



An
Bord
Pleanála

Inspector's Report PL27.248705

Development

Mixed use development comprising 658 no. residential units, neighbourhood centre, 6 no. retail and commercial units, café, 3 no. three storey office buildings, two storey crèche building, a district park, realignment of existing road and provision of new road through the site (total length 2.9km), new pedestrian / cycle bridge across the N11, the diversion and rerouting of a twin 110kv electricity line and 2 no. 38kv lines, demolition of an existing dwelling and remediation works for historic landfill locations within the site.

Location

Fassaroe and Monastery, Bray, Co. Wicklow

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

16/999

Applicant(s)

Cosgrave Property Group

Type of Application

Permission

Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	First and Third Party
Appellant(s)	Cosgrave Property Group Bray Clay Pidgeon Club William B Somerville Large Stephen Byrne Frank and Noreen Keane Denis Sherlock and Others Barry and Tracy MacDevitt and Others
Observer(s)	Noel Barry and Tanny Peters Gerry McGlinchy Patricia Walker and Rose Mary Craig Gerard and Philip Lardner S. Mathews
Date of Site Inspection	14 th September, 2017
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The site is located approximately 4km to the west of Bray town centre and 4.5 km at the closest point of the site from Bray DART station. The site is c. 3km to the north east of the centre of the village of Enniskerry and has a stated area of 48.59 ha.
- 1.2. The site is part bounded to the north by the boundary between the administrative areas of Dun Laoghaire Rathdown and Wicklow County Councils and the boundary in this area is a stream called the County Brook and in some places referred to as the Fassaroe Stream. This stream connects with the River Dargle to the east of the site and ultimately discharges to the sea at Bray.
- 1.3. The site and its environs has a history of use for the extraction of stone and some of these worked quarries were subsequently used as landfills. These areas were generally in use as landfills prior to the implementation of legislation requiring permission or environmental assessment and the standards used in the development and use of the sites was basic. There are a number of existing operational facilities in the vicinity of the site, namely the Cement Roadstone sand and gravel facility to the south of the site and an existing waste management facility located to the north east of the site which is operated by Greenstar.
- 1.4. The character of the area is semi-rural with an existing road network serving the site from the N11 via junction 6. The main local road in the vicinity of the site is Fassaroe Lane that runs to the south of the appeal site. This is a narrow local road that is characterised by a number of one off rural dwellings along its length. The main body of the site is currently in agricultural use with mature hedgerow boundaries and the lands are undulating in nature.
- 1.5. The lands are characterised by a number of powerlines which cross in a generally north to south orientation and there is an existing substation located on the southern side of Berryfield Lane close to the south west corner of the site.
- 1.6. The appeal site forms part of a larger site that encompasses lands to the south of Berryfield lane and to the west of the current application site boundary. These lands have been the subject of a masterplan that dates from 2010. The stated overall developable area under the masterplan is 112 ha. The target populations for the masterplan area are 6,600 residential population and 16,000 employees.

1.7. Permission was sought for a period of seven years.

2.0 Proposed Development

As revised on foot of a request for further information issued by the Planning Authority and as subsequently granted the proposed development comprises the following elements:

- The construction of 706 no residential units comprising 438 no. apartments and 268 no. houses. The majority of these dwellings are located in a main area of development located to the north of Berryfield Lane with additional apartment units proposed to be located in the vicinity of the neighbourhood centre further to the east on Berryfield Lane. Dwellings are a mixture of two and three storeys and the apartment buildings four and five storeys.
- The residential area includes a crèche which is proposed to be two storeys in height and which has a stated floor area of 786 sq. metres.
- To the north of the main residential area a district park is proposed that would be bounded on the northern side by the Ballyman Glen and to the south by the new residential neighbourhood. The area of this park is stated to be 12.1 ha.
- A neighbourhood centre located to the east of the residential development on Berryfield Lane which comprises a convenience store of 1,795 sq. metres floor area. Six retail / commercial units are also proposed with a total gross floor area of 1,166 sq. metres are also proposed in the neighbourhood centre as well as a café with a floor area of 204 sq. metres.
- The development of an office park on lands located at the eastern end of the masterplan area and to the south east of an existing roundabout accessed off junction 6 of the N11. A total of 3 no. three storey office buildings are proposed with a total of 9,177 sq. metres of office accommodation proposed.
- A new road running through the site is proposed. This road would run from the eastern end of the Berryfield Road in the vicinity of the roundabout at the access to the Roadstone facility and run generally to the north of the existing

Berryfield Road alignment. Approximately at the centre of the main residential area proposed the new road would turn south and cross the Berryfield Road before further crossing it to the west and ending up linking with the Ballyman Road at a location east of the existing Ballyman Road Berryfield Lane junction.

- A new pedestrian access over the N11 is proposed to the east of the site.

3.0 Planning Authority Decision

3.1. Further Information

Prior to the issuing of a Notification of Decision, the Planning Authority requested further information on a total of 17 no. issues. The request for further information derived from a report from the Senior Engineer (Planning), which is summarised at section 3.3 below.

3.1.1. Request for Further Information

The most significant of the items raised in the request for further information are considered to be as follows:

- Item 1 requests further details on the possibility of the EPA requiring a long term solution to landfill remediation, if landfill capping is the most appropriate solution and its impact on the SAC, the implications of a requirement to remove waste, the structural implications of building on landfill areas, whether the phasing of the development could be altered to avoid areas of landfill to facilitate long term remediation.
- Item 2 relates to transportation links and identifies concerns with regard to the proposed public transportation connections. Further proposals are required. Further information on the impact of the proposed development on the capacity of the N11 is also required as is justification for the modal split proposed.

- Item 3 sets out concerns of the Planning Authority regarding the neighbourhood centre size and location relative to the rest of the development, prematurity and compatibility with the Masterplan.
- Item 5 notes that the level of private amenity space to a significant number of the residential units is below the standard set out in the development plan.
- Item 6 relates to car parking and that the level of parking proposed to serve the apartments is below the standard set out in the development plan and inadequate visitor parking for the housing. Report justifying the approach is required.
- Item 7 requires further consideration of the potential impact of the pedestrian bridge and attenuation pond on the future upgrading of the N11.
- Item 8 relates to visual impact and requires further consideration of the impact from protected views located on the Ballyman Rd in DLR County Council area. Clarification of drawings / potential discrepancies and the level of fill proposed also required.
- Item 9 seeks clarification as to how the use of Berryfield Lane as a rat run would be avoided and capacity of this road.
- Item 10 notes that there is a water main traversing the site and seeks clarification that it is acceptable to Irish Water to build over part of this line.
- Item 14 notes that the proposals submitted in relation to Part V are not in accordance with the provisions of the Act and that revised proposals are required.
- Item 15 relates to roads and seeks, inter alia, clarification of the capacity of the Ballyman Road and junction of link road and Ballyman Rd. Proposals for the internal estate roads to ensure compliance with DMURS.
- Item 16 relates to the crèche and seeks additional external play space and a set down area.
- Item 17 relates to the NIS and states that there is insufficient information submitted to allow an AA to be undertaken. Clarification as to how the

reduced recharge rate from the landfill remediation works would not impact on the SAC.

3.1.2. Response to Further Information

The response to further information was received by the Planning Authority on 16th march, 2017 and the following are the main issues arising from this response:

- The neighbourhood centre and crèche were the subject of redevelopment / redesign and the number of residential units increased. The number of residential units increased to 706 no. with 438 no. apartments and 268 no. houses.
- Stated that the EPA was contacted by the applicant and declined to comment on proposed remediation at this time.
- That the proposals for remediation included in the application relate to remediation to facilitate development of the site. There may be additional measures required by the council to mitigate leachate. The measures proposed in the application are consistent with the Environmental Risk Assessment prepared in accordance with EPA guidance.
- It is considered that the proposed capping of the landfill is the most appropriate long term solution to the landfills.
- Submitted that the excavation of waste at the sites is prohibitive due to the volumes arising, the suitability of the capping proposed and the lack of alternative locations to receive the excavated material.
- That the phase 1 development would not be viable if excavation of waste was required as proposed parks and open space areas would be lost.
- That the stability of the landfill areas is not considered to be a significant issue given the time that it has been in place. This issue is covered in the remediation report. No buildings are proposed to be on waste sites however part of the link road is proposed to be.
- That the concerns of the NTA with regard to employment on site relate primarily to the potential impact of future development phases.

- That consideration of longer term employment on the lands could best be considered in the context of the Bray Municipal District LAP, the NTA transportation plan and future applications.
- The design of the neighbourhood centre has been amended to improve connectivity with lands to the north west. The design now incorporates the use of podiums.
- An updated retail impact assessment has been prepared that indicates the proposed development would not give rise to any significant trade diversion. It is now proposed that the neighbourhood centre would be developed in the final stage of the Phase 1 development.
- That the level of private amenity space in the plan is high (92-96 sq. metres) and the reduced rate is justified on the basis of the high density designation of the lands and the extensive public open space provision. The densities for the site in the Bray Environs LAP are 50 and 85 units per ha. and to accommodate these densities the development plan open space standard cannot be met. All back to back distances meet the requirement for 22 metres and the principles in the Sustainable Residential Development Guidelines are met.
- That no views from the Ballyman Road would be blocked by the proposed development. A more detailed visual analysis prepared by Cunnane Stratton Reynolds was submitted. Additional views have been prepared and submitted.
- That the design of the waste capping system has been revised such that leachate seeping upwards would be re directed down into the waste and the need for a leachate drain and sump is removed.
- The proposal for Part V compliance has been revised to reflect clarification that the 10% requirement is based on unit numbers and also the increase in the proposed number of units.
- That the footprint, access and parking arrangement to the crèche building have been revised.

- An updated NIS has been submitted which indicates that addresses the issues raised. The calculation of the recharge rate is set out at 4.8.13 and the reason why there is not considered to be an impact on the qualifying interests set out at 4.8.1.3. Section 4.8.1.1 sets out the detailed construction activities within the SAC and the impact on qualifying interests.
- That the loss of wet woodland is not specifically addressed in the NIS as it is not a qualifying interest of the site however it is referenced in the ecology section of the EIS.
- A management strategy for invasive species has been prepared.
- Regarding public transport, the Traffic and Roads Response to the FI states that the NTA have confirmed that the site will be served by public bus service. It is also stated that the NTA are currently examining option study of the Bray to UCD radial route and that the provision of a service to Fassaroe is included within this study. States that it has been confirmed by the NTA that the Phase 1 development will be served by express bus service direct to Dublin City Centre via the LUAS interchange and a bus service to Bray TC and DART station. There is a commitment that a private bus will be available if the public service is delayed. To improve bus efficiency, a number of traffic management measures and road layout changes within Bray are proposed
- Noted that the NTA are engaged in a study of the Bray / N11 to UCD bus corridor and that TII are working on proposals for improvements to the N11 corridor. Neither of these are available to the applicant at the time of the FI response however they indicate that actions to address traffic issues in the area are being take.
- Revised traffic assessment submitted that takes account of the revised layout at FI stage including additional residential units. This shows that there would be nominal impact on the key junctions at the Fassaroe Interchange roundabouts and the new Ballyman Road junction arising from the additional traffic from the proposed changes.
- Analysis indicates that the overall impact of the development would be a 2.8% increase on M11 northbound and 2.2% increase in the N11 northbound in the

AM peak which is not a significant impact on the congested northbound AM route.

- Regarding the 45% modal split for car used the FI clarifies how these are based on analysis of small area statistics for an area in the western side of Bray town.
- Additional visitor parking for the housing units are proposed in the revised layout.
- Regarding the potential conflict between the pedestrian bridge and attenuation area and the upgrade to the N111 it is stated that the upgrade proposals are at a very early stage of development and that no information is yet available on the layout. In this situation, the bridge design has been done to facilitate the future widening of the N11 to 3 lanes.
- Clarification as to the road hierarchy and compatibility with DMURS is submitted.

3.2. Decision

It is noted that the decision to issue a Notification of Decision to Grant Permission was made by the Director of Services for Planning contrary to a recommendation to refuse permission from the planning officer. Section 3.2 below summarises the content of the reports of the Planning Officer, Senior Engineer (Planning) and Director of Services.

The Planning Authority issued a Notification of Decision to Grant Permission subject to 35 no. conditions, the most significant of which are considered to be as follows:

Condition No.4 requires that no development shall be undertaken until such time as Wicklow County Council has been granted a Certificate of Authorisation under the Waste Management Regulations, 2008 in respect of the landfill areas that are located on and adjoining the site and the certificate does not require the substantial removal of waste from the site and Wicklow County Council has confirmed in writing that development can commence having regard to the requirements of the EPA.

Condition No.5 requires that no works on the employment / office park element of the proposed development shall be undertaken until such time as the Bray and Environs Transportation Plan (to be undertaken by NTA in conjunction with TII and Wicklow County Council) has been completed and written confirmation received from the Planning Authority that this aspect of the development can be accommodated.

Condition No.6 requires that not more than 350 no. residential units shall be occupied prior to written confirmation from the department of education that the construction of a primary school in the Fassaroe area has commenced and (ii) not more than 625 no units shall be occupied until an 8 classroom primary school has been opened in Fassaroe.

Condition No.7 requires that not more than 350 residential units shall be occupied in advance of the completion and commencement of operation of the crèche.

Condition No.8 requires that no part of the neighbourhood centre shall commence in advance of the completion of all residential units outside of this area.

Condition No.13 requires that the developer shall enter into an agreement regarding Part V prior to the commencement of development.

Condition No.15 requires the agreement of details regarding aspects of the road layout and design including the proposed pedestrian / cycle bridge over the N11.

Condition No.19 requires that no residential unit shall be occupied until the proposed Ballyman / Monastery Link Road has been constructed and open to traffic.

Condition No.21 requires that in advance of the rerouting of the public bus service through the development and connection with Bray that a private bus connection from the development to Bray town centre and DART station shall be provided.

Condition No.24 requires that prior to the commencement of development, full surface water drainage details shall be submitted for the agreement of the planning authority.

Condition No.34 requires that prior to the capping of the landfill area, a monitoring programme shall be submitted

3.3. Planning Authority Reports

3.3.1. Planning Reports

The initial report of the planning officer dated 26th October, 2016 summarises the submissions received, internal reports, the plan policy context and other submissions. Report highlights concerns with regard to the lack of LUAS connection and the implication for the road network in the area. Concern also relating to the extent of employment uses on the site. Finally, significant concern is expressed with regard to the former landfill sites within the development area and the appropriateness of a grant of permission in advance of a determination on the appropriate remediation of these areas by the EPA. The implications of the landfill works on the Ballyman SAC have not been adequately assessed. Refusal of permission for eight reasons is recommended.

Following the request for further information issued and response received a second report from the Planning Officer recommends refusal of permission on two grounds relating to the absence of a final approved remediation approach to the landfill areas would be premature and that the scale of retail development proposed is excessive relative to the scale of residential development, is premature and would have an adverse impact on the existing retail centre of Bray.

Senior Engineer (Planning) – Report dated 27th October, 2017 notes the Planning Officers first report and the submissions of TII and NTA as well as the internal Environmental Services Report. Notes the submission of TII but comments that the logic applied would mean that all development in east Wicklow should be refused contrary to various land use plans. Also comments that while there is northbound congestion on the N11 that this eases north of Fassaroe. Concludes that having regard to national housing issues, government policy, the zoning of the site that it would not be reasonable to refuse permission without further investigation and further information is recommended.

Second Report from the SE (Planning) addresses the reasons for refusal in the second Planning Officer report, notes the issues arising and recommends that permission be granted subject to appropriate conditions, namely 4 and 5.

Director of Services – Report acknowledges the recommendations of the SEE Planning and SE Planning and considers that the difference in recommendation is largely one of emphasis with common issues arising in both. Notes onus on Planning Authorities to facilitate residential development and meet core strategy targets. On the waste sites it is considered that a holding condition is appropriate and similarly with the transportation issues it is considered that a holding condition pending the NTA Bray and Environs Transportation Plan is the appropriate action. Notes that there are works that the council will have to undertake to facilitate a successful development including works to improve the bus connection to Bray Main Street and on the Ballyman Rd.

3.3.2. **Other Technical Reports**

Roads Report – recommends further information on a range of roads issues including the Ballyman Road junction and the requirement for a right turn lane. Concerns also regarding the impact on the N11 and the use of a modal split based on existing residential development within Bray. Second report subsequent to FI recommends a grant of permission subject to conditions.

Bray Town Engineer – Refusal of permission recommended on the basis that the impact on the N11. The length of the main distributor road and alignment is an issue as is the attenuation pond and its impact on future N11 upgrade works. Concerns also regarding cycle facilities and that the Ballyman Road is inadequate to cater for the development and requires upgrading and revised proposals for the junction with the new distributor road. Concerns regarding the impact of the development on the County Brook and the risk of flooding downstream.

Water Services – Further information required.

Heritage Officer – report highlights that petrifying springs are one of the qualifying interests of the Ballyman Glen SAC and that the conservation objective is to maintain appropriate hydrological regimes. Given the predicted reduction in groundwater recharge projected from the capping of the landfills it is not clear how the conclusion of no adverse effects was reached. Also highlight potential for invasive species to impact on the SAC (alkaline fen) and the fact that Japanese knotweed is present on

the site. Highlights presence of wet woodland habitat at the northern end of site potentially impacted by diversion of the ESB lines.

Housing Officer – initial report that proposals are not sufficient to comply with Part V as proposal is for 10% of units and not 10% of the total residential floorspace.

