Plan, 2009-2015 and the Tralee / Killarney Hub Functional Area Local Area Plan, 2013-2019 whilst the southernmost extremity of the application site is not zoned for any particular purpose and is

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therefore subject to the provisions of the Kerry County Development Plan, 2015-2021.

10.2.3 With regard to the northernmost extent of the proposed development site which is zoned as *'Retail Warehouse'* with the stated land use zoning objective *'To provide retail warehousing and sale of bulky goods'* in the Tralee Town Council Development Plan, 2009, it has been asserted in the grounds of appeal that this land use zoning does not include any provision which would allow for the development of the proposed access road. Whilst I would accept that the land use zoning matrix set out in the Town Development Plan does not expressly refer to the acceptability or otherwise of the development of an access road on lands zoned primarily for retail warehousing purposes, in my opinion, it would be reasonable to assume that the development of an access roadway as part of a wider retail warehouse scheme would be considered to form an ancillary aspect of that development proposal and thus would not amount to a material contravention of the relevant land use zoning. Accordingly, on the basis that the proposed roadway is intended to function as an alternative access route to the existing Manor West Retail Park and as it is also intended to open up adjacent lands zoned for the further development of retail warehousing, I would suggest that the submitted proposal would certainly be open for consideration within this land use zoning. Indeed, further credence is lent to the foregoing position in that Section 11.23 of the Town Development Plan specifically states that uses not listed in the matrix will be considered on their merits.

10.2.4 The remaining southernmost extent of the site area contained within the town boundary (and north of the River Lee) is zoned as *'Parks / Recreational'* with the stated land use zoning objective *'To protect open space and to provide for recreational and amenity purposes and any ancillary structure'* whilst the intended use of same is stated as *'Solely recreational and amenity use'*. In this respect the appellant has submitted that the development of the proposed access road would materially contravene the aforementioned land use zoning objective on the basis that the access road would not be *'ancillary'* to the stated purpose of the zoning i.e. *'Parks / Recreational'*. It has also been submitted that the need to provide for a *'buffer'* along the proposed access road would further encroach into those lands zoned as *'Parks / Recreational'* and that it would be necessary to set aside an additional area of land for parks / recreational purposes in order to compensate for the loss of such associated with the proposed development. Whilst I would acknowledge that the principle of constructing an access road on lands zoned for recreational / amenity purposes is perhaps less definitive than on those lands identified for the development of

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retail warehousing, it is similarly notable that the land use zoning matrix set out in the Town Development Plan does not refer to the acceptability or otherwise of such a development proposal and thus it must be assessed on its merits. In this respect I would advise the Board that in its assessment of the subject proposal the Planning Authority concluded that the roadway would not encroach to a significant degree into the lands zoned as 'Parks / Recreational' nor would it compromise the future use of the said lands for recreational / amenity purposes. It was also noted that the proposed river crossing had been designed to accommodate a 3m wide footpath / cycleway in order to facilitate the future development of the Ballymullen Amenity Trail by the Local Authority. Having considered the available information, I am inclined to accept that the development of the proposed access road on the subject lands is open for consideration on the basis that any such proposal would serve to provide for improved access from the wider area to those lands zoned for parks / recreational purposes. For example, the proposal would incorporate a dedicated river crossing thereby allowing improved access to both the wider 'recreationally' zoned lands and that section of the proposed amenity trail to the north of the River Lee from the Tralee bypass and the lands beyond same further south. Therefore, on balance, I am satisfied that the overall principle of the proposed access road in terms of land use zoning is generally open for consideration and that the proposal should be assessed on its wider merits.

10.2.5 In terms of assessing the submitted proposal in a wider strategic context, it is clear that the appellant has placed a considerable emphasis on the need for a 'plan-led' approach to the future development of those undeveloped lands which could potentially be served by the proposed access road (as has been indicatively detailed in the masterplan which has accompanied the planning application). In this regard it has been submitted that there is no specific transport objective included in any of the applicable Development Plans / Local Area Plans which would support the provision of the proposed access onto the Tralee bypass at a point where a speed limit of 100kph applies (at the existing junction of the N70 & N22 National Roads). Accordingly, it has been suggested that the proposed development is at variance with the wider sustainable transportation objectives of the relevant statutory plans, in addition to national policy as expressed in '*A Sustainable Transport Future – Smarter Travel, 2009*', and that it would be premature pending the inclusion of a specific strategic objective pertaining to the development of a proposed link road at this location.

