



Development

A craft-distillery and visitors centre. The proposed development will consist of permission for; 1) A change of use of Building J from permitted Gaelscoil to craft distillery with display areas, 2) Change of use of part of Building K from permitted ground floor retail, 1st, 2nd & 3rd floor Gaelscoil to use as a visitors centre. The proposed visitors centre will include a shop with off-licence at ground floor level, tasting room and display areas at 1st floor level, media room and open plan area at 2nd floor level and ancillary office use & staff facilities at 3rd floor level, 3) Change of use of part of Building K from permitted ground floor retail to use as a café / restaurant, 4) Modifications to the façade including new signage, display windows, a new pedestrian walkway linking Buildings J & K at first floor level, 5) Retention of a fire escape stairway to Building K and permission to enclose same with select metal cladding, 6) Retention of

a ground floor extension to Building K (to form part of the proposed restaurant), 7) A distillery service yard to include 3 no. malt silos, a water tank, a pot ale tank, a process water holding tank, IBC storage, spent grain storage and an external store, 8) 2 no. LPG gas compounds, 9) Restaurant service yard, 10) Site development works to include alterations to the existing plaza consisting of the relocation and replacement of the existing ramp and stairs, internal access roadways, landscaping, footpaths & an ancillary car park, 11) a modified entrance at Clark Street including upgrades & provision of a roundabout at the existing Inchydoney Road / Casement Street / Clarke Street junction on the N71.

Location

The Waterfront, Inchydoney Road / Casement Street / Clarke Street Junction, Clonakilty, Co. Cork.

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

16/502

Applicant(s)

Clonakilty Distillery Ltd.

Type of Application

Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal	First Party v. Condition
Observer(s)	None.
Date of Site Inspection	None required.
Inspector	Robert Speer.

1.0 Introduction

- 1.1. This report relates to a first party appeal made under S.48 of the Planning and Development Act, 2000, as amended, in respect of Condition No. 25 as attached to the notification of the decision of the Planning Authority to grant permission for the proposed development.

2.0 Site Location and Description

- 2.1. The proposed development site is located on the south-eastern fringe of Clonakilty town centre alongside the junction of the N71 National Road (Clarke Street / Casement Street) with Red Strand Street (Inchydoney Road) at the mouth of the Feagle River. The site itself has a stated site area of 0.8331 hectares and forms part of a wider landbank known as 'The Waterfront' (which comprises the former GAA grounds) that has been earmarked for redevelopment in order to provide for an extension to the existing town centre to incorporate a substantial mixed-use scheme in addition to a variety civic spaces and amenities, including a boardwalk and a pedestrian bridge over the Feagle River. Only Buildings 'J', 'K' and 'H' have been constructed to date along with a plaza area located in the north-western extremity of the site.

3.0 Proposed Development

- 3.1. The proposed development consists of the change of use of Buildings 'J' and 'K' in order to provide for a craft-distillery and visitors centre with ancillary retail and café / restaurant areas in addition to associated office accommodation etc. as follows:
- The change of use of Building 'J' from a previously permitted Gaelscoil to a craft distillery with display areas.
 - The change of use of part of Building 'K' to provide for a visitors centre (from a permitted retail use on the ground floor and use as a Gaelscoil over the first, second and third floor levels) which will include a café / restaurant and a shop with off-licence at ground floor level, a tasting room and display areas at first floor level, a media room and open plan area at second floor level, and ancillary office use & staff facilities on the third floor.

- Modifications to the façade including new signage, display windows, and the provision of a new pedestrian walkway linking Buildings ‘J’ & ‘K’ at first floor level.
- The retention of a fire escape stairway to Building ‘K’ and the enclosure of same with select metal cladding.
- The retention of a ground floor extension to Building ‘K’ (to form part of the proposed restaurant).
- The provision of a distillery service yard to include 3 No. malt silos, a water tank, a pot ale tank, a process water holding tank, IBC storage, spent grain storage and an external store.
- The provision of an LPG gas compound.
- The development of a restaurant service yard.
- Assorted site development works, including alterations to the existing plaza consisting of the relocation and replacement of the existing ramp and stairs, and the provision of internal access roadways, landscaping, footpaths & an ancillary car park.
- The modification of the existing entrance onto Clarke Street to include the provision of a mini-roundabout at the existing Inchydoney Road / Casement Street / Clarke Street junction on the N71 National Road.

