

3rd Party Appeal

Correspondence Coversheet

Page 1 of 1

Case Number
PL-500165-WW

Case Priority
Normal

Case Lodged On
24/10/2025

Case EO
Catherine Flynn

PA Reg. Reference
2560207

Case Details

Planning Authority
Wicklow County Council

PA Reg. Reference
2560207

Summary Description

Mixed use development, comprising of residential units and commercial spaces and all associated ancillary site works.

Site Location

Site largely within the Former Bray Golf Course Lands , Off Ravenswell Road and Dublin Road , Bray

Correspondence Details

Correspondence Type
3rd Party Appeal

Received From
Avril Power

Lodged On
28/10/2025

Validity
Valid

Valid OH Req
No

Issue
BP01M — English

Participant
Avril Power

Representative
—

Response Date
Applicable



Number of Days
Allowed
28

Keep Copy of Letter



Return Docs



Keep Envelope



Comments

please cross circulate appeals to parties

Filing

Attach to File



Return to EO



Signatures

Signed


Catherine Flynn, Executive Officer

Date

29/10/2025

Signed


Fadime Khatipova, Administrative Assistant

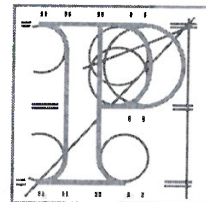
Date

30/10/25

PP

Correspondence Coversheet

Payment ID: **FEE-PAY-000199**



An
Coimisiún
Pleanála

Section:	Processing
PA Name:	Wicklow County Council

Submission Reference:	2560207 ✓
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Date:	28/10/2025 ✓
Name:	Avril Power ✓
Total:	€220.00 ✓

Attachments/Comment:	—
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Created By:	Pádraic Keane
Channel:	By Hand

3rd Party

ACK,

DD: 30/10/25
LD: 28/10/25



Comhairle Contae Chill Mhantáin
Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic & Rural Development

Áras An Chontae / County Buildings
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Suíomh / Website: www.wicklow.ie

AN COMMISSION PLEANÁLA
LDG- Fee- pay - 200194
ACP- _____
28 OCT 2025
Fee: € 220 Type: C2
Time: 2:24 By: Herr

29/04/2025

Avril Power
C/O 1 St. Cronan's Road
Bray
Co. Wicklow

**ACKNOWLEDGEMENT of RECEIPT of SUBMISSION or OBSERVATION on a
PLANNING APPLICATION**

THIS IS AN IMPORTANT DOCUMENT

KEEP THIS DOCUMENT SAFELY. YOU WILL BE REQUIRED TO PRODUCE THIS ACKNOWLEDGEMENT TO AN BORD PLEANÁLA IF YOU WISH TO APPEAL THE DECISION OF THE PLANNING AUTHORITY. IT IS THE ONLY FORM OF EVIDENCE THAT WILL BE ACCEPTED BY AN BORD PLEANÁLA THAT A SUBMISSION OR OBSERVATION HAS BEEN MADE TO THE PLANNING AUTHORITY ON THE PLANNING APPLICATION.

PLANNING AUTHORITY NAME Wicklow County Council

PLANNING APPLICATION REFERENCE No.2560207

A submission/observation in writing, has been received from
Avril Power on 28/04/2025 in relation to the above planning application.

The appropriate fee of €20 has been paid. (Fee not applicable to prescribed bodies)

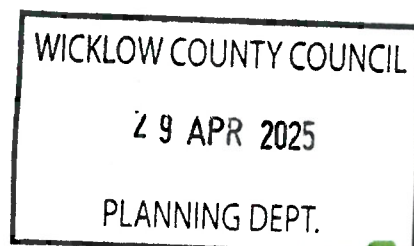
The submission/ observation is in accordance with the appropriate provisions of the Planning and Development Regulations 2001(as amended) and will be taken into account by the planning authority in its determination of the planning application.



SENIOR EXECUTIVE OFFICER
PLANNING, ECONOMIC & RURAL DEVELOPMENT.

Date 29/04/2025

Planning Authority Stamp



Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas
This document is available in alternative formats on request.

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísi, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
All correspondence should be addressed to the Director of Services, Planning, Economic & Rural Development.





Appeal to An Coimisiún Pleanála re Grant of Permission by Wicklow County Council to Shankill Property Investments for Phase 2 of their proposed development on the former Bray Golf Club lands off Ravenswell Rd and Dublin Rd, Bray, Co. Wicklow: ref. 2560207:

Introduction:

The following document is an almost verbatim reproduction of our submission to Wicklow County Council in April, regarding the above application. Arguments in this Appeal that were not submitted in our group's submission then were included in a submission by Noeleen McManus at the same date.

The only exception to this is an expanded wildlife section in this Appeal, this Introduction, and its following section entitled 'Submissions to Wicklow County Council'. The remainder still forms the ground plank of this Appeal, but *were ignored by our local planning authority both in its request for Further Information from the developer, and in the Schedule attached to its Grant of Permission*, as follows:

Submissions to Wicklow County Council:

53 valid submissions objecting to a grant of permission by Wicklow County Council were received by our local planning authority. The vast majority of these outlined concerns about flood risk; danger to our colony of mute swans (acknowledged as of national importance) and other wildlife - in particular otters travelling between this location and the Wicklow Mountains; environmental damage already carried out in this location while court proceedings were in process regarding environmental protection of precisely the same land; and traffic/road safety.

In Wicklow's 14th May request for further information to the developer; in Shankill Property's response of 8th August, and, most importantly of all, in Wicklow County Council's grant of permission dated 30th September, the majority of these concerns were totally ignored.

Flood risk was not mentioned in Wicklow's request for further information, and was simply dismissed in the opening paragraph of their Grant of Permission with the unsubstantiated claim that the site "would not be at risk of flooding or increasing the risk of flooding to other lands". The danger to our swan colony was reduced somewhat for Phase 2 in that the proposed 15 storey Block E has been lowered to 9 storeys: however, the developer's stated plans for Phase 3 include putting the highest buildings alongside the river, next to the swans' flight path.

