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# An Bord Pleanála



## Inspector's Report

Ref.: PL04. 247185

Development: A 24/7 unmanned petrol station. The development will consist of the following: 1. Two number 4 hose pumps under a canopy, 4500mm high to the underside, dispensing unleaded petrol and diesel on each side of the pump. 2. Two underground storage tanks, each 40,000lt, one storing diesel and one storing unleaded petrol. 3. All the associated fuel pipework between the pumps and underground tanks, fill points and vents. 4. Concrete slab surfacing and associated drainage of the forecourt and adjoining area. The drainage around the forecourt and fill area will discharge into a 10,000lt Class 1 petrol interceptor and from there into the existing drainage system. 5. Two 900mm x 900mm x 2400mm high electrical cabinets, one adjacent to each pump. 6. 900mm high perimeter rendered block wall on the Eastern Boundary and 600mm high on the Northern, Western and Southern boundaries. 7. Advertising signage along the edge of the canopy and a stand alone 6,000mm high advertising monolith on the Northern boundary. 8. Site entrance and exit.

Ballycurreen, Kinsale Road, Co. Cork.

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## **PLANNING APPLICATION**

Planning Authority: Cork County Council  
Planning Authority Ref.: 16/4109  
Applicant: Emo Oil Ltd. T/A Great Gas  
Type of Application: Permission  
Planning Authority Decision: Grant subject to conditions

## **APPEAL**

Type of Appeal: Third Party v. Decision  
Appellant: Topaz Energy Group Ltd.  
Observers: None.  
INSPECTOR: Robert Speer  
Date of Site Inspection: 5<sup>th</sup> December, 2016

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## **1.0 SITE LOCATION AND DESCRIPTION**

1.1 The proposed development site is located at Ballycurreen, Kinsale Road, Co. Cork, on the southern side of the N27 National Route after the Kinsale Road Roundabout, approximately 2.8km south of Cork City Centre and c. 200m northeast of the South Link Business Park, where it occupies a position within the display forecourt of an existing car sales showroom trading as Lehane Motors, adjacent to the access roadway which serves the wider Touchdown Business Park. The surrounding area can be described as mixed-use / commercial and is dominated by business park / warehouse uses in addition to industrial estates, although there is a notable residential component further south / southeast. The business park within which the subject site is located includes a car showroom, a distribution / logistics premises and a printworks. The site itself has a stated site area of 0.06 hectares, is irregularly shaped and presently comprises a 'corner' plot at the junction of the Touchdown Business Park service road with the N27 Kinsale / Airport Road which is used for the display of motor vehicles as part of a wider forecourt / car sales area. It was also noted during the course of a site inspection that warning signage had been erected along the western site of the Touchdown Business Park service roadway opposite the application site with regard to the presence of invasive species, namely, Japanese Knotweed.

## **2.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

2.1 The proposed development consists of the construction of an unmanned petrol filling station (as set out in the public notices) which will include the following key elements:

- The provision of 2 No. four hose pumps under a canopy area.
- The construction of 2 No. 40,000 litre underground fuel (petrol & diesel) storage tanks.
- All associated fuel pipework between the pumps, underground tanks, fill points and vents.
- The construction of concrete slab surfacing and the associated drainage of the forecourt and adjoining areas, including the installation of a 10,000 litre Class 1 petrol interceptor.
- The provision of 2 No. electrical cabinets (1 No. adjacent to each pump).
- The construction of a 900mm high perimeter rendered block wall along the eastern site boundary and a 600mm high wall along the northern, western and southern site boundaries.

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- The erection of advertising signage along the edge of the proposed canopy and the construction of a standalone 6.0m high advertising monolith adjacent to the northern site boundary.
  - The provision of a new site entrance and exit.

2.2 In response to a request for further information, a revised site layout plan was submitted which included for the provision of a 'fuel delivery gate' in order to accommodate the movement of fuel delivery vehicles on site. In this respect I would advise the Board that although this gateway is described as an 'entrance gate' on the submitted drawings, it was confirmed by the applicant in response to a request for clarification of further information that the 'fuel delivery gate' is intended for exit purposes only.

2.3 The proposed development will operate on a 24-hour, 7-day week basis.

### **3.0 RELEVANT PLANNING HISTORY**

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

PA Ref. No. 0613389. Was refused on 16<sup>th</sup> February, 2007 refusing Des Murphy permission for the construction of a two storey trade warehouse with under deck car parking, provision for 18 no. surface car parking spaces, vertical illuminated signage and associated site works.

PA Ref. No. 155167. Was granted on 2<sup>nd</sup> September, 2015 permitting Macroom Motors Services Ltd. T/A Lehane Motors permission for (a) Change of use of existing light industrial warehouse to vehicles sales and service facility, (b) construction of extensions to North and West elevation of existing warehouse building which is to form part of the new vehicle sales showroom, (c) partial demolition of existing first floor mezzanine and construction of new first floor mezzanine area for ancillary offices and staff amenities, (d) modifications to the existing building elevations including re-cladding of the existing building and the incorporation of new glazing and doors on the North, West and East elevations, (e) construction of a new car parking area adjacent to the existing building for staff car parking, customer parking, and the display of new and used vehicles, and (f) free standing and attached illuminated signage and associated site works.