4.0 Planning Authority Decision

4.1. Decision

Following the receipt of a response to a request for further information, on 25th November, 2016 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 25 No. conditions. A significant proportion of these conditions are of a standardised format and relate to issues including development contributions, external finishes, signage, landscaping and infrastructural works, however, Condition No. 25 is of particular note given the context of the subject appeal:

'At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a special contribution of €75,000.00 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contribution Scheme, in respect of works proposed to be carried out, for the provision of a signalised junction on the N71 fronting the site which shall be provided by Cork County Council. The payment of the said contribution shall be subject to the following:- (a) where the works in question – (i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment), (ii) have commenced but have not been completed within 7 years of the date of payment of the contribution (or final instalment if paid by phased payment), or (iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the applicant together with any interest which may have accrued over the period while held by the Council. (b) Where under subparagraphs (ii) or (iii) of paragraph (a) above, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out. (c) Payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council.

Reason: It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development'.

4.2. Planning Authority Reports

4.2.1. Planning Reports:

Planning Officer: States that the proposed development accords with the applicable land use zoning objective and the Town Centre Strategy set out in the Clonakilty

Town Development Plan, 2009, however, it is noted that the lodgement of 2 No. further planning applications on the 'Waterfront' site under PA Ref. Nos. 16/590 & 16/591 could have implications as regards the proposed access arrangements i.e. the provision of a mini-roundabout (*N.B.* It is further clarified that Condition No. 8 of ABP Ref. No. PL50.241423 requires the provision of a right-hand turning lane from Casement Street and the signalisation of the junction).

Senior Planner: States that following discussions with the Area Engineer and the Roads Dept. of the Local Authority as regards the construction and funding of the signalisation of the N71 junction fronting the application site, a detailed costing of same has been completed and an agreement made to apportion said costs to those impacting on the traffic movements at the junction. Accordingly, a special development contribution of €75,000 is to be attached to the grant of permission in order to address the foregoing issue.

4.2.2. Other Technical Reports:

Estates Primary: No objection from a flood-risk perspective and recommends a grant of planning permission.

Traffic & Transport: No objection subject to conditions, including a requirement that no development should progress on site until such time as the junction of Casement Street / Inchydoney Road has been upgraded to a mini-roundabout (with the details of same to be agreed with the Planning Authority).

Ecologist: Recommends that the applicant be requested to submit a Draft Construction Environmental Management Plan and a Habitats Directive Screening Report by way of way of further information.

Area Engineer: States that whilst the provision of a mini-roundabout at the existing road junction is not a long-term solution, it is satisfactory in the shorter-term. No objection subject to conditions.

Environment: No objection subject to conditions.

Heritage Unit: No objection subject to conditions.

4.3. **Prescribed Bodies**

Health Service Executive / Environmental Health Officer: No objection subject to compliance with various public health and food hygiene requirements.

Inland Fisheries Ireland: States that there is no objection to the proposal to dispose of all effluent from the development to the public sewerage network provided Irish Water signifies that there is sufficient capacity in existence so as to ensure that the development does not overload existing treatment facilities or result in polluting matter entering waters. It is also recommended that conditions be imposed so as to avoid any interference with bridging, draining or culverting of any watercourse, its banks, or bankside vegetation etc. without the prior approval of IFI.

Irish Water: No objection subject to conditions.

Transport Infrastructure Ireland: Recommends that a pro-active approach towards transport mitigation measures will need to be addressed, implemented and monitored in full due to the nature of the proposed development. It is further advised that in the event of a grant of permission, and where the additional traffic to be generated by the proposal will require the upgrading of the roads so as to cater for the traffic concerned, and in order to maintain the carrying capacity and efficiency of the national road network, the costs, for any necessary road upgrade and / or traffic improvement works should be met by the developer.