Second report dated 3rd April, 2017 subsequent to FI does not object to the proposed Part V response.

Waste Management – Notes that three former waste sites are potentially impacted by the proposed development and that none of these have been the subject of authorisation by the EPA. Considered that pending the receipt of authorisation and clarity on mitigation or remedial measures required by the EPA that a grant of permission is not appropriate.

Childcare Officer – Notes that the 2 storey layout is not optimal. That a single large crèche facility is not the ideal outcome and that there is an expectation of significant need for places with expansion of the early years scheme.

3.4. **Prescribed Bodies**

Dun Laoghaire Rathdown County Council – Note the potential impacts of the development on the road network in the DLR area and any TIA should examine the impact on the Ballyman Road having regard to future developments including at Old Conna. Notes that there are flood risk zones A and B on the DLR side of the river that might be reflected on the Wicklow side. Concludes that generally supportive of residential development that there are concerns with regard to access, public transport, traffic, views and flooding.

NPWS – submission on file dated 11th October, 2016 make recommendations for conditions relating to archaeology. Regarding nature conservation, the submission notes the proposed landfill works and recommends that all mitigation measures contained in the EIS be put in place. Second submission dated 31 March, 2017 states that no objection on nature conservation grounds.

Irish Water – Initial report states that proposals required as to how the 33” watermain on the site would be protected. Details of leachate to be discharged to foul system is required. Confirmation that IW would not be required to operate or maintain any aspect of the leachate system including the pumping and rising main infrastructure.

Report dated 3rd April, 2017 subsequent to FI states that there is no objection subject to the 33" watermain being protected.

Fisheries Ireland – Further information on a number of issues required including an invasive species management plan and details of slope stabilisation works.

NTA – Initial report recommends that permission be granted for the residential component subject to the incorporation of mitigation measures necessary to address the increased traffic levels on the N11 junction (junction 6). These issues need to be addressed with TII. That consideration be given to the appropriateness of the location of the neighbourhood centre and that permission be refused for the office part pending the completion of a comprehensive traffic plan for the overall Fassaroe area. Subsequent to the FI it is noted that NTA, TII and Wicklow County Council have committed to undertake a transportation plan to cover the Bray area and adjoining lands in DLR County Council. NTA state that they are undertaking a review of the bus network in the Dublin Metropolitan area but that the applicant has satisfied the NTA that the bus service proposed are acceptable in principle. Specific measures within Bray to facilitate bus are noted. Regarding the impact on the N11 the submission states that applicant has not demonstrated that the increased burden on the N11 has been addressed or that the issues raised by TII have been addressed and that *'the authority is not in a position to fully recommend a grant of permission for any element of the proposed development at this stage'*. Noted that the applicant has misinterpreted the transport strategy document with regard to employment assumptions and questions the modal split assumptions used.

TII – Initial submission states that the proposed development cannot proceed without undermining the safety and efficiency of the national road network and that permission should be refused. That the N11 is currently in excess of capacity and that the development would compound capacity issues northbound in the AM peak and southbound in the PM peak. It is noted that the Fassaroe Masterplan predates a number of policy documents including the Guidelines on Spatial Planning and National Roads and the NTA transport strategy. Considered that the development is premature pending a statutory update of the Fassaroe Masterplan. Note that TII is currently undertaking a M11/N11 Corridor Needs Study and that development is premature pending the findings of this study.

Second TII report dated 24 April, 2017 states that the FI response does not demonstrate that the development can be accommodated without impacting on the operation of the national road. Stated that it remains unclear how the car modal share target of 45% can be met. Development would be contrary to national guidance and to Objective TR23 of Plan.

An Taisce – Note that the previous LUAS proposals are not likely to be delivered and that it is essential that alternative transport proposals would be on a par with LUAS. Issues relating to energy efficiency and flood risk also noted.

ESB – that to date there had been no formal agreement regarding the undergrounding of 110kv lines but that there was no objection to the development.

3.5. **Third Party Observations**

A total of 40 no. third party submissions were received by the Planning Authority. The following are the main issues raised in these submissions:

- Capacity of local road network and new junction layouts.
- Lack of public transport provision and connection with existing public transport in Bray.
- That the zoning of the site should be reconsidered in view of the scrapping of plans to extend the LUAS to Fassaroe as included in the original masterplan.
- Negative impact on the rural landscape and setting. Loss of greenbelt and coalescence of the settlements of Bray and Enniskerry.
- Lack of ancillary services including schools.
- Lack of detail regarding social housing / part V.
- That the application should be accompanied by a flood impact study. There is a history of flooding from the county Brook.
- The development would impact negatively on the water supply in the area.
- The development would impact negatively on the setting of Vallombrossa House, a protected structure close to the site.

- That the development is being planned in isolation from development on the Dun Laoghaire side of the administrative boundary.
- That the quantum of retail development proposed is excessive.

4.0 Planning History

The following planning applications relate to the appeal site and adjoining lands at Fassaroe:

Wicklow County Council Ref.99/366; ABP Ref. PL27.120646 – Permission granted by the Planning Authority but refused on appeal for the development of a business park on a site of 78.6 ha. for reasons relating to contravention of principles of sustainable development and accessibility, the impact of the development on the visual and scenic amenity of the area, the proximity of the site to Enniskerry and the potential for the development to result in the coalescence of Bray and Enniskerry areas and the impact of the development on the carrying capacity of the N11.

Wicklow County Council Ref. 02/6564; ABP Ref. PL27.201368 – Permission granted by the Planning authority and by the Board on appeal for the development of 20 no. warehousing units on part of the site.

Wicklow County Council Ref. 03/9812 – Permission granted for revisions to the warehousing layout permitted under Ref. 02/6564.

Wicklow County Council Ref.04/1710; ABP Ref. PL27.211321 – Permission granted by the Planning authority but refused by the Board for further revisions to warehousing development permitted under Ref. 02/6564.

Wicklow County Council Ref.08/801 – Extension of duration of permission of Ref. 02/6564 granted by the Planning authority.

5.0 Policy Context

5.1. National and Regional Planning Policy

- 5.1.1. Bray is identified as a metropolitan consolidation town in the Regional Planning Guidelines for the GDA, 2010 – 2022. The Guidelines identify such towns as being located close to Dublin City and functioning as part of the gateway. Consolidation towns should be developed at a relatively large scale as part of the consolidation of the metropolitan area and to continue to support key public transport corridors connecting these locations to the city, each other and the large growth towns.

5.2. Local Plan Policy

5.2.1. The Wicklow County Development Plan, 2016-2022

Chapter 3 of the plan sets out the settlement strategy for the county, notes the designation of Bray as a level 1 settlement and a metropolitan consolidation town and identifies that the population of the settlement is targeted to increase from 29,339 in 2011 to 40,000 in 2028. In order to achieve this level of growth the plan states that lands at Fassaroe to the west of the N/M11 are targeted for new housing and other facilities. It is stated that the development of a new centre at Fassaroe is largely dependent on the delivery of infrastructure including upgrades to the N/M11 and the delivery of high quality public transport connections to Bray Town Centre and to Dublin City Centre. The potential for Bray to become a more significant location for employment is also recognised in Chapter 3 of the Plan and it is stated that *'having regard to the limitations for expansion of employment facilities within the town, there is scope for the creation of new facilities at Fassaroe.'*

It is noted that the lands at Fassaroe have been identified for potential residential development for a significant period with the 1999, 2004 and 2010 County Development Plans all identifying the area as being suitable for development.

5.2.2. Bray Environs Local Area Plan 2009-2015

The Bray Environs LAP includes the area of the appeal site at Fassaroe. The period of the Plan was extended up to 2017 to facilitate the preparation of a new Bray Town

and Environs Plan which would cover the administrative area of the Bray Municipal District.

Sections 3.1 and 3.2 of the Plan note the suitability of the site on the basis of its proximity to the N11 and the proposed future extension of the LUAS to Fassaroe and Bray. The form of the proposed development at Fassaroe is shaped by the proposed alignment of the LUAS line. The area is divided into masterplan sectors in the indicative zoning plan prepared and it is stated in 3.2 that the preparation of masterplans is imperative to implement the overall vision.

Under the provisions of the Bray Environs LAP Indicative Land Use Zonings are provided for the Fassaroe area and under these zonings the main residential area of the site is zoned a mixture of R1 (new residential – high density) and R2 (new residential – medium to low density) with areas to the north and north east of the residential area zoned open space. Other parts of the site are zoned MU2 (mixed use 2 – predominately residential / office) and E1 (Employment 1 – high density employment).

Section 4 of the plan identifies potential future populations for each of the land use zones identified in the indicative land use zoning map. A total of 2,602 residential units and 6,659 persons are envisaged on full development of the Fassaroe lands.

5.2.3. Fassaroe Masterplan October, 2010

The Fassaroe Masterplan – A Sustainable Urban Extension to Bray was produced in October, 2010 and was approved by manager's order dated 22 October, 2010. The stated purpose of the Plan is to progress the requirements and vision of the Bray Environs LAP. The Masterplan is not a statutory plan in that it did not go through full public consultation. Its approval by the council by way of manager's order was subject to a number of conditions including a requirement that all development would be consistent with the provisions, policies, objectives and environmental impact avoidance measures as set out in the Bray Environs LAP and Wicklow County Development Plan. Conditions (e) and (f) of the approval issued sets out a number of requirements in terms of infrastructure that must be met in order for the development to be acceptable and these include a requirement for high quality public transport transportation connection to both the metropolitan area and Bray town and

requirements in terms of school provision in advance of development. The plan makes reference to the proposal at the time for the extension of the LUAS to Fassaroe and Bray.

5.2.4. Draft Bray Municipal District Plan, 2017

This plan is proposed to replace the Bray Town Plan and the Bray Environs LAP, 2009-2015 and would cover the entire Bray Municipal District area. The draft was on public display up to 15th September, 2017. As at the date of this report the plan had not been adopted in its final form.

Map No.2 of the Draft Plan indicates the proposed zoning of the site and these differ from that set out in the Bray Environs LAP. The main residential area of development proposed is zoned Objective R-HD with part of the eastern side of the residential development appearing to overlap with an area zoned Objective OS1 (open space). Other developed areas proposed in the application are zoned Objective NC (neighbourhood centre) and Objective E (employment).

5.2.5. Woodbrook Shangannagh LAP, 2017

A local area plan for the Woodbrook Shangannagh area was adopted by Dun Laoghaire Rathdown County Council in July, 2017. This plan area is located to the east of the N11 and to the north of Bray town. It is anticipated that this area would be served by a future extension of the Luas to Shankill and onwards to Bray. The plan covers a total of 31 ha. and has a target of 1,600 – 2,300 residential units.

5.2.6. Dun Laoghaire Rathdown County Development Plan, 2016-2022

The Dun Laoghaire Rathdown County Development Plan includes lands zoned for residential development at Old Connaught which is located to the north east of the current appeal site within the Dun Laoghaire Rathdown area. The Plan also contains a number of objectives of relevance to the appeal site including the identification of protected views on the Ballyman Road to the north of the site in the direction of the appeal site.

5.3. Guidelines

There are a number of ministerial guidance documents that are considered to be of relevance to the assessment of the proposed development, as follows:

- Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities
- Sustainable Apartment Guidelines
- Spatial Planning and National Roads Guidelines for Planning Authorities (2012)
- Design Manual for Urban Roads and Streets
- Flood Risk Management Guidelines for Planning Authorities.

5.4. Natural Heritage Designations

The Ballyman Glen SAC (site code 000731) is located to the north of the site and runs along the boundary between the Wicklow and Dun Laoghaire Rathdown administrative areas. The conservation objectives for the site are to maintain or restore to favourable conservation status the Annex I habitats and or Annex II species for which the SAC has been selected. These are Petrifying springs with tufa formation and Alkaline fens.

6.0 The Appeal

6.1. Grounds of Appeal – First Party

The following is a summary of the main issues raised in the first party grounds of appeal:

Condition No.4

- That this condition is overly cautious and not required. Requested that it be revised to allow some works to be undertaken on foot of the permission.
- That the works proposed to the waste locations in the application will not preclude the Council from complying with its responsibilities.
- That the proposals included in the application have been undertaken in accordance with the EPA Code of Practice for Unregulated Waste Disposal Sites.
- It is submitted that the works provided for in the application will deliver the majority of the remediation works which are required of the Council under the Certificate of Authorisation Process.
- That the planning application documentation was mindful of the possibility that the EPA could require additional remedial measures and the application details how such possible additional measures could be provided for within the context of the capping system proposed.
- Submitted that while it is possible that the EPA may require an alternative approach involving substantial excavation and disposal off site that this is very unlikely. Submitted that were the capping solution and gas management proposed considered not to be sufficient that it would be feasible that further leachate and treatment system could be undertaken.
- In conclusion, having regard to the potential impacts of a 'dig and dump' approach including costs, that the proposed capping system is the only realistic and viable option available.

Condition 5

- That the requirement that no works on the employment / office element be undertaken until the Bray and Environs Transport Plan is completed and confirmation in writing obtained is not required.
- Submitted that the office element is in accordance with the provisions of the Fassaroe masterplan and the Bray LAP.
- Submitted that while the study may inform future development on the lands that there is sufficient capacity to accommodate the office element currently proposed.
- That the current commercial development proposals could accommodate c. 1,000 employees and it is understood that the modelling undertaken by the NTA for the Transportation Strategy for the GDA (TSGDA) assumed an employment level of c.2,500.
- Significant public transport measures are proposed to connect the site by bus to Bray, Bray DART, Cherrywood LUAS and the city centre. The link road and bridge over the N11 are also consistent with the TSGDA.

Condition No.6

- That the requirement of Condition No.6(a) that a maximum of 350 no. residential units be occupied prior to the construction of a primary school is contrary to the requirements of the Masterplan. It is also unrealistic and unreasonable.
- That the provision of an 8 no. classroom school on delivery of 625 units is accepted.
- That the delivery of the school is the responsibility of the Department of Education and Skills. The requirement that not more than 350 residential units can be occupied prior to the commencement of building of a school may actually therefore delay the provision of the school.
- The planning application has identified a suitable location for the provision of a primary school.

Condition No.7

- That the requirement is too restrictive.
- That there are significant local crèche facilities already available.
- It is requested that the wording of this condition be amended to revise the number of residential units above which the crèche facility is required to 450.

Condition No.8 – Neighbourhood Centre

- That this condition is commercially unviable and is contrary to the provisions of the Fassaroe Masterplan.
- The issue of the retail provision and the potential impact on Bray town centre was raised by the Planning Authority during the assessment of the application and an updated retail impact statement prepared. This indicated that the scale of retail provision proposed in Phase 1 is appropriate.

Condition No.10 – Financial contribution

- That the condition requires the payment of the full s.48 contribution prior to the commencement of development. The development is proposed to be phased and some conditions limit the timing of developments outside of the control of the applicant. Requested that the wording be changed to reflect the phased nature of the development.

Condition No.10 – Financial Bond

- Requested that this condition be reworded to provide that the bond can be in a form other than cash.

Condition No.15 – N11 Pedestrian / Cycle Bridge Design

- Requested that part (b) be amended to provide that the design agreed be on the basis of the existing N11 layout with a reasonable accommodation made for future alterations. Otherwise feared that the agreement of this infrastructure will be delayed pending detailed design of upgrading works.

Condition No.18 – Design and Phasing of Pedestrian / Cycle Bridge

- That the wording of (a) and (b) should be altered to reflect the issue above regarding the N11 bridge (Condition No.15).

Condition No.21 – Provision of a Private Bus Connection.

- Requested that the requirement for a private bus service in advance of the re-routing of the No.185 service would kick in at a threshold of occupation of 200 no. dwellings.

Condition No.22 – Location of Attenuation Pond

- That the wording of this condition be amended to ensure that agreement is not delayed by detailed design of the N11 / M11 upgrades being delayed.

6.2. Grounds of Appeal – Third Party

The following is a summary of the main issues raised in the third party appeals received:

- That there is inadequate public transport infrastructure available to support a development of the scale proposed. The lands on which the site is proposed was zoned and a masterplan prepared at a time when LUAS was to be extended to the site and BRT provided. The development is dependent on this infrastructure.
- LUAS extension to Fassaroe has now been cancelled and there is not a suitable public transport infrastructure to support development of this scale.
- That the development if permitted would be almost exclusively dependant on cars and result in further congestion of the N11. This view is supported by the TII submission. Also considered that the permitted developments at Woodbrook, Shangannagh and the Old Bray Golf Course lands have not adequately been taken account of and will impact the N11.
- That the impact on the N11 remains the same as was the case with previous refusal of permission issued by the Board.
- That the requirement for a private bus service pending the diversion of the 185 bus through the site is not workable as the width restrictions on the Ballyman Road and Monastery Road into Enniskerry wouldn't allow for the service.