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

### **4.1 Decision:**

Following the receipt of responses to requests for further information and subsequent clarification, on 2<sup>nd</sup> August, 2016 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 16 No. conditions which can be summarised as follows:

- Condition No. 1 – Refers to the submitted plans and particulars.
- Condition No. 2 – Refers to the implementation of an agreed landscaping scheme.
- Condition No. 3 – Requires the proposed signage to be lit by static internal illumination only and prohibits the installation of any intermittent illumination.
- Condition No. 4 – Prohibits the erection of further signage etc. without the benefit of a grant of permission.
- Condition No. 5 – Requires the recommendations of the Road Safety Audit to be implemented to the satisfaction of the Local Authority, save where amended in order to comply with other conditions.
- Condition No. 6 – Refers to the payment of a special development contribution in the amount of €5,000 towards works proposed to be carried out to the public road and / or footpath to facilitate the development.
- Condition No. 7 – Requires the footpath to be reinstated to the satisfaction of the Local Authority.
- Condition No. 8 – Requires any gates to open inwards and states that the proposed fuel gate is to be used only by exiting fuel delivery trucks.
- Condition No. 9 – Prohibits any vegetation or structure within the sight distance triangle from exceeding 1m in height.
- Condition No. 10 – Refers to the installation of stormwater attenuation measures.
- Condition No. 11 – Refers to surface water drainage and the installation of a Class 1 hydrocarbon interceptor and a grit trap.
- Condition No. 12 – Refers to the control of lighting.
- Condition No. 13 – Refers to fuel storage, delivery lines and monitoring & alarm systems.
- Condition No. 14 – Prohibits the installation of any equipment intended to facilitate the washing of vehicles.

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Condition No. 15 – Prohibits any construction within 15m of the verified centreline of the trunk watermain.

Condition No. 16 – Refers to connection to water and wastewater services.

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

A single submission was received from the appellant, the contents of which are generally reiterated in the grounds of appeal.

#### **4.3 Internal Reports:**

*Cork National Roads Office:* No objection.

*Environment:* An initial report recommended that further information be sought in respect of a number of issues including details of the underground fuel tanks, the provision of leak detection systems, the measures to be implemented to prevent vandalism of the tanks / fuel delivery systems, on site drainage arrangements and waste management.

Following the receipt of a response to a request for further information, a further report was prepared which stated that there was no objection to the proposed development on environmental grounds, subject to conditions.

*Water Services: (Mr. John Slattery):* An initial report noted that the proposed development was in close proximity to a 1,500mm diameter trunk main serving the Cork Harbour & City Water Supply Scheme and recommended that further information be sought in respect of the verification of the actual location of the truck main with no construction to occur within 15m of the centreline of that main.

Following the receipt of a response to a request for further information, a further report was prepared which stated that the additional details provided regarding the trunk main were satisfactory subject to the inclusion of a condition whereby no construction would occur within 15m of the verified centreline of the trunk watermain.

*Area Engineer / Engineering:* An initial report expressed concerns as regards the proximity of the proposed entrance to the fuel pumps relative to the junction with the N27 National Road. It also stated that the additional irregular traffic movements associated with the proposed development onto the N27 National Road would be undesirable due to the width of the carriageway at the exit and as the junction in question is uncontrolled. Accordingly, it was recommended that the applicant be required by way of a request for further information to submit a

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Stage 1 Road Safety Audit of the proposed development in addition to confirmation of the necessary consent to connect into the surface water sewer on the adjoining site and the submission of details for surface water attenuation.

Following the receipt of a response to a request for further information, a subsequent report was prepared which recommended that further clarification should be sought in respect of the findings of the Road Safety Audit, including any mitigation measures and the proposed siting of the fuel delivery gate.

Upon the receipt of a response to a request for clarification of further information, a final report was prepared which stated that the additional details were acceptable before recommending a grant of permission subject to conditions, including the imposition of a special development contribution of €5,000 towards the remedying of any defects highlighted in the Road Safety Audit on public property.

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

*Irish Water:* No objection subject to conditions.

*Transport Infrastructure Ireland:* States that the Authority will rely on the planning authority to abide by official policy in relation to development on / affecting national roads, as outlined in the DoECLG's '*Spatial Planning and National Roads, Guidelines for Planning Authorities, 2012*'.

### **5.0 GROUNDS OF APPEAL**

The grounds of appeal are summarised as follows:

- The size, nature and location of the proposed development site are such that the proposed service station cannot be properly or safely accommodated and, as a result, the proposed development would endanger public safety by reason of traffic hazard on the site itself and in the immediate vicinity of same.
- The proposed development is located in an area which is presently used as surface parking associated with an adjacent car showroom and will result in the loss of approximately 10 No. spaces in addition to the associated boundary and landscaping works along the roadside boundaries.
- It is of particular relevance to the consideration of the subject appeal to note that the application site is located on the N27 National Route, a short

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distance from the Kinsale Road Roundabout, and is accessed by a simple priority junction along a roadway which is subject to a 50kph speed limit.

Despite having an existing access onto the national road, this access is located approximately 230m from the roundabout interchange, which is one of the busiest road junctions in Cork City.

Traffic frequently backs up past the access, particularly at peak times (*N.B.* The accompanying photographs, taken at 14:00 hours on Wednesday, 24<sup>th</sup> February, 2016, show substantial queueing even at off-peak periods).