10.2.6 From a review of the relevant Development Plans / Local Area Plans, I would concur with the appellant that there is no express provision contained

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within same which would specifically support the development of a new link road at the location proposed. Moreover, it is of relevance to note that Objective AAPFMPO1 of the Tralee Town Council Development Plan, 2009-2015 requires all relevant developments to comply with the terms, conditions and provisions of the area action plans, framework plans and masterplans adopted by the Council and that the proposed development site is therefore subject to the provisions of the Manor West Action Area Plan, 2000. In this respect I would advise the Board that it is apparent from a review of the Manor West Action Area Plan, 2000 that the development of both the subject site and adjacent zoned lands, including those identified in the masterplan submitted by the applicant, was to be accommodated solely by way of means of access from the N21 to the north and the Killerisk Road to the west. No provision was made in either the Manor West Action Area Plan or the Tralee Town Development Plan for any new access point to serve the lands at Manor West from the Tralee Bypass, although I would concede that the aforementioned plans are somewhat outdated given the recent completion of the Tralee bypass and the ongoing preparation of a new Municipal District Plan to replace the Town Development Plan etc. Similarly, there is a notable absence of any specific objective identifying a new access / link road at the subject location in the Tralee / Killarney Hub Functional Area Local Area Plan, 2013-2019 despite the zoning of additional lands for 'Strategic Industrial / Business' purposes. In effect, it would appear that current local development plan policy envisages the development of all of the lands at Manor West as only being serviced via the existing access arrangements to the west and north and not through the provision of a new link road onto the Tralee Bypass.

10.2.7 At this point, I would reiterate that the subject proposal involves the opening up of a new access onto an existing roundabout at the junction of the N70 and N22 National Routes along a section roadway which is subject to a speed limit of 100kph and in this respect I would draw the Board's attention, in particular, to Objective RD-17 of the Kerry County Development Plan, 2015 which seeks to *'Protect the capacity and safety of the national road and strategically important regional road network in the County and ensure compliance with the Spatial Planning and National Roads Planning Guidelines (January 2012) and the NRA Traffic & Transport Assessment Guidelines (2007)'*. The recently completed Tralee Bypass is strategically important in terms of facilitating major inter-urban and inter-regional traffic and in this regard it is notable that the aforementioned Guidelines are clear in stating that *'any local transport function of national road bypasses and relief roads in respect of the urban areas they pass through is, and must continue to be, secondary to the role of these roads in catering for strategic traffic'*. The Guidelines further state that



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*‘the planning system must ensure that the strategic traffic function of national roads is maintained by limiting the extent of development that would give rise to the generation of short trip traffic on national roads or alternatively by ensuring that the trip demand from future development will primarily be catered for on the non-national network’.*

10.2.8 In promoting a ‘plan-led’ approach to development affecting national roads, the *‘Spatial Planning and National Roads, Guidelines for Planning Authorities, 2012’* require all development plans and any relevant local area plans to implement a policy approach whereby planning authorities will avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. Notably, whilst Section 2.6 of the Guidelines does include a provision whereby planning authorities may identify stretches of national roads where a less restrictive approach may be applied, this is only to be undertaken as part of the process of reviewing or varying the relevant development plan and having consulted and taken on board the advice of the NRA (as superseded by Transport Infrastructure Ireland). Such an approach may be considered in the case of developments of national and regional strategic importance or also along lightly-trafficked sections of national secondary routes, however, it must be stressed that any such policy provision must have formed part of the Development Plan process i.e. it cannot be applied on an ‘ad-hoc’ basis through the planning application process. In the subject instance, none of the exceptional circumstances set out in the current County Development Plan for the area can be considered to be relevant to the proposed development.

10.2.9 Therefore, on the basis of the foregoing, it is my opinion that the submitted proposal is contrary to official policy as set out in the *‘Spatial Planning and National Roads, Guidelines for Planning Authorities, 2012’* as regards the control of development on / affecting national roads in that it will involve the creation of a new access onto the national road network along a section of roadway which is subject to a speed limit of 100kph. I would also concur with the conclusions of the reporting inspector in their assessment of ABP Ref. No. PL08.HA0016 that the opening up of the Tralee Bypass to traffic to and from the Retail Park would have significant consequences for the bypass in terms of impacts on the safety and free flow of traffic on that road which would serve to undermine its primary strategic function. Indeed, this position would seem to find support in the submissions on file received from Transport Infrastructure Ireland which state that the proposal is at variance with official policy in relation to the control of development on / affecting national roads as outlined in the DoECLG’s *‘Spatial*

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*Planning and National Roads, Guidelines for Planning Authorities, 2012*' as the proposed development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network. Furthermore, in my opinion, it is clear that the construction of the access / link road at the location proposed should be 'plan-led' having regard to the provisions of the *'Spatial Planning and National Road, Guidelines for Planning Authorities'* and that it does not presently find support in local development plan policy. Indeed, I would suggest that the acceptability or otherwise of an access point at the location proposed onto the Tralee bypass would be more appropriately considered as part of the upcoming preparation of the relevant Municipal District Plan which will serve to replace the current Tralee Town Development Plan, 2009 and the Tralee / Killarney Hub Functional Area Local Area Plan, 2013. Accordingly, I am satisfied that the proposed development is contrary to the proper planning and sustainable development of the area.