4.4. **Third Party Observations**

A total of 4 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- The possible acquisition of third party lands (i.e. part of the garden area of a nearby resident) for road widening purposes.
- The wider implications of the proposal in terms of traffic management.

5.0 **Planning History**

On Site:

PA Ref. No. 07/50005. Was granted on 10th September, 2007 permitting Bob & Maria Hilliard permission for demolition of GAA Club House Building and construction of a mixed use development (gross floor area 36,002m²) on 4.19-hectare site.

PA Ref. No. 08/50004. Was granted on 15th May, 2008 permitting Bob & Maria Hilliard permission for change of plan from existing planning permission ref. no. 50005/07. The changes to building J are as follows: 1) The addition of a third floor plant room (29.5m²) 2) An increase of floor area for the ground floor bank from 158.9m² to 214m² 3) An increase of floor area for the first and second floor offices from 374m² to 380m². 4) Minor amendments to the facades. Building J will be built as Phase 1 of 5 Phases of construction of the existing planning permission ref. no. 50005/07. In addition, the construction of a temporary entrance during construction, a temporary new road layout on part of the site and temporary surface car parking at The GAA Grounds, Clarke Street / Inchydoney Road, Clonakilty, Co. Cork.

PA Ref. No. 08/50005. Was granted on 3rd June, 2008 permitting Bob & Maria Hilliard permission for a change of plan from existing planning permission ref. no. 50005/07. The changes to building H are as follows: 1) The addition of a third floor plant room to Building H and the omission of 5 no. apartments on the first and second floors and change of use of first floor to retail/commercial (221m²) and change of use of second floor to offices/commercial (221m²), therefore no change in floor area. There is an overall increase in height of the building to accommodate services. Building H will be built as part of Phase 1 of 5 phases of construction of the existing planning permission ref. no. 50005/07. All at the GAA Grounds, Clarke Street / Inchydoney Road, Clonakilty, Co. Cork.

PA Ref. No. 08/50009. Was granted on 12th June, 2008 permitting Bob & Maria Hilliard permission for change of plan from existing planning permission ref. no. 50005/07. The changes to building K are as follows: 1.) Part construction of Building K involving the construction of the west side only. The relocation of the stair cores on the ground floor, change of use in part of the first floor to retail (190.6m²) and change of use in part of the second and third floors to commercial use (332.2m²), the reduction of 12 no. apartments to 6 no. apartments and amendments to the facades to facilitate the above mentioned changes. 2.) The omission of part of the basement directly underneath the west side of Building K (future car parking provisions to be

made in a future phase of the development). Building K will be built as part of Phase 1 of 5 Phases of construction of the existing planning permission ref. no. 50005/07. All at the GAA Grounds, Clarke Street / Inchydoney Road, Clonakilty, Co. Cork.

PA Ref. No. 10/50004. Was granted on 10th August, 2010 permitting An Bord Bainistíochta Ghaelscoil Chloch na gCoillte permission for coinneáil cead pleanála agus cead athrú úsáide i leith na nithe seo a leanas: 1. Athrú úsáide Foirgneamh J ó úsáid gnó/oifige go húsáid scoile, 2. Athrú úsáide cuid d'Fhoirgneamh K ó úsáid oifige go húsáid scoile, 3. Tógáil shiúltán éalaithe tine ar chúl Fhoirgneamh K le Foirgneamh J, 4. Tógáil staighre éalaithe tine ar chúl Fhoirgneamh K, 5. Athraithe go aghaidh theas Fhoirgneamh K (tógáil 5 fhuinneog ar an 3ú úrlár). Cois Uisce, Cloch na gCoillte, Co. Chorcaí.