- The proposed development has significant potential to negatively impact on the safe and efficient operation of the national road network in the immediate vicinity of the site; in that it involves the introduction of a completely new use on site which is fundamentally dependent on the generation of traffic trips.
- Having regard to the potential traffic implications of the proposed development and the provisions of Policy TM3-3 of the Cork County Development Plan, it is of note that the subject application is not supported by a Traffic Impact Assessment.
- The proposed development is contrary to the relevant traffic and road safety policy provisions of the Cork County Development Plan.
- There are serious concerns as regards the confined nature of the site and its ability to satisfactorily accommodate the proposed service station.
- The applicant has acknowledged that the proposed service station cannot be suitably or safely accessed by HGV traffic or other large vehicles and, therefore, there are concerns as to how access to the site by any such large vehicles will be restricted if the station is to be unmanned e.g. it is queried what measures will be implemented in order to prevent HGVs / trucks from mistakenly attempting to access the site to re-fuel and the associated potential for haphazard queueing and the creation of traffic safety issues.
- It has been acknowledged by the applicant that there will be a need to close the station during the course of deliveries as tanker trucks and cars cannot manoeuvre safely on the site at the same time. Accordingly, there is a likelihood that delivery vehicles will have to wait at the site entrance onto the national road while any customers already on site complete their refuelling activities. Furthermore, it is questioned where cars will be expected to queue when the site is closed during fuel deliveries and what



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- is to stop a car from mistakenly entering the site when a fuel truck is present.
- The difficulties associated with the limited size of the application site are further demonstrated by the need to introduce a separate entrance for fuel delivery trucks and for these trucks to travel further into the business park in order to safely exit onto the national road.
  - The submitted autotrack analysis illustrates that it is not possible for large trucks to undertake a range of manoeuvres at the entrance / access points. For example, 'Autotrack Sheet No. 3' shows trucks having to move into the outside lane in order to access the site whilst 'Autotrack Sheet No. 4' shows trucks again moving into the outside lane on exiting the site.
  - It is considered that the restricted site size demonstrates that the location in question is incapable of properly and safely accommodating the proposed development. Accordingly, the proposed development will threaten the safe and efficient movement of traffic on the N27 National Road and in the immediate area.
  - All of the landscaping required along the western site boundary by the grant of permission issued in respect of PA Ref. No. 155167 will be removed as part of the submitted proposal whilst the landscaping approved along the northern roadside boundary will be significantly reduced from 3m to 1.5m in height. Furthermore, it is questionable whether the revised landscaping proposal can be introduced without impacting on the circulation of vehicles within the proposed service station e.g. to implement the required 3m landscaping strip would require the relocation of the proposed fuel delivery entrance.

In effect, the applicant cannot comply with the request for clarification of further information which required that the landscaping along the northern site boundary accord with that permitted under PA Ref. No. 155167.

- The proposed development will lead to a proliferation of roadside signage with the introduction of a third monolith sign. There are already 2 No. free standing signs permitted along the roadside boundary, although these have not been shown on the submitted plans.
- The unmanned and 24-hour operation of the proposed development, together with the lack of detail as regards security on site and the potential for anti-social behaviour, will unduly and negatively impact on the amenity of adjoining residential properties.
- There are concerns as regards the potential for noise impacts given that a condition attached to PA Ref. No. 155167 limits noise levels to 45dB(A)<sub>(15)</sub>

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minutes Leq) at night. In this regard, it is further submitted that the applicant has not complied with the Planning Authority's request to submit a Noise Impact Assessment of the proposal.

- There are concerns in relation to the potential for light emissions onto the public roadway given the conditions attached to the grant of permission issued in respect of PA Ref. No. 155167. The planning report under this application noted that

*'given the prominent site location adjacent to a busy national primary route and junction consideration must be given to potential impacts from night lighting of the subject site including illuminated signage'.*

- Key issues raised in the request for further information have not been comprehensively addressed. Therefore, none of those issues have been satisfactorily addressed and all present significant planning constraints to the development of the site for the proposed use.
- The proposed development is contrary to the proper planning and sustainable development of the area.
- The restricted size of the proposed development site is insufficient to properly and safely accommodate the proposed use. Therefore, the proposed development has the potential to undermine the safety, efficiency and operational capacity of the N27 National Route in close proximity to one of the busiest and most important road junctions in the Cork City area.

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

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

None.

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

- During the course of the planning application, the applicants received a copy of those objections / observations made against the proposed development. In this respect it is submitted that the objection lodged on behalf of Topaz Energy Group Limited was made against the wrong planning application as the first paragraph in that submission states the following:

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*'We, Coakley O'Neill, Town Planners Ltd., NSC Campus, Mahon Road, Cork, make this submission to Application Reg. Ref. 156553 on behalf of Topaz Energy Group . . .'*

On the basis that PA Ref. No. 156553 refers to a planning application lodged by Emo Oil Ltd. T/A Great Gas for an unmanned petrol filling station in Midleton, it is submitted that the appellant's original objection / observation as lodged with the Planning Authority should have been declared invalid and thus the Board should deem the subject appeal to be invalid.