### **10.3 Traffic Implications:**

10.3.1 Whilst the proposed development will provide for an alternative access route to the existing retail park and will also open up the remainder of those lands within the applicant's ownership at Manor West for future development as indicatively set out in the accompanying 'Master Plan', in my opinion, it is clear that the provision of any such roadway should also consider the need to service those lands zoned as *'Retail Warehousing'* in the Tralee Town Development Plan and *'Strategic Industrial / Business'* in the Tralee / Killarney Hub Functional Area Local Area Plan which are not in the ownership of the applicant. Indeed, the development of all those lands zoned as *'S-S 1-2: Strategic Industrial / Business'* lands is expressly stated in the Local Area Plan as being contingent on the preparation of an overall masterplan. In this respect I would advise the Board at the outset that although the subject application has been accompanied by a Traffic and Transport Assessment which has examined the traffic impact of the proposed access road in addition to the future development of the applicant's own 'masterplan' lands, no consideration has been given to the potential implications associated with the additional traffic volumes arising from the development of those further zoned lands which, whilst not in the ownership of the applicant, could reasonably be expected to be accessed via the new proposed link road e.g. the entirety of those lands zoned as *'S-S 1-2: Strategic Industrial / Business'*. Accordingly, I am inclined to suggest that the omission of any clear and comprehensive consideration of the future needs of all those zoned lands in Manor West which may require access to any such link to the Tralee bypass and the traffic implications associated with same is regrettable and

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serves to support my earlier comments as regards the need for a plan-led approach to be employed as regards the subject proposal.

10.3.2 With regard to the Traffic and Transport Assessment which has accompanied the application, this report details that baseline traffic conditions in the vicinity of the application site, including along those routes used to access the existing Manor West Retail Park, were established through the completion of traffic counts undertaken at key roundabout junctions in the surrounding area and that a review of same having regard to recent historic continuous automatic traffic counter data for the N21, N22 & N69 National Routes available from the National Roads Authority (as superseded by Transport Infrastructure Ireland) has concluded that peak hour traffic volumes would seem to occur on Friday evenings and thus these figures have been used in the remainder of the traffic impact assessment. Forecasting of future peak hour traffic volumes at the identified junctions in the absence of the proposed development for an opening year of 2016, in addition to design years of 2021 & 2031, was subsequently undertaken pursuant to the provisions of the NRA's Traffic and Transport Assessment Guidelines utilising the appropriate traffic growth factors whilst an analysis was also completed of the impact of the proposed access road on the distribution of peak hour traffic volumes associated with the existing Manor West Retail Park which concluded that 16.97% of the existing Manor West generated traffic volumes will be diverted to the proposed southern access road once constructed.

10.3.3 The TTA has subsequently extrapolated the likely future traffic impact associated with the proposed access road and the further development of the applicant's 'Manor West Southern Lands Masterplan' for the design years of 2016, 2021 & 2031 (which has included an analysis of junction capacity) and has concluded that the proposed access road at the existing N22 / N70 roundabout would facilitate more direct access for existing traffic volumes associated with the retail park and would also serve to reduce traffic volumes at the existing accesses to the retail park from both the Clashlehane and Killerisk Road roundabouts. It is further stated that although the proposed southern access road would increase the traffic volumes experienced locally along the N22 & N70 sections of the Tralee bypass, these national roads and the related junctions would continue to operate well within their respective design capacities. In relation to the impact of the proposed access road when taken in conjunction with the development of the applicant's masterplan lands, it has been concluded that 2021 and 2031 peak hour traffic volumes on the existing Manor West Retail Park access roads and locally within the Tralee urban area on the Killerisk Road

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(west), N86 (south) and R875 (east) would reduce and that whilst the traffic volumes locally along the R875 (west) and Killerisk Road (north) will increase, any such increases will be significantly less than the reductions expected to be experienced elsewhere. The TTA proceeds to state that the Tralee Bypass will continue to operate well within its link capacity and that, with the exception of the Castlemorris Roundabout, all the local road network and Tralee Bypass roundabout junctions will operate within practical capacity during the predicted 2031 peak traffic hour without significant traffic queueing or delays, both with and without the proposed southern access and masterplan development in place. It is further stated that the proposed southern access road and the masterplan development will result in reduced highest RFCs at the Clashlehan, Castlemorris, Killerisk Road, N21 / N22 / N69 / R875 and the N70 / N86 roundabouts whilst the N22 / N70 Roundabout will have a highest predicted RFC of 0.524 with the proposed access road and masterplan development in place which is with acceptable parameters. It is also stated that the proposed southern access and masterplan development will similarly result in a reduced 2031 peak hour RFC at the Castlemorris Roundabout, although it is acknowledged that the ARCADY analysis of same has confirmed that this junction will be operating in excess of its practical capacity in 2031.

10.3.4 Therefore, on the basis of the foregoing, the submitted TTA has concluded that the proposed development will result in a significant beneficial reduction in peak hour traffic volumes on the existing local Tralee urban road network and thus will not have any significant adverse traffic impact whilst the Tralee Bypass will continue to operate well within capacity. Similarly, it has been submitted that the proposed masterplan development will not have any significant adverse traffic impact with the proposed southern access road in place.

10.3.5 In response to a request for further information (which would appear to have been directly derived from an earlier submission made by Transport Infrastructure Ireland), the applicant subsequently submitted a supplementary Traffic and Transport Assessment which has determined the increased traffic flows on the proposed southern access road network on the basis of future design year predicted peak hour traffic volumes with the proposed southern access road and possible Masterplan development plus 25% and 50%. In this respect the baseline peak hour traffic volumes and the predicted southern access road peak hour traffic volumes (as detailed in the original TTA) have been increased by 25% and 50% respectively. This assessment ultimately concludes that in both the aforementioned scenarios, the southern access road junctions

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would operate well within practical capacity without significant traffic queuing or delays and with no back-up of traffic between junctions.