PA Ref. No. 10/50009 / ABP Ref. No. PL50.238118. Was granted on appeal on 18th August, 2011 permitting Bob and Maria Hilliard permission for the construction of a three-storey building (with 2 No. plant rooms at roof level) with a gross floor area of 5,845m², the ground floor consists of a discount retail store including an off-licence, storage and plant (1,465m²), 2 No. retail/commercial units (215m² and 100m²), café/restaurant (105m²). The first floor (2,070m²) comprises of retail area and the second floor (1,745m²) comprises of offices and associated ancillary accommodation. The vehicular access road will be from the existing entrance at the junction of Clarke Street / Inchydoney Road. This development also includes 117 surface car parking spaces (100 for the discount retail store), extension to existing boardwalk, plantrooms, signage, and all associated site works (change of plan from previous granted planning register reference number 50005/07) at The Waterfront, Inchydoney Road/Clarke Street Junction, Clonakilty, County Cork. (The proposed development was revised by further public notice received by the planning authority on the 28th day of October, 2010 including the replacement of the first floor retail and second floor offices and associated ancillary accommodation with first and second floors comprising of an events centre and an arts and culture centre).

PA Ref. No. 12/50005. Was granted on 22nd October, 2012 permitting Bob & Maria Hilliard permission for alterations and amendments to a 3 storey building permitted by 5000910 and PL50.238118. The proposed alterations consist of a reduction in the scale of the building from 3 storeys to 2 storeys and the omission of the Events Centre and Arts and Culture Centre permitted on first and second floors. The

proposed development will include alterations to the permitted elevations. The ground floor of the permitted building consisting of a discount retail store including and off licence, storage and plant (1,465m²), 2 no. retail / commercial units (215m² & 100m²) and a cafe/restaurant (105m²) remains unaltered. The construction, fit out and use of the first floor of the altered building will be the subject of a separate planning application. All at The Waterfront, Inchydoney Road / Clarke Street Junction, Clonakilty, Co. Cork.

PA Ref. No. 15483. Was refused on 19th October, 2015 refusing Lyonshall Limited permission for site development works including the raising of the existing site levels with imported fill and alterations to the existing plaza including the relocation and replacement of the existing ramp and stairs. All at The Waterfront, Inchydoney Road/Clarke Street Junction, Clonakilty, Co. Cork.

PA Ref. No. 16103. Was granted on 25th October, 2016 permitting Lyonshall Limited permission site development works to include the raising of the existing site levels with imported fill and alterations to the existing plaza including the relocation and replacement of the existing ramp and stairs. All at The Waterfront, Inchydoney Road/Clarke Street Junction, Clonakilty, Co. Cork.

PA Ref. No. 16590. Application by Lyonshall Limited for permission for a supermarket. The proposed development will consist of permission for: 1) the construction of a supermarket with off-licence and all ancillary signage, 2) site development works to include alterations to the existing plaza consisting of the relocation and replacement of the existing ramp and stairs, refuse store, plant enclosure, internal access roadways, landscaping, footpaths and an ancillary car park, 3) a modified entrance at Clarke Street including upgrades and provision of a roundabout at the existing Inchydoney Road/Casement Street/Clarke Street junction on the N71 and 4) a new vehicle access from the Inchydoney Road. All at The Waterfront, Inchydoney Road/Casement Street/Clarke Street Junction, Clonakilty, Co. Cork. No decision to date.

PA Ref. No. 16591. Application by Lyonshall Limited for permission for a 3 storey Primary Care Centre. The proposed development will consist of permission for: 1) the construction of a Primary Care Centre consisting of 3 no. ground floor retail/medical units, medical uses on the ground, first and second floor levels and all

ancillary signage, 2) site development works to include alterations to the existing plaza consisting of the relocation and replacement of the existing ramp and stairs, refuse enclosure, internal access roadways, landscaping, footpaths and an ancillary car park, 3) a modified entrance at Clarke Street including upgrades and provision of a roundabout at the existing Inchydoney Road/Casement Street/Clarke Street junction on the N71 and 4) a new vehicle access from the Inchydoney Road. All at The Waterfront, Inchydoney Road/Casement Street/Clarke Street Junction, Clonakilty, Co. Cork. No decision to date.