- PA Ref. No. 156553 relates to a planning application by Emo Oil Ltd. T/A Great Gas for an unmanned petrol filling station in Midleton which was granted permission by the Planning Authority and appealed by Topaz Energy Group Ltd before ultimately being approved by the Board on appeal pursuant to ABP Ref. No. PL04.246467. Both that application and the subject proposal have been appealed by a corporate entity which is in commercial competition with the applicant.
- With regard to the appellants' reference to PA Ref. No. 0613389, it is submitted that said application concerned a completely different type of development from that presently under consideration and that the refusal of that application was based on the planning considerations and road traffic conditions prevailing at the time. Accordingly, PA Ref. No. 0613389 is of no relevance to the assessment of the subject proposal.
- The reference to the application site being accessed via a simple priority junction in an area subject to a 50kph speed limit is misleading in that the proposed development will actually be accessed off Hazelwood Grove via an existing junction arrangement with the N27 National Route. The proposed development will not result in the creation of another junction onto the National Road.
- The photographs which have accompanied the grounds of appeal show a line of traffic in the laneway heading towards Cork City, however, it is considered that they have no valid relevance to the subject application for the following reasons:
  - a) Based upon the applicant's experience, the majority of traffic expected to avail of the proposed development will be travelling out of Cork City. In this respect it should be noted that one of the key parameters in siting a petrol station is that the majority of traffic entering the site will be performing a left-hand turn to enter the site

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i.e. traffic will turn left off the N27 National Road onto Hazelwood Grove / Lane and subsequently into the application site.

b) The small volume of traffic which will use the proposed facility on travelling toward Cork City will use the existing 'yellow box' junction in order to turn into Hazelwood Grove. One of the functions of the 'yellow box' at this location is to facilitate vehicles heading in the Cork City direction in turning into Hazelwood Grove / Lane.

- The proposed development is not a conventional service station (which could include a retail offering, car wash and car parking) in that it will only consist of 2 No. four hose pumps under a small canopy area. The time to re-fuel at this type of facility is between 2-3 No. minutes from exiting the vehicle, completion of the credit card transaction, fuelling the vehicle and exiting the site. Accordingly, there will be no backlog of vehicles queuing up to exit the site.
- The applicant presently operates 10 No. similar sites which are open 24-hours with approximately 10% of the usage of same occurring between 23:00 and 06:00 hours. Based upon the historical usage of these existing sites, it is anticipated that a maximum of 25 No. vehicles will use the proposed facility at its busiest time (which tends to be in the early afternoon) and that during the remainder of the day, usage of the site can be expected to drop to less than half of that figure.
- A Stage 1 Road Safety Audit of the site was completed and submitted to Cork County Council in response to a request for further information. All of the issues raised in that audit have been addressed and the results of same were accepted by the Local Authority.
- The suggestion that the proposed development is contrary to the relevant traffic and road safety provisions of the Development Plan is vehemently rejected.
- The appellants have incorrectly stated that the applicant has acknowledged that the proposed facility cannot be properly accessed by HGVs. Instead, the applicant has stated that this model will not be used by HGVs and this was one of the parameters in its design. The only exception is the delivery vehicle.
- The proposed development will be unmanned and all fuel deliveries will be managed and controlled by the driver. Furthermore, in the interests of fire safety, and in accordance with the requirements of the Fire Authority, the site will be closed during fuel deliveries. This is a standard requirement for the proposed model of forecourt and facility layout.

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- The use of a separate exit facility for fuel delivery trucks is a safety requirement of S.I. 311 of 1979 with regard to petrol filling stations. When delivering fuel to a site, in the case of an incident, the delivery vehicles must be able to exit the site in a direct forward movement. Accordingly, the proposed separate delivery vehicle exit is necessary to comply with the foregoing requirement.
  - The proposed delivery route involves vehicles from the N27 National Road turning onto Hazelwood Grove and completing of a 180-degree turn further down that roadway before entering the facility in a direction travelling towards the national road. This will ensure that:
    - (a) Vehicles will not be required to queue in order to enter the site thereby avoiding the rear of any vehicles protruding onto the N27 National Route.
    - (b) If there are any vehicles on site when the delivery tanker arrives, it can safely stop along the Hazelwood Grove access roadway before entering the site to make its delivery.
  - The issue of site levels and landscaping between the subject site and PA Ref. No. 155167 was addressed in the applicant's response to the request for further information which was accepted by the Planning Authority.
  - Proposals have been submitted for the landscaping of the northern site boundary. In this regard it has been noted that there will be a reduction in the depth of the area at the north-western corner of the site in order to facilitate the movement of vehicles on site. All of these proposals have been accepted by the Planning Authority.
  - With regard to the appellants concerns in relation to security, noise and light emissions etc., it is submitted that each of these items was considered in the response to the request for further information.

## **7.0 NATIONAL AND REGIONAL POLICY**

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

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to retail planning and sustainable rural housing, and replace the National Roads Authority policy statement on national roads published in May, 2006.

## **8.0 DEVELOPMENT PLAN**

### **Cork County Development Plan, 2014:-**

#### **Chapter 7: Town Centres and Retail:**

Section 7.10: *Approach to Retail Types:*

Section 7.10.5: *Other Categories of Retail Development:*

Guidance in relation to specific categories of retail development e.g. factory shops, outlet centres, retailing in small towns, rural areas and motor fuel stations where not specifically dealt with in this Plan shall be as outlined in the Retail Planning Guidelines.

#### **Chapter 10: Transport and Mobility:**

Section 10.3: *Road Network:*

TM 3-1: *National Road Network:*

- a) Seek the support of the National Roads Authority in the implementation of the following major projects:

Projects Critical to the Delivery of Planned Development:

- N28 (Cork – Ringaskiddy).
- M8 (Dunkettle Interchange Upgrade).
- Cork Northern Ring Road (N22/N20/M8).

Key NSS Projects:

- M20 (Blarney – Mallow – Limerick).
- N25 (Carrigtwohill – Middleton – Youghal).

Key Regional Projects:

- N22 (Ballincollig – Macroom – Ballyvourney) to include Macroom Bypass.
- N71 (Cork – Clonakilty – Skibbereen and Bantry).
- N72 (Mallow Northern Relief Road).
- N72 Mallow to Fermoy.
- N73 (Mallow – Mitchelstown).

- b) Support and provide for improvements to the national road network, including reserving corridors for proposed routes,

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free of inappropriate development, so as not to compromise future road schemes.

- c) Restrict individual access onto national roads, in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network.
- d) Avoid the creation of additional access points from new development or the generation of increased traffic from existing accesses onto national roads to which speed limits greater than 50kph apply.
- e) Prevent the undermining of the strategic transport function of national roads and to protect the capacity of the interchanges in the County from locally generated traffic.
- f) Consider the most up-to-date guidance in relation to the provision of Service and Rest Areas on the National Road Network (Section 2.8 of the Department of the Environment Community Heritage and Local Government 'Spatial Planning and National Roads Guidelines' (2012) and 'NRA Service Area Policy' (August 2014).
- g) Cooperate with the National Roads Authority to identify the need for Service areas and/or rest areas for motorists along the national road network and to assist in the implementation of suitable proposals for provision, subject to normal planning considerations.
- h) Ensure that in the design of new development adjoining or near National Roads, account is taken of the need to include measures that will serve to protect the development from the adverse effects of traffic noise for the design life of the development.
- i) Control the proliferation of non-road traffic signage on and adjacent to national roads having regard to the NRA's "Policy on the Provision of Tourist & Leisure Signage on the National Roads" and Section 3.8 of the 'Spatial Planning and National Roads Guidelines (2012)' of the Department of the Environment Community Heritage and Local Government.

*TM 3-3: Road Safety and Traffic Management:*

- a) Where traffic movements associated with a development proposal will have a material impact on the safety and free flow of traffic on a National, Regional or other Local Routes,

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to require the submission of a Traffic and Transport Assessment (TTA) and Road Safety Audit as part of the proposal.

- b) Support demand management measures to reduce car travel and promote best practice mobility management and travel planning via sustainable transport modes.
- c) For developments of 50 employees or more, developers will be required to prepare mobility management plans (travel plans), to promote alternative sustainable modes or practices of transport as part of the proposal.
- d) Ensure that all new vehicular accesses are designed to appropriate standards of visibility to ensure the safety of other road users.
- e) Improve the standards and safety of public roads and to protect the investment of public resources in the provision, improvement and maintenance of the public road network.
- f) Promote road safety measures throughout the County, including traffic calming, road signage and parking.
- g) Coordinate proposed zoning designations and/or access strategies in settlement plans with speed limits on national roads.

Chapter 14: Zoning and Land Use:

*ZU 3-1: Existing Built Up Areas:*

Normally encourage through the Local Area Plan's development that supports in general the primary land use of the surrounding existing built up area. Development that does not support, or threatens the vitality or integrity of, the primary use of these existing built up areas will be resisted.

**Carrigaline Electoral Area Local Area Plan, 2011 (2<sup>nd</sup> Ed., January, 2015):-**

Land Use Zoning:

The proposed development site is located in an area zoned as 'Existing Built Up Area'.

Section 1: *Introduction to the Carrigaline Electoral Area Local Area Plan*

Section 2: *Local Area Strategy*

Section 3: *Settlements and Other Locations: Cork City – South Environs*



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**Draft Ballincollig Carrigaline Municipal District Local Area Plan, 2016:-**

**Land Use Zoning:**

The proposed development site is located in an area zoned as 'Existing Built Up Area'.

**Chapter 3: Main Towns and Key Assets:**

**Section 3.2: Introduction:**

Section 3.2.4: In the preparation of new 'zoning' maps for the main towns in this plan, the following issues have been addressed:

- Zoned areas in the 2011 Local Area Plan that have now been developed are now shown as part of the 'existing built up area'. This approach has been taken in order to allow a more positive and flexible response to proposals for the re-use or re-development of underused or derelict land or buildings particularly in the older parts of the main towns.

**Section 3.5: Cork City South Environs**

**9.0 ASSESSMENT**

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

- The principle of the proposed development
- Traffic implications
- Amenity considerations
- Procedural issues
- Appropriate assessment
- Other issues

These are assessed as follows:

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

9.1.1 The proposed development site is located within the Cork City South Environs on lands zoned as 'Existing Built Up Area' in the Carrigaline Electoral Area Local Area Plan, 2011 (2<sup>nd</sup> Ed., January, 2015) with the stated land use zoning objective (as defined in Chapter 14 of the Cork County Development Plan, 2014) to 'Normally encourage through the Local Area Plans development that supports in general the primary land use of the surrounding existing built up

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area. *Development that does not support, or threatens the vitality or integrity of, the primary use of these existing built up areas will be resisted* (N.B. This land use zoning is detailed as being retained in the Draft Ballincollig Carrigaline Municipal District Local Area Plan, 2016). Within this land use zoning, which includes all lands within a development boundary that do not have a specific zoning objective attached, the Development Plan advocates a more positive and flexible response to proposals for the reuse or redevelopment of underused or derelict land or buildings. More specifically, proposals for development within *'Existing Built Up Areas'* will be considered having regard to the wider objectives of the Development Plan; any general or other relevant objectives of the relevant local area plan, the character of the surrounding area; and any other planning and sustainable development considerations considered relevant to the proposal or its surroundings. In this respect, it is my opinion that, in light of the prevailing pattern of development in the surrounding area, the planning history of the application site, and the existing use of the subject site as a car sales showroom / display area, the construction of an unmanned petrol filling station at the location proposed is generally acceptable in principle and broadly adheres to the wider policy objectives of the Development Plan, subject to the further consideration of the specifics of the site context and the potential impact of the proposal on the surrounding area, with particular reference to traffic safety.