10.3.6 Having reviewed the available information, it would appear that the Planning Authority does not dispute the findings of the Traffic and Transport Assessment and, in the absence of any conflicting evidence, I am similarly inclined to accept that the conclusions set out in same are reasonable and that the submitted proposal, either in isolation or in combination with the future development of those remaining 'masterplan' lands in the ownership of the applicant, would not appear to result in any significant adverse traffic impact on the surrounding road network. However, notwithstanding the foregoing, I would reiterate my earlier concerns that the submitted Traffic and Transport Assessment is based solely on the development of the applicant's landholding and does not consider the wider implications and potential traffic volumes that may reasonably be expected to arise from the development of those other zoned lands in the area which may be reliant on access to the Tralee bypass via the proposed link road (*N.B.* It may also be desirable to consider the possibility of further development lands being identified in this area as part of the upcoming preparation of the new Municipal District Plan for the area).

10.3.7 At this point of my assessment, I would also advise the Board that it may wish to consider the potential for the proposed access road to function as a 'short-cut' for local urban traffic between the N21 to the north of the Manor West Retail Park and the Tralee Bypass to the south, although it should be noted that during the course of my site inspection it was observed that a number of lockable gates had been erected along various access points within the wider retail park presumably for the purposes of preventing anti-social behaviour and to limit traffic movements outside of normal trading hours etc.

10.3.8 With regard to the specific design of the proposed roadway and its associated junction arrangements, notwithstanding the amended proposals submitted by the applicant in response to the request for further information issued by the Planning Authority, which includes for a series of internal vehicular access points to the adjacent lands to the east and west of the carriageway with provision also being made for a dedicated right-hand turning lane for north-bound traffic entering 'Internal Access No. 1' in addition to further design specifications of the proposed bridge construction, it would appear that Transport Infrastructure Ireland (in its final submission) was not satisfied with the revised design which *'indicates inappropriate standards which are not in accordance with those set out in the Authority's Design Manual for Roads and Bridges'*. Whilst I would

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acknowledge that the applicant's response to the grounds of appeal has been accompanied by a Road Safety Audit of the proposed access road and that the designer has accepted the various measures recommended to address the problems identified, in my opinion, further details are required to demonstrate that the final design of the proposed roadway will have satisfactorily addressed the potential risks. It should also be noted that TII has not commented on the contents of this Road Safety Audit.

10.3.9 From a review of the available information, whilst I would accept that the submitted TTA would appear to have established that the increased traffic volumes consequent on the proposed access road and the future development of the applicant's own 'masterplan' lands will not give rise to any significant adverse traffic impact on the surrounding road network, I would nevertheless have concerns that there is a need to consider the wider strategic implications of any such access / link road, including any impact on the development potential of those lands at Manor West outside of the applicant's ownership and the provision of suitable future access to same. In my opinion, the foregoing serves to emphasise the need for a 'plan-led' approach to be adopted in this instance, particularly as the subject proposal conflicts with official policy as expressed in the 'Spatial Planning and National Roads, Guidelines for Planning Authorities, 2012' and similarly does not presently find support in local development plan policy. Such matters should perhaps be given consideration in the upcoming preparation of a new municipal district plan for the area which will serve to replace the current Tralee Town Development Plan, 2009 and the Tralee / Killarney Hub Functional Area Local Area Plan, 2013. Therefore, on the basis of the foregoing, in addition to the design concerns raised by Transport Infrastructure Ireland, I am not satisfied that the submitted development proposal is acceptable in terms of its potential wider traffic impact.

#### **10.4 Flooding Implications:**

10.4.1 From a review of the available information, it is apparent that the proposed development site is located in an area which has historically been subject to flood events given its proximity to the River Lee and the Ballynabrennagh River. In this respect I would advise the Board that although the initial planning application as lodged with the Planning Authority failed to acknowledge the foregoing, in its assessment of the submitted proposal the Local Authority noted that the River Lee had been modelled as part of the South West CFRAM Study and that this had identified the area in question as being subject to flood risk whilst significant flooding had also been witnessed in the area in September and December, 2015. Specifically, in an initial report prepared by Mr. Damien Ginty for the Planning

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Authority it was noted that the flood event witnessed on 5<sup>th</sup> September, 2015 in the Manor West / Killerisk area had been much greater than that predicted for a 1 in 1,000 (0.1% AEP) return period in the CFRAM Study and thus Kerry County Council had written to the Office of Public Works to seek a review of the hydrology for the CFRAM study in order to accurately reflect the flooding witnessed in September, 2015.