On Sites in the Immediate Vicinity:

PA Ref. No. 11/50004 / ABP Ref. No. PL50.239120. Was refused on appeal on 2nd February, 2012 refusing Lidl Ireland GmbH permission for the demolition of an existing agricultural/commercial building measuring approximately 151m²; construction of a single level mono-pitch discount foodstore with ancillary off licence use measuring 1,537m² gross floor space with a total net retail sales area of 1,065m²; provision of 2 No. building mounted internally illuminated signs, 1 No. free standing internally illuminated sign, 1 No. trolley bay internally illuminated sign, 3 No. wall mounted externally illuminated billboard poster signs and 2 No. directional signs; provision of a surface car park comprising 107 No. car parking spaces and 4 No. cycle parking spaces; upgrading of the existing site entrance for vehicular and pedestrian access along Inchydoney/Island Road to the proposed development; and provision of boundary treatments, hard and soft landscaping, lighting, connections to drainage and water services and all other ancillary and associated works, all on a site of 0.89 hectares at Inchydoney/Island Road (in the townland of Youghals), Clonakilty, Co. Cork.

PA Ref. No. 12/50014 / ABP Ref. No. PL50.241423. Was granted on appeal on 10th September, 2013 permitting Lidl Ireland GmbH permission for the development of a Licensed Discount Foodstore measuring 1,503m² and associated development and works on a site of 0.89 hectares comprising: the demolition of an existing agricultural/commercial building measuring approximately 151m²; the construction of a single level monopitch discount foodstore with ancillary off-licence use measuring 1,503m² gross floor space with a total net retail sales area of 1,065m²; the provision of 1 No. building mounted internally illuminated sign, 1 No. free-standing internally illuminated sign, 1 No. trolley bay internally illuminated sign, 3 No. wall mounted

externally illuminated poster panel signs; the provision of a surface car park comprising 82 No. car parking spaces; the upgrading of the existing site entrance for vehicular and pedestrian access along Inchydoney / Island Road to the proposed development; and, the provision of cycle parking, boundary treatments, hard and soft landscaping, lighting, connections to drainage and water services and all other ancillary and associated works, all at Inchydoney / Island Road (in the townland of Youghals), Clonakilty, Co. Cork.

Condition No 8:-

'The junction of the N71 and the Island Road shall be upgraded at the developer's expense in accordance with Option 1, as submitted with the Barry and Partners report to the planning authority on the 28th day of September, 2012. Final details of the upgrade and details of its implementation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety and convenience'

6.0 Policy Context

6.1. National and Regional Policy:

The 'Development Contributions, Guidelines for Planning Authorities' published by the Department of the Environment, Community and Local Government in January, 2013 aim to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since guidance was last issued in 2007. With regard to 'double charging' the Guidelines state that such a practice is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing "planning gain" in an equitable manner.

6.2. Cork County Development Plan, 2014:-

Chapter 7: Town Centres and Retail:

Section 7.2: Town Centres:

Section 7.2.5:

In order to maintain the attractive characteristics of our town centres applications for new development/changes of use within the town centre will need to ensure proposals will not detract from the amenity, vitality and character of the area. Where the evening economy is promoted it should avoid being detrimental to the amenity of residents. Safeguards regarding the hours of operation, control of litter and odour may be imposed as conditions to development. In cases where there is a proliferation of uses which threaten the vibrancy and mixed use character of the town centre they will be discouraged.

TCR 2-1: Town Centre:

- a) Maintain, strengthen and reinvent the role of town centres as dynamic attractive and inclusive environments and enhance their mixed use character by encouraging the retention and development of general office, retail, housing, office based industry, community, civic and entertainment uses.
- b) Encourage and promote innovation and creativity within town centres in relation to the use of streets, public spaces, vacant buildings and derelict sites for different public activities and events.
- c) Sustain, promote and manage the key role that diverse and vibrant town centres have to play in the tourism product of the county.
- d) Encourage the initiation and support the development of 'Town Teams' to guide stakeholders in the holistic management and revitalisation of town centres across the county.
- e) Support proposals for development involving evening and late night commercial, retail or entertainment uses within, or immediately adjacent to, the defined town centres or local service centre, where it can be demonstrated that the development will enhance the character and function of the area;
- f) Encourage, promote and facilitate the development of country/farmers markets in town centres devoted to the sale of local agricultural and craft

produce and support their role as visitor attractions which add to the vibrancy and vitality of towns.