### **9.2 Traffic Implications:**

9.2.1 The proposed development site will be accessed from an existing service road which provides access to the Touchdown Business Park via the junction of same with the N27 Kinsale / Airport Road alongside a heavily trafficked section of the National Road which is subject to a speed limit of 50kph (N.B. Contrary to the applicant's submission, it is my understanding that the access road serving the application site is not known as 'Hazelwood Grove' which in fact refers to an entirely separate roadway that serves a scheme of housing located on the opposite side of the N27 National Route). In this respect concerns have been raised in the grounds of appeal as regards the traffic impact of the proposed development, with particular reference to the potential for the proposal to undermine the safety, efficiency and operational capacity of the N27 National Route in close proximity to one of the busiest and most important road junctions in the Cork City area.

9.2.2 From a review of the available information, it is apparent that the submitted proposal involves the development of an unmanned petrol filling station which will include a single pump island with provision being made for vehicle re-fuelling activities to be conducted on either side of same. Access through the

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development will be via a one-way circulation arrangement with vehicles entering and exiting the site by way of a new access / egress point to be opened within the south-western corner of the property onto the Touchdown Business Park access road. Visiting traffic will be required to turn off the N27 National Route and onto the Touchdown Business Park access road before then accessing the proposed development site with vehicles subsequently exiting back onto the public road via the existing uncontrolled priority junction of the Touchdown Business Park access road with the National Road.

9.2.3 In the initial assessment of the subject application by the Planning Authority, it is apparent that the Area Engineer had reservations as regards the location of the proposed entrance to the pump island relative to the existing junction with the N27 National Road in addition to the increased number of irregular traffic movements onto the public road likely to be generated by the proposed development. With respect to the foregoing the applicant was therefore required by way of a request for further information to submit a Stage 1 Road Safety Audit of the proposal.

9.2.4 In response to a request for further information, on 24<sup>th</sup> May, 2016 the applicant subsequently submitted amended proposals supported by a Stage 1 Road Safety Audit which identified a number of potential problems with the proposed development before recommending various measures which could be implemented to address same, all of which were accepted by the designer (i.e. the applicant), with the exception of Problem 3.7 which concerned repair works to the public footpath and was considered to be the responsibility of the Local Authority. Notably, these revised proposals also included for the provision of a second access point within the north-western corner of the application site which was identified as a *'fuel delivery vehicle entrance gate'* to be remotely controlled by fuel delivery drivers.

9.2.5 Following consideration of the aforementioned additional information, the Planning Authority was of the opinion that the applicant had failed to satisfactorily address several of the issues identified in the Road Safety Audit and that it was also unclear whether or not the audit had considered the newly proposed fuel delivery gate. Accordingly, in response to a request for clarification of further information, the applicant subsequently detailed further proposals in order to deal with the issues raised in the Road Safety Audit such as clarifying the level difference between the proposed development site and adjacent lands and providing for improved demarcation of the entry / exit point. Most notably, it was also indicated that the proposed *'fuel delivery vehicle entrance gate'* would not

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function as an entrance to the proposed facility and would instead only be used for delivery vehicles to exit the site. An 'autotrack' analysis of delivery tankers entering and exiting the site was also provided and in this respect I would advise the Board that upon turning into the Touchdown Business Park access road from the N27 National Road all such vehicles will be required to travel along the service road before performing a 180-degree turning manoeuvre in order to make a right-hand turn into the application site. Delivery tankers will subsequently travel against the one-way circulatory route in order to exit the site forwards onto the service road via the 'fuel delivery gate' before proceeding onto the N27 National Road (*N.B.* For clarity purposes, it should be noted that it has been indicated that the proposed filling station will be closed to customers during any fuel deliveries in order to avoid conflicting traffic movements etc. and that any such deliveries will occur before 07:00 hours or after 21:00 hours). It was on the basis of these additional details that the Planning Authority was ultimately satisfied that it was appropriate to grant permission for the proposed development.

9.2.6 Having reviewed the available information, it is clear that the N27 Kinsale / Airport Road is a key strategic route serving Cork City and that it is necessary to protect the substantial investment in the national road network and to improve the carrying capacity, efficiency and safety of same. In this respect, I would acknowledge the legitimacy of several of the concerns raised in the grounds of appeal as regards the potential traffic impact of the proposed development, including the restricted size and confined nature of the application site and its ability to safely accommodate the proposed use, particularly given its proximity to the national road.

9.2.7 At present, the N27 National Road alongside the application site comprises 2 No. westbound lanes and 2 No. eastbound lanes (including a bus lane) in addition to a dedicated right-hand turning lane into the Touchdown Business Park which forms a simple uncontrolled priority junction with a 'hatched yellow box' arrangement (shared with the junction with Hazelwood Grove to the north that is similarly served by a right hand turning lane off the N27). It should also be noted that there is a public footpath and a separate cycle-lane alongside the northern site boundary. The principle concern with regard to the subject proposal is the potential for the proposed development to give rise to conflicting traffic movements at this junction with the national road or to otherwise contribute to traffic congestion.

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9.2.8 In relation to the potential for the proposed development to give rise to instances of excessive queuing with the result that waiting vehicles may ultimately back-up onto the national road from the site entrance thereby contributing to increased traffic congestion or otherwise interfering with the free flow of traffic along the public road, I am inclined to accept the applicant's position that the siting of the actual entrance point to the proposed filling station approximately 25m from the junction of the Touchdown Business Park with the N27 National Road, particularly when combined with the available space on site, should be sufficient so as to provide adequate queuing space when consideration is given to the reasonably rapid turnover of trade on site given the absence of any ancillary retail offering and the sole acceptance of card payments. Any queuing arising on exiting the site should typically occur along the private roadway serving the business park and thus should not impact on the public road. However, I would have reservations as regards the proposed fuel delivery arrangements. In this respect I am inclined to suggest that the 'autotrack' analysis submitted to the Planning Authority on 12<sup>th</sup> July, 2016 serves to highlight the confined nature of the application site and the limitations of the proposed access / egress arrangements. For example, there will be a need for fuel delivery tankers approaching the site from the east to cross into the outside west-bound lane in order to perform a turning movement into the business park. In addition, it is apparent that given the close proximity of the proposed 'fuel delivery gate' to the junction with the N27 National Road, delivery trucks seeking to exit the site / business park onto the public road will block entry to this junction for on-coming traffic i.e. vehicles seeking to enter the Touchdown Business Park from both the east and west will have to wait for any waiting delivery truck to exit the business park / site. Whilst I would accept that the business park is already frequented by articulated vehicles associated with the existing business operations within same, at present any such vehicles exiting the service road do not block the junction on exit as they have already performed a complete turning movement and are exiting the junction perpendicular to the public road. Similarly, whilst I would accept that it has been asserted that deliveries will only be conducted before 07:00 hours or after 21:00 hours in an effort to avoid peak traffic times, I would suggest that this should be viewed as an attempt to mitigate the impact as opposed to a means to address or eliminate the problem in the first instance.

9.2.9 In addition to the foregoing, I would advise the Board that the subject application has not been accompanied by any traffic / transport impact assessment of the proposed development and thus it is unclear how the potential traffic volumes and turning movements associated with this car-dependent proposal will be accommodated.

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9.2.10 On balance, it is my opinion that the restricted size of the proposed development site, when taken in conjunction with its siting adjacent to a junction with the heavily trafficked N27 National Route, has the potential to give rise to conflicting traffic movements and associated congestion, and that it has not been adequately demonstrated that the proposal will be able to operate in a safe manner without detriment to the free-flow of traffic along this key strategic roadway.

9.2.10 With regard to the loss of an area of car parking consequent on the proposed development, given that this space is presently used for the display of motor vehicles for sale associated with the adjacent car sales showroom (as distinct from any usage for staff / customer car parking purposes), I am inclined to accept that this aspect of the proposal will not give rise to any significant impact in terms of wider traffic considerations.

### **9.3 Amenity Considerations:**

9.3.1 Various concerns have been raised in the grounds of appeal with regard to the impact of the proposed development on wider amenity considerations such as noise, lighting, visual impact / signage, security and the potential for anti-social behaviour etc. In this respect I would suggest that cognisance must be taken of the site context and its location within a predominantly mixed-use / commercial area alongside a heavily-trafficked national route. Accordingly, having regard to the specifics of the site location, with particular reference to the characteristics of the receiving environment and the separation distance from nearby housing, in addition to the surrounding pattern of development, it is my opinion that matters such as landscaping, boundary treatment, lighting and the control of signage etc. can be satisfactorily addressed by way of condition in the event of a grant of permission.

### **9.4 Procedural Issues:**

9.4.1 Concerns have been raised by the applicant in response to the grounds of appeal as regards the validity of the appellant's original objection to the planning application and, by extension, its subsequent lodgement of a third party appeal against the notification of the decision to grant permission as issued by the Planning Authority. In this regard it has been asserted by the applicant that the appellant's original submission to the planning file referenced PA Ref. No. 156553 (a planning application lodged by Emo Oil Ltd. T/A Great Gas for the development of an unmanned petrol filling station in Midleton) as opposed to the planning reference number allocated to the subject application i.e. PA Ref. No.

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16/4109. Accordingly, the argument has been forward that the appellant's original objection / observation as lodged with the Planning Authority should have been declared invalid and thus the Board should deem the subject appeal to be invalid.

9.4.2 Whilst I would acknowledge that the appellant's original objection to the planning application mistakenly references PA Ref. No. 156553, in my opinion, it is abundantly clear that the contents of that submission relate specifically to the subject proposal. For example, reference is made to the specifics of the site location and context whilst the document itself is emboldened by a heading which clearly refers to PA Ref. No. 164109 i.e. the subject application. Therefore, I am inclined to suggest that the reference to PA Ref. No. 156553 is, in effect, a typological error and does not serve to detract from the legitimacy of the objection as lodged. Accordingly, I do not accept that the assertion by the applicant that the subject appeal should be declared invalid and thus I do not propose to comment further on this matter.

### **9.5 Appropriate Assessment:**

9.5.1 From a review of the available mapping, and the data maps from the website of the National Parks and Wildlife Service, it is apparent that the proposed development site is located outside of any Natura 2000 site with the closest example of any such designation being the Cork Harbour Special Protection Area (Site Code: 004030) c. 2.8km northeast In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Objective No. HE 2-1: '*Sites Designated for Nature Conservation*' of Chapter 13 of the Cork County Development Plan, 2014, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

9.5.2 Having reviewed the available information, and following consideration of the 'source-pathway-receptor' model, it is my opinion that given the nature and scale of the development proposed, the site location outside of any Natura 2000 designation, the limited ecological value of the lands in question, the separation

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distance involved between the application site and the Cork Harbour Special Protection Area, and the availability of public services, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of the aforementioned Natura 2000 sites. Therefore, I am inclined to conclude that the proposed development would not be likely to significantly affect the integrity of the foregoing Natura 2000 sites and would not undermine or conflict with the Conservation Objectives applicable to same.

9.5.3 Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site, in particular, specific Site Codes: 004030, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

## **9.6 Other Issues:**

### **9.6.1 Competition / Commercial Interests:**

9.6.1.1 With regard to the applicant's reference to the subject appeal having been lodged by a competing commercial interest, I would refer the Board to Paragraph 23 of the 'Retail Planning, Guidelines for Planning Authorities, 2005' which specifically states the following:

*'It is not the purpose of the planning system to inhibit competition, preserve existing commercial interests or prevent innovation. In interpreting these guidelines local authorities should avoid taking actions which would adversely affect competition in the retail market.'*

9.6.1.2 Therefore, on the basis of the foregoing, it is clearly not within the remit of the planning system to interfere with competition in the retail sector or to seek to preserve established commercial interests and thus I do not propose to comment further on the applicant's concerns in this regard.

### **9.6.2 Invasive Species:**

9.6.2.1 During the course of a site inspection, it was observed that warning signage had been erected along the western site of the Touchdown Business Park service roadway (which will be used to access the application site) with regard to the presence of an invasive species, namely, Japanese Knotweed. Accordingly, in the event of a grant of permission, the Board may wish to



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consider the imposition of a suitable condition with regard to the implementation of an invasive species management plan during the construction stage of the proposed development.

9.6.3 Special Development Contribution:

9.6.3.1 Condition No. 6 of the notification of the decision to grant planning permission requires the payment of a special development contribution in the amount of €5,000 towards works proposed to be carried out to the public road and / or footpath in order to facilitate the development. The works in question would appear to involve the repair of defects in the public footpath identified in the Road Safety Audit, namely, that the existing tactile paving on either side of the junction of the Touchdown Business Park access road with the N27 National Road is damaged and thus presents a trip hazard to pedestrians and unstable ground for cyclists.

9.6.3.2 In this respect I would refer the Board to Section 48(2)(c) of the Act which states that Planning Authorities may require the payment of a special development contribution in respect of a particular development where specified exceptional costs not covered by the General Contribution Scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. By way of further clarification, it should be noted that Paragraph 7.12 of the *'Development Management, Guidelines for Planning Authorities, 2007'* states the following:

*“special contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of Section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis of the calculation, including how it is apportioned to the particular development”.*

9.6.3.3 Therefore, on the basis of the foregoing, it is necessary to consider whether or not the special development contribution as imposed complies with the requirements of Section 48(2)(c) of the Act.

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9.6.3.4 From a review of the available information, it is apparent that the special development contribution was imposed on the recommendation of the Area Engineer and that it is intended to contribute towards the repair of defects in the public footpath at the junction of the Touchdown Business Park access road with the N27 National Road, however, whilst I would acknowledge the merits in seeking to repair the identified defects, in my opinion, it is clear that the damage in question cannot be solely attributed to traffic movements arising from the subject site (given its usage in association with an existing car showroom premises). Similarly, although the construction period may bring about additional vehicular movements for a temporary period, both the size and scale of the works proposed could not be characterised as exceptional and it is not envisaged that such activity would be considered to give rise to specific or unique considerations. Indeed, I would suggest that it would be reasonable to conclude that the referenced footpath repair works simply comprise routine maintenance which would be covered by the adopted Section 48 Development Contribution Scheme and thus could not be considered to give rise to specific exceptional costs, particularly as any such repair works would be of benefit to the wider community.

9.6.3.5 Furthermore, notwithstanding that the works in question cannot be considered to involve 'specific exceptional costs', it is necessary to review the apportionment of the costs associated with same relative to the subject proposal. In this respect the identification of the works is key to the determination of the expenditure involved and to allow a clear basis for the calculation, including how the monies would be apportioned to a particular development. In the absence of these details it would be impossible for the applicant to calculate, in the future, if a refund would be payable should the works not commence or be partially completed within the specified timeframes. In this regard, it is regrettable that no clear details have been provided by the Planning Authority in respect of the calculation of the costs associated with the proposed road improvement works or how same has been apportioned to the subject development.

9.6.3.6 Therefore, it is my opinion that the repair works in question do not give rise to '*specific exceptional costs*' in accordance with the relevant legislative requirements. Accordingly, I do not consider that Condition No. 6 as imposed by the Planning Authority complies with the requirements of Section 48(2)(c) of the Act and thus it should be omitted from any decision to grant permission.

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## **10.0 RECOMMENDATION**

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

### **Reasons and Considerations:**

1. Having regard to the nature and scale of the development proposed, and the limited area and access arrangements associated with the site, it is considered that the traffic turning movements generated by the proposed development onto a heavily-trafficked major distributor road in close proximity to a major road junction would have an adverse effect on traffic congestion, would interfere with the safety and free flow of traffic and would, therefore, endanger public safety by reason of traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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

Robert Speer  
Inspectorate

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