10.4.2 In support of the foregoing, and as a means of further establishing whether or not the proposed development site is located in an area of flood risk, I would refer the Board to the *National Flood Hazard Mapping* available from the Office of Public Works ([www.floodmaps.ie](http://www.floodmaps.ie)) which, although not recording any flood events in the immediate surrounds of the subject site, indicates that the southernmost extent of the application site in the vicinity to the River Lee is located within an area identified as 'Benefitting Lands' which are described by the Office of Public Works as lands that might benefit from the implementation of Arterial (Major) Drainage Schemes (under the Arterial Drainage Act, 1945) and which may also be subject to flooding or poor drainage. However, whilst this mapping serves as a useful tool in highlighting the potential for flood events in a particular area, it must be conceded that it is not definitive and thus it would not be appropriate to rely on same for the purposes of flood risk assessment.

10.4.3 Having considered the historical 'National Flood Hazard Mapping' available from the Office of Public Works, I would refer the Board to the '*Preliminary Flood Risk Assessment*' prepared by the OPW in 2011 as part of the National CFRAM Programme which essentially encompassed a national screening exercise to identify areas where there may be a significant risk associated with flooding. More notably, the mapping compiled as part of this exercise indicates that those lands in the immediate vicinity of both the River Lee and the Ballynabrennagh River, which would include parts of the proposed development site, are within the indicative extent of a 1% AEP (1 in 100) fluvial flood event. However, it is important to note that the PFRA is not a detailed assessment of flood risk and is rather a broad-scale assessment, based on available or readily-derivable information, to identify where there is a genuine cause for concern that may require national intervention and assessment rather than locally developed and implemented solutions.

10.4.4 Therefore, it is perhaps of greater relevance to consider the updated mapping prepared by the Office of Public Works and published in 2016 as part of its Draft Flood Risk Management Plan for UoM 23: '*Tralee Bay – Feale*', however, the OPW has since indicated that this mapping is presently under

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review following the receipt of an objection / submission and / or further information as part of the statutory consultation on the draft maps and that it may be amended prior to finalisation. Notably, this would seem to correspond with the assertion by the Planning Authority that Kerry County Council has requested a review of the hydrology under the CFRAM study to accurately reflect flooding recently witnessed in the area which exceeded the predicted 1 in 1,000-year flood event level.

10.4.5 On the basis of the available information, in my opinion, it is reasonable to conclude that the subject site is located in an area at risk of flooding and in this respect I am satisfied that the Planning Authority was warranted in seeking the submission of a Flood Risk Assessment by the applicant.

10.4.6 On 12<sup>th</sup> August, 2016 the applicant submitted a site specific Flood Risk Assessment of the proposed development compiled by Malachy Walsh and Partners, Consulting Engineers, in response to a request for further information. This report references the draft flood mapping published in February, 2015 as part of the Shannon CFRAM Study, which details the predicted flood extents of 10%, 1% and 0.1% AEP flood events (based on current predicted flow rates without taking the effects of future climate change into account), and subsequently acknowledges that there is some potential for flooding indicated adjacent to the River Lee and the Ballynabrennagh River in addition to that area to the northeast of the existing N22 / N70 roundabout, although it is emphasised that this mapping is of a draft nature only and has not been finalised. The FRA proceeds to set out the methodology employed in the calculation of flow rates in the River Lee at the proposed bridge location in order to establish the applicable Flood Zone classifications for the application site and to inform the design of the proposed bridge (including the soffit level). Hydraulic modelling was subsequently undertaken for both the River Lee and the Ballynabrennagh River and it is proposed to set the bridge soffit level at 6.50mOD at its southern end and 6.77mOD at its northern end to accommodate the 2% longitudinal gradient of the roadway. This is stated as providing for a freeboard of 0.3m at the southern abutment and 0.57m at the northern abutment at the design flow rate of 80m<sup>3</sup>/second which would accord with the OPW's minimum freeboard requirement of 0.3m (*N.B.* This design is intended to cater for a 1% AEP flood event with a 20% increase in the flow rate to allow for the future effects of climate change).

10.4.7 With regard to the potential impact of the proposed construction on flooding elsewhere such as by way of an increase in surface water runoff or



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through the displacement of flood waters due to the loss of floodplain storage, I would refer the Board to Section 4.5 of the FRA which states that the additional runoff will be collected in a closed system with the outfall for same to the River Lee located downstream of the proposed bridge and that *'due to the relative time of concentration for the storm water system and that for the overall catchment, the development will not cause an increase in the flow rate in the river during an extreme flood event'*. It is also stated that whilst the proposed construction will require filling works to be undertaken within Flood Zones 'A' and 'B' of the existing flood plain, the loss of flood plain storage up to the 1 in 100 flood event level will be negligible whilst the total loss of storage up to the 1 in 1,000 flood level will be 1,500m<sup>3</sup>, most of which will be above the 100-year flood level. In effect, it has been asserted that the loss of floodplain storage consequent on the proposed development will be insignificant in the context of the design flood magnitude and water surface levels of the adjacent rivers with the result that the impact downstream will be immeasurably low.

10.4.8 In relation to the identification of Flood Zones pursuant to the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'*, Figure No. 6 of the FRA details the estimated extent of Flood Zones 'A', 'B' & 'C' on site (*N.B.* The limit of Flood Zone 'A' has been calculated as 5.98mOD with Flood Zone 'B' extending from same up to a level of 6.49mOD whilst Flood 'C' encompasses those lands where the probability of flooding is low i.e. less than a 1 in 1,000 flood event). Levels on site vary between 7.00mOD at its northern end and 5.8mOD at its southern end adjacent to the River Lee and, therefore, elements of the proposed road and bridge construction will occur with Flood Zones 'A' and 'B'. On the basis that the proposed bridge and roadway can be classified as 'less vulnerable development', it is necessary to undertake a 'Justification Test' in accordance with Box 5.1 of the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* and in this regard the FRA has simply submitted that the proposed development satisfies all the relevant criteria and is therefore appropriate in the context of the Guidelines.

10.4.9 In its assessment of the FRA, the Planning Authority has considered the calculated flow rates and the hydraulic modelling undertaken by the applicant and has concluded that, in the absence of revised hydrology from the CFRAM study (with the OPW having already been requested by the Local Authority to undertake a review of the hydrology in Tralee), the adoption of a flow rate of 80m<sup>3</sup>/s presents an adequate factor of safety to calculate the bridge soffit and to ascertain the impact on adjacent lands. It has also accepted that the loss of flood storage in a 1 in 100 flood event will be negligible and that the proposed

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development will not increase flooding either upstream or downstream during such an event. The bridge soffit level is similarly considered to be acceptable. Therefore, the Planning Authority has concluded that the proposed development will have a minimal impact on the flood regime of the area and that it is acceptable from a flood risk perspective.

10.4.10 Having reviewed the available information, including the FRA, it would appear that the proposed development satisfies the requirements of Item Nos. (i), (ii), (iii) & (iv) of Part 2 of the 'Justification Test' set out in Box 5.1 of the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* in that it will not give rise to any significant increase in flood risk elsewhere, for example, such as through the displacement of flood waters, or any other unacceptable residual risks, however, in light of my earlier concerns that the construction of the access / link road at the location proposed should be 'plan-led' having regard to the provisions of the *'Spatial Planning and National Roads, Guidelines for Planning Authorities'* and that it does not presently find support in local development plan policy, the Board may wish to consider if the subject proposal can be held to accord with the requirements of Item No. 1 of the 'Justification Test' which states the following:

*'The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of these Guidelines'.*

10.4.11 Furthermore, on the basis that the OPW is presently engaged in a review of the mapping contained in its Draft Flood Risk Management Plan for UoM 23: 'Tralee Bay – Feale' following the receipt of an objection / submission and / or further information as part of the statutory consultation on the draft maps, there may be a case that the proposed development is premature pending the finalisation of the Flood Risk Management Plan and the associated mapping of flood extents and depths at the site location.

### **10.5 Archaeological Considerations:**

10.5.1 From a review of the Sites and Monuments Record Database, it is apparent that the proposed development site is located to the immediate east of an 'enclosure' identified as SMR Ref. No. KE029-165 which is scheduled for inclusion in the next revision of the Record of Monuments and Places. In this respect I would suggest that the proposed works could therefore potentially encroach into the area of archaeological potential typically associated with such features and thus there is the possibility of ground works encountering

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subsurface items of archaeological significance. However, whilst it would be open to the Board to seek further information in this regard, I am inclined to suggest that in light of the extent of ground disturbance already undertaken in the vicinity of SMR Ref. No. KE029-165, it would be sufficient to require archaeological monitoring of all ground works associated with the proposed development as a condition of any grant of permission.

**10.6 Appropriate Assessment:**

10.6.1 From a review of the available mapping, including Map Nos. 10.1(c) & 10.2(c) of the Kerry County Development Plan, 2015 and the data maps available from the website of the National Parks and Wildlife Service, it is apparent that although the proposed development site is not located within any Natura 2000 designation, it is of relevance to note that the subject works will include for the construction of a new bridge crossing over the River Lee at a point located approximately 3.0km upstream of the Tralee Bay and Magharees Peninsula, West to Cloghane Special Area of Conservation (Site Code: 002070) and the Tralee Bay Complex Special Protection Area (Site Code: 004188). In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 10 of the Kerry County Development Plan, 2015, to conserve, manage and, where possible, enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County. Furthermore, Objective NE 12 of the Plan states that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites, having regard to their conservation objectives, will be permitted (either individually or in combination with other plans or projects) unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions. In effect, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.

10.6.2 Having reviewed the available information, in light of the nature and scale of the proposed development, the specifics of the site location relative to certain Natura 2000 sites, and having regard to the prevailing site topography, in my opinion, by employing the source/pathway/receptor principle of risk assessment, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the

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conservation objectives of the Tralee Bay and Magharees Peninsula, West to Cloghane Special Area of Conservation and the Tralee Bay Complex Special Protection Area on the basis that the lands in question are situated upstream of these Natura 2000 sites and thus drain towards same i.e. it will be necessary to consider the potential for water-based / pollution / contamination impacts. In this respect I would further advise the Board that whilst there are a number of other Natura 2000 sites within a 15km radius of the proposed development site, including the Ballyseedy Wood Special Area of Conservation (Site Code: 002112) approximately 500m to the east further upstream and the Slieve Mish Mountains Special Area of Conservation (Site Code: 002185) c. 2.0km to the south, given the absence of any pathways, such as hydrological links, between the proposed works and those areas, it is my opinion that there is no potential for the subject proposal to adversely impact on those European Sites.

10.6.3 At this point I would advise the Board that in screening the proposed development for the purposes of appropriate assessment, the Planning Authority initially determined that the *'Alteration of key environmental conditions (e.g. water quality, water supply, air quality)'* could not be ruled out before subsequently concluding that *'The potential for significant effects to Natura 2000 sites cannot be ruled out'*. Regrettably, this initial screening exercise is not entirely clear as to the rationale for its conclusions, particularly in light of the more detailed examination carried out as regards screening the proposal for the purposes of sub-threshold environmental impact assessment and the limited significance attached to the potential impacts identified therein, whilst it is also noteworthy that despite the conclusions of the screening exercise that the potential for significant effects on Natura 2000 sites could not be ruled out, the Planning Authority neither refused the application nor sought the submission of a Stage 2 Appropriate Assessment: Natura Impact Statement. Subsequently, following the receipt of a response to a request for further information, which included the submission of a Flood Risk Assessment of the proposed development, it is detailed in the final Planner's Report that as the aforementioned FRA had seemingly verified that the proposed development would not cause flooding, the Planning Authority was satisfied that there was no likely potential for significant effects to any Natura 2000 sites.

10.6.4 Having reviewed the available information, in my opinion, given the site location and the nature of the works proposed, I would reiterate the need to consider the likelihood of the proposal to have a significant effect on the conservation objectives of the downstream Tralee Bay and Magharees Peninsula, West to Cloghane Special Area of Conservation and the Tralee Bay

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Complex Special Protection Area given the potentially significant impacts on water quality which could arise from any runoff of sediment and / or pollutants into the River Lee (which flows into the SAC & SPA) during the construction of the proposed development, with particular reference to the proposed bridge crossing. Any deterioration in water quality downstream as a result of the proposed construction works (such as by way of sedimentation, pollution or other contamination) could potentially have a significant adverse impact on those protected aquatic habitats and species etc. within the SAC & SPA which are to be maintained and / or restored to a favourable conservation condition pursuant to the relevant conservation objectives.

10.6.5 Whilst I would acknowledge that the Natura 2000 sites in question are located c. 3km west of the proposed works (and potentially a further distance on measurement downstream), in the absence of any clear construction methodology for the proposed works, including the bridge crossing, and any details of those mitigation measures which would be put in place to avoid the potential for pollution etc. of the watercourse, in my opinion, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the likelihood of the proposed development significantly and negatively affecting the identified downstream Natura 2000 sites cannot be objectively ruled out and therefore it is necessary to undertake an 'Appropriate Assessment (Stage 2)'

10.6.6 Accordingly, it is my opinion that in the absence of a comprehensive Natura Impact Statement it is not possible to conduct a suitable appropriate assessment of the effects of the proposed development on the identified European sites and thus it cannot be established that the proposed development would not have a significant adverse effect on the integrity of Tralee Bay and Magharees Peninsula, West to Cloghane Special Area of Conservation and the Tralee Bay Complex Special Protection Area, in light of their conservation objectives.

## **10.7 Other Issues:**

### **10.7.1 The Requirement for Environmental Impact Assessment:**

10.7.1.1 Concerns have been raised in the grounds of appeal that the subject proposal gives rise to 'application-splitting' (seemingly in reference to 'project-splitting') on the basis that the proposed link road will facilitate access to the existing retail park and will also serve to open up the applicant's adjacent lands to development. In this respect the term 'project-splitting' can be used to describe a scenario whereby a single larger development project has been purposely split

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into a series of smaller 'sub-threshold' planning applications in order to avoid the mandatory preparation of an Environmental Impact Statement. It can also be used in reference to the findings of the High Court in respect of *O'Grianna & Ors. v. An Bord Pleanala* wherein, inter alia, it was held that the connection of a wind farm to the national grid formed an integral part of the overall development of which the construction of the turbines is the first part; and that the cumulative effects of the construction of the turbines and the connection to the national grid must be assessed in order to comply with the EIA Directive.

10.7.1.2 With regard to the subject application the appellant has submitted that there is a functional relationship between the provision of the proposed roadway and the applicant's future intentions for the development of the remainder of its landholding as detailed in the 'indicative 'masterplan' and that when these aspects are considered cumulatively they would necessitate the preparation of an Environmental Impact Statement given the potential to facilitate the expansion of the retail park and the relevant provisions of Classes 13 & 15 of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended.

10.7.1.3 In response to the foregoing, the applicant has asserted that Environmental Impact Assessment is not a mandatory requirement for the proposed development as the submitted proposal does not involve a class of development prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, as set out in Parts 1 & 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended. Similarly, it has also been submitted that the proposed development would not be likely to have significant effects on the environment having regard to the criteria set out in Schedule 7 of the Regulations and thus does not consist of 'sub-threshold' development or warrant the submission of an environmental impact statement. Instead, it has been suggested that the proposed roadway simply amounts to the 'frontloading' of infrastructure as the applicant is not presently in a position to present plans for the development of its wider landbank although it wishes to provide the requisite infrastructure upfront so as to facilitate the development of those lands once an appropriate commercial environment arises.

10.7.1.4 Having considered the available information, whilst I would acknowledge the appellant's concerns, it should be noted in the first instance that the subject proposal, when considered as a standalone development, does not involve a class of development prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, as set out in Parts 1 & 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and,

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therefore, it does not necessitate the preparation of an Environmental Impact Statement. Furthermore, it is my opinion that the works in question would be unlikely to have significant effects on the environment having regard to the criteria set out under Schedule 7 of the Regulations.

10.7.1.5 With regard to the suggestion that the impact of the proposed development should be considered cumulatively with the existing Manor West Retail Park, it should be noted that although the applicant has indicated that the principle purpose of the proposed roadway will be to facilitate an alternative / improved access arrangement to the retail park, it is evident from a review of the site location map which has accompanied the subject application that the applicant's landholding does not extend to include the existing retail park which is seemingly in separate ownership. It is also notable that the proposed roadway will not contribute to any additional floorspace etc. within the existing retail park.

10.7.1.6 In relation to the applicant's future intentions with regard to the development of the 'masterplan' plans, I am inclined to suggest that there must be an acknowledgement that this submission is intended to be viewed solely for indicative purposes and that the applicant has expressly stated that there are no definitive proposals planned for the development of same. Therefore, in the absence of any proposed or planned developments on the 'masterplan' lands, I would suggest that it would be somewhat difficult to undertake an environmental impact assessment of same and thus the subject proposal should be considered as a standalone development.

10.7.1.7 On balance, it is my opinion that, having regard to the site location, the context of the proposed development site, the planning history of the surrounding area, and the nature and scale of the works proposed, the subject proposal does not involve a class of development prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, as set out in Parts 1 & 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and, therefore, it does not necessitate the preparation of an Environmental Impact Statement.

10.7.2 The Provision of the Ballymullen to Ballyseedy Amenity Trail:

10.7.2.1 Objective WRPO6 of the Tralee Town Development Plan 2009 seeks to 'Facilitate a river walkway from the Town Council area to Ballyseedy Woods in conjunction with Kerry County Council' and in this regard it is of relevance to note that the Local Authority has received approval for the development of a Greenway Amenity Trail between Ballymullen and Ballyseedy Wood. Whilst the

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submitted proposal has acknowledged the route of the aforementioned greenway, it will be necessary to ensure that the proposed construction includes provision for a suitable crossing arrangement where the amenity trail intersects with the link road. In this regard the final report of the Capital Infrastructure Unit of the Local Authority has stated that due to the vertical alignment and width of the proposed roadway, in addition to the projected peak hour traffic volumes, an 'at grade' crossing of the roadway by the greenway would not be satisfactory and thus an underpass should be provided to accommodate the greenway with the design of same to be approved by the Local Authority. Accordingly, a condition has been included in the notification of the decision to grant permission that requires the provision of an agreed underpass beneath the proposed access road in order to accommodate the proposed Ballymullen to Ballyseedy Greenway Amenity Trail. In the event that the Board decides to grant permission for the subject proposal, I would consider the inclusion of a comparable condition to be reasonable.

#### 10.7.3 Access to Adjacent Agricultural Lands:

10.7.3.1 With regard to the proposed alteration of the existing access arrangement to the agricultural lands in the ownership of the appellant, it would appear that the Local Authority has acceded to the necessary works on its lands in order to accommodate same.

### **11.0 RECOMMENDATION**

Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

#### **Reasons and Considerations:**

1. The "Spatial Planning and National Roads - Guidelines for Planning Authorities" issued by the Department of the Environment, Community and Local Government (2012) seek in Section 2.5 'to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply'. Objective RD-17 of the Kerry County Development Plan 2015-2021 seeks to protect the capacity and safety of the national road network in the County and ensure compliance with these Guidelines. Having regard to the foregoing, it is considered that the proposed development would result in the creation of an additional access



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onto the N70 / N22 national primary road, where a speed limit of 100 km/h applies, and would contravene national policy to preserve the level of service and carrying capacity of the national road network and to protect the public investment in the road. The proposed development would also contravene current Development Plan policies for the area, which seek to safeguard the strategic role of the national road network in catering for the safe and efficient movement of major inter-urban and inter-regional traffic. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the 'Spatial Planning and National Roads, Guidelines for Planning Authorities', the site location, and its relationship with the national road network and adjoining undeveloped lands, it is considered that the construction of an access road onto the Tralee Bypass at the location proposed does not presently find support in local development plan policy and, in the absence of a 'plan-led' approach, would constitute an uncoordinated developmental approach to the subject site and adjoining lands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Tralee Bay and Magharees Peninsula, West to Cloghane Special Area of Conservation (Site Code: 002070) or the Tralee Bay Complex Special Protection Area (Site Code: 004188), in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from further consideration to the granting of permission for the proposed development.

Signed: \_\_\_\_\_

Robert Speer  
Inspectorate

Date: \_\_\_\_\_