



An  
Bord  
Pleanála

## Inspector's Report ABP 310649-21.

### Development

Three extensions to existing materials recovery facility and all associated site development works. The development relates to a waste material recovery site which is operated under a Waste Licence granted by the EPA.

### Location

Existing Material Recovery Facility,  
Fassaroe, Bray, Co. Wicklow.

### Planning Authority

Wicklow County Council

### Planning Authority Reg. Ref.

20/935

### Applicant

Starrus Eco Holdings

### Type of Application

Permission

### Planning Authority Decision

Grant retention permission

### Type of Appeal

First party against development  
contribution condition.

### Appellant

Starrus Eco Holdings

### Date of Site Inspection

None required

**Inspector**

Siobhan Carroll

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## **1.0 Site Location and Description**

- 1.1. The appeal site with a stated area of 1.03 ha is located at Fassaroe to the west of Bray Co. Wicklow. It lies circa 400m west of the N11 and Bray. The site comprises an area within the overall landholding which contains a materials recovery facility. The facility includes a transfer Building located adjacent to the site entrance and a screening/sorting building.
- 1.2. The facility accepts commercial and industrial waste, dry mixed recyclable waste and household general waste which is bulked for transfer on the site. The facility also accepts wood products for processing and repurposing.

## **2.0 Proposed Development**

- 2.1. Retention of three extensions to existing materials recovery facility and all associated site development works. The development relates to a waste material recovery site which is operated under a Waste Licence a granted by the EPA.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Wicklow County Council issued a notification of decision to grant retention permission subject to 3 no. conditions. Condition no. 2 required the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- Following the submission for further information in relation to details of how the storm water runoff from the extension will be dealt with including design calculations for site attenuation and infiltration with an allowance for climate change, the Planning Officer was satisfied with the details provided and it was recommended to grant permission for retention of the proposed development.

#### 3.2.2. Other Technical Reports

#### 3.2.3. Roads – no issues

#### 3.2.4. Water & Environmental Services – Further information response was considered satisfactory.

### 3.3. Prescribed Bodies

#### 3.3.1. Irish Water – no objections

## 4.0 Planning History

There is an extension planning history on the site which is detailed in the report of the Planning Officer. The most recent application is Reg. Ref. 17/1488 – permission was granted for single storey waste materials recovery building to internally accommodate existing on site external waste management activities.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1. The operative plan for the area is the **Wicklow County Development Plan 2016 – 2022** and the **Bray Municipal District Local Area Plan 2018 – 2024**.

#### 5.1.2. In the Bray Municipal District Local Area Plan 2018 – 2024 the site is zoned ‘E1’ Employment, where the objective is to provide for the development of enterprise and employment.

### 5.2. Development Contributions

#### 5.2.1. Wicklow County Council adopted a Development Contribution Scheme under Section 48 of the Planning and Development Act 2000 (as amended) and it is in place since 5<sup>th</sup> of October 2015.

#### 5.2.2. The Development Contribution Scheme was updated on the 16<sup>th</sup> of February 2021.

#### 5.2.3. Section 4.0 – Basis for the Determination of the Contribution

- 5.2.4. Table 4.3 – Industrial/Commercial refers to all industrial and commercial developments including extensions. Floor areas will be based on Gross Floor area.
- 5.2.5. Section 4.10 – There will be no double charging. Credit will be given for previously paid development contributions or previously authorised use or existing floor areas.
- 5.2.6. Section 5.0 – Exemptions
- 5.2.7. Section 5.2 – No exemptions/reductions will be allowed for retention permission.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

A first party appeal was submitted by Tom Phillips & Associates on behalf of the applicant Starrus Eco Holdings Ltd. The content of the appeal submission can be summarised as follows;

- The appeal is made against condition no. 2 of the permission granted under Reg. Ref. 20/935.
- Condition no. 2 states;  
  
“Within three months of the date of this permission, the developer shall pay the sum of €118,304 (one hundred and eighteen thousand three hundred and four euro) to the Planning Authority as a contribution in respect of public infrastructure and facilities benefiting the development in the area of the Planning Authority.