- Given the lack of public transport provision serving the site the development is premature.
- That the proposed new access road (Ballyman / Monastery Link Road) will facilitate rat running from traffic exiting the N11. The Ballyman Road cannot cater for such traffic.
- Noted that 12.6.2.6 of the submitted EIS states that there would be only 40 additional vehicles during the AM peak however this analysis relates only to traffic generated by the development and not diverted traffic.
- The condition of the Ballyman Road has not been taken into account adequately in the decision.
- That the necessity to widen and upgrade the existing Ballyman Road from Barnaslingan Lane to Monastery Road is recognised in the report from the Director of Services however there are no proposals to do this or requirement by way of condition.
- That the proposed junction of the new link road with the Ballyman Road is unsuitable for reasons relating to inadequate stopping sight distance, inadequate sight lines, gradient of the road in the vicinity of the junction and lack of provision of a right turn lane. It is noted that refusal of permission was recommended by the Bray district engineer and concerns expressed in the reports of Edel Birmingham (planning) and Conor Page (Roads).
- That the development would result in significant increases in traffic in the vicinity of Enniskerry village, on the Ballyman Road and the Scalp. Traffic seeking to avoid congestion on the N11 could take this route.
- That the scale of development proposed would impact negatively on the character and setting of Enniskerry village. The environs of Enniskerry are designated as an area of outstanding natural beauty in the Wicklow County Development Plan.
- That the construction of the link road would impact properties along the route in terms of loss of privacy, amenity, noise, traffic safety and loss of trees due to encroachment into property.

- That the development would have a negative impact on the residential amenity of Berryfield Lane who currently have a rural setting. No consultation was undertaken with these residents. It would be appropriate the dwellings within the proposed scheme facing the lane would be single storey or dormer in type. These dwellings should also be accessed via the internal estate roads rather than directly from Berryfield Lane.
- That there should be restriction on access to Berryfield Lane for traffic in the development / on the proposed new link road.
- That the extent and scope of conditions attached to the permission are inappropriate in that they preclude further public input and are not appropriate to a development that required an EIS and was the subject of EIA. For example, condition 4 requiring a certificate of authorisation for the landfills on site would appear to preclude the development being the subject of proper EIA. Similarly, conditions 5, 9, 15 and 16 require the agreement on aspects of the development which should be the subject of EIA.
- That the NTA Transport Strategy 2016-2035 specifically notes the fact that congestion on the N11/M11 route is increasing and that capacity on this route will need to be protected through demand management. Stated that north of Bray there is scope to increase DART capacity and together with bus will have to accommodate the bulk of demand growth. LUAS green line is close to its maximum theoretical capacity. Section 5.3.6 states that subsequent to the upgrading of the green line to metro the line will be extended to Bray Town Centre and that '*while the final alignment has not been decided it is likely to be via Shankill and the former golf club lands*'.
- That the existing limitations on capacity of the N/M11 are clearly set out in the recently published M11/N11 Corridor Study: Needs Assessment Report prepared for TII by AECOM and Roughan & O'Donovan. The Board has a record of refusing permission for developments where there are capacity issues with national roads, e.g. the extension to Liffey Valley SC, Ref. PL06S.247283.
- Access to the DART station from Fassaroe is poor and the distance is c.4km rather than the 3km stated in the EIS.

- That the car modal split target for the development at 45% is very optimistic. By way of comparison, the target for the Cherrywood SDZ site which is served by LUAS is also 45%.
- That the submission of the NTA to the Planning Authority raises significant concerns with regard to the capacity of the N11 and the modal split for the development.
- That it is not appropriate to facilitate large scale residential development in such close proximity to landfill sites where these sites may be the subject of significant remediation requirements.
- That the proposed development would impact on protected views of the site and the designation of an area of outstanding natural beauty to the west and south of the site. Noted that permission refused under Ref. PL27.211321 on the site for reasons relating to visual impact and lack of a visual break between Enniskerry and Bray.
- The visual impact of the proposed development would be very significant with large apartment buildings located on elevated parts of the site, e.g. Blocks 8-11 c. 112 metres above sea level. The commercial buildings close to the N11 will also be significantly elevated and visible from the N11.
- Concerns regarding the availability of adequate water supply and implications for other areas in advance of the proposed upgrade to the Vartry Water treatment plant.
- That the conditions attached by the Planning Authority relating to the office park (Condition 5) is not certain. Similarly, Condition No.4 regarding the landfill areas on site also is uncertain and points to significant issues with the site and the development.
- It is noted that the initial application was for a seven year permission but that this became 10 years in the final decision of the Planning Authority.
- That the development will require close interaction with Dun Laoghaire Rathdown County Council to be successful. Development is already underway at Woodbrook, Shangannagh and the Old Golf Course lands at

Bray all located within 3km of the site. These developments do not appear to be taken into account in the development.

- That the zoning history of the site was such that in the 1999 and 2004 County Plans it was zoned for industrial uses and this changed to residential in the 2009-2015 Bray Environs LAP. Submitted that the site retains the AONB status that it had in the 1999 and 2004 plans.
- That the development will impact on the Ballyman Glen SAC (site code 000713). The SAC is host to an Annex I priority habitat. There is a lack of scientific certainty with regard to the impact of the proposed development on these sites, particularly given the ambiguity created by Condition No.4.
- That the proposed development will have a significant negative impact in terms of noise, dust and vibration on Vallombrosa, a protected structure located approximately 200 metres from the north east corner of the site.
- That the activities of the Bray Clay Pidgeon Club will be at variance with the proposed development as the development will be within shot range resulting in a safety and noise issue. The proposed works including to the landfill sites has the potential to stop activity at what is a vibrant club. If the development is to be permitted there should be required that the existing infrastructure and activity of the club would be accommodated.

6.3. Response Submissions

- 6.3.1. The following is a summary of the main issues raised in the third party response submissions received:

Frank and Noreen Keane (c/o Doyle Kent Ltd.) against First Party Appeal

- That Condition No.4 gives rise to uncertainty in terms of timelines and leaves the Applicant in the hands of a third party (EPA).
- Note the outcome of a case at Whitestown, Baltinglass where the cost of remediation was not considered justification for inaction.

6.3.2. First Party Response

The following is a summary of the main issues raised in the first party response to the third party grounds of appeal:

- That the zoning of the lands has determined the future use of the site and the issue of compatibility with existing uses, including the pigeon club has therefore already been decided. The lands are not owned by the pigeon club.
- That proposals for the serving of the site by bus are set out in the EIS and FI response and will be delivered by the NTA.
- That the extension of the bus along Ballyman Road would serve additional residents and the upgrading of the Ballyman Road from the R117 to County Brook is an objective of the development plan.
- The impact on the N11/M11 has been detailed in the EIS and FI response and will result in an increase of less than 3% in traffic volumes in the northbound morning and southbound evening peak.
- That the Ballyman Rd / Link Rd junction meets the requirement of TII document DN-GEO-03031 (TII TD 9) and the appropriate gradient in these documents is 7%. The relevant visibility splay is 90 metres each direction from 3 metres back that is met in the proposed layout.
- Alternative routes for the link road and the Ballyman junction are examined and discounted for reasons of traffic safety, impact on properties and impact on the SAC.
- That there is no reason for traffic generated by the development to travel through Enniskerry Village.
- There will remain a green belt area between the development site and Enniskerry village.
- That there is no advantage or reason for development traffic to use Thornhill Road.
- That the Transport Strategy for the GDA published by the NTA takes a holistic approach to transport in the region. It is incumbent on the NTA to deliver on the measures contained within the strategy.

- That there is no reason to use the R117 as an alternative to the N11 as analysis indicates that the journey times are longer using that route.
- That the design approach seeks to maintain the boreen character of Berryfield Lane. To address concerns there is an option to close Berryfield lane at a point immediately to the west of the existing housing area.
- Regarding conditions, highlighted than none of the conditions require any significant alteration to the scheme, rather they relate to aspect of detail and timing.
- That the appeal lands are not designated as an area of outstanding natural beauty, rather they have the landscape category 'urban' in the landscape assessment contained in the development plan.
- That a detailed landscape and visual impact assessment was contained in EIS and expanded in the FI submission. Views from Ballyman Road to the north are restricted and the development and site contours are such that where they do occur clear panoramic views of lands to the south remain available.
- That it is not correct to state that there is not full knowledge of the extent of the problems with regards to gas and leachate and that an Environmental Risk Assessment undertaken in accordance with the EPA Code of Practice has identified these issues.
- Submitted that the situation with regard to Condition No.4 is analogous to that where permission is granted for an activity that requires a waste licence. Notwithstanding this, considered that the likelihood of the proposals set out in the application not being acceptable to the EPA is very low.
- Anticipated that the Council intends to prioritise these applications relevant to the site and that the sites will be identified as priority by the Department.
- That there would be an overall 7 % reduction in groundwater infiltration across the entire site however groundwater will still be above the levels at which the springs emerge and tufa formations occur. Therefore, based on best scientific information it is not considered that the development will impact on the

qualifying interests of the SAC. The capping will improve water quality in the SAC and County Brook stream.

- Noted that the NPWS have no objection to the proposed development.
- That a flood risk assessment was submitted with the application and no residual flood risks upstream were identified.
- That there is a clear need for the development and housing and the proposal is consistent with the Action Plan for Housing and Homelessness. Development at Fassaroe is a strategic need for Bray, for Wicklow County Council and for the region.

6.4. Planning Authority Response

No response to the grounds of appeal received from the Planning Authority.

6.5. Observations

The following is a summary of the main issues raised in the observations on the appeal submissions:

- That the zoning of the site needs to be reviewed in light of the fact that it will not be served by LUAS.
- That development is premature pending road upgrades for the area.
- That the scale of development in the general area is such that there should be a LAP prepared that covers development sites within DLR County Council and Wicklow.
- The development is almost completely car dependent and will impact on the N11. The proposed diversion of the route 185 bus is wholly inadequate. There is a lack of clarity, finance and timelines for the delivery of direct transport connectivity to Bray.

- That the Ballyman Road does not have capacity to cater for the development and the road layout creates potential for rat running through the site.
- That the location is inappropriate for development of the scale proposed. There is a history of refusal of permission on the basis of its isolated location and access.
- That the local authority needs to apply to the EPA for a Certificate of Authorisation for sites 1, 2 and 3b that are impacted by the proposed development. Condition 4 is not appropriate in these circumstances.
- That the impact on the N11 has been understated in the application.
- That the submissions from the NTA raise so many concerns that it is surprising that they contain a recommendation that permission be granted for the residential element of the proposed development.
- There would be adverse impacts on visual amenity and protected views. Previous refusals of permission by ABP have referenced visual impact.
- That it is important that the setting and access to Enniskerry as a significant visitor attraction would be protected.

7.0 Assessment

The following are considered to be the main issues in the assessment of this case:

- Principal of Development and Land Use Policy,
- Non Residential Land Uses,
- Transportation and site access,
- Residential Layout and Standards,
- Waste Issues
- First Party Appeal
- Other Issues

7.1. Principal of Development and Land Use Policy

7.1.1. National and Regional Context

7.1.1.1 Under the provisions of the ***Regional Planning Guidelines for the GDA, 2010-2022*** Bray is identified as a Metropolitan Consolidation Town, the second level in the settlement hierarchy after the Dublin city.

7.1.1.2 As per Table 2.4 of the ***Wicklow County Development Plan, 2016-2022*** the population target for Bray in 2028 is 40,000, an increase of approximately 10,660 over the 2011 population figure. In housing unit terms, an increase of 5,378 units or 17.2% is provided for over the 2011-2028 period. Table 2.8 of the current ***Wicklow County Development Plan, 2016-2022*** indicates that the housing yield of the existing zoned lands in Bray is below the identified housing unit growth requirement. There is therefore no indication that the development of the appeal site would result in potential exceedance of the population target. The provision of an additional 658 no. residential units as proposed in the application as originally submitted is therefore considered to be consistent with the provisions of the Regional Planning Guidelines.

7.1.2. Local Context

7.1.2.1 The current statutory development plan covering the site is the **Bray Environs LAP, 2009-2015** which covers the lands to the west of the N11 including the entirety of the Fassaroe lands. I note that by resolution of the elected members dated 28th April, 2015 this plan was extended for a period up to 2017 with the preparation of a new plan deferred. No specific timeframe for the period of extension is cited in the resolution, however, under s.19 of the Planning and Development Act, 2010 the period of a LAP can be extended by up to five years provided certain requirements relating to consistency with the core strategy and the securing of plan objectives have been met. The preparation of a new Bray Municipal District Local Area Plan has commenced and public consultation on a draft LAP was open up to 15th September, 2017. In advance of the consideration of submissions received and adoption of a new plan it is considered that the provisions of the Bray Environs LAP are relevant to the current assessment.

7.1.2.2 Under the provisions of the Bray Environs LAP, the main residential area of the appeal site is zoned a mixture of R1 (new residential high density) and R2 (new residential medium to low density). The layout of the residential development proposed in the crescent shaped area on the western side of the site is generally consistent with these zonings although the areas of apartment development and higher density on the outside of the crescent does not correspond directly with the higher density Objective R1 zoning. The residential area to the east located to the east of the area of open space and between the new Berryfield Avenue and Berryfield Lane to the south is zoned Objective MU2 (mixed use 2 predominately residential / office) under the provisions of the Plan and the proposed development is therefore in my opinion consistent with the plan zonings in this location. Similarly, the proposed neighbourhood centre is located on lands that are zoned MU1 (mixed use 1 predominately commercial) and is consistent with the zoning objective. To the eastern side of the site, the proposed office development is located on lands that are zoned Objective E1 (high density employment) and the proposed development in that part of the site is consistent with that land use zoning objective.

7.1.2.3 I note that the zonings contained in the **Draft Bray Municipal District LAP** are more rationalised in terms of number than those in the Environs LAP. I also note the fact that while the proposed development is generally consistent with the revised zonings

contained in this draft plan, that the extent of open space to the east of the main area of housing proposed has been increased in extent such that it would appear that the dwellings proposed in the south east corner of this residential area would encroach onto the area of open space. As set out above however, the current plan for the area is the Bray Environs LAP and I am satisfied that the uses proposed are consistent with the main provisions of this plan.

7.1.2.4 In terms of compliance with the **Fassaroe Masterplan** prepared by Loci, and approved by the Planning Authority in October, 2010, the basic layout proposed and mix of uses is in my opinion generally consistent with the provisions of this Masterplan. The conditions attaching to the approval of the plan include considerations of phasing including the provision of educational and employment facilities and these issues are considered further in subsequent sections of this report. Of more fundamental concern with regard to the compatibility of the development with the approved masterplan is the background to the plan, infrastructure proposals and the timing of the zoning of the lands at Fassaroe for residential development. The lands at Fassaroe were zoned for employment use up until the 2009 County Development Plan and the adoption of the 2009 Bray Environs LAP at which time the lands were rezoned for residential use. As set out in the section below relating to transportation and access, the transportation context at that time was that under Transport 21 it was proposed that there would be an extension of LUAS to Bray and the final alignment determined and announced in 2007 indicated that the alignment would run via the Fassaroe lands. The basis for the zoning of the lands at Fassaroe and the preparation of the Masterplan was therefore undertaken in a context where it was anticipated that the area would be served by LUAS. The connection of the site by light rail transport is no longer proposed on foot of the NTAs Transport Strategy for the GDA (2016) which clearly indicates that the Luas connection is not proposed to extend to the west of the N11 / M11 and would likely terminate at Bray DART station. This issue has been raised in a number of the submissions on file and it has also been noted that given the change in transportation context that it is appropriate that the masterplan would be reviewed. As will be discussed further in the transportation section of this report, I would to a significant extent agree with this view and consider it appropriate that the planning for the site and phasing of development would be revisited in the light of the changed

public transportation circumstances and the issues that are now evident with regard to the capacity of the N11 / M11. I note that the changed circumstances regarding light rail have been included in the Bray Metropolitan area LAP, however, as will be discussed further under the heading of transportation there is limited information regarding the proposed alternative public transportation available in lieu of LUAS.

7.1.2.5 Of further note with regard to the context of the proposed development is the fact that there are a number of ***other development sites and areas*** in the general vicinity of the appeal site which have the capacity to accommodate significant new residential population. Firstly, within the Wicklow County Council area, permission was granted by An Bord Pleanála in 2010 (Ref. 39.230246) for development of lands to the immediate north of Bray town centre on lands that were previously in use as a gold course (Pizzaro lands). This permission was for a period of 10 years and comprised a mixed use development of which residential element comprised a total of 603 no. units. No development on foot of this permission has been undertaken to date. In addition, there are significant areas of undeveloped residential lands located to the north and north east of the appeal site within the administrative area of Dun Laoghaire Rathdown County Council. These areas comprise residentially zoned lands to the north of the Ballyman Glen at Old Connaught and secondly, lands at Woodbrook Shangannagh located to the north of Bray and the east of the N11 in respect of which a LAP has recently been adopted. As will be discussed later in this assessment, the availability of other zoned lands for residential development is of note in terms of residential development in the wider area and the achievement of population targets and also with regard to transportation and the potential for existing congestion on transportation routes to be exacerbated by future developments.

7.2. **Non Residential Land Uses**

7.2.1. In addition to residential development, the application the subject of this appeal provides for retail and office development. The office component is located at the eastern side of the site and as noted above, this location is consistent with the zoning of the site under the Bray Environs LAP and with the site layout as envisaged in the 2010 Masterplan.

- 7.2.2. The stated floor area of the **office component** of the development is 9,177 sq. metres and the capacity of this accommodation in terms of employees is stated to be c. 1,000 persons. The appropriateness of locating of a significantly scaled office development at a location close to the national primary road network is an issue that is raised in a number of the submissions received. Regard also needs to be had to the fact that the office component proposed in this application is phase one of a much larger employment hub on the Fassaroe lands, development which will clearly have significant transportation impacts in the future.
- 7.2.3. As stated above, the lands on which the office component is located are zoned for employment use and the general area of the site on which they are located was identified as suitable for employment uses in the masterplan. I also note however that both TII and the NTA have raised concerns with regard to the location of the proposed office element and both agencies are of the opinion that permission for this aspect of the development should not be permitted on the basis of the potential impacts on the road network. I further note the fact that the NTA has specifically refuted the statements of the first party that the 1,000 employees that would be generated by the office element of Phase 1 was well within the overall employment figures for the Fassaroe lands under the NTA model. The NTA go on to recommend that permission is not granted for the office aspect of the development pending the completion of a comprehensive transport plan for the Fassaroe area that is being developed by NTA and TII in conjunction with the council.
- 7.2.4. As will be set out in section 7.3 below relating to transportation, I consider that the proposed development, including the office component would have a very significant adverse impact on the strategic function and operation of the N11 / M11 corridor and that permission should be refused on this basis. Notwithstanding the zoning of the site and the contents of the Masterplan I also however have a fundamental issue with the appropriateness of the proposed office location for large scale employment uses. I accept the principle of some employment generating uses being incorporated into a mixed use development, however the concept that any significant portion of the future employees of such a development would come from the residential part of the Fassaroe development or even from the wider Bray area is in my opinion unlikely. The office element of the proposed development therefore has to be seen as a major trip attractor located adjacent to the national road network. As

such and given its likely significant implications for the operation of the national road network, this element of the overall development proposals is in my opinion inconsistent with the provisions of the Guidelines for Planning Authorities on Spatial Planning and National Roads as it relates to the protection of the strategic function of such routes and the appropriateness of development at junctions on national routes and would result in an unsustainable form of development excessively dependant on private car transport.

7.2.5. The **retail element of the proposed development** comprises a convenience foodstore comprising a single storey building with a floor area of 1,795 sq. metres GFA and a net floor area of c. 1,166 sq. metres. In addition to this main unit it is proposed to provide 6 no. retail / commercial units which would have a combined GFA of 1,166 sq. metres and a net floorspace of c.1,075 sq. metres. A café unit of c. 240 sq. metres is also proposed. The location of the retail development is to the south east of the main residential area and would be surrounded by roads on three sides with the new link road to the north and east and Berryfield Lane to the south. The site of the retail floorspace also accommodates a total of 48 no. residential units (as per the revised layout submitted as FI) and a total of 210 no. car parking spaces are proposed to serve the retail and residential elements.

7.2.6. The application is accompanied by a **Retail Impact Assessment (RIA)** which was submitted in response to the request for further information issued by the Planning Authority. Policy with regard to retail development is set out in the Wicklow County Development Plan, 2016-2022 which refers to Fassaroe in Chapter 6. The indicative additional floorspace requirements up to 2031 cited in Table 6.3 of Chapter 6 of the Plan are for an additional 2,500 sq metres of net convenience space and 1,000 sq. metres of net comparison space. The net retail floorspace proposed as part of Phase 1 which is included in this application measures c. 2,418 sq metres inclusive of the coffee shop proposed (see Table 1 in RIA, March 2017) and is therefore a very significant part of the total retail floorspace envisaged in the development plan and in the masterplan for the site. The first party have stated as part of the response to further information that the phasing of the overall development is such that the Neighbourhood centre will be constructed after the main residential areas are completed and after the office element. It is further stated that it is likely that at such a time permission for phase 2 would have been secured and that the retail element

would also serve a significant element of Phase 2. I note the comments of the first party in this regard as well as the fact that the submitted RIA indicates that the proposed retail would not have a significant impact in terms of trade diversion from Bray town centre.

7.2.7. There are however, a couple of issues that are of specific concern to me with regard to the retail aspect of the proposal. Firstly, the location of the neighbourhood centre is such that it is physically very separate from the main area of residential development proposed in Phase 1. The distance between the neighbourhood centre and the main residential area to the west is c. 250 metres. There is therefore in my opinion a significant potential for the retail area to not integrate well with Phase 1 for pedestrians. I note, and would agree to a significant extent with the comments of the Planning Officer that there may be scope for a smaller scale of retail development to be integrated into the main Western residential lands. I also agree with the comments of the Planning Officer in report 1 that the layout of the retail development would be improved by the provision of the retail floorspace in an urban street rather than in a separate standalone cluster.

7.2.8. It is noted that Condition No.8 attached by the Planning Authority restricts the construction of the neighbourhood centre to such time as all the other permitted residential units are complete. It also restricts the net retail floorspace of the convenience unit to a maximum of half the gross floor area. The first party contend that the requirements of this condition are commercially unviable and is contrary to the provisions of the Fassaroe Masterplan. For the reasons set out above however I do not agree that the proposed retail floorspace is justified and in the event that consideration was being given to a grant of permission for the residential element of the proposed development it is my opinion that a significant reduction in the scale of the proposed retail element is appropriate and that the development of this retail element should be deferred pending construction of a significant element of the residential layout. Such a requirement would not however address in any significant way the concerns expressed above with regard to the location of the residential development in Phase 1 relative to the neighbourhood centre.

7.2.9. With specific regard to the RIS submitted by the first party and to the methodology employed in that assessment, I note the concerns of the Planning Officer as set out in the assessment undertaken subsequent to the submission of further information.

Specifically, I note the comment in this report regarding the retail catchment used in the RIS and the fact that the catchment as defined includes significant areas of Bray town on the far side of the N11. In my opinion the inclusion of a catchment that includes the entirety of the local electoral area of Bray (Figure 2 of RIA, March 2017) is not appropriate as this is not consistent with the role of the neighbourhood centre as envisaged in the Masterplan which was to serve the population of the Fassaroe development.

7.2.10. Overall, on the basis of the information presented in the RIA I would share the concerns of the Planning Officer with regard to the appropriateness of the scale of retail development proposed in Phase 1. While a significant retail element to serve the Fassaroe masterplan area may be appropriate in time I do not consider that the applicant has justified the extent of net retail floorspace proposed at this stage in the overall development and that the extent of catchment as defined is excessive. I note that Table 6 of the RIA indicates that the estimated turnover of the proposed retail development in 2022 would be slightly over €12 million but section 3.5 indicates that the likely expenditure of the Phase 1 population would only be c.€5.6 million in the same year. There is clearly scope for additional expenditure by any employees of the office park, however it would appear to me that there is a likelihood of a significant draw of trade from other areas to the detriment of established retailers in Bray and elsewhere. For these reasons, and having regard to my previously stated concerns regarding the scale of office accommodation proposed and the separation of the neighbourhood centre site from the main area of Phase 1 residential development it is my opinion that permission for the development should be refused on the basis of prematurity and potential adverse impact on the existing retail centres, in particular Bray TC.

7.3. Transportation and Site Access,

7.3.1. There are a number of aspects of relevance to the accessibility of the site and transportation including rail connection, bus service, impact on the local road network and the potential impact on the national road network in the form of the N11/M11.

7.3.2. With regard to a **rail connection**, under Transport 21 there was a proposal for the extension of the LUAS green line from Cherrywood south to Bray (Line B2). A number of possible alignments were examined for this extension with a line B2 extension examined as extending from Bray town west to Fassaroe. The final line B2 alignment announced in June 2007 proposed an alignment that followed the old rail alignment over the Brides Glen viaduct and alongside the M11 before crossing over the motorway to terminate in Fassaroe and included provision for a branch off the line to connect with the DART. This was the light rail plan which was in place at the time of the preparation of the Bray Environs LAP in 2009 which zoned lands at Fassaroe for residential for the first time and the preparation of the Fassaroe Masterplan prepared by Loci in October, 2010. The context for light rail changed in 2016 with the publication by the NTA of the Greater Dublin Area Transportation Strategy 2016-2035. Under this plan the extension of the LUAS line to Bray is still proposed however the document states that *'while a decision on the final alignment has yet to be made, it is likely to run to Bray DART station via Shankill and the former Golf club lands'*. The available information therefore indicates that the Luas will not serve the lands at Fassaroe. In terms of timing, it is also noted that the extension of the Luas to Bray is scheduled to be undertaken after the upgrading of the existing Luas green line to metro and, as per Figure 5.12 of the Strategy document, the Bray extension is scheduled to be at the end of the plan period. It is therefore likely that any such extension would be close to the 2035 date for the end of the NTA strategy.

7.3.3. In the absence of a LUAS connection what is proposed by the applicant to ensure public transport access to the site is a bus connection. **Details of this bus connection** were included in the request for further information issued by the Planning Authority and the adequacy of the proposed service has been commented on by the NTA in their submissions to the Planning Authority. The applicant states that the NTA are currently undertaking a study of the Bray to UCD radial route and that the provision of a service to Fassaroe is included within this study. The applicant also states that the NTA have confirmed that the Phase 1 development will be served by express bus service direct to Dublin City Centre via the LUAS interchange and a bus service to Bray TC and DART station and a commitment is made that a private bus will be available if the public service is delayed. To improve

bus efficiency, a number of traffic management measures and road layout changes within Bray are proposed that would reduce journey times from the site into Bray TC. The submission received from the NTA generally supports the applicant's proposals with regard to bus and the intention is that the existing 185 (Enniskerry to Bray Rail Station) service would be re-routed to run through the proposed development. The current frequency of this service is not, however very high and it is unclear from the NTA submission, or from the information presented by the applicant, exactly what frequency of service would be provided.

7.3.4. The other aspect of the bus service provision that in my opinion is of note is the **proposals for road upgrades to facilitate a bus service** through Fassaroe and on to Bray TC and the DART station. As part of the applicant's response to further information a number of road improvements with the Bray town area have been identified which it is contended would alleviate some of the traffic congestion that currently exists and which inhibit an effective link between the appeal site and the existing public transport connections in Bray. The report on file from the Director of Services notes these works, and states that their implementation would be a priority for the council in the event that permission was granted. I note however that there is no timeline given for undertaking these works which are outside of the control of the applicant to implement. I also note that some concerns with regard to the compatibility of such works with the walking and cycling environment in Bray have been raised by the NTA. In addition, I note that based on paragraph 2.29 of the Traffic and Roads response to FI document (Atkins) the journey times from the identified improvements would only be in the order of up to 3 minutes.

7.3.5. In addition to road improvements within Bray, the provision of a bus service through the proposed development site raises **roads issues on the Enniskerry side of the development**. The existing alignment of the Ballyman Road to the west of the junction with the new Berryfield Avenue / Link Road is narrow and poor in terms of vertical and horizontal alignment. Some concerns have been raised regarding the ability of this road to cater for a bus service. From my inspection of the area however I do not agree with third parties who contend that this section of road is unsuitable for a bus connection. I also note the concerns raised with regard to the proposed junction between the new Link Road and the Ballyman Road and specifically the visibility at this junction and alignment of the Ballyman Road. These

issues were included in the request for further information issued by the Planning Authority and on the basis of the response received and an inspection of the site, I am satisfied that the road gradient in the area of the proposed junction is in accordance with relevant NRA standards and that the available sight lines at the junction are satisfactory. Similarly, the comments in third party submissions regarding alternative routes for the link road that would mean that a better junction with the Ballyman Road could be provided are noted. These alternative routes do however in my opinion have negative elements in terms of non-compliance with the overall masterplan approach, increased length of travel on the Ballyman Road to access the Enniskerry / Monastery Road and the fact that it would result in the road passing close to or potentially within the Ballyman Glen SAC. For these reasons I consider that the proposed alignment of the link road and the junction with the Ballyman Road is the most appropriate option.

7.3.6. Residents in the immediate vicinity of the proposed junction with the Ballyman Road have also raised concerns with regard to the potential for the proposed road alignment at this location to encroach onto their property. These comments have been refuted by the first party in submissions on file and more detailed drawings / layout of the relevant area provided. On the basis of the submissions made, the drawings submitted and from an inspection of the site I cannot determine that there clearly would be a direct impact on third party lands in this area. Any permission that may be granted would clearly have to be on the basis that no such impacts arose and in the case of a dispute such an issue would be a matter between the developer and the relevant third parties.

7.3.7. Issues have also been raised by appellants with regard to the **creation of through routes** that avoid the N11 / M11 and which could result in 'rat running' and increased traffic flows on minor roads that are sub standard. Particular reference has been made to the Ballyman Road from the new link road junction to the junction with the R117 / Monastery Road, the R117 itself and the road via the scalp and Thornhill Road. This issue was also the subject of the request for further information issued by the Planning Authority and has been addressed in some detail by the applicant in the FI response and in the response to the grounds of appeal. The responses provided are not however in my opinion completely clear in that they address the impact that the proposed development itself would have on the above mentioned

junctions and routes and assign a portion of trips generated to these routes. It is not however clear to me that the applicant has fully examined the potential for diverted traffic off the N11/M11 that could use the new link road as a means of accessing the R117. The response to the grounds of appeal submitted by the first party includes an analysis (see section 3.9) of the likely use of alternative routes and concludes that such alternative routes using the R117 would take longer than using the N11 / M11. I note and accept the conclusions of the analysis presented at section 3.9 / Table 3.2 of the response submission, however I remain concerned as to the potential impact on the R.117 route in the event that delays on the N11/M11 were to further worsen. Discussion of the impact of the proposed development on the N11 / M11 is contained in the sections below. I also remain concerned that the full impact of diverted traffic from the N11/M11 has not been taken into account in the analysis undertaken by the applicant.

- 7.3.8. Regarding the ***potential impact on other local roads***, the Thornhill Road to the north east of the site is very narrow and restricted at the southern end and is not capable of accommodating any significant increase in traffic. I note and generally agree with the assessment made at 3.7 of the first party response to the third party appeals that there is not a clear advantage to traffic to use this route. Diverted traffic via the new link road would also have a potential impact on the Ballyman Road to the west of the link road junction. This road is relatively narrow and has poor horizontal and vertical alignment and would have a limited capacity to accommodate significant additional traffic volumes. There is an objective in the Bray Environs LAP for the upgrading of this road however there is no clear timeline available for the undertaking of such works.
- 7.3.9. The impact of the development on the character of the existing ***Berryfield Lane*** was raised as an issue by some third parties and was the subject of clarification in the request for additional information. The first party has proposed that through traffic on this road would be restricted by the blocking off of the road at a point to the west of the proposed junction with the new link road. Such a proposal would in my opinion address concerns regarding potential use of the lane by through traffic. With regard to the concerns expressed about the proposal for residential units within the proposed development to front onto Berryfield Lane I would generally agree with the submissions of the first party that such an approach is required in order to integrate

the proposed development with existing properties. I do not consider that such an approach would lead to a traffic safety issue.

7.3.10. The ***impact of the proposed development on the N11*** is raised by TII as a key issue in the consideration of the proposed development. The TII submission notes that the N11 / M11 between Fassaroe and the merge with the M50 is already operating above capacity and consider that the proposed development would result in additional traffic on the N11/M11 that would impact negatively on its strategic function. TII are particularly questioning of the modal split targets for the proposed development and the 45% target for car journeys. The projected overall impact of the development on the N11 / M11 is set out in Table 3-2 of the Traffic and Roads response to FI and in the submitted EIS. This analysis indicates that the main impact arising in the AM peak will be southbound with a 6.1% and 3.4% increase projected for the M11 and N11 respectively. Northbound, the increases are projected to be 2.8% on the M11 and 2.2% on the N11. These figures appear counterintuitive given that the main focus of commuter traffic generated by the development would appear likely to be northbound towards Dublin in the AM peak and was the subject of a FI request by the Planning Authority. The explanation provided by the first party is set out at section 5 of the response submission which states that the trip distribution used was based on origin and destination information from the Bray Socio Economic Report commissioned by Wicklow County Council which utilised Census 2011 data. The fact that the proposed development at Phase 1 comprises employment / office use for c. 1,000 persons and a residential population of c.1,500 persons is provided as part of the reasoning why the impact on north / south flows is not as may be expected. I note the rationale provided by the first party in this regard and the proposed office component would clearly result in an element of reverse commuting with traffic travelling south from Dublin in the AM peak and back north in the PM peak. The focus of this discussion is therefore on the impact on the N11 / M11 arising from the residential component.

7.3.11. The first party contend that the overall impact of the development would be a 2.8% increase on M11 northbound and 2.2% increase in the N11 northbound in the AM peak which is not a significant impact on the congested northbound AM route. This view is contradicted by TII who state that the residential component would impact negatively on the strategic role of the road and would be contrary to the provisions of

Strategic Planning and National Roads – Guidelines for Planning Authorities (2012) which seeks to protect the strategic role and carrying capacity of national roads. Given the existing above capacity status of the N11/M11 in the vicinity of the site I would agree with TII that the proposed development would have a negative impact on this national route and would be contrary to the provision of the guidelines. The reports on file from Wicklow County Council and specifically that from the Director of Services sets out the reasonable position that TII are coming at the proposal solely from the perspective of national roads, but that there is an onus on the Planning Authority to set this against the regional and local planning policy that has identified the site as suitable for housing and the clear current need for additional housing development. I note, and to a significant extent agree with, this position. I do however refer back to my point with regard to the fact that the subject lands were zoned for residential development at a time when it was envisaged that the lands would be served by light rail and also to my concerns regarding the clarity and viability of the public transportation proposals put forward to serve the development. In addition, as highlighted by a number of third parties and by TII the traffic assessment undertaken by the first party utilises a car modal split of 45% which appears to be optimistic in the absence of a light rail connection. By way of comparison, the Cherrywood development c.8km to the north which is served by light rail also has a car modal split of 45 percent and the overall N11 corridor currently has a car share of c.70 percent, (Corridor F in Transport Strategy for the GDA, 2016-2035 published by the NTA). I note the clarification of the basis of the 45% figure as set out at section 4 of the Traffic and Transportation response to FI prepared by Atkins where it is detailed how CSO small area statistics for the area of Bray immediately to the east of the N11 were used as a basis for the figure. I would however share the concerns expressed by TII with regard to the appropriateness of using a modal share based on a mature residential area located on the far side of the N11 with much better access to Bray town centre and Bray rail station. In short, I consider that given the c.4km separation between the rail station and the closest part of the site, the barrier formed by the N11 and the restrictions on providing a good public transport connection to Bray TC that the 45 % car modal share assumed by the first party is very ambitious and unlikely to be achieved in the short to medium term. It is therefore my opinion that the impact on the N11 predicted in the EIS and application documentation is likely significantly understated and I consider that there

are strong grounds to support the view of TII that permission should be refused on the basis of adverse impact on the carrying capacity of a national route and contravention of planning guidance on national roads.

- 7.3.12. A further aspect of the analysis of the impact of the proposed development on the N11 / M11 route that arises is the degree to which the projections regarding additional traffic volumes generated by the development take account firstly of the year on year ongoing increase in traffic volumes as highlighted by TII and secondly the degree to which the assessment takes account of the potential for other development sites to create additional loading on the N11 / M11. It would appear to me that the traffic increase on the N11 / M11 cited by the first party relates to the impact of the proposed development in terms of an increase relative to existing volumes. As set out previously in this report, proposals for demand management measures and or upgrades of the N11 / M11 route are at an early stage (M11 / N11 Corridor Study Needs Assessment Report produced in April, 2017) and it is likely to be a significant period before upgrade works are undertaken. In advance of such upgrades it is likely that the next number of years will see continued increase in traffic volumes at peak times on the N11 / M11 corridor. It is also feasible that other development sites such as the Bray Golf Course lands which is the subject of an extant permission for 603 residential units (ABP Ref. PL39.230246), the Woodbrook Shangannagh LAP lands which have capacity for between 1,600 and 2,300 additional residential units and residentially zoned lands at Old Connaught to the north of the appeal site could be developed further adding to congestion issues on the N11 / M11.
- 7.3.13. I note that the NTA are engaged in a study of the Bray / N11 to UCD bus corridor and that TII are working on proposals for improvements to the N11 corridor. The first party contend that both of these projects indicate that there are proposals at hand that will address capacity issues arising on the N11 / M11. Details of the proposed revisions to the bus corridors and how they may impact on the appeal site are not, however currently available and the submission from the NTA does not indicate what changes may arise. With regard to future works to the N11, a Needs Assessment Report covering the section from J4 (M50) to J14 was produced in April 2017. This report aims to identify measures that could address the issues arising on this corridor and a strategy for delivery and implementation. The results of the assessment

indicates that there is a shortfall in capacity between J4 and J8, that the capacity of existing junctions including J6 and J6a at Fassaroe needs to be improved and that there need to be upgrades to the regional and local road network to the east and west of the corridor and north and south of the Dargle River. Four phases of development are outlined and Phase 2 proposes upgrading of the M11 to 3 lanes as far as junction 6. All proposals are, however, indicative, subject to the availability of funds and need to be the subject of future detailed investigations and design. It is therefore apparent that works to improve the capacity of the N11/M11 that would benefit the appeal site are a significant distance away. Given this fact, the existing capacity issues, the trend of rising traffic volumes and the potential impacts of other zoned lands I would therefore agree with the submission of TII that the proposed development is premature pending clarification regarding the timing of upgrades to the N11/M11 corridor.

7.3.14. Other traffic issues arising in the proposal relate to the **proposed pedestrian / cycle bridge over the N11**, the internal road layout and to the provision of parking on the site. All of these issues were the subject of further clarification in the request for further information. With regard to **car parking**, the further information response sets out how the proposal complies with the development plan standard for both houses and apartments. Additional shared spaces were incorporated into the layout at the further information stage and the proposals regarding car parking are in my opinion acceptable. Similarly, the hierarchy of streets and **compliance with DMURS** principles was the subject of further clarification in the applicant's response to further information. The residential layout is the subject of more detailed comment in section 7.4 of this report below however the residential area incorporates a clear hierarchy of roads with the use of raised tales at appropriate locations and the use of narrower shared surface areas at appropriate locations. The hierarchy of streets and sections showing the layout of the roads is given at section 18 of the FI response submission on Traffic and Roads.

7.3.15. The exact location and design of the proposed pedestrian and cycle bridge over the N11 has been the subject of comment during the course of the assessment of the proposal by the planning authority with concerns from TII and internally within the council regarding the impact on future road upgrade proposals and also potential conflict with the surface water attenuation in this area. As set out above, the

upgrade proposals are at a very early stage of development and no detailed information is yet available on the layout. The first party states that the bridge design has been done to facilitate the future widening of the N11 to 3 lanes and it is my opinion that it is appropriate that future details regarding the bridge can be the subject of condition.

7.3.16. Overall, with regard to transportation and traffic I have significant concerns with regard to the potential impact of the proposed development on the N11 / M11 and share the concerns expressed by TII in this regard. I also share the concerns expressed by TII with regard to the achievement of the 45% modal share target for cars and consider that this figure is overly ambitious for an area that is not served by light rail and which would be severed from the DART (and potential future Luas extension in Bray) by the N11 and by the constraints presented by traffic congestion in Bray. No firm proposals or timeline for the resolution of the capacity constraints on the N11/ M11 corridor are currently available and, in advance of such proposals, it is considered that the proposed development is premature. I note also the proposals for a bus connection to Bray town centre and DART station as well as bus connection along the N11. Proposals for these are not in my opinion sufficiently well developed such that the modal share figures presented in the EIS are likely to be achievable. Finally, I note the fact that while the NTA submissions on the proposed development is generally taken as being supportive, the contents of the submissions, particularly the submission subsequent to the further information response, is in my opinion quite contradictory. Regarding the impact on the N11, the submission states that applicant has not demonstrated that the increased burden on the N11 has been addressed or that the issues raised by TII have been addressed and goes on to state that *'the authority is not in a position to fully recommend a grant of permission for any element of the proposed development at this stage'*. Effectively therefore both TII and the NTA are indicating the proposed development, while maybe acceptable in the future is currently premature pending the resolution of outstanding transportation issues. I appreciate that issues of potential prematurity have to be offset against the long (7 year) timeline of the permission sought and also against the strategic nature of the lands in terms of regional and local housing policy. On balance however it is my opinion that there remain a number of outstanding issues which require resolution and that in advance of these issues the proposed

development would represent an unsustainable form of development excessively reliant on private car transport and with the potential to have a significant adverse impact on the strategic national road network. In these circumstances, it is my opinion that to permit the development would be contrary to national policy relating to national roads and would be contrary to the proper planning and sustainable development of the area.

7.4. Residential Layout and Standards,

- 7.4.1. Issues relating to the residential layout and standards are not among the more significant raised in the third party submissions received. There are in my opinion a number of issues of note in addition to the consideration of the non residential land uses as discussed at 7.2 above. These are; compatibility with adopted masterplan, overall density and plot ratio, open space provision and layout and residential unit standards.
- 7.4.2. With regard to the **masterplan**, the layout proposed is in my opinion generally consistent with that set out in the masterplan. The proposed layout involves two distinct residential areas identified on the drawings as the Eastern Residential and Western Residential with the southern district park separating these two areas. The eastern area is proposed to consist of three blocks of apartments, the crèche and a total of 35 no terraced dwellings which would be accessed from Berryfield Lane. The larger western residential area follows a crescent pattern with the houses and apartment buildings constructed so as to be accessed off outer and inner access roads. These residential layouts, the separation by the district park and the set back of development from the County Brook to the north are all in my opinion generally consistent with the indicative layout provided in the Masterplan prepared by Loci.
- 7.4.3. The road network is identified in the application documentation and a detailed breakdown of the **road hierarchy** showing the levels of roads within the development and the location of homezone areas is provided in the response to further information submission made by the first party to the Planning Authority (see Item 18 of Traffic and Roads Response to FI prepared by Atkins). This submission clearly sets out the road hierarchy, its **DMURS classification**, design speed and proposed widths / layouts. The basic road hierarchy and standards proposed are in

my opinion acceptable. The alignment of the main link road through the site is also in my opinion generally consistent with that envisaged in the Masterplan.

- 7.4.4. With regard to **overall density and scale** of development as proposed in this application for Phase 1, under the Bray Environs Plan the site is located on lands that are partially zoned high density and part medium to low density. The eastern residential area as identified on the drawings generally corresponds with the area zoned as high density in the plan. I estimate that the density of development proposed in this area is close to 80 no. units per ha. and is therefore slightly lower than the 85 units per ha. anticipated in the Bray Environs LAP. Similarly, for the larger western area, the density of development as proposed would appear to me to be approximately 44 no. units per ha. which is slightly below the 50 units per ha. envisaged in the LAP. The 80 units per ha. on the eastern residential sector is in my opinion a high level that is appropriate to the zoning and the location closer to the eastern side of the site and the proposed connections with the existing urban area of Bray. The density of c.44 units per ha. for the western sector is below the indicative level cited in the LAP however it is still consistent with the 35-50 units per ha. envisaged for Outer Suburban / Greenfield sites in Paragraph 5.11 of the Sustainable Residential Development In Urban Areas Guidelines for Planning Authorities. The density proposed is therefore in my opinion acceptable in this location and at this stage of the overall development of the site.
- 7.4.5. As noted above, the dwellings proposed in the eastern sector of the development are proposed to front onto **Berryfield Lane**. The use of Berryfield Lane as an access is objected to some third parties who also consider that the scale and development proposed is unacceptable. As set out under Traffic and Transportation below, I consider that it would be appropriate that Berryfield Lane would be blocked off to allow for the existing character of the Lane to be protected and to prevent it being used as a through route. Regarding the principle of direct access for new dwellings onto the Lane I consider that the approach proposed is acceptable and would help to integrate the new development with existing in the vicinity.
- 7.4.6. The main area of **open space** is proposed to be provided in the central district park. The Bray Environs LAP sets an open space standard of 2.4 ha. of open space per 1000 population with two thirds of the provision of open space to be active open space. The areas indicated in the current application show a total of 8.7 ha. in the

northern district park, approximately 1 ha. in the southern park and approximately 2.35 in the western district park. A mixture of sports and play areas as well as grassed sections are proposed. The contours of the site are such that a number of open space lands are or would appear to be on relatively steeply sloping grounds. This is particularly the case with the northern district park. Overall, the area of public open space proposed are well in excess of that required for Phase 1 of the development and are, in my opinion generally consistent with the provisions of the Masterplan and the LAP. In the event of a grant of permission and future applications for subsequent phases of development the provision of public open space would need to be subject of more detailed assessment.

7.4.7. Individual **residential units in terms of layouts, floorspaces** and compatibility with relevant apartment standards is detailed in the application documentation. Firstly, the houses are in my opinion acceptable in terms of internal layout and room sizes. The total gross floorspace of the housing units ranges between c. 143 and 205 sq. metres. External finishes comprise a mix of brick, render and metal cladding with slate or tiled roofs. This is considered acceptable in principle. Private amenity spaces to the houses are below the standards set out in the development plan with the majority of the units having between 77 and 90 sq. metres of private amenity space. As noted by the first party in their response to FI, the level of private amenity space in the plan is high (92-96 sq. metres) and the reduced rate is justified on the basis of the high density designation of the lands in the Bray Environs LAP (between 50 and 85 units per ha.) and that to accommodate these densities the development plan open space standard cannot be met. I would agree with the first party on this issue and consider that the private amenity spaces proposed are acceptable particularly when set against the significant areas of public open space proposed. All back to back distances meet the normal minimum requirement for 22 metres and the principles in the Sustainable Residential Development Guidelines are met.

7.4.8. The **apartment units** range between 46.5 and 60 sq. metres for a one bed unit, 74.2 and 96.5 sq. metres for two bed units and 94.5 and 130 sq. metres for three bed units. These floor areas are consistent with the Guidelines for Planning Authorities Design Standards for New Apartments, 2015. In addition, the floor areas are such that the development would meet the requirement that in excess of 50 percent of the units would have a floorspace 10% greater than the minimum as set out in the 2015

Guidelines. All apartment units are proposed to have a balcony as a private amenity space and these are consistent with the minimum standards in the guidelines.

- 7.4.9. **Car parking** to serve the development is detailed in the application documentation. Car parking standards for the site are as set out in the Wicklow County Development Plan. The assessment undertaken by the Planning Officer in their first report notes that parking provision is consistent with the development plan standard for the commercial and office elements of the development. The parking to serve the residential element was an issue raised in the request for further information issued by the Planning authority and the response is provided at Item 7 of the Traffic and Roads Response to FI prepared by Atkins and dated March, 2017. This response proposed that additional visitor car parking would be provided within the development and an average provision of 1.73 spaces per apartment unit is proposed on foot of the revised layout. This is in my opinion acceptable and is consistent with the provisions of the development plan.

7.5. Waste Issues

- 7.5.1. The issue of waste on site, how this waste is to be addressed in the development proposals and the requirements of the Council to obtain certification from the Environmental Protection Agency (EPA) regarding the waste is a subject that has been raised by most of the appellants and observers to the case. It was also an issue of significant concern to the Planning Authority with refusal of permission recommended by the Planning Officer and by the Executive Chemist in the Waste Management Section.
- 7.5.2. In summary, the situation is that there are a total of five known sites in Fassaroe which were used as waste disposal sites by the local authority. Three of these sites are located within the boundary of the current appeal site, referred to as sites 1, 2 and 3b in the application documentation. Two of these sites (sites 1 and 2) are located to the north of Berryfield Lane with site 3b located to the south of the lane. The sites were operated by Wicklow County Council between the 1970s and the mid 1990's and were used for the disposal of domestic waste. Based on the classification contained in the Eastern and Midlands Waste Management Plan, the three sites have a risk rating of moderate, moderate and high respectively.

- 7.5.3. The fact that the sites were operated by Wicklow County Council as landfill sites and their date of closure means that they did not come within the scope of requiring a licence from the EPA. They do however require a Certificate of Authorisation from the EPA under the provisions of the *Waste Management (Certification of Unlicensed Waste Disposal and Recovery Activity) Regulations, 2008*. Such an application can only be made by a local authority and applications are to be accompanied by a risk assessment report undertaken by the local authority. The determination issued by the EPA takes the form of a certificate of authorisation and under the provisions of s.7(7) of the Regulations, this certificate shall determine the adequacy of the risk assessment submitted, may specify further necessary measures in addition to those specified in the risk assessment having regard to appropriate protection of human health and the environment and shall require that a validation report is undertaken.
- 7.5.4. The position taken by the applicant in this case is that a risk assessment report has been undertaken and accompanies the application for planning permission. It is stated that this risk assessment has been undertaken in accordance with the published EPA code of practice and is of a form consistent with the requirements for a Certificate of Authorisation. The layout of the proposed development has been designed such that none of the areas of waste are proposed to developed areas of the site and the waste areas are sited below areas of open space and the proposed new link road in the case of site 3b.
- 7.5.5. The works to the former waste sites proposed by the applicant as part of the planning application is based on the results of a comprehensive number of site investigations which includes the excavation of 28 no. trial pits and the drilling of 57 no. boreholes as well as the collection and analysis of leachate samples and geophysical analysis. The solution put forward in the application comprise the capping of the sites so as to minimise the infiltration of rainwater and a landfill gas management system.
- 7.5.6. It should be noted that the three waste sites which impact the appeal site are all located either immediately adjoining (sites 1 and 2) or overlapping with the Ballyman Glen SAC. The implications of the proximity of the sites to the SAC in terms of AA screening and appropriate assessment are considered in more detail in section 7.8 of this report below.

7.5.7. The first party acknowledge in the response to third party appeals that certificates of authorisation will be required for the waste sites. It is also that the application and the proposed works to the landfill sites has been designed with the fact that a certificate of authorisation application will be required. It is noted in the report of the Waste Management Section of the council that the works proposed in the application will address the potential impacts of the waste sites on human health and the future surface water uses of the site but that responsibility for any other remediation measures will rest with Wicklow County Council. The further information submission from the first party clear acknowledges that the proposed capping and gas management works do not address any existing environmental impacts of the landfill sites in the form of leachate or groundwater contamination although it is clear that the capping of the sites will significantly reduce water infiltration into the waste and hence leachate generation. Additional leachate control measures or other measures required by the EPA will therefore be the responsibility of the county council. As noted above, the issues that will be considered by the EPA relate to the environment as well as human health.

7.5.8. I note that to date the only sites for which applications for Certificates of Authorisation have been made are for sites 3a and 3c. The application for site 3c was made in May 2013 and to date there is no record of a decision being issued. There is therefore likely to be a significant delay in the time between any granting of permission for the development as proposed and the receipt of an authorisation from the EPA on foot of applications that have yet to be made. In addition to this time delay, there is also the possibility that the measures proposed in the Risk Assessment and included in the current application are not deemed to be significantly thorough by the EPA and that additional measures are proposed. It is possible that such measures could involve additional leachate control works at the sites and this possibility is indicated at section 1.1 of the response to further information. The position of the first party is that such additional measures could be incorporated without any material change in the proposed development and that it is therefore appropriate that permission would be granted in advance of the issuing of an authorisation by the EPA. This may be the case, however I note and would generally be in agreement with the position adopted by the Waste Management Section of Wicklow County Council as set out in their report dated 13th October, 2016

which raises concerns that the EPA may actually require more significant remediation works to be undertaken at sites 1, 2 and 3b up to and potentially including removal of waste. Such a scale of work would clearly in my opinion be contrary to the proposed development which is the subject of this application and in such circumstances it is not in my opinion appropriate that permission would be granted. The proposals presented with the application essentially relate to the protection of human health and I remain conscious that the remit of the EPA goes beyond this to include consideration of the impacts on the environment. Were the EPA to determine that the existing environmental impacts, which as detailed in the Risk Assessment Report clearly include the discharging of significant volumes of leachate to groundwater, were unacceptable then additional measures would be required. While I note the comments of the first party that additional measures could be undertaken within the scope of the planning permission sought the extent of such works is limited by the terms of the permission and more comprehensive works as may be required by the EPA would not be feasible.

7.5.9. Prior to making a decision on this application the Board may wish to refer the application to the EPA for comment. This option has not so far been pursued in this case on the basis that no application for a Certificate of Authorisation has yet been made to the EPA to date for any of the three sites directly impacted by the proposed development. It is likely therefore that the EPA will be limited in what advice it can give to the Board on this issue such as would give comfort on the likely extent of works that may be the subject of condition. In addition, the issue of prematurity and the making of a permission dependant on a decision by another body would not be addressed by a referral to the EPA at this time.

7.5.10. In conclusion therefore, I note the fact that no application for certificates of authorisation for the former waste sites within the application boundary have to date been made, and that based on the experience of the application relating to sites 3a and 3c there is potential for such authorisations to take a significant period of time to obtain. I further note the fact that the measures put forward in the application based on the risk assessment undertaken, are primarily aimed at making the site and the development safe and suitable for the proposed uses. It is clear from the information on file that the responsibility for ongoing environmental emissions from the site are considered by the applicant to be the responsibility of the Council and that

environmental considerations will be taken into account by the EPA in making future decisions on applications for authorisations. Notwithstanding the preparation of the risk assessment in accordance with the EPA Code of Practice, there remains in my opinion potential that significant additional remediation works may be required by the EPA. In such circumstances it is not in my opinion appropriate that permission would be granted in advance of the issuing of a Certificate of Authorisation. The approach taken by the Planning Authority to address the issue is to make development conditional (Condition No.4) on the receipt of authorisation from the EPA and confirmation from the planning authority that the authorisation issued is consistent with the proposed development. I do not consider that such a condition is appropriate on the grounds of uncertainty in terms of timelines and the end decision as it leaves the applicant in the hands of a decision of a third party (EPA) made under environmental rather than planning legislation and subsequent interpretation of that decision by the Planning Authority. The uncertainty with regard to the final remediation works is also in my opinion problematic with regard to the undertaking of appropriate assessment and this issue is addressed in section 9 below. For these reasons it is my opinion that permission should be refused on the basis of prematurity pending the receipt of certificates of authorisation from the EPA and that it is not appropriate from either a planning or environmental perspective that the development would be permitted subject to a condition requiring the prior granting of authorisation from the EPA as provided for in Condition No.4 attached by the Planning Authority.

7.6. **First Party Appeal**

A number of conditions were the subject of appeal by the first party. Some of the conditions and related issues have been addressed in previous sections of this report and are summarised below.

Condition No.4 – No development to commence pending issuing of Statement of Authorisation from the EPA.

The first party contend that this condition is overly cautious and not required. As set out at section 7.5 of this report above however it is my opinion that the granting of permission subject to a condition that is uncertain in timescale and exact

requirements and which depends of a determination by a third party (in this case the EPA) lacks certainty and is not an appropriate restriction to apply by way of condition. In advance of the issuing of a determination by the EPA it is my opinion that permission should be refused on the basis of prematurity. I also consider that the granting of permission in such circumstances, and in a situation where the requirements by way of works to the landfill sites are not definitive, raises issues for the undertaking of appropriate assessment. Specifically, it is not considered that the competent authority, in this case the Board can make a determination that there would not be an adverse effect on the integrity of the Ballyman Glen SAC. The first party have specifically requested that the wording of Condition No.4 would be revised to allow some works to be undertaken on foot of the permission and that the works proposed to the waste locations in the application will not preclude the Council from complying with its responsibilities. While I note that the works proposed in the application have been developed having regard to the EPA Code of Practice I do not consider that it is appropriate that works would be allowed in advance of the receipt of certification from the EPA.

Condition 5 – Employment / Office Element Pending Bray and Environs Transportation Plan

Similar to the situation with Condition No.4 above, as set out at section 7.3 of this report above, I am of the opinion that the overall development would have a significant adverse impact on the carrying capacity and strategic role of the N11 / M11 national primary route and that the proposed office and employment element of the overall development would have a significant negative impact in this regard. Given the concerns of the Planning Authority with regard to the impact of the office and employment element of the development in terms of traffic congestion and the operation of the N11 / M11 it is my opinion that permission should be refused on this basis. Notwithstanding this, the wording of Condition No.5 is in my opinion problematic in that it makes development dependant on a further study to be undertaken by third parties (NTA and TII), the outcome of which is uncertain. The wording of Condition No.5 is also problematic in that it leaves it up to the Planning Authority to determine whether the outcome of the study is satisfactory to enable the office element to proceed.

Condition No.6 – Phased Construction of Primary School Facilities

The first party contends that the requirement of Condition No.6(a) that a maximum of 350 no. residential units be occupied prior to the receipt of confirmation in writing from the Department that construction of a primary school has commenced. It is submitted that this is contrary to the requirements of the Masterplan and that it is also unrealistic and unreasonable. Condition (f) attached to the masterplan at the time of approval specifies that not more than 625 no. units may be completed prior to the opening of the first 8 no. classroom primary school and this is specified at Condition 6(b). I would agree with the first party that a requirement for written confirmation regarding the start of construction after 350 no units are occupied appears to be excessively restrictive and that the omission of 6(a) would leave the condition consistent with the requirements of the Masterplan.

Condition No.7 – Provision of a Crèche

Condition No.7 requires that the crèche would be provided when not more than 350 no. residential units are occupied. It is argued by the first party that this requirement is too restrictive, that there are significant local crèche facilities already available and that the wording be revised to amend the number of residential units above which the crèche facility is required to 450. I note the significant number of crèche facilities as detailed by the first party, however, given the location of the site separate from the main facilities in Bray it is my opinion that it is important that a crèche facility is provided at an early stage of the development. In the event of a decision to grant permission it is therefore recommended that Condition 7 would remain unchanged.

Condition No.8 – Neighbourhood Centre

It is contended by the first party that this condition which requires that the neighbourhood centre would only be provided after the completion of all residential units outside of the neighbourhood centre site and restriction on net floor area of the convenience store is commercially unviable and is contrary to the provisions of the Fassaroe Masterplan. Condition (f) of the Masterplan requires that Phase 1C shall include the construction of a local retail and services centre commensurate with the needs of residents within 500 metres. As set out above, I have concerns with regard to the separation between the proposed neighbourhood centre and large areas of the proposed housing and also with regard to the scale of retail floorspace proposed,

the methodology used in the RIA and the potential impact of the retail development in terms of trade draw and impact on established retail centres including Bray TC. I therefore consider it appropriate that permission for the retail element of the development would be refused. Notwithstanding this recommendation, given the scale of retail development proposed it is in my opinion appropriate that if retail uses are to be granted that they would be subject to a requirement that no retail be provided until all residential outside the neighbourhood centre is completed. Similarly, in my opinion the requirement that a maximum of 50 percent of the convenience unit be net floorspace is justified given the issues set out above regarding the scale of floorspace proposed.

Condition No.10 – Financial Contribution

This condition requires the payment of the full s.48 contribution prior to the commencement of development. I would agree that given the scale of development and the likely timescale of the development that this condition is quite onerous. In the event of a grant of permission a revised condition requiring the agreement of phased payments is recommended.

Condition No.11 – Cash Financial Bond

Condition No.11 requires the provision of a cash bond with no option for other forms of bond. In the event of a grant of permission I consider it appropriate that the wording of the condition be altered to allow alternative forms of bond to be provided.

Condition No.15 – N11 Pedestrian / Cycle Bridge Design

Condition 15, part (b) requires that the final details of the pedestrian / cycle bridge over the N11 would be agreed with the Planning Authority prior to commencement of development. The first party requests that part (b) be amended to provide that the design agreed be on the basis of the existing N11 layout with a reasonable accommodation made for future alterations. In the event of a grant of permission it is considered appropriate that the design would be agreed on the basis of a reasonable provision for upgrading / widening of the N11 at this location.

Condition Nos.18 and 22 – Design and Phasing of Pedestrian / Cycle Bridge and Location of Attenuation Pond

In the event of a grant of permission I agree with the first party that it would be appropriate that the wording of Conditions Nos. 18(a) and 22 would be revised to reflect the changes to the wording of Condition 15 above.

Condition No.21 – Provision of a Private Bus Connection.

Condition No.21 requires that in advance of the rerouting of the public bus service that a private bus service would be provided to connect with the existing public bus. It is requested that the requirement for a private bus service in advance of the rerouting of the No.185 service would kick in at a threshold of occupation of 200 no. dwellings. I consider that it is necessary that a connection be available from the initial stages of development and do not therefore consider it appropriate that a threshold as high as 200 occupied units is appropriate. I also consider that in the event of a grant of permission that the wording of the condition should be revised to require the private bus service to connect with Bray DART station directly rather than just the existing public bus service serving Bray TC and the rail station.

7.7. Other Issues

- 7.7.1. **Bray Clay Pidgeon Club** have appealed the decision to grant permission on the basis that their activities will be at variance with the proposed development as the development will be within shot range resulting in a safety and noise issue. Contended that if the development is to be permitted there should be required that the existing infrastructure and activity of the club would be accommodated. On the issue of compatibility of the proposed development with the activities of the clay shooting club I note that the lands are zoned for residential development and have been the subject of identification for development in a masterplan for the site. I further note the fact that the pigeon club are not the owners of the lands on which the club operates. While the loss of the club facilities would be to the detriment of the sport, I do not consider that the current location of the club is a basis for the refusal of permission or that the layout of the development should be significantly altered to accommodate the club. The club state that they have a lease with the landowner

and the future occupation of the lands by the club is in my opinion an issue between them and the landowner.

7.7.2. The **visual impact** of the proposed development is cited in a number of submissions as being an issue as is the potential impact of the development on the setting of Enniskerry Village and the existing visual break between Bray and Enniskerry. It is also contended in a number of submissions that the proposed development would impact on an area of outstanding natural beauty and that the site itself is covered by this AONB designation. From a review of Appendix 5 of the Wicklow County Development Plan, 2016-2022 which contains the landscape assessment the area of the appeal site is identified as an Urban Area in the plan (Figure 1.1) while lands to the immediate west and to the south of the R117 road are indicated as being within an Area of Outstanding Natural Beauty. The Dun Laoghaire Rathdown Development Plan identifies protected views from the Ballyman Road to the north of the site looking south across the site. Objective NH52 of the Plan seeks to protect listed views and prospects from development that would either obstruct the view /prospect from the identified vantage point or form an obtrusive or incongruous feature in that view /prospect.

7.7.3. The **visual and landscape character impact** of the development is addressed at chapter 10 of the EIS and the assessment found that the nature and scale of the proposed development was such that the landscape impacts of the proposal would be significant. The Bray Environs LAP contains detailed requirements for the development of the Fassaroe lands which are aimed at limiting the overall visual impacts. The proposed development is in my opinion generally consistent with these provisions and is therefore consistent with the visual impacts envisaged in the LAP at the time of the zoning of the lands for development. The submitted EIS contains a total of 23 viewpoints from which the visual impacts of the development were assessed and these cover the Berryfield Lane, existing residential clusters in the vicinity, Bray town and views from some of the main tourist routes and locations in the vicinity. I would generally agree with the assessment contained in the EIS that the most significant locations identified where impacts are likely are the existing dwelling cluster on Berryfield Lane (View 8) and from location on the Ballyman Road to the north of the site (View 12). In the case of both of these locations the overall impact would clearly be negative. I note that there are protected viewpoints from the

Ballyman Road that would be impacted by the proposed development. These viewpoints are however rather limited by the extent of existing mature planting along the roadside boundary. In addition, while the development would alter the view in the middle ground the area immediately to the south of the road is zoned green belt and is not therefore going to be developed. Longer distance views to the south from the Ballyman Road would not in my opinion be significantly impacted by the proposed development. The apartment buildings Nos. 1 to 7 at the eastern end of the site would be visually prominent in the middle distance due to their height and the undulating elevated ground on which they are located. The scale of these buildings is not however such that they would break the horizon and the visual impact of this part of the development will in my opinion be mitigated as the development matures.

7.7.4. Overall, it is my opinion that the visual impact has to be set against the fact that the lands have been zoned for development and been the subject of a masterplan. The local character will clearly be the subject of significant change however the overall setting of the area relative to the main landscape features such as the Sugarloaf and little Sugarloaf will not be significantly altered. Protected views from the Ballyman would clearly be altered however the separation of the site from these viewpoints and the degree of intervention in the views is such that the impacts arising would not in my opinion be significantly adverse. Having regard to the zoning of the site, its location relative to Bray town centre and the N11 and the retained separation to Enniskerry I do not consider that the proposed development would have a significant adverse visual impact or would result in a significant adverse impact on the landscape character of the area.

7.7.5. With regard to **services**, third party submissions have expressed concerns regarding the availability of adequate water supply and implications for other areas in advance of the proposed upgrade to the Vartry Water treatment plant. I note that the Irish Water submission to the Planning Authority dated 3 April 2017 indicates that Irish Water do not have any objection in principle to the proposed development subject to a number of conditions, notably that details regarding the protection of the 33" diameter water main that crosses the site shall be submitted. In the event of a grant of permission it is recommended that this issue would be the subject of agreement by way of condition. I note that the first party submitted details for the protection of

this main as part of the response to further information (Appendix B of Drainage and Water Response to FI, dated 15th March, 2017). This document also contains revised calculations for foul drainage and water supply.

- 7.7.6. The potential for ***flooding and surface water*** issues has also been raised in a number of submissions and it has specifically been noted that the lands on the northern side of the boundary with Dun Laoghaire Rathdown County Council are prone to flooding. The submission from Dun Laoghaire Rathdown County Council identifies that there are flood risk zones A and B on the DLR side of the river that might be reflected on the Wicklow side. Appendix 7.1 to the EIS comprises a Flood Risk Assessment for the Phase 1 development of the Fassaroe lands that are the subject of this application.
- 7.7.7. As noted in the EIS the masterplan for the site was not the subject of flood risk assessment and that flood risk assessment is required to establish the nature of flood risk zones and flood risk and to manage any such risks. The assessment undertaken states at section 4 that the site is located within Flood Risk Zone C. The basis for this classification appears to be the OPW preliminary flood risk mapping which shows that the entirety of the appeal site is outside of the 1 in 100 year or 1 in 1,000 year flood risk area. A site specific flood risk assessment does not therefore appear to have been undertaken that would cover the site and detail the potential implications of the development downstream of the site. The EIS notes that Wicklow County Council has recently appointed a consultant to address the wider catchment of the County Brook stream including the section in the vicinity of the appeal site. No results of this assessment are yet available or presented with the application documentation. From the contours of the site in the vicinity of the County Brook where the river is in a significant cutting and the layout of the site with a significant setback to the stream together with the preliminary flood risk assessment mapping data it would appear that the potential for fluvial flooding at the site is limited. Two potential pinch points on the County Brook stream are identified as areas of potential problems and are subject to additional analysis in section 5 of the FRA. These locations are where the County Brook crosses the Thornhill Road and secondly where it crosses the Hazelwood Road. Given the estimated surface water runoff from the development site in the 1 in 100 year scenario it is not predicted that the development will give rise to additional flooding issues at these locations.

- 7.7.8. In terms of pluvial and groundwater flood risk, there is one location within the appeal site identified in the preliminary flood risk assessment mapping that is potentially at risk of flooding. The surface water drainage design proposed incorporates surface water drainage feature in this location that will manage the risk of flooding in this location.
- 7.7.9. The surface water design proposed incorporates a variety of SUDS technologies and the analysis undertaken indicates that discharge rates to the four proposed outfalls will be greenfield runoff rates. Overall therefore, while there is a lack of a very detailed site specific flood risk analysis, the available information would indicate that the risk of fluvial or pluvial / groundwater flooding on the site is very low and that there will not be likely negative implications for locations up or downstream of the development site.
- 7.7.10. With regard to **Part V** of the Planning and Development Act, the local authority have indicated in a report dated 3rd April, 2017 from the Housing and Capital Projects section that the revised proposals submitted by way of the response to further information are acceptable to the Planning Authority. The proposed units to be transferred to the local authority are set out in the Part V Proposal Document dated March, 2017 and proposes that a total of 71 units contained in apartment Blocks 1 and 2 would be provided. These 71 units comprise 13 no. one bedroom, 49 two bedroom and 9 no. three bedroom units. The location and unit mix proposed is in my opinion acceptable.
- 7.7.11. A **procedural issue** regarding the duration of permission granted is noted. In the initial application permission was sought for a seven year permission however this became 10 years in the final decision of the Planning Authority. I do not see a detailed justification presented by the applicant for the longer permission period sought. While an additional period may be considered beneficial to enable issues relating to roads and waste licencing to be resolved as set out above I do not consider that a grant of permission subject to conditions addressing these issues is appropriate. It is therefore recommended that in the event of a grant of permission that the duration of permission would be limited to seven years.

7.7.12. One of the appellants has raised concerns that the proposed development will have a significant negative impact in terms of noise, dust and vibration on Vallombrosa, a protected structure located approximately 200 metres from the north east corner of the site. If permitted, the development would be the subject of a construction management plan and it is recommended that requirements under such a plan would include provision for noise and dust monitoring.

8.0 Environmental Impact Assessment

8.1 Introduction

- 8.1.1. This application was made to the Planning Authority (Wicklow County Council) prior to the 16th May, 2017, the date for transposition of Directive 2014/52/EU amending the 2011 EIA Directive. Under the transitional provisions of the 2014 Directive, the 2011 Directive (Directive 2011/92/EU) as transposed into Irish legislation will therefore apply to the application. I am satisfied that the information contained in the EIS complies with article 94 of the Planning and Development regulations, 2000 (as amended).
- 8.1.2. The requirements for an EIS relates to categories 10(b)(i) and 10(b)(iv) of Part 2 of the Fifth Schedule of the Planning and Development Regulations, 2001 (as amended). The relevant sections referred to above relate to a mandatory requirement for the submission of an EIS in the case of developments comprising more than 500 residential units and urban development involving an area of greater than 20 ha. in the case of a non built up area.
- 8.1.3. The submitted EIS comprises two volumes with the main EIS document and a separate volume of appendices. The structure of the EIS is in a grouped format with likely significant effects on the environment assessed under the following headings: Human Beings and Socio Economic, Biodiversity, Soils, Geology and Hydrology, Hydrology, Flood Risk and Water Services, Air Quality, Noise and Vibration, Landscape and Visual Impact, Archaeology, Architectural and Cultural Heritage, Traffic and Transportation Impact Assessment. Under each heading the submitted EIS describes the existing environment, the likely significant effects arising from the proposed alterations, proposed mitigation measures and the likely residual effects.

A clear description of the proposed alterations is given at section 2.0 of the EIS. The policy context of the proposed development is addressed at section 3.0. Chapter 13 of the EIS sets out the likely interactions between the likely significant environmental effects identified. A non technical summary of the EIS is included as part of the main document.

7.8.1.4 Overall, it is my opinion that the structure and content of the submitted EIS is consistent with the provisions of Article 94 of the Regulations, and is sufficient to enable an identification of the likely significant environmental effects of the proposed alteration to the permitted development. The following sections set out what I consider to be the likely significant environmental effects arising and it is arranged under the headings contained in the submitted EIS which reflects the environmental factors as prescribed in the legislation. This assessment should be read in conjunction with the preceding assessment contained at sections 7.1 – 7.7 (inclusive) of this report and, where appropriate, reference will be made back to discussion contained in these sections of the assessment.

8.1.4. **Human Beings and Socio Economic,**

Likely Significant Impacts

- Increased traffic noise and disturbance during construction and operation.
- Potential for severance.
- Availability of employment during construction and operational phases.

Mitigation

Extensive mitigation measures to address residential amenity issues are set out in the submitted EIS. These include:

- The submission of a construction management plan and a construction traffic plan. These measures include measures to protect ecology and prevent run off of material into local watercourses, particularly the Fassaroe stream to the north of the site.
- The accommodation of pedestrian and vehicular traffic during the construction phase. Detailed mitigation measures and monitoring proposals for air including noise and vibration are set out at sections 8 and 9 of the EIS.

Residual Impacts

On completion the proposed development is likely to have a positive impact on the human population residing and working in the development. The impact on the small existing population in the environs of the site is potentially more mixed with a significant change in visual character and views for these properties as well as increases in traffic and some increased severance for those on Berryfield Lane. These negative impacts would be offset by the availability of new transport services, roads and local shopping.

I have considered all of the written submissions made in relation to Human Beings. I am satisfied that they can be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of human beings.

8.1.5. Ecology (Flora and fauna)

Likely Significant Impacts

- Potential loss of existing terrestrial habitats.
- Impacts on watercourses from changes in runoff and pollution.
- Loss of habitats for birds and bats.

Mitigation

Extensive mitigation measures to address ecology issues are set out in the submitted EIS. These include:

- The preparation and implementation of a construction and environmental management plan that will seek to ensure the minimisation of pollution incidents. This plan is to be prepared with the input of an ecologist.
- The identification of areas to be avoided during construction including wet woodland and other valuable habitats.

- Use of badger proof fencing to the main link road and underpasses.
- Bat protection measures by survey prior to works and replacement hedgerow planting.
- Implementation of an invasive species management plan.
- Detailed drainage design to ensure that surface water flow rates are controlled.

Residual Impacts

On completion of the proposed development the impacts on flora and fauna would be substantially mitigated. It is noted that the imposition of Condition No.4 requiring the development to obtain authorisation from the EPA for the waste disposal site remediation introduces an element of uncertainty with regard to the final development design in this area and the resulting potential impacts on the Ballyman Glen SAC are not capable of being determined to a level of certainty as required by the Habitats Directive.

I have considered all of the written submissions made in relation to ecology. I am satisfied that they can be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of general ecology. As set out above however in the event that the undertaking of development was the subject of a condition such as Condition 4 where the exact nature of works and impacts cannot be determined then I do not consider that it is possible for the Board as the competent authority for AA to determine that there would not be adverse effects on the integrity of any European site.

8.1.6. Soils, Geology and Hydrology,

Likely Significant Impacts

- Requirement for the re profiling of the site with a net deficit in material and required importation of c. 350,000 cubic metres of material.

- The works to the existing landfill sites will result in a change in the volume and composition of groundwater flowing out of these areas.
- The disturbance of waste areas could mobilise additional contaminants in the area.
- Construction and operational phases have the risk of spillages and other discharges that could pollute ground and surface waters.

Mitigation

Extensive mitigation measures to address soils, geology and hydrology are set out in the submitted EIS. These include:

- The site was the subject of detailed site investigations particularly in the areas of known waste disposal and a detailed risk assessment undertaken.
- Care taken in the stripping of topsoil and ground re profiling. Storage of excess material off site in a licenced facility.
- Care in on site operations to avoid spillages and contamination and adherence to a construction and environmental management plan.
- Capping of existing landfill areas within the site will reduce the level of leachate generated from the area.
- Detailed drainage design to include interceptors and leachate collection in the waste area.

Residual Impacts

On completion of the proposed development the impacts on soil, geology and hydrology would be substantially mitigated. Again, it is noted that Condition No.4 results in a degree of uncertainty with regard to the final development design in this area and the resulting potential impacts on groundwater and surface water.

I have considered all of the written submissions made in relation to soil geology and hydrology. I am satisfied that they can be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation

measures and through suitable conditions. I am satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of these environmental factors.

8.1.7. **Hydrology, Flood Risk and Water Services,**

Likely Significant Impacts

- Potential altering of flow rates downstream of the site.
- Changes to the natural surface water discharge rates from the site.
- Increase in the risk of flooding on site.
- Impact on water and wastewater services infrastructure.

Mitigation

Mitigation measures to address hydrology and flood risk are set out in the submitted EIS. These include:

- Surface water runoff will be attenuated to greenfield runoff rates.
- Drainage outfalls designed so as not to impact on flows or flow capacity in the county brook.
- Site specific construction and environmental management plan to be prepared and implemented.
- Detailed overall drainage strategy including SUDS measures.
- Use of 24 hour on site water storage to minimise impact on network.
- Interceptors and attenuation ponds on all storm water discharge points.

Residual Impacts

On implementation of the proposed mitigation measures the residual impacts of the proposed development in terms of hydrology, flood risk and water services would be substantially mitigated. It is noted that the flood risk assessment undertaken utilised indicative flood zone mapping from the OPW however this analysis is augmented by additional analysis of potential areas of concern on the County Brook / Fassaroe Stream. The residual flood risk is not however considered to be significant. As set

out in the assessment, the potential for further works to the landfill areas would result in potential further changes to groundwater hydrology and groundwater quality in the area of the County Brook. These additional works are not however part of the proposed development and as set out above the requirement that future additional works in the area of these landfill sites would be the subject of agreement by way of condition following authorisation from the EPA is not in my opinion an appropriate approach.

I have considered all of the written submissions made in relation to hydrology, flood risk and water services. I am satisfied that they can be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of these environmental factors.

8.1.8. Air Quality, Noise and Vibration,

Likely Significant Impacts

- Construction phase noise and dust emissions from equipment and construction traffic.
- Emissions to air from construction machinery.
- Potential for release of odours from works to existing waste sites.
- Increased level of traffic post development / operational phase.

Mitigation

Mitigation measures to address air quality, noise and vibration are set out in the submitted EIS. These include:

- Preparation and implementation of a dust minimisation plan as part of the CEMP. Implementation of a construction traffic management plan. Use of internal haul routes where feasible to minimise impact on local road network.
- Preparation and implementation of an odour management plan.
- Implementation of the travel plan for the site including the public transportation measures.

Residual Impacts

On implementation of the proposed construction management plan and the dust management plan the likely residual impacts are not considered likely to be significantly adverse.

I have considered all of the written submissions made in relation to air quality, noise and vibration. I am satisfied that they can be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of these environmental factors.

8.1.9. Landscape and Visual Impact,

Likely Significant Effects

- Change in character of the lands from semi urban to urban in nature.
- Impact on views from local dwellings including those on Berryfield Lane.
- Impact on views from within the existing Bray urban area and the N11.
- Impact on protected views from the Ballyman Road.
- Construction phase impacts from construction activity and equipment.

Mitigation

Mitigation measures to address landscape and visual impact are set out in the submitted EIS (Chapter 10). The main mitigation put forward relates to the fact that the lands have been the subject of residential zoning under the Bray Environs LAP, 2009 and the fact that the contours of the site are such that there would not be significant negative impacts on views from the north on the Ballyman Road. A significant separation between the site and the existing built up area of Enniskerry is also noted.

Residual Effects

I have considered all of the written submissions made in relation to landscape and visual impact. I am satisfied that they can be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of landscape or visual impact.

8.1.10. **Archaeology, Architectural and Cultural Heritage,**

Likely Significant Effects

- That there is one recorded monument location with the application site.
- Potential for the uncovering of material given the scale of development proposed and the extent of ground level reductions proposed in some areas.
- On the basis of available information not considered likely that the proposed development would impact on any known archaeological sites.

Mitigation

The following mitigation measures are proposed in the EIS (Chapter 11):

- Mitigation measures in the form of the erection of a barrier around the known site (CH-1).
- All earthworks and topsoil stripping to be undertaken under the supervision of an archaeologist.
- In the event of material being discovered power to stop works pending the direction of the national monuments service.
- Preparation of a full report post development.

Residual Effects

I have considered all of the written submissions made in relation to archaeology. I am satisfied that they can be avoided, managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and

through suitable conditions. I am satisfied that the proposed development would not have any unacceptable direct or indirect impacts in terms of archaeology.

8.1.11. Traffic and Transportation Impact Assessment

Likely Significant Effects

- Construction phase traffic impacts on local roads and connections with the national road network.
- Impact of construction traffic including employee traffic.
- Increase in existing heavy traffic on the N11 at peak periods.
- Operational phase impacts on surrounding local and regional road network and potential for creating alternative routes for commuter traffic.

Mitigation

The following mitigation is set out in Chapter 12 of the EIS (Traffic and Transportation):

- That there would be a construction traffic plan that would address issues of construction movements, deliveries, access routes, parking and access for local residents.
- Mobility management plan for construction employees.
- Provision of bus service directly to Fassaroe.
- New pedestrian / cycle bridge over the N11 to provide direct connection to Bray.
- Travel plan for both residential and office / employment elements of the development.

Residual Effects

The residual effects predicted by the EIS during the construction phase are for a minimal impact. Subject to the mitigation measures proposed I consider that the impacts could be successfully mitigated.

During the construction phase I have significant concerns with regard to the impact of the proposed development on the N11. These concerns are detailed at section 7.3 of this report above. In particular I do not consider that the use of a modal split based on an existing residential part of Bray to the east of the N11 is appropriate comparison and that the analysis likely underestimates the potential impact on the N11. Notwithstanding this I note the comments of TII regarding the potential impact of the development on the N11 which is already operating significantly above capacity at peak periods.

For these reasons it is my opinion that the proposed development would likely have significant adverse residual effects in terms of traffic congestion on the N11 and unsustainable commuting patterns.

9.0 Appropriate Assessment

- 9.1.1. A Natura Impact Statement was submitted with the application in August 2016 and is contained at Appendix 5.1 of the EIS. This submission comprised a screening assessment which concluded that significant effects on the Ballyman Glen SAC could not be ruled out having regard to the conservation objectives of that site. The submission therefore proceeded to a Stage 2 Appropriate Assessment which concluded that subject to mitigation measures proposed the proposed development would not have an adverse effect on the integrity of the Ballyman Glen SAC site.
- 9.1.2. On foot of the councils request for further information and the revisions proposed to the development layout and number of residential units, a revised NIS dated March 2017 was submitted. This document also concluded in a screening assessment that the proposed development may have significant effects on the petrifying springs and tufa formation, and Alkaline fens, both Annex I habitat and that the potential for significant effects on the Ballyman Glen SAC site cannot be ruled out. A Stage 2 Appropriate Assessment concluded that subject to mitigation measures proposed the proposed development would not have an adverse effect on the integrity of the Ballyman Glen SAC site.

9.2. Screening Assessment

9.2.1. The following are the specific aspects of the proposed alterations that would, in my opinion, have a potential effect on a European site:

- The works to the existing landfill sites which has the potential to alter the level of water infiltration into these sites and therefore impact on the level of leachate flowing from the sites.
- Works to the existing electricity lines on site which require works within the Ballyman Glen SAC site.
- The foul and surface water drainage proposals to serve the development.

9.2.2. The identification of designated sites under the Habitats Directive which should be the subject of Stage 1 Screening Assessment is usually guided by the general principle contained in UK Guidance that a zone of 15km is appropriate in the case of plans, and that this distance could be significantly less in the case of projects. The DEHLG Guidance on Appropriate Assessment of Plans and Projects in Ireland (2009) makes it clear that the separation distance applicable for examination should be assessed on a case by case basis. In the case of the proposed development, having regard to the scale and nature of what is proposed and the hydrological connection between the proposed development site and Natura 2000 designated sites in the general vicinity, it is considered appropriate that the following sites should be the subject of screening for appropriate assessment:

- Ballyman Glen SAC (Site Code 000713)
- Knocksink Woods SAC (Site Code 000725)
- Bray Head SAC (Site Code 000714)

The following sections set out the qualifying interests and conservation objectives for these sites, their location relative to the appeal site, potential pathways and an assessment of the potential for likely significant effects to arise.

9.3. Ballyman Glen SAC (Site Code 000713)

The Ballyman Glen SAC directly adjoins the appeal site to the north and part of the appeal site is located within the SAC.

The qualifying interests are as follows:

- Petrifying springs with tufa formation (Cratoneurion)*
- Alkaline fens

The conservation objective is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected as listed above.

The site is hydrologically connected to the appeal site via groundwater and surface water flows to the Ballyman Stream. The on site former waste disposal areas are a potential source of discharge and pollution to the SAC site and groundwater from these parts of the site have the potential to impact on the volume of water serving the springs and fen which are the qualifying interests for the site. The Risk Assessment report undertaken of the waste sites found that the direction of groundwater flow from the sites, particularly site 2 is in the direction of the County Brook and Fassaroe stream and therefore towards the Ballyman Glen SAC site. Two of these former waste sites are located within approximately 50 metres of the Natura 2000 site boundary. The works proposed to the waste sites as part of the development include the capping of the former waste sites which will reduce water infiltration and hence runoff through these areas to groundwater. The proposed development therefore has the potential to firstly reduce the level of leachate / water quality flowing to the SAC site and secondly to potentially reduce the level of groundwater flow to the site. The capping may also change groundwater flows in the vicinity of the SAC site. Ground water changes may impact on the petrifying spring habitat which the changes to the volume and quality of groundwater may, in my opinion have potential impacts on both the alkaline fen and petrifying spring qualifying interests of the Ballyman Glen SAC site. Having regard to this, it is my opinion that the potential for the development to have significant effects on the Ballyman Glen SAC site exists and that a Stage 2 Appropriate Assessment of these effects is required.

9.4 Knocksink Woods SAC (Site Code 000725)

The Knocksink Woods SAC site is located c. 600 metres to the south west of the appeal site at the closest point. The qualifying interests for the site are as follows:

- Petrifying springs with tufa formation
- Alluvial forests.

The conservation objective is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected as listed above.

The Knocksink site is located within the Dargle Lower River sub catchment and there is no indication that there is any surface water connection between the appeal site and the Knocksink Woods SAC site. It is noted that landfill site 3b is located on the appeal site along the alignment of the proposed new link road through the development. This site is therefore one of the closest locations on the appeal site to the Knocksink Woods site and the main area of housing and other development is further to the north east and further from the Knocksink Woods site. The investigations undertaken as part of the risk assessment for the former waste sites indicated that groundwater flows in this part of the site were to the north east and therefore not in the direction of the SAC. On the basis of the available information therefore I consider that the proposed development is not likely to have a significant effect on the Knocksink Woods SAC site having regard to the conservation objectives of the site and an Appropriate Assessment (and submission of an Natura Impact Statement) is not therefore required.

9.5 Bray Head SAC (Site Code 000714)

The Bray Head SAC site is located c. 3km to the east of the appeal site. The conservation objectives for this site are as follows:

- Vegetated sea cliffs of the Atlantic and Baltic Coasts,
- European dry heaths

There are site specific conservation objectives for this SAC and these relate to the maintenance at favourable conservation status vegetated sea cliffs and dry heaths

having regard to a range of attributes that include habitat length, habitat distribution, physical structure and the hydrological regime, vegetation structure and composition.

The site is located such that there is a very indirect connection between the appeal site and the SAC via the County Brook stream discharging to the River Dargle and onwards to the Irish sea in the vicinity of the Bray Head SAC site. There are no likely surface or groundwater connections that have been identified. On the basis of the available information therefore it is my opinion that the proposed development is not likely to have significant effects on the Bray Head SAC site having regard to the conservation objectives of the site and an Appropriate Assessment (and submission of an Natura Impact Statement) is not therefore required.

9.6 Other European Sites

9.6.1 A number of other Natura 2000 sites are identified in the screening assessment submitted by the first party and these are ruled out as having any likely significant effects on the environment. On the basis of their physical separation from the appeal site, the results of ground investigations undertaken as detailed in the EIS and the Risk Assessment Report and the lack of a clear ground or surface water pathway between the appeal site and the relevant Natura 2000 sites I do not consider that there are any additional likely significant adverse effects that arise. The following sites are within a 10 km radius but have no clear pathway that would give rise to a potential for likely significant effects and have therefore been excluded from further consideration in this screening assessment:

- Glen of the Downs SAC (site code 000719) located c.6km to the south of the site. Qualifying interest – old sessile oak woods.
- Glenasmole Valley SAC (site code 001209) located c.13km to the north west of the site. Qualifying interests comprise semi natural dry grasslands, Molina meadows and petrifying springs.
- Wicklow Mountains SAC (site code 002122) located c.5km to the west of the site. Qualifying interests comprise oligotrophic to mesotrophic waters, natural dystrophic lakes and ponds, Atlantic wet heaths, dry heath, alpine and boreal

heath, Species rich nardus grass, blanket bog, siliceous scree, calcareous rocky slopes, siliceous rocky slopes, old sessile oak woodlands, lutra lutra.

- Carrigower Bog SAC (site code 000716) located c. 9.5km to the south of the appeal site. Qualifying interests comprise transition mires and quaking bogs.
- Rockabill to Dalkey Islands SAC (site code 003000) located c. 6km to the north of the appeal site at the closest point. Qualifying interests comprise reefs and phocoena (harbour porpoise).
- Wicklow Mountains SPA (site code 004040) located c. 5km to the west of the appeal site. Qualifying interests comprise merlin and peregrine.
- Dalkey Islands SPA (site code 004172) located c.9km to the north north east of the appeal site. Qualifying interests comprise the roseate tern, common tern and artic tern.

9.7 Screening Conclusion

- 9.7.1 In conclusion therefore, having regard to the sites identified, the qualifying interests of these sites, the location and nature of the proposed development and the potential pathways between the appeal site and identified Natura 2000 site the only site identified where there is in my opinion a potential for likely significant effects on the conservation objectives of a European site to arise is in the case of the Ballyman Glen SAC. It is therefore considered necessary that this assessment would proceed to a Stage 2 Appropriate Assessment of the potential effects that the proposed development would have on the integrity of this site.

9.8 Stage 2 Appropriate Assessment

- 9.8.1 This appropriate assessment follows from the screening assessment undertaken at above which concluded that on the basis of available scientific information the possibility of significant environmental effects on the Ballyman Glen SAC site cannot be excluded. Specifically, the screening assessment concluded that the potential for construction impacts arising from the works to the ESB pylons, the changes

proposed to the on site waste disposal locations and the drainage measures on site are such as to have a potentially significant impact on the conservation objectives for the site. The species of conservation importance and the qualifying interests are set out in the relevant sections of the screening assessment above (9.3) and the following sections will proceed to undertake a more detailed evaluation of the potential effects of the proposed development on the Ballyman Glen SAC site including consideration of the proposed mitigation measures and potential in combination effects with other plans and projects.

9.8.2 The location of the petrifying springs and alkaline fen areas within the SAC are identified in Figure 4.2 of the submitted NIS dated March, 2017. During the construction phase, the proposed development would have potential impacts in the areas of loss of habitat and disturbance of existing habitats, the alteration of water quality, the alteration of water flows and the potential for the introduction of invasive species. This is particularly the case with regard to some works proposed at the northern end of the site where there is a new lattice tower proposed for the 110kv line within the SAC site and a second new tower for the rerouting of the existing 38kv line. Some ground stabilisation works are also proposed at the northern side of former landfill sites 1 and 2 which are located adjoining the SAC and the capping works to the waste sites also have the potential to mobilise contaminants. These works have the potential for the generation of contaminated runoff and the degradation of the petrifying spring habitat. Mitigation measures in the form of a construction management plan, a sediment control plan and the use of good environmental practices during the construction phase are proposed which would, in my opinion, adequately mitigate such potential impacts. Details of these are provided at 4.9.1 and 4.9.2 of the NIS (March, 2017) and are also detailed in the submitted EIS.

9.8.3 With regard to the Alkaline fen habitat, there are no works that would directly affect this habitat within the SAC (see locations identified in Appendix A of the submitted

NIS dated March, 2017). Changes in the hydrological regime and water quality would however have a potential impact on this qualifying interest. The capping of the landfill sites has the potential to impact on groundwater quality and volume. Survey work undertaken and set out in the submitted Risk Assessment Report indicates that there are two main identified locations within the Ballyman Glen SAC where springs display clear signs of contamination from leachate. As noted in the NIS one of the conservation objectives for petrifying springs is water quality where it is an objective to maintain oligotrophic and calcareous conditions. On the basis of the information presented in the EIS and Risk Assessment, the result of the landfill capping will likely be an improvement in water quality within the springs in the SAC site as a result of less rainfall infiltration and a reduced recharge rate. A rise in PH levels is therefore predicted which would have beneficial impacts on the spring water quality and the petrifying conditions at the springs. A similar improvement in the conditions for alkaline fen are also considered likely though it is noted that the main areas of fen within the SAC are further to the west of the development area proposed in the application and it is therefore unlikely that the groundwater flow which is towards the north east will have a significant impact on this habitat.

9.8.4 The landfill capping is also predicted to change the groundwater regime due to reduced water infiltration reducing the flow of water into the SAC site and serving the springs. There is therefore potential for a lowering of the water table in this area and for there to be impacts on the springs within the SAC. Analysis contained in the Risk Assessment report submitted indicates that the capping of the landfill sites would likely lead to a reduction in the recharge rate post development of the order of 7% and it is estimated in the Risk assessment that this would lead to a reduction in the level of the groundwater in the vicinity of the Ballyman Glen SAC of c. 0.28 metres with a corresponding drop in the height of the seepage face for the springs in the SAC. The analysis undertaken by the first party and presented with the application indicates that the reduction in the height of the seepage face of c. 0.3 metres is relatively minor in the context of the overall area (see Appendix B) and that the

reduced recharge rate of 7% and resulting reduction in the flow of the springs would not be likely to have a significant impact on the ability to deposit tufa. On the basis of the available information I would therefore agree with the first party that the works involving the capping of the waste sites would not be likely to have a significant adverse effect on the integrity of the Ballyman Glen site.

9.8.5 With regard to the potential for the surface water design of the proposed development to impact on the SAC I note that the proposed design provides for surface water up to a one in five year event would be accommodated in storm water soakaways on site. Volumes in excess of this would be discharged to attenuation on site and discharged to surface water at rates that would not exceed greenfield levels. I do not therefore consider that the surface water implications of the mixed use development proposed would be such as to have an adverse effect on the integrity of the Ballyman Glen site.

9.8.6 The presence of a number of areas of invasive species on the appeal site is noted in the ecology section of the EIS and I specifically note the recorded presence of Japanese knotweed at four locations that are in the general vicinity of the Ballyman Glen SAC site. Subject to good construction practice and a plan to deal with invasive species there should not be a risk of spread of invasive species within the SAC and a Japanese Knotweed Management Plan has been prepared by the applicant and is presented at Appendix C of the NIS. In terms of the potential for degradation of SAC habitat through increased access, the submitted NIS notes the fact that the layout of the development is such that the developed areas would be separated from the SAC by the district park and that the park is separated from the Natura 2000 site by steep contours and dense wooded areas. The potential for significant human impacts on the SAC habitat post development is therefore considered to be unlikely.

9.8.7 Cumulative / In Combination Effects

There are in my opinion a number of plans and projects that have the potential to result in in combination effects together with those arising from the proposed alterations such as may have impacts on the Ballyman Glen SAC site. The following plans and projects are considered of relevance:

- Bray and Environs LAP 2009 which zones the current appeal site for residential use as well as additional lands to the west and south. The LAP was the subject of SEA regarding the overall environmental impact of the Fassaroe lands including the appeal site and any future proposals for the development of subsequent part of the Masterplan lands at Fassaroe in addition to the Phase 1 proposed in this application will need to be the subject of AA screening and full appropriate assessment if required.
- Dun Laoghaire Rathdown County Development Plan, 2016-2022 identifies lands for development at Old Conna to the north of Ballyman Glen. The identification of such lands has been the subject of SEA as part of the Plan preparation process and any future development of such lands will need to be the subject of AA screening and full appropriate assessment if required.
- The Old Connaught Woodbrook Water Supply Scheme. This is a significant scheme to provide water supply to the Fassaroe area as well as significant areas of development lands within the administrative area of Dun Laoghaire Rathdown County Council. Detailed designs have not been progressed to date and so there has not been any appropriate assessment screening or Stage 2 assessment undertaken. If and when the scheme is progressed, then it will need to be the subject of AA screening and full appropriate assessment if required.

- The Woodbrook Shangannagh LAP was adopted by Dun Laoghaire Rathdown County Council on 3rd July, 2017. This plan identifies an area of land to the east of the N11 and north of Bray for residential development. A total of 31 ha. of land are within the plan area and it is stated that this is capable of accommodating between 1600 and 2300 new homes. The LAP was the subject of SEA and any future applications for development would require to be the subject of AA screening and if necessary Stage 2 AA.

The above plans and projects have been reviewed and the results of SEA, screening assessment and, where undertaken, stage 2 appropriate assessments noted. On the basis of the available information, I do not consider that the in combination effects of these plans and projects would result in adverse effects on the integrity of the Ballyman Glen SAC site.

9.8.8 Implication of Condition No.4 as attached by the Planning Authority to the Notification of Decision to Grant Permission for Appropriate Assessment

For clarity, the above screening assessment and Stage 2 appropriate assessment has been undertaken on the basis of the works as proposed in the application submitted to Wicklow County Council and which is the subject of appeal to the Board. As set out above, it is my opinion that the development as proposed in the application documentation would not either individually or in combination with other plans or projects, have an adverse effect on the integrity of any European site. There remains however the issue of uncertainty regarding the final requirements for the remediation of the areas of waste on the application site pending. As set out previously in this report (7.5), pending certainty regarding the final remediation solution for the site it is not in my opinion possible for the competent authority, in the case the Board, to make a clear determination that there would not be an adverse impact on the Ballyman Glen SAC and that pending certainty on this issue the development is premature.

Section 7.5 of this report also addresses the issue of the appropriateness of the inclusion of a condition (Condition No.4 as attached by the Planning Authority) that

development of the site would not occur until such time as an application for a Certificate of Authorisation to the EPA has been made, an approval received and the Planning Authority has informed the applicant in writing that the outcome of the application is acceptable and that development can proceed. As set out in section 7.5 above I do not consider that the inclusion of such a condition is appropriate on the grounds that it lacks certainty with regard to timescale and the extent of works that might be required and also that it puts the outcome of the whole development in the hands of a separate consent procedure involving a third party as well as requiring determination from the Planning Authority as to whether the decision issued by this third party is acceptable or not.

The inclusion of a condition along the lines of Condition 4 also in my opinion has implications in terms of appropriate assessment and the determination by the competent authority that a development would or would not have an adverse effect on the integrity of a European site having regard to the conservation objectives of the site. In the case of the proposed development, as set out above, in the event that a condition along the lines of Condition 4 was to be attached, and on receipt of an authorisation from the EPA it was required that further works to the landfill sites was required, then it would be my opinion that there would be the potential for significant effects on the Ballyman Glen SAC site to arise such as would require Stage 2 appropriate assessment. Where this generates a problem in my opinion is that the requirement to undertake appropriate assessment has to be done on the basis of the best available scientific knowledge and having regard to the precautionary principle. In a situation such as would arise with Condition No.4 there is a complete lack of certainty with regard to the potential requirements of the EPA on foot of the application for authorisation. There is therefore in my opinion a clear absence of certainty with regard to the potential implications for the Ballyman Glen SAC such that it is not possible for the Board as the competent authority to cover the potential impacts that may arise. Were a condition along the lines of Condition No.4 to be attached a decision on the acceptability or otherwise of the measures required would be taken by the planning authority by way of compliance without being the subject of appropriate assessment by the competent authority, in this case the Board. Such a situation is not in my opinion appropriate and would result in a decision where a full assessment of the implications of the development on the natura 2000 network as

required by Directives 2009/147/EC (Birds Directive) and 92/43/EEC (Habitats Directive) had not been undertaken.

9.8.9 Conclusion of Appropriate Assessment

Having regard to the above assessment, I consider that it is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development as set out in the application documentation (including submitted Risk Assessment and EIS) and which comprises a mixed use development on lands at Fassaroe County Wicklow, individually or in combination with other plans or projects as listed above would not adversely affect the integrity of the Ballyman Glen SAC (site code 000713), or any other European site, in view of the site's conservation objectives. However, as set out previously in this report (7.5 and 9.8.8), there is a requirement that the works to the former waste disposal areas on site are the subject of future authorisation from the EPA. In my opinion there remains significant uncertainty regarding the final remediation solution for these areas of the site such that I do not consider it possible for the competent authority, in the case the Board, to make a clear determination that there would not be an adverse impact on the integrity of the Ballyman Glen SAC in the light of its conservation objectives.

10.0 Conclusion and Recommendation

Having regard to the above, it is my opinion that while the site is zoned for development and the basic form, layout and design of development is generally acceptable that there are a number of issues arising the resolution of which it is not in my opinion feasible or appropriate to address by way of condition. Specifically, the potential impact on the carrying capacity and strategic function of the N11 / M11 and the requirement that parts of the site would be the subject of authorisation from the EPA the outcome of which is not clear, are issues that require that permission

would be refused. I also have significant concerns with regard to the extent of retail floorspace proposed in the development and consider that this is excessive relative to the scale of development proposed and relative to the retail functions envisaged in the Masterplan for the site. This issue could be addressed by way of condition although I remain concerned regarding the separation of the proposed neighbourhood centre from the main residential areas proposed in Phase 1.

The extent of office accommodation proposed and its relationship to and impact on the national road network is also of concern.

Finally, and related to the issue regarding the requirement for authorisation of the waste sites by the EPA, the granting of permission or the conditioning of development subject to authorisation of these sites and the undertaking of works that are beyond the scope of the Risk Assessment and EIS both in my opinion raise issues of certainty regarding the effects on the Ballyman Glen SAC site which mean that it is not possible to determine with the required degree of certainty that there would not be an adverse effect on the integrity of this site having regard to its conservation objectives.

For these reasons it is recommended that permission would be refused for the following reasons:

Reasons and Considerations

1. Having regard to

- (a) the scale of development proposed,
- (b) to the absence of a high capacity public transport mode conveniently serving the site or plans for the provision of such a service,
- (c) the car based nature of the development proposed,
- (d) to the volume of traffic likely to be generated by the development and the percentage of that traffic likely to use the N11 / M11 route,
- (e) to the existing congested nature of this route and trend of increasing traffic volumes as evidenced by the submission made by Transport Infrastructure Ireland and the anticipated timescale within which such capacity issues will be resolved and
- (f) the potential for the future development of other zoned sites that would impact on this road corridor,

it is considered that the proposed development would have a significant adverse impact on the carrying capacity and strategic function of the N11 / M11 route and would represent an unsustainable form of development excessively dependant on the private car. The proposed development would therefore be contrary to the Guidelines for Planning Authorities on Spatial Planning and National Roads and to the proper planning and sustainable development of the area.

2. Having regard to the provisions of the Fassaroe Masterplan which requires that Phase 1 of the development of the Masterplan area shall provide for the construction of local retail and service facilities commensurate with the needs of residents within a 500 metre radius (condition f of Managers Order dated 10792/10), it is considered that the scale and location of retail development proposed and as justified in the submitted Retail Impact Assessment which included a catchment area extending significantly beyond the boundaries of the site would be in excess of the needs of local residents and would be poorly connected to the main residential development proposed. The

proposed retail development is therefore considered to be contrary to the provisions of the site Masterplan and premature for the scale of Phase 1 development, would have a potentially significant negative impact on established retail centres including Bray town centre and would therefore be contrary to the proper planning and sustainable development of the area.

3. Having regard to the presence of three historic landfills on the site, to the requirement that these sites would be the subject of authorisations from the Environmental Protection Agency, to the location of these areas in close proximity to proposed residential development and within amenity and service areas of the site and to the uncertainty with regard to the final requirements of the EPA and resolution of the issue it is considered that the Board cannot clearly determine that the proposed development would not have an adverse effect on the integrity of the Ballyman Glen SAC having regard to the conservation objectives for the site and that to allow development to proceed would therefore be premature, could lead to works that would seriously injure the amenities of future residents of the development and would be contrary to the objectives of the Habitats Directive and to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

29th September, 2017