- g) Encourage the preparation of targeted public realm strategies and other strategies in a general and specific sense for individual towns over the lifetime of the plan, particularly where a need has been identified through the local area plan process.
- h) Encourage and prioritise an urban framework approach for those town centres which are experiencing unique challenges such as heritage constraints, traffic and transportation issues, etc.
- i) Local Area Plans will identify and set out a proactive approach towards the development of opportunity sites (normally within or adjoining core town centre areas).
- j) In relation to Derelict Sites the council will endeavour to use all mechanisms available to it as appropriate in order to maximize the potential of such lands.
- k) Establish a General Development Contribution fund to support the physical improvement of the public realm and parking infrastructure within town centres.

Chapter 15: Putting this Plan into Practice:

Section 15.6: Local Area Development:

Section 15.6.6 In the past, 9 of the County's Towns have been served by Town Councils who were independent planning authorities and maintained their own Development Plans. However, in accordance with the Local Government (Reform) Act, 2014, all of the Town Councils have been dissolved and the County Council are now the sole planning authority for the entire area. The intention is that these town plans will expire when the new Municipal District Local Area Plans are adopted.

N.B. The Cork County Council website states that the Town Development Plans remain in force pending the making of the next County Development Plan in 2020.

Clonakilty Development Plan, 2009-2015:

Land Use Zoning:

The proposed development site is located in an area zoned as 'Town Centre: TC3'.

Other Relevant Sections / Policies (Vol. II: Policies & Objectives):

Chapter 3.0: Social & Economic Objectives:

Section 3.3.1: Strategic Objectives

Section 3.3.2: Development Management Objectives

Section 3.3.5: It is an objective of the Plan:

To promote the development of the town centre as a primary location for retail and other uses that provide goods or services to members of the public.

To maintain and enhance the mixed use character of the town centre by encouraging the retention and development of general office, retail, housing, office accommodation, community, childcare, civic and entertainment uses.

Section 3.4.3: Town Centre 3 (TC-3)

Chapter 6: Infrastructure Objectives:

Section 6.1: Strategic Objectives:

It shall be an objective to have regard to the final report of the Clonakilty Traffic and Transportation Study when it becomes available in the assessment of development proposals in the town.

6.3. Development Contribution Scheme:

The *Cork County Council Development Contribution Scheme, 2004* was adopted on 23rd February, 2004 and is intended to operate for a period of twenty years in line with the time periods of the Cork Area Strategic Plan and the North and West Cork Strategic Plans. The Scheme sets out the basis for the determination of the relevant

development contributions whereas Tables G4, G5 & G6 detail the initial rates of contribution applicable in respect of the various classes of infrastructure for specified categories of development within the Cork Area Strategic Plan (CASP) and the North and West Cork Strategic Plan (N&WCSP) areas. It also states that development contributions for windfarms, golf courses, quarries, gravel pits and other non-agricultural developments, which are not specifically allowed for in the General Scheme, will be levied as special contributions. Appendix 1 of the Scheme then sets out some particular types of developments where special contributions are to be levied whilst the amounts of the contributions in such cases are to be calculated on the basis of the criteria set down.

7.0 The Appeal

7.1. Grounds of Appeal

- The imposition of a special development contribution of €75,000 will place an unnecessary burden on the proposed development and has not been justified in a meaningful manner in the reports held on the planning application file.
- It is of relevance to note that in accordance with the spirit of the *'Development Contributions, Guidelines for Planning Authorities, 2013'* and Cork County Council's General Development Contribution Scheme, a general development contribution was not required for the proposed development on the basis that it involves a change of use to a less intensive use.
- No regard would appear to have been had to the proposal to improve the N71 junction through the provision of a new roundabout, particularly as the traffic analysis contained in the submitted Traffic and Transport Assessment has concluded that this *'significantly improves the operation of the N71 at this location'*.
- The existing waterfront development is accessed from the junction of Inchydoney Road with Clarke Street and whilst this arrangement has been permitted as 'entrance-only', it serves as the only access to the existing buildings until the internal service road is completed. In this respect it is anticipated that the N71 junction will be signalised in the future on the basis

that Condition No. 8 of the grant of permission issued under ABP Ref. No. PL50.242423 for a new supermarket requires such works to be carried out at the expense of that applicant (i.e. Lidl Ireland GmbH). It is also understood that Cork County Council has agreed the cost of the required upgrade with Lidl Ireland GmbH, which has paid for the signalisation of the junction, and that the timing of the works will be determined by the Local Authority.