The likelihood of success for Phase 3 has been greatly enhanced by granting permission for Phase 2, located on the middle ground, as it enables Shankill Property's clearly stated intention to put their highest density buildings on the floodplain in their final Phase 3. By deliberately phasing their applications from the highest ground (Phase 1 on Flood Zone C) to the lowest (Phase 3 on Flood Zone A), they are circumventing the most important part of the Flood Risk Guidelines' Justification Test, i.e. no development should take place on a Flood Zone A if there is another location at lower risk close at hand.

Traffic was the only repeated concern by residents that has been addressed in any way in either the request for Further Information or the Grant of Permission. As this is not our area of personal knowledge and experience, we do not intend to comment substantially on changes in it other than to refer to confusing references to 'the southern access junction' and 'the proposed active travel entrance 'at the southwest corner of the overall site', and 'the proposed junction of the south-west access point and the link road' both in the Further Information request and in Conditions attached to the Grant of Permission. We presume these all refer to the junction

Appeal to An Coimisin Pleanála to Grant Permission by Wicklow County Council to
Shankill Property Investments for Phase 2 of their proposed development on the former
Bray Golf Club lands off Ravenswell Rd and Dublin Rd, Bray, Co. Wicklow, ref. 286207.

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between Castle Street and Ravenswell Road, which turns then onto an access road which was originally built for the schools, and which Shankill Property Investments now wants to remove on the false premise that it blocks the floodpath: *that road actually dips at the point where the flood waters cross onto Flood Zone A of that site*. As this is an extremely important part of our flood path, we feel qualified to address this.

What Wicklow County Council did address in their request for Further Information were details of how Shankill Property's development will tie in with Wicklow's proposed 'sustainable' transport bridge and access roads – an unauthorised development.

Each of Shankill Property's applications have, from the beginning, been designed around Wicklow County Council's 2021 Part VIII proposal for this bridge – [PRR 21/869 Part VIII - Bray Sustainable Transport Bridge](#) – and we believe that there is a real conflict of interest now in Wicklow's ability to grant permission to the owner of the land on which they wish to put their northern access road to the bridge.

This proposal not only has never been put to our councillors for approval, and is therefore an unauthorised development, but it contains claims that are verifiably false, e.g. that the land on which the northern access road will be located, and the bridge will start, is a Flood Zone C, whereas in Bray's current 2018 Local Area Plan – and in the developer's applications - the same land is correctly categorised as a Flood Zone A.

Yet this proposal is beginning to appear in National Road Authority plans as a 'fait accompli', and indeed in decisions by the then Bord Pleanála. It was because of Condition 22 (b) of their Grant of Permission to Shankill Property for their Phase 1a SHD that our group decided we had no option but to seek a Judicial Review, still ongoing: ref. 314686 taken in the name of Noeleen McManus and argued on other grounds – but this was the reason we felt we had to fight the case.

While Shankill Property Investments might argue that Wicklow's proposed bridge has nothing to do with their application, we would argue that the Further Information requested by Wicklow County Council, and Shankill Property's response, within the process of this case, as to how Phase 2 will tie in with Wicklow's proposed bridge and access roads makes it very clear that these are indeed interdependent plans – and one of them is unauthorised.

Please accept the above, and the following, as our formal appeal to An Coimisiún Pleanála regarding Wicklow County Council's grant of permission to Shankill Property Investments for their Phase 2 application, ref. 2560207.

Flood Risk:

Shankill Property Investments claim in their 'Application Form: Part A' that this site has never flooded. There is substantial evidence in the RTE archives (Charlie Bird report); alluvial soil maps; OPW/CFRAM maps; and living memory that all of Flood Zone A as described in Bray's Development Plans, as well as the applicant's own documentation, has been flooded consistently. Approximately half of Flood Zone A is located within this application.

The applicant further suggests on p16 of their Flood Risk Assessment (FRA) that this site has experienced "*no recent flooding since the completion of the flood defence scheme.*" Flood defences failed at this precise location in 2015 and 2016: see photographs at the end of this submission.

The Sequential Approach demanded for building on floodplains is based on the avoidance of building on land at a higher risk flooding, if land at a lower risk is available. This approach, outlined in the mandatory Flood Risk Management Guidelines, is clearly being manipulated by phasing applications on the former golf club lands. By dividing their applications for development into three separate phases, starting with the highest ground, Shankill Property Investments have already reduced the available land at a lower risk of flooding on which to build. As their Phase 1 applications cover all of the high ground (Flood Zone C), only Flood Zones A and B now remain.

Most of the development in this Phase 2 is located on Flood Zone B, the middle category of flood risk. This included a 150 bed hotel (Block I) with associated well-being centre and pool, wedding/function venue, rooftop restaurant, and 1 retail unit; a private medical centre, childcare facility, and 1 retail unit (Block H), as well as 341 housing units, according to 'Application Form A'.

Despite the applicant's claim on p43 of their FRA that: "The low-lying areas at highest risk of flooding are dedicated to the linear park / amenity open space uses, with [only] the Block G retail units also proposed in an area at high risk of flooding", we would contend that the Block E enclave is also at least partially located in Flood Zone A – as demonstrated in their Figure 5.2 on the same page: see screen shot attached at the end of this submission.

This enclave consisted of the 15 storey apartment Block E (now reduced to 9 storeys), plus a pub, 3 commercial units (2 of which are retail), and 109 'premium residential units' on what was previously permitted as a Coastal Garden, ideal for a floodplain. This public open space has now been reduced to 0.35ha, according to the applicant's calculations on p28 of their Architectural Design Statement, Part 2a (ADS: 2a).

In this Phase 2 application, Shankill Property Investments have then divided Flood Zone A, the highest category of risk, into approximately two parts. They propose to locate a public park measuring just under 1.6ha within the part of Flood Zone A included in this application, leaving the remaining Flood Zone A area, beside the flood defence wall, without any such commitment.

A further 0.25ha of space around Block G, and the remainder of a much reduced Coastal Garden reaches the total of 2.2ha claimed as public open space in this application: however, the Coastal Garden was already included in their public open space calculations for Phase 1 (p28 of ADS: 2a).

In effect, Shankill Property Investments are attempting to replace a 3.5ha Flood Zone A, as per Town Planners Brady Shipman Martin's 1999 Area Action Plan for the former Bray Golf Club lands, with a 1.6ha Central Park, and a further 0.6ha scattered around the application site.

This calculated division of Flood Zone A into two applications, like the previous application to build on Flood Zone C first, has the effect of leaving only the remainder of this zone for Phase 3.

According to p5 of their ADS: 1: *"Phase 3, located adjacent to the River Dargle, is expected to accommodate approximately 362 residential units above a podium, including approximately 14,000sqm of retail and other uses. The building heights in Phase 3 will range from 6-9 storeys."* P39 of the FRA adds that it will: *"include 6 apartment blocks built on a podium. The ground floor beneath the podium is proposed to be lowered to 1.5m AOD and will serve as a carpark, raising the higher vulnerability residences off the ground and above the design flood protection level."*

All of Phase 3 will have to be built on the remainder of Flood Zone A, next to the flood defence wall – with the public park obligation already fulfilled – if this Phase 2 proposal is allowed to go ahead in its present form – because there will be no other available land left on this site on which to build the remainder of Wicklow County Council's target of 1,000 housing units on the old golf links.

We would submit that, if it is really necessary – and safe – to build those 362 housing units (classed as Highly Vulnerable development by the Flood Risk Management Guidelines) on the former golf club lands, then they should at least be assigned in this application to its Flood Zone B, as per the Sequential Approach, instead of the numerous commercial entities listed above. Specifically, we submit that it is unsafe to permit a childcare facility on either a Flood Zone A or B, particularly as the applicant already has permission for one on the safer Flood Zone C.

Shankill Property Investments clearly recognise the dangers inherent in putting residential development on a Flood Zone A, as the FRA includes: *"Emergency access and egress plans to evacuate to higher ground via access roads if needed"* (p37); a proposal to raise *"residential buildings and key access roads ... above the flood protection level of 3.5m AOD"* (p43); *"Demountable barriers and a water exclusion design strategy up to the flood protection level of 3.5m AOD"* in some locations (p44); 'resilience measures', such as non-return valves, lifts fitted with a sump to allow for pumping of flood water, and raised electrical and gas fittings (p46); and a Flood Emergency Response Plan *"in the event of a significant flooding or exceedance eventfor the building users and tenants within the site that are set below the flood protection level of 3.5m AOD"* (p46). In addition, p28 advises that: *"An external pedestrian escape to higher ground should be provided for the apartment blocks (part of the future Phase 3 of the development)"*.

In addition, while "Residents within the duplex and 'own-door' units north of the park and above the flood protection level of 3.5m AOD" are reassured that they "would not be impacted upon by a 0.5% AEP tidal event, which is the dominant design flood level in this area", they are also told that "in case of an emergency" they would still be "able to leave the site by moving northwards towards Harbour Road." [p47]

This underlines the fact that the only safe place to build on a floodplain is the high ground – and the applicant is clearly aware of this. *"The site slopes from the northwest to the River Dargle in the southeast. The levels range from 7.2m AOD on the northern boundary to 1.47m AOD on the southeast boundary"*. [p7] Phase 3 is proposed for the low southern boundary.

The applicant's Flood Emergency Response Plan "has been informed by the Bray Flood Emergency Plan and details triggers for activation including the receipt of a timely flood warning, a staged response and sets out the management and operational roles and responsibilities." [p46] Bray's Flood Emergency Plan, to be renewed annually, is dated 29th September, 2008.

Ground Levels on Site:

Various ground levels are quoted in the different documents submitted by the applicant.

Their Natura Impact Statement states on p8 that: "The southern and eastern portions of the Site are located on low-lying level ground, while the ground rises **slightly** towards the north elsewhere." Yet their Flood Risk Assessment states on p6 that: "The site slopes from the northwest to the River Dargle in the southeast. The levels range from 7.2m AOD on the northern

boundary to 1.47m AOD on the southeast boundary. The contours of the site are shown in Figure 1-2 at 0.5m spacing.” A difference of 5.73m AOD is hardly “slight”. This is borne out by the description of Block I (the hotel) on p11 of their Architectural Design Statement: Part 2b: “The design of Block I has taken into account the site’s 3-meter slope from North to South, which significantly influenced the building’s layout and orientation. This slope was a key factor in ensuring that the hotel remains accessible while maintaining optimal views and integration with its surroundings.”

We submit that the safety afforded by this ground level difference of 5.73m AOD should be used to protect highly vulnerable homes on this site, as per the Sequential Approach, not hotels.

Prematurity: 5.26 of Chapter 5 of the Flood Risk Guidelines states that, when a planning decision is required “where a review of a development plan is imminent”, “*a precautionary approach should be applied, and either the application should be refused on grounds of prematurity or a flood risk assessment should be undertaken, and the Justification Test applied following advice in paragraphs below.*”

The following advice states that major proposals for development in areas of flood risk “*should be considered as though the land was not zoned for development*” and “*Where the information is not sufficient to fully assess the issues involved, the development should not be approved on the basis of flood risk and / or on the grounds of prematurity prior to addressing flood risk as part of the normal review of the development plan for the area.*”

As our 2025 Local Area Plan is now imminent, having been delayed by the introduction of new Planning law, and the Justification Test within Bray’s Development Plan is flawed (as follows), we submit that this development should be refused on the basis of both flood risk and prematurity, allowing our councillors to review the contradictions in both Land Use and Flood Zones contained in our present and proposed LAPs.

In Bray’s present LAP and Wicklow County Council’s proposal for a public transport bridge, the same land is identified in the former as Flood Zones A and B, and in the latter as a Flood Zone C.

In Bray’s 2011 Development Plan, Flood Zone A shows precisely the area of the former Bray Golf club lands that has verifiably flooded in all major floods in the past: yet it was zoned for Land Use as Town Centre in violation of the Flood Risk Management Guidelines, which came into law in 2009.

In Bray’s (present) 2018 LAP the Land Use zoning was reduced to Mixed Use for the entire site – but Flood Zones A and B were extended up onto the high ground, thus greatly *extending* the area at flood risk following the installation of 47m euro flood defences along the Dargle River. The result was to ‘allow’ the entire site to ‘pass’ the mandatory Justification Test for building on floodplains.

While the proposed flood zoning for the upcoming 2025 LAP for Bray – as per the pre-consultation portal shown to us before the new planning laws postponed our LAP – showed a slight decrease in Flood Zone B, but Flood Zone A has still been extended far beyond the accurate map shown in the 2011 Plan, *while declared as Flood Zone C in the ‘bridge proposal’.*

We submit that the 2011 Flood Zone A is the only accurate mapping of flood risk on these lands, as it is the only area which has consistently, verifiably flooded; that the Justification Test within Bray’s Development Plan is flawed; and that the Development Management

section of the Flood Risk Management Guidelines again require that any decision on this planning application would be premature before Bray's 2025 Local Area Plan is adopted.

Impact on Mute Swan Population:

According to Section 2d (p16) of their Architectural Design Statement (ADS), the applicant proposed to locate the 15 storey apartment Block E, at the south-eastern junction of their site, nearest to the river and the railway track. The danger to the swan colony has been only superficially addressed through the reduction of Block E from 15 to 9 storeys in this Phase. This minor modification fails to address the cumulative impact of the phased development, particularly as the developer has explicitly stated their intention to place the highest density buildings alongside the river in Phase 3, *directly impacting the swans' established flight paths and feeding grounds*.

When we made our submission to Wicklow County Council in April last, a swan was nesting upriver, close to the boardwalk, between the Fran O'Toole bridge and the People's Park, demonstrating clearly that the mute swans' sanctuary extends a long way upriver from the harbour. A photograph, taken then, is attached of herself and her four eggs. Three of the eggs were hatched, but, unfortunately, one chick was later killed, possibly by a fox. The other two cygnets are now 'teenagers', with white feathers beginning to show through the brown, as are several of their companions in the harbour.

Phase 3 plans include six apartment blocks built on a podium, alongside the flood defence wall. Building heights here will range from 6-9 storeys. The Swan Sanctuary in Bray Harbour is *"approximately 100 meters from the development site"*. They acknowledge *"a potential risk of bird collisions, especially for species like swans that struggle with flight"*.

Wicklow County Council is already proposing to build a suspension bridge alongside this section of the site, effectively maximizing the risk to swans whose lack of forward vision during flight will subject them to optimum danger of horrific injury and death by the twin hazards of tall buildings and suspension bridge infrastructure. *The associated construction of the bridge and related infrastructure would destroy key riparian and intertidal habitats.*

The applicant proposes that "best practice has been used to reduce the risks of collision."

We submit that 'best practice' is to refuse permission for tall buildings close to the railway line and river, to prevent our wild birds of all descriptions, but especially our Mute Swans, from even further danger of appalling injury or death.

Otters and Wicklow Mountains SAC:

According to p35 of the same Natura Impact Statement (NIS) submitted by the applicant, "the latest NBDC recorded sighting" of otters on the relevant stretch of the Dargle was "noted to be during 2017". The video from which the screenshot at the end of this submission was taken shows an otter feeding on the base of the railway bridge: *the video was taken in June, 2022*. SaveBray can also supply a photo of an otter feeding in the same place in August, 2021, and two videos of an otter swimming in Bray harbour in October, 2024. Evidence of the dates of recording can be checked through the Properties on both photo and videos.

Further evidence of otter activity was recorded on Monday, 21st April, 2025, when an otter pup was observed by several local people playing in the Dargle River, close to the Swan waterfall opposite the People's Park. Again video footage can be supplied as well as witness statements.

On pp50-51 of the NIS, it is stated that the Wicklow Mountains, which is a European Special Area of Conservation (SAC), "is designated for a range of habitats and for the conservation of otters found within the rivers of the Wicklow mountains."

It goes on to say that: "following a highly precautionary approach, it has been assumed for the purposes of this assessment that ex-situ QI otters from the SAC may range 14km downstream to the estuarine waters of the River Dargle in Bray town. As such Wicklow Mountains SAC QI Otters are assumed to be within the ZOI of the proposed development for the purposes of this assessment."

At the same time, the writers of the document are careful to note, *consistently*, that nothing in this admission may be used in the current court case challenging the last grant of permission to the applicant, in which application the possibility of otters travelling 14km was dismissed. Consequently, otters were erroneously screened out of that assessment as the research quoted was out-of-date. More recent research has shown that the male adult otter can travel up to 21km along a 'hydrogeological pathway' – such as the Glencullen River feeding into the Dargle, before opening into Bray Harbour. The distance between the Wicklow mountains and Ballymore's site, according to their own NIS, is only 14km.

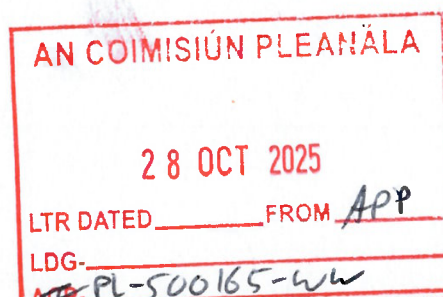
The cumulative effect of the phased development, bridge infrastructure, and associated disturbance will effectively sever this ecological connectivity, contrary to Article 10 of the Habitats Directive which requires Member States to manage landscape features essential for migration, dispersal, and genetic exchange of wild species. *Furthermore, the proposed alteration of embankments and flood channels will fragment existing movement corridors, increasing mortality risk and habitat isolation*

On p74, the NIS notes that: "Site surveys determined there are no otter holts along the riverbanks near the proposed development site" (clearly there were, or an otter pup would not have been seen swimming there), "nor was any evidence of otter activity noted, and *the entirety of the riverbanks in the area of the proposed development are man-made structures (flood defence walls, promenade and reinforced rock).*" As can be seen from the photo of the otter below, he is feeding comfortably on the concrete base of the railway bridge.

The problem of "noise and vibration" during piling works "for the construction of the proposed apartment blocks" is dealt with on the same page by the following statement: "These percussive works will only occur during normal working hours i.e. during daylight hours. Given that otters are predominantly nocturnal species, and considering the busy urban setting of the project site, any noise or vibration generated from works during the day will not result in likely significant disturbance or displacement effects to ex-situ SAC otters."

Both the photo and the videos of the otter in SaveBray's possession were clearly taken during daylight hours.

We submit that there is a clear secondary impact on the local otter population, whose foraging and breeding areas along the River Dargle would be disrupted by construction activity, lighting, and permanent alteration of the river corridor. We further submit that this proposal is a breach of European law regarding the protection of otters on their hydrogeological pathway from Upper Lough Bray to Bray Harbour, and to grant permission for this application before that argument is settled in court would be premature.



Mitigation Measures Inadequacy:

Failures to observe protection of swans, otters, and other wildlife alongside and within the river cannot be cured by planning conditions or by reliance on speculative mitigation. The Court has confirmed that mitigation measures may only be taken into account at the screening stage if they are inherent in the design of the project and deliver certainty of protection (Case C-428/24). **No such inherent measures exist here.**

The introduction of lighting, piling, elevated structures, and permanent human activity into a **protected (protected de facto species)** flight path and aquatic feeding zone for swans and otters constitutes disturbance within the meaning of EU Directives. It cannot be regularised after the fact.

The law sets a preventive threshold: once likely significant effects cannot be excluded, a full Appropriate Assessment is mandatory, and consent must be refused unless compliance is demonstrated with the scientific certainty required by Article 6(3). *The absence of any enforceable mitigation renders the decision incapable of satisfying the legal test of precautionary certainty.*

Breach of species protection requirements:

No derogation has been sought under Article 16 of the Habitats Directive for disturbance and displacement of protected species including swans and otters.

The ecological surveys identify the presence of Annex IV otters and Annex I Mute Swans, yet no Article 16 derogation was sought or assessed. This omission confirms that strict protection requirements were not applied.

In addition, the in-combination assessment provided in the NIS is based on the incorrect premise that the Bray Sustainable Transport Bridge “will not act in combination” because it “is at design stage.” However, the applicant’s own Traffic and Transport Assessment acknowledges reliance on the bridge for access and modal shift compliance. The Board has already directed that the bridge requires Stage 2 AA and EIAR (ABP Refs. 313685-22 and 320608-24). Therefore, the exclusion of the bridge from the in-combination assessment is contrary to the requirement in Article 6(3) and Case C-142/07 (*Ecologistas en Acción*) to include all projects that are functionally or temporally connected, whether existing, approved or reasonably foreseeable.

Taken together, these factors demonstrate that the Appropriate Assessment process for Planning Ref. 2560207 did not comply with Article 6(3). Mitigation was relied upon at the screening stage; a full NIS was submitted but no AA Determination was made; European sites and functionally connected habitats were excluded without scientific justification; and protected species under Article 12 and Article 5 were not assessed in accordance with strict legal obligations.

The fact that the applicant’s NIS relies on mitigation demonstrates that the correct procedural step was not followed.

Planning Authority’s ‘AA exercise’ without an AA Determination:

The Director of Services, in the decision report of September 2025, states: “I have completed an Appropriate Assessment exercise... and I conclude that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European Site.” No Stage 2 Appropriate Assessment determination was issued,

despite the submission of a full Natura Impact Statement by the applicant. The use of a full NIS means Stage 2 had already been triggered. The competent authority instead used the NIS as a screening document and adopted the applicant's conclusions without issuing a distinct, reasoned determination as required under Regulation 42(11) of the European Communities (Birds and Natural Habitats) Regulations 2011. The CJEU held in Case C-418/04 (Commission v Ireland) that a competent authority cannot rely on a developer's assessment or adopt it without conducting its own appropriate assessment based on complete, precise and definitive findings. No such independent assessment or written determination exists in this case.

Acknowledgement of protected species in ecological baseline but omission from AA findings:

The ecological baseline submitted with the planning application records year-round usage of the development site and adjacent waters by Mute Swans, otters and significant waterbird populations. The Bat and Mammal Survey states: "An otter survey was undertaken... field signs of otter including spraints and slides were recorded along both banks of the River Dargle" and the NIS acknowledges that "Bray Harbour is located c.100m from the development site and supports nationally important numbers of Mute Swans (*Cygnus olor*).". Despite this, the NIS limits its assessment to hydrological pathways and concludes that there will be no significant effects based solely on water quality. There is no assessment of disturbance, displacement, loss of foraging habitat or ecological functionality.

Under Case C-383/09 (Commission v France) and Case C-179/23 (Commission v Ireland), the State must prevent any deterioration or disturbance affecting Annex I and Annex IV species, even outside designated Natura sites. The failure to assess ecological function and species protection under Article 12 and Article 5 renders the screening conclusion incomplete.

Cumulative and in-combination effects with the bridge:

The ecological report states: "Bray Harbour is located c.100m from the development site and supports nationally important numbers of Mute Swans (*Cygnus olor*). A Swan Sanctuary is located adjacent to the River Dargle." It further records "evidence of otter (*Lutra lutra*) along both riverbanks including spraints and slides," establishing the site as functional habitat for Annex I and Annex IV species. Despite these admissions, the NIS limits its impact assessment exclusively to hydrological pathways, with no evaluation of disturbance, displacement or loss of functional habitat.

Case C-383/09 (Commission v France) and Case C-179/23 confirm that Member States must prevent deterioration of habitats essential to the lifecycle of protected species regardless of whether the site is formally designated, and failure to assess such impacts constitutes a breach of Article 6(3) and Article 12.

The NIS does not assess the functional connectivity between the site and nearby European sites in accordance with the standards required by Case C-461/17 (Holohan). The report dismisses Bray Head SAC, The Murrough SPA and the Dalkey Island IBA on the basis that there is "no hydrological connection," despite acknowledging that bird species associated with these sites forage and overwinter across Bray Harbour and the River Dargle. This omission is inconsistent with the obligation under Article 6(3) to assess the potential effects of the project on habitats and species that contribute to the conservation objectives of European sites through ecological connectivity, even if they lie outside site boundaries.

In the Santana Marshes case (Case C-355/90) and Bas Corbières case (Case C-374/98), the Court held that ecological value gives rise to protection duties even prior to designation. Most recently, in Skydda Skogen (Case C-473/19), the Court held that where there is a likelihood that breeding or resting sites of protected birds will be affected, competent authorities are under a legal obligation to refuse authorisation unless it is demonstrated, to a high standard of scientific certainty, that no deterioration will arise. These principles apply directly in this case, as the River Dargle and Bray Harbour function as a breeding, foraging and roosting corridor for Mute Swans and other protected species, and are acknowledged as such in the application documentation itself.

Environmental reports on a destroyed environment:

As already referenced, the applicant has been allowed to divide the former Bray Golf Club lands into separate 'sites', beginning with construction on the high ground. This has not only made the Sequential Approach much easier to bypass – building from the higher ground down will always mean you cannot be asked to move your next building phase to a higher, safer location – but it has also made passing environmental tests much easier. If the lower ground each time is destroyed by heavy machinery and noise, while construction goes ahead on the high ground, then its birds and wildlife will obviously be disturbed and eventually move to other, safer locations. The photographs below – of curlews feeding under the trees to the south-west of what was already a devastated 'Coastal Garden' area on 15th January, 2023, and, just under a month later (4th February, 2023), a drone shot taken of the entire lowlands of the former golf club lands, illustrate this better than any words can. That latter photograph shows the south-east part of the site (bottom left in the photo – proposed as a Coastal Garden) utterly destroyed; the old schools' road which used to divide the high ground from the lowlands on this site clearly reinstated closer to the lowlands at its eastern end; the legitimate building work, to the right of this road in the photograph, spilling over into further devastation of the lowland to the left; and two new, rough roads created from that area up to the site office (since substantially enlarged) at the western end of the site.

This land became a rewilded haven for wild birds and mammals (particularly at its eastern end), following the relocation of Bray Golf Club to its new course on Bray Head in 2003, until development work was begun by the applicant, and large swathes of the lowlands – which still has no planning permission other than a Coastal Garden – were destroyed.

The official response from Wicklow County Council on 24th April, 2023, to our Enforcement Complaint of 25th February, 2023, with regard to the devastation carried out on both the old schools' road and on the permitted Coastal Garden stated: *"It should also be noted that **Irish Water carried out works in the area in September/October last year of their Local Network Reinforcement Project.**"*

However, a member of SaveBray community group wrote to Uisce Éireann to verify exactly who was responsible for the excavation and relocation of the old schools' road, and the work carried out on the eastern end of the floodplain (permitted as a Coastal Garden). Following are the relevant parts of their very helpful reply dated 26th September, 2024:

"A 160m section of 450mm foul sewer was installed on this road on behalf of Uisce Éireann by a developer. These works were part of Uisce Éireann's Old Connaught Ave LNR Project. This section of sewer ran from a manhole adjacent to the railway bridge to adjacent to the existing storm tank (approx 160m)." ["The road up to Ravenswell school from the railway underpass" had been specified in our question.] "As the developer was engaged in works in this area it made

*logistical sense that **the developer would carry out the works for Uisce Éireann** (which, for example, obviated the need for the road to be opened twice)."*

"Uisce Éireann installed two lengths of 450mm dia sewer in the area noted. This work was part of a local network reinforcement project." [The permitted Coastal Garden was the area noted in our accompanying map.]

The utter destruction of the entire area permitted as a Coastal Garden and the extension of the eastern end of the former schools' road spilling over even further onto the lowlands to create two more roads to the applicant's compound cannot be explained by the installation of "two lengths of 450mm dia sewer".

We submit that any environmental assessment carried out on the lowlands of this site now, whether by the applicant or by Wicklow County Council for the proposed bridge and access road, has already been totally compromised because it is being carried out on an environment which has already been substantially destroyed, mostly by the applicant.

Traffic/Road Safety:

Bray's traffic is already in chaos, and that is dangerous, particularly for VRUs. This new application includes 341 housing units; 150 bed hotel; a wellness centre; pool, pub, wedding venue; a childcare facility; a private medical clinic; and 7 retail centres. Only 532 car parking spaces will be provided.

The applicant has announced an intention to apply for a further 362 housing units, plus "additional retail space", and 11,000sqm of commercial floor space" in Phase 3 – in addition to the buildings already developed on the high ground, and 2 apartment blocks under challenge in the High Court.

It was also proposed by the applicant to close vehicle access to the Sea Gardens' site from the junction between Castle Street and Ravenswell Road, instead opening a new junction at Sunnybank through the old Ravenswell Convent avenue. Two of the Conditions attached to Wicklow's Grant of Permission refer, respectively, to the "southern access junction" and the "southwest corner of the overall site", i.e. Conditions 5iii and 16. It is unclear whether either, or both of, these refers to the aforementioned junction between Castle Street and Ravenswell Road. We enquired from the Planning Dept. in Wicklow County Council, but were told that the only planner who could answer the question the question was on leave, and would not be back until October 28th – too late for us to make any kind of judgement on this in time for this Appeal.

This is an important question for us as, on p28 of the applicant's Flood Risk Assessment, emphasis is given to requests from Wicklow County Council to (sensibly) ensure that the floodpath through Dwyer Park onto the floodplain is kept free. The photograph shown at the end of this submission was taken from the gate in Dwyer Park through which the floods enter: it was taken on Tuesday, 22nd April, 2025, and shows clearly that the road running from south to north from the Ravenswell car park does not block the floodpath at this point. Therefore, the request made in many submissions – because debris and overgrowth of brambles, etc., behind that gateway blocked the view to the floodplain until very recently – that this road "simply needs to be realigned" is superfluous. The only purpose the closure of this road serves is to stop it dividing one part of the applicant's Phase 2 site from the other.

We submit that the closure of this road will simply add to the already severe traffic gridlock in Bray, and that a development of this scale requires a considered and cohesive traffic

management plan before planning permission is granted. Otherwise, the additional burden on our roads will lead to traffic gridlock, particularly if a major artery into our town at the Herbert Road is even partially closed, as proposed, and another major artery from the Wilton roundabout is choked almost immediately at Sunnybank, as proposed by the developer, where the only relief road is the very narrow Upper Dargle Road – impossible to widen because of its topography.

Bray Sustainable Transport Bridge:

On p78 of the applicant's Natura Impact Statement, while discussing the possible impact of future projects in this vicinity, the proposed public transport bridge, with its access road across the floodplain on the applicant's site, is discussed. The applicant's plan is clearly designed around this proposed access road and bridge.

The applicant's NIS relies on an AA Screening Report carried out by Arup which concluded (p81 of the applicant's NIS): "The proposed development, alone or in combination with other projects, is not likely to have significant effects on Natura 2000 sites in view of their conservation objectives. It has been determined by Arup that it is possible to rule out likely significant impacts on any Natura 2000 sites. It is the view of Arup that it is not necessary to undertake any further stage of the Appropriate Assessment process." – ARUP."

The screening report carried out by Arup is dated 9th July, 2021.

A Direction was issued by An Bord Pleanála to Wicklow County Council on 5th December, 2022, to prepare a Natura Impact Statement in respect of the development. One of the seven reasons set out by the Board was *"the uncertainty with regard to in-combination effects with other plans and projects"*.

Subsequently, a Direction was issued by An Bord Pleanála to Wicklow County Council on 16th December, 2024, following a decision by the High Court, "to prepare an Environmental Impact Assessment Report in respect of the proposed construction of the Bray Sustainable Transport Bridge, link road, and associated works". The Reasons and Considerations for this Direction were summed up as: *"It is considered that there are likely significant negative effects on the environment arising from the proposed Bray Sustainable Transport Bridge, link road and associated works"*. A further Note by the Board added that the information contained in the "site-specific Flood Risk Assessment" submitted for this project was considered to be "imprecise".

Neither the Natura Impact Statement nor the Environmental Impact Assessment report have been carried out by Wicklow County Council to date.

We submit that the applicant is relying on an out-of-date and subsequently challenged Appropriate Assessment Screening Report to support an insupportable argument that these two projects, together and separately, will not have an enormously detrimental effect on the environment around this site.

We also contend that Wicklow Co Co's grant of permission is compromised, as it is obviously heavily influenced by their intent to build a public transport bridge across the Dargle at a point where Shankill Property Investment's planned development must accommodate the proposed bridge in order to allow the construction of an access road to the bridge from the northern side of the river.

This is something local communities have - and are - fighting strenuously, both at Council level and in the courts, as we believe this is the wrong design (because of our mute swan population and because of multiple safety concerns expressed in the proposal's accompanying Road Safety Audit) in the wrong location (flooding, coastal erosion, wildlife, and road safety on both sides of the river).

Wicklow's bias is evidenced by their concentration in their request for Further Information on how the applicant's plans will tie in with the proposed bridge - which has not yet been put to the councillors for approval, nor has the Natura Impact Statement mandated by the courts in December, 2022, been carried out by Wicklow, nor the Environmental Impact Assessment ordered by An Bord Pleanala in December, 2024, following a Judicial Review that found ABP's previous decision to be flawed.

In addition, Shankill Property's previous Grant of Permission from An Bord Pleanala for Phase 1a of their development (Ref. TA06D.314686) is also the subject of a Judicial Review at present. We would submit that granting permission for Phase 2, while Phase 1a is being considered in Court, would be premature.

Summary:

We submit that, as our 2025 Local Area Plan is imminent and the Justification Test within Bray's Development Plan is flawed, this development should be refused on the basis of both flood risk and prematurity, allowing our councillors to review the contradictions in both Land Use and Flood Zones contained in our present and proposed LAPs before the 2025 LAP is adopted. We also submit that this planning application should be re-submitted, following the LAP, with the highly vulnerable residential units taking up the higher ground of Flood Zone B as per the Sequential Approach; no development allowed on the 3.5ha Flood Zone A, which should be zoned for Land Use as Open Space according to planning law; and with high rise buildings kept away from the railway track and river to protect our swan colony. We also submit that a development of this scale requires a considered and cohesive traffic management plan before planning permission is granted. Finally, we submit that there is a clear symbiotic relationship between the applicant and the planning authority in this case, based on Wicklow County Council's determination to build a dangerous bridge (according to its own Road Safety Audit) across an important wildlife habitat, with access crossing Flood Zones A on either side of that river, enabling public transport to be diverted from the town centre to a private development.

Signed:

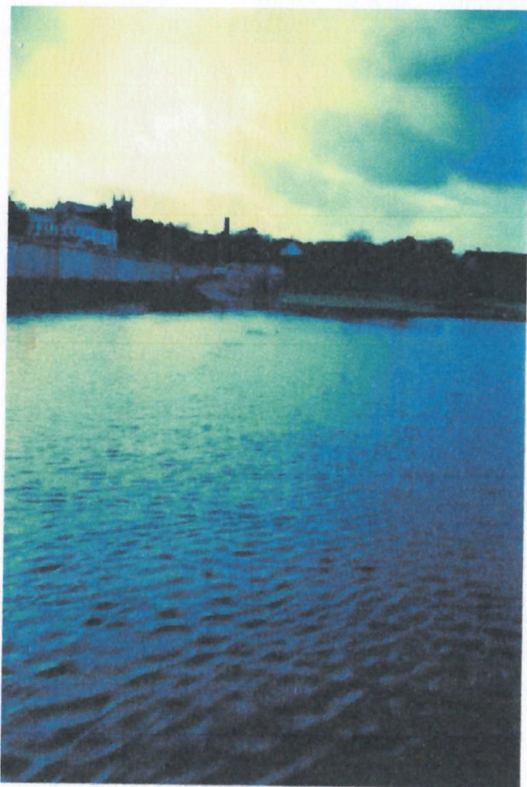


Avril Power, Secretary,
for SaveBray,
c/o 1 St. Cronan's Road,
Bray,
Co. Wicklow.

Date:

26th October 2025

Attachments:



AN COIMISIÚN PLEANÁLA	
28 OCT 2025	
LTR DATED _____	FROM <u>APP</u>
LDG- _____	
ACP- <u>PL-500165-WW</u>	

2015 Flood Defence Failure at former Bray Golf Club lands



2016 Flood Defence Failure at former Bray Golf Club land

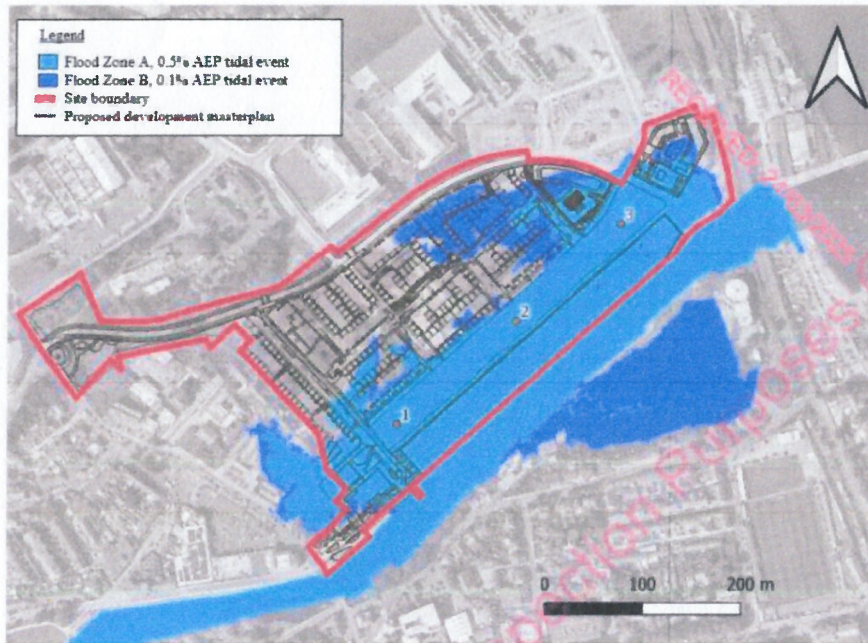
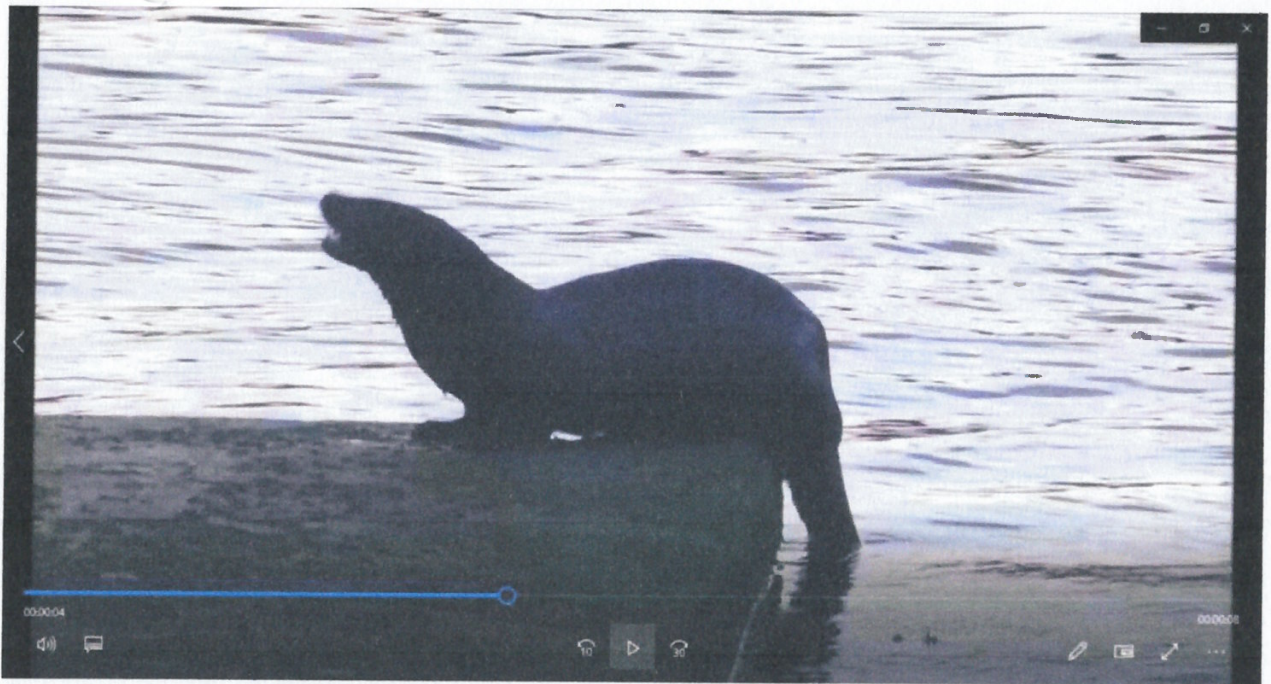


Figure 5-2 Flood Zones A and B with proposed development overlap.



Nesting Mute Swan between Fran O'Toole bridge and the People's Park. 26.4.2025:



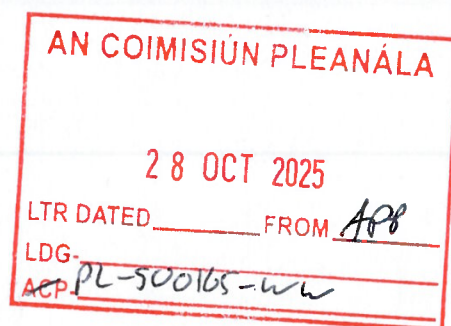
Screenshot of otter feeding on the concrete base of the railway bridge: June, 2022:



Curlews feeding south-west of the newly excavated road: 15th January, 2023:



Drone shot of destroyed environment: 4th February, 2023



Floodpath from Dwyer Park onto Flood Zone A of the former golf club lands: 22.4.2025:



Drone shot of destroyed environment 4th February 2023



Floodgate from Dwyer Park onto Flood Zone A of the former golf club lands 22.4.2025

AN COMMISSION PLEA

58 OCT 2023

FILED

CLERK

2023