Where the contribution remains unpaid the monies shall be updated in accordance with the Wholesale Price Index as published by the Central Statistics Office on the 1st of January of each year following the date of the Final Grant.

Reason: The public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof.”

- The applicant requests that the condition no. 2 be omitted based on the grounds of appeal.

- The appeal details the planning history on the site and the previous development contributions. Under Reg. Ref. 98/8960 permission was granted for a new waste transfer station and associated works including the continuation and the intensification of dry filling of an adjacent quarry. Under Reg. Ref. 02/6265 and Reg. Ref. 03/9208 the development of phase 1 and phase 2 of the existing screening/sorting buildings was permitted. In relation to Reg. Ref. 02/6265 this permission included a retention application for amendments to the development of the existing waste transfer station granted under Reg. Ref. 93/926 and Reg. Ref. 98/8960.
- These permissions included conditions which required the payment of development contributions to Wicklow County Council.
- Under Reg. Ref. 98/8960 the payment of the following Development Contribution amounts was required under condition no. 4 and condition no. 5. Roads IR£75,000, Water IR£3,000, Sewage IR£4,2000. In total IR£82,000. In a letter from Wicklow County Council dated 9<sup>th</sup> of May 2002, it stated that works granted as part of Reg. Ref. 98/8960 were commenced unlawfully as several conditions had not been complied with. These conditions included conditions no. 4 and no. 5.
- Under Reg. Ref. 02/6265 a condition requiring the payment of the same development contributions as was sought under Reg. Ref. 98/8960 was attached to the permission. The appellant states that it is understood that all development contributions for this application were paid to Wicklow County Council.
- Under Reg. Ref. 03/9208 permission was granted for Phase 2 of a screening/sorting building. It comprised a structure of 1,980sq m of the same design and height of 12.5m as the Phase 1 development. No development contributions were charged in relation to the proposed development. A note was included on the Council Planners Report which states; Under Ref. 98/8960 (7,500sq m of new floor space/buildings proposed). Contributions = £75,000 Roads (€95,230.36). £3,000 (€3809.21). Level of new floor space now permitted and proposed under current app =4,080sq m approx. It is

therefore considered that applicants have already paid contributions appropriate to the level of development being recommended by for PP.

- Therefore, as detailed above no development contribution were sought for works granted as part of application Reg. Ref. 03/9208 as the initial development contribution paid under Reg. Ref. 98/8960 and subsequent Reg. Ref. 02/6265 was deemed sufficient for works up to a floor space of 7,500sq m.
- The works subject to this retention application were carried out in response to the EPA compliance investigation and were required to enclose and screen existing and permitted activities on the site. No new activity was proposed, and this is not disputed by the Planning Authority. It is confirmed that no intensification of use has taken place on site as a result of the erection of these structures.
- The development for which retention permission was granted consists of:
  - The western extension, which has a gross floor area of c. 1,826sq m and was constructed to enclose and weather protect plant associated with the permitted materials recovery facility. This extension also encloses the permitted wood shredding activity on site. The maximum height of the western extension is c.10.25m.
  - The southern extension has a gross floor area of c.194sq m and was constructed to enclose and weather protect the loading of vehicles. The maximum height of the southern extension is c. 10.25m.
  - The eastern extension has a gross floor area of c.496.7sq m and was constructed to enclose and weather protect plant associated with the permitted materials recovery facility. The maximum height of the eastern extension is c. 8 metres.
  - The total floor areas associated with the above referenced extensions which enclose permitted activities on the site is 2,517.1sq m.



- Upon review of the development contributions required to be paid for Phase 2 the Screening/Sorting building, it was determined by Wicklow County Council that a total floor areas associated with the Phase 2 works and other permitted works on site was 4,080sq m, substantially less than the floor area of 7,500sq m already levied. Therefore, no contribution was charged.
- The proposed retention application relates to extensions with a total floor area of 2,517.1sq m. These extensions in addition to the floor area/buildings already on site (4,080sq m) equate to a now floor area of 6,597.1sq m which is still substantially less than the floor area which has been levied and paid through previous applications.
- Development contributions have already been paid on the land, the Council's decision in relation to the Phase 2 development (Reg. Ref. 03/9208) confirms this. It is submitted that the extent of development now permitted inclusive of Reg. Ref. 20/935 remains less than the total amount of development already levied by the Council and therefore credit should be applied. Therefore, it is submitted that the application of condition no. 2 is inequitable and unfair and should be removed.
- It is submitted that the proposal will not result in the need for a new or upgraded infrastructure or services or result in a significant intensification of demand place on existing infrastructure. The works subject of the retention permission relate to work undertaken to enclose the existing development areas wood processing area were carried out in response to specific requests from the EPA, to control any potential dust entering the surrounding area. No new uses were proposed and no intensification of the existing and permitted activities on site were proposed. Therefore, it is considered that the works subject to this retention permission cannot be said to place any new burden on the existing road infrastructure within the surrounding area.
- Regarding the site drainage and runoff, the works subject of this retention permission were constructed over existing hard surface areas which already discharge to the existing and permitted drainage network. The three extensions tie into the existing drainage network with no net increase in impermeable area. The subject works for this retention permission do not

place any additional burden or demand on existing infrastructure or services within the Council. Therefore, it is considered that the inclusion of condition no. 2 is inequitable and not in line with the principal of the Development Contribution Scheme.

- It is submitted that Wicklow Development Contribution Scheme does not allow for levy on waste recovery. Section 4.0 of the Development Contribution Scheme outlines the basis for the determination of the contribution for each development. The contribution calculated for the subject application Reg. Ref. 20/935 was calculated using Table 4.3 which considered the application as an Industrial Development.
- The Planning Authorities' own position in their correspondence dated 13<sup>th</sup> October 2020 was that the use of the land for waste recycling and transfer purposes could not be deemed to constitute an 'industrial process'. Notwithstanding this position, the planning authority have charged an 'industrial' levy on the development as detailed in the Council's Planner's report. This is considered to contradict the earlier position taken by the Planning Authority in respect of the enforcement case where the works were not considered an 'industrial process' and it was determined that the works were unauthorised. It is therefore argued that either the works are an industrial process and constitute exempted development or they are not an industrial process and the 'industrial' category of the Development Contribution Scheme does not apply.
- Upon review of the Development Contribution Scheme, it is not considered that an appropriate category exists to levy the proposed works and therefore the condition no. 2 should be removed.
- In conclusion, it is evident from the review of the relevant planning history associated with the land, the previous contributions paid and the nature of the works subject of this retention application that the Wicklow County Council Development Contribution Scheme has been misapplied. It is submitted that the Planning Authority failed to consider the fact that the levy has been previously paid. No intensification of use has taken place on the site as a

result of the retained extensions and the works do not constitute development. Therefore, it is requested that the Board omit condition no. 2.

## 6.2. Planning Authority Response

A response to the first party appeal was submitted by Wicklow County Council. The issues raised are as follows;

- Condition no. 2 was attached to the permission in accordance with the terms of the current Development Contribution Scheme for County Wicklow.
- Section 2.4 of the Scheme states: “The Planning Authority when granting a permission under Section 34 of the Planning and Development Act 2000, as amended, will include conditions requiring the payment of contributions in respect of public infrastructure and facilities benefiting development in its functional area in line with the terms of the Scheme.”
- Section 4.0 sets out the basis for the determination of the Contribution. Table 4.3 is the relevant table, it sets out rates for industrial/commercial development. The relevant rate is €47/m<sup>2</sup>. Based on a gross floor area of 2517.1m<sup>2</sup>. A contribution of €118,303.70 was correctly computed.
- The heading used in the Contribution Scheme for Table 4.3 was not intended to be ‘technical planning term’ such that it narrowed down what came within the development type. The heading was used (Since the first Scheme in 2004, prior to any case law regarding recovery not being an industrial process) to distinguish between “Residential” (Tables 4.1 & 4.2) and “non-residential” development in a way that an ordinary member of the public would understand. For ease of use it was decided not to list all the potential development types that would be possible but to group them into three groups i.e. residential, industrial/commercial and outdoor. Table 4.4 Miscellaneous Development was then used for what was effectively outdoor developments with ancillary structures, e.g. quarries, forestry etc, as opposed to indoor developments with ancillary outdoor use. In addition, it is noted that in Table 4.3 “Industrial” is described using: e.g. Manufacturing, Warehousing, etc. If “Industrial” was intended to be purely what is defined in the Planning &

Development Regulations 2001, as amended then the use of warehousing as an example would not be correct.

- If the above is not accepted by the Board in terms of the meaning of the “industrial/commercial” heading, then the Planning Authority considers that the development proposal be deemed to be “Commercial” and the appropriate rates in Table 4.3 should be used, i.e. €48/m<sup>2</sup>.
- Table 4.4 covers rates for use (and mixed developments of both use & works) developments. It is noted that Section 4.7 of the Scheme states: ‘Buildings/Structures (including non-mobile plant & machinery), which form part of Extractive/Disposal and Recreation/Leisure Development Types, will incur development contributions at the rate for Industrial/Commercial Development Type set out in Table 4.3.’ This clearly distinguishes between buildings/structures and open areas that are used for an industrial/commercial use. This emphasises the distinction between the charges for buildings and outdoor use.
- Section 4.10 of the Scheme states: ‘There will be no double charging. Credit will be given for previously paid development contributions or previously authorised use or existing floor areas. Development contributions shall not be charged on a change of use permission, where such change of use does not result in a significant intensification of demand on public infrastructure.’
- It is clear from the content of the Scheme that any structure is subject to development contributions based on the GFA, unless any exemptions apply. Section 5.0 of the Scheme sets out the potential exemptions. None apply to the proposed development.
- The contributions sought under the quoted planning permission references in the submitted appeal namely, 98/8960, 02/6265, 03/9208, were permitted prior to the adoption of a Development Contribution Scheme.
- Therefore, on the basis of the above details, the only potential for a reduction in the development contributions would be on the application of Section 4.10 of the Scheme. The latter part of Section 4.10 which states ‘Development contributions shall not be charged on a change of use permission, where such change of use does not result in a significant intensification of demand on

public infrastructure) does not apply as the proposed development is not for a change of use.' Therefore, the only relevant part is 'Credit will be given for previously paid development contributions or previously authorised use or existing floor areas.'

- The proposed development is for an expanded floor area, which it is argued will facilitate a previously authorised use. This was dealt with under the unauthorised development file UD5240 which the applicant has included relevant extract from. Therefore, the previously paid development contributions did not relate to any use which would now be facilitated by the proposed structures.
- Where the Board considers that there is merit in the argument made by the appellant in relation to the previously paid contributions for a floor area up to 7,500sq m, then it could only be on the basis of an interpretation of Section 4.10 of the Scheme, whereby some credit is given for previously paid contributions. The previously paid contributions would appear to have been charged at  $\text{IR£}10/\text{m}^2 = \text{€}12.70/\text{m}^2$ . Given that the full floor area was not built pursuant to Reg. Ref. 98/8960, Reg. Ref. 02/6265 or Reg. Ref. 03/9208 but is subject to Reg. Ref. 20/935 it is considered that the current rate of  $\text{€}47/\text{m}^2$  is applicable with credit being given for  $\text{€}12.70/\text{m}^2$ . This would mean a rate of  $\text{€}34.30$  would allow for credit for previously paid contributions towards the floor area permitted. The contribution could be calculated as  $\text{€}34.30 \times 2517 = \text{€}86,333$ .

## 7.0 Assessment

### Introduction

- 7.1. The first party have appealed against condition No. 2 under Section 48 (10)(b) of the Planning & Development Act, 2000, as amended. Condition No. 2 requires the developer to pay a development contribution of  $\text{€}118,303.70$ . The appellant requests that the Board omit condition no. 2 on the basis that the Planning Authority did not properly apply the terms of the adopted Development Contribution Scheme. Wicklow County Council Development Contribution Scheme adopted on the 5th of October,

2015 provides for development levies in respect of roads and transportation, stormwater drainage and community and recreational amenity.

7.2. Condition No. 2 is as follows;

“Within three months of the date of this permission, the developer shall pay the sum of €118,304 (one hundred and eighteen thousand three hundred and four euro) to the Planning Authority as a contribution in respect of public infrastructure and facilities benefiting the development in the area of the Planning Authority.

Where the contribution remains unpaid the monies shall be updated in accordance with the Wholesale Price Index as published by the Central Statistics Office on the 1<sup>st</sup> of January of each year following the date of the Final Grant.

**Reason:** The public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof.”

7.3. The subject application Reg. Ref. 20/935 relates to a retention permission for three extensions to existing materials recovery facility and all associated site development works. The floor area proposed for retention was 2,517.1sq m. In respect of the attached development contribution the Planning Authority charged the industrial rate of €47/m<sup>2</sup> as detailed on Table 4.3 of the Wicklow County Council Development Contribution Scheme.

7.4. Section 5.0 of the Wicklow County Council Development Contribution Scheme refers to Exemptions. Section 5.2 states, ‘No exemptions/reductions will be allowed for retention permissions.’ Accordingly, as the subject application refers to a retention permission then no exemptions or reductions apply.

7.5. Section 4.10 of the Wicklow County Council Development Contribution Scheme refers to double charging. It states that ‘There will be no double charging. Credit will be given for previously paid development contributions or previously authorised use or existing floor areas.’

7.6. It is argued in the appeal that development contributions have already been paid on the subject land. They cite the permission granted by the Council under Reg. Ref.

03/9208 in relation to the Phase 2 development. The first party submit that the extent of development now permitted inclusive of Reg. Ref. 20/935 remains less than the total amount of development already levied by the Council and therefore credit should be applied.

- 7.7. In response to the matter the submission from Wicklow County Council states that the contributions which were sought under the cited planning permission referenced in the appeal Reg. Ref. 98/8960, Reg. Ref. 02/6265 and Reg. Ref. 03/9208 were permitted prior to the adoption of a Development Contribution Scheme by Wicklow County Council. Therefore, the Planning Authority submit that based on the fact that the previous development contributions attached to the cited permissions were levied prior to the adoption of a Development Contribution Scheme then a reduction based on these previous levies is not applicable.
- 7.8. In relation to the matter of a reduction in the amount charged for a development contribution, it is highlighted in the response from the Planning Authority that the only potential for a reduction in the development contributions would be on the application of Section 4.10 of the Scheme.
- 7.9. The second paragraph of Section 4.10 of the Development Contribution Scheme states that; 'Development contributions shall not be charged on a change of use permission, where such change of use does not result in a significant intensification of demand on public infrastructure.' In respect of this matter the Planning Authority noted in their response that this provision of the scheme does not apply as the proposed development is not for a change of use.
- 7.10. The first paragraph of Section 4.10 of the Development Contribution Scheme states that, 'There will be no double charging. Credit will be given for previously paid development contributions or previously authorised use or existing floor areas.' In respect of this section of the scheme the Planning Authority state that they do not consider that this is applicable because the proposed development for retention is an expanded floor area. The first party submitted that it will facilitate a previously authorised use. The Planning Authority note that the matter of this additional floor area was dealt with under unauthorised development file UD5240 and that the previously paid development contributions did not relate to any use which would now be facilitated by the proposed structures.

- 7.11. I note the points put forward by the Planning Authority in respect of the proposed floor area for retention. As indicated on the submitted floor plan on Drawing No: 3DA-001, Area A has a floor area of 1,826.4m<sup>2</sup> and is a wood shredding area, Area B has a floor area of 194m<sup>2</sup> and is a vehicle loading area and Area C has a floor area of 496.7 m<sup>2</sup> and contains plant for material recovery. This floor area represents new additional floor area, and I would concur with the opinion of the Planning Authority that the previously paid contributions do not relate to the uses provided within the additional floor area. Therefore, I do not consider that the provisions of Section 4.10 of the Development Contribution Scheme are applicable in this instance. Furthermore, I would note that the previously paid development contributions cited by the first party refer to permissions granted prior to the adoption by Wicklow County Council of a Development Contribution Scheme. Accordingly, I do not consider that it is within the provisions of the scheme to provide credit for these previous contributions which were attached to permissions granted prior to the adoption by the Council of Development Contribution Scheme.
- 7.12. The first party have argued that the development contribution should not have been applied on the basis that the Wicklow Development Contribution Scheme does not allow for a levy on waste recovery. They refer to Section 4.0 of the Scheme and state that it outlines the basis for the determination of the contribution for each development. They noted that the contribution was calculated using Table 4.3 which considered the application as an Industrial Development. They submit that the subject contribution should not have been charged on the basis that it was an Industrial Development.
- 7.13. In response to the matter the Planning Authority stated that the heading used in the Contribution Scheme for Table 4.3 was not intended to be 'technical planning term' such that it narrowed down what came within the development type. They noted in their response that this heading has been used since the first Scheme was adopted in 2004. The Planning Authority highlight that this term was therefore used in the Scheme prior to any case law regarding waste recovery not being an industrial process. It is explained in their submission that for ease of use the Planning Authority decided not to list all the potential development types that would be possible but to group them into three groups i.e. residential, industrial/commercial and outdoor. The submission notes that in Table 4.3 "Industrial" is described using



Manufacturing, Warehousing, etc. Therefore, they submit that if “Industrial” was intended to be purely what is defined in the Planning & Development Regulations 2001, as amended then the use of ‘Warehousing’ as an example would not be correct.

7.14. I consider that the explanation provided by the Planning Authority clearly outlines that the use of the title of Table 4.3 as Industrial/Commercial Development originates from the first adopted Development Contribution Scheme which predates any case law regarding the recovery of waste not being classified as industrial development. Therefore, I consider that this is a reasonable explanation for the use of this development type as per Table 4.3 for the calculation of the subject development contribution. I note that the Planning Authority have suggested that should the Board decide not to accept this rationale then they consider that the development proposal be deemed to be “Commercial” and the appropriate rates in Table 4.3 should be used, i.e. €48/m<sup>2</sup>.

7.15. In conclusion, I consider that the subject development contribution has been calculated correctly by the Planning Authority and has been applied correctly in accordance with the provisions of the Wicklow County Council Development Contribution Scheme 2015, as amended.

## **8.0 Recommendation**

8.1. Having read the submissions on file, had due regard to the provisions of the Development Plan, Development Contribution Scheme and all other matters arising. I recommend that the planning authority be directed under Section 48 of the Planning and Development Act, 2000 to ATTACH condition no. 2 in respect of the amount levied.

## **9.0 Reasons and Considerations**

9.1.1. The Wicklow County Council Development Contribution Scheme 2015, as amended, provides for financial contributions to be paid by Industrial/Commercial development in respect of certain categories of expenditure on the basis of a cost per square metre as set out on Table 4.3 of the Development Contribution Scheme. It is noted that the proposed development involves the retention of an additional floor area of

2,517.1sq m. It is considered that no exemptions or credit from previous previously paid development contributions or previously authorised use or existing floor areas are applicable in this case. Accordingly, the Board considered that the terms of the Development Contribution Scheme had been properly applied by the planning authority in this instance in respect of the calculation of the levy.

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Siobhan Carroll  
Planning Inspector

9<sup>th</sup> of December 2021