- The proposed development involves a less intensive use and in this respect the Board is referred to the submitted Traffic and Transport Assessment which states that:

‘Traffic generation from the proposed change of use is significantly less than the use originally granted planning permission which is a positive traffic impact for the N71 junction. It should also be noted that the junction currently operates above capacity (107.8%) for a significant portion of the day and would benefit from both presented layout options’.

- The proposed development provides for the improvement of the N71 junction by way of a roundabout which is intended as an interim measure designed to improve the current operation of the junction pending its future signalisation. In this regard, the submitted TTA has reached the following conclusion:

‘The conclusion of the TTA is that Junction 1, reconfigured as a mini-roundabout, has adequate capacity to cater for the proposed change of use to a distillery and associated restaurant / café up to 2022’.

Furthermore, the report of the Senior Engineer (Traffic and Transportation) with the Local Authority notes that:

‘Applicant proposes to upgrade the junction in question by altering to a mini-roundabout configuration and the TTA has identified that this configuration will give significant additional capacity to the junction over and above the current configuration. I have no objection to this proposal.

It should be noted that the proposed development does not give rise to significant peak time traffic volumes and so its impact on the junction is not very significant. It does however give rise to right turning movements which are problematic at this junction and does involve exiting traffic from

the site which cannot be accommodated with the current junction configuration'.

Therefore, it is clear that the proposed development will not only result in a long-term viable use for the existing buildings, but will also deliver significant improvements to the operation of the N71 junction.

- In assessing the subject application, the Planning Authority had regard to the fact that development contributions had already been paid in respect of the existing buildings whilst the *'Development Contributions, Guidelines for Planning Authorities, 2013'* state that development contributions should not be sought where there has been a change of use:

'waivers in the case of change of use permissions, where change of use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure (including, for example, transport infrastructure)'.

- Section 48(2)(c) of the Planning and Development Act, 2000, as amended, states that a planning authority can require the payment of a special development contribution in instances where:

'specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development'.

In this regard it is submitted that the applicant has no objection to contributing towards the upgrade of the N71 junction despite the fact that contributions (including contributions towards roads) have already been paid in respect of the existing buildings and notwithstanding the assertion in the Traffic and Transport Assessment that *'Traffic generation from the proposed change of use is significantly less than the use originally'*. The accompanying letter from MHL Consulting Engineers estimates the cost of the provision of an urban mini-roundabout as normally in the range of €50,000 - €90,000 and includes an estimate of €57,515 (excluding VAT) for those works the applicant proposes to carry out to improve the junction.

It is considered that the Planning Authority has not had full regard to the foregoing and its approach to the levying of special development contributions is inconsistent with that applied towards the levying of the general contributions. That approach also contrasts with the spirit of the *'Development Contributions, Guidelines for Planning Authorities'* and, in particular, one of the key messages of same which state that:

'Development contributions are not cash-cows: there is an important balance to be struck between the funding of public infrastructure and the need to encourage economic activity and promote sustainable development patterns. It is essential that development contribution schemes do not impede job creation or facilitate unsustainable development patterns.'

The Guidelines also highlight that:

'While it is expected that planning authorities will ensure that developers make an appropriate contribution towards the costs of public infrastructure and facilities, the local authority must ensure that it avoids levying development contributions that are excessively high – development contributions are ultimately designed to offset only a portion of the costs of public infrastructure and facilities.'

- It is unclear how the special development contribution has been calculated and how it has been apportioned to the future cost of signalling the N71 junction.
- The *'Development Contributions, Guidelines for Planning Authorities'* state the following:

'A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs which are not covered by the general contribution scheme, are incurred by a local authority in the provision of the public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the

public infrastructure or facility in question should be liable to pay the development contribution’.

The signalisation of the N71 junction is not required to accommodate traffic volumes associated with the proposed development (which are less than those uses already permitted). The signalisation of the roundabout will only be required if and when the remainder of the ‘Waterfront’ site is developed and, based on traffic projections and analysis carried out in the TTA, is also unlikely to be required until after 2022. In any case, Lidl Ireland GmbH may have already paid for the signalisation of the junction pursuant to Condition No. 8 of ABP Ref. No. PL50. 241423.

- On the basis of the foregoing, and having regard to the lack of a justification or breakdown of the special development contribution, it is difficult to understand how the proposed development will benefit from the signalisation of the N71 (which is unlikely to be required until 2025 and has already been paid for).
- The applicant has no objection to making an appropriate contribution towards the costs of public infrastructure and facilities in the area and has already committed to carrying out improvement works to the junction which will cost in the region of €60,000. These works will significantly improve the operation of the N71 junction until such time as signalisation is required.
- The special development contribution has not been fully justified and is contrary to current guidance in that it is not clear what proportion of public investment in the signalisation of the N71 the monies will be used to offset. The levy imposed would also appear to amount to ‘double-charging’ as development contributions have already been paid for more intensive uses on site and as payment for the signalisation of the junction has already been made by Lidl Ireland GmbH in accordance with Condition No. 8 of ABP Ref. No. PL50.241423.

7.2. Planning Authority Response

- The most significant aspect of the proposed development concerns the access from a critically important junction and the associated right-hand

turning movements which will have the potential to block the junction unless a right-hand turning lane is provided. While a mini-roundabout may well be a short-term solution for addressing the traffic concerns at this junction, a roundabout will not serve the needs of pedestrians or cyclists and therefore is not a sustainable proposal. Signalisation of the junction, incorporating a right-hand turning lane from Casement Street, is required to manage all the traffic movements and a mini-roundabout could only be considered a short-term intervention.

- The N71 is the only national route in West Cork and as such is a critical strategic route serving the needs of the region. In addition to the traffic travelling along the N71 National Road, Casement Street is also a critical part of the one-way traffic system operating in Clonakilty town insofar as all eastbound town centre traffic must use Casement Street in the absence of an alternative route. Accordingly, Casement Street is subject to high traffic volumes, especially during peak periods.
- The existing priority junction operates with the Inchydoney Road yielding to the N71 National Road and access to the application site is via an additional arm from this junction. By virtue of the configuration of the junction, traffic entering the application site is effectively performing a right-hand turning movement and thus has the potential to block the roadway. Whilst a 'mini-roundabout' may be sufficient to accommodate the likely traffic volumes and right-hand turning movements, such a proposal will not serve the needs of pedestrians and cyclists very well. A roundabout junction at this location would, in effect, create a barrier to movements by non-car modes and could not be considered to be sustainable. A signalised solution would provide a more effective means of managing traffic flows at the junction and would also include controlled crossing opportunities for pedestrians and cyclists. Ultimately, it is considered that the sustainable solution for access to the application site is signalisation and that is reasonable for the applicant to make a contribution towards this cost.
- The cost of the signalisation has been estimated at €400,000, including the acquisition of two separate parcels of land, and given the complexity of the project, in addition to the need to keep the roadway open to traffic at all times

during construction, the Local Authority is satisfied that this is a reasonable estimate of the costs involved. Equally, given that the subject application represents a significant element of the 'Waterfront' development and the traffic arising therefrom, a contribution of €75,000 is deemed to be reasonable.

- If permission were to be granted in the absence of a significant contribution towards the signalisation required, then a serious traffic management problem will have been created without a clear solution which would have serious implications for the satisfactory functioning of the N71, town centre traffic flow, and access for emergency vehicles etc.
- The development contribution has been levied on the basis of the proposed development and other future development that is likely to take place on the 'Waterfront' site.
- There are presently 2 No. further planning applications on site (PA Ref. Nos. 16/590 & 16/591). The proposed roundabout works are considered to comprise a short-term solution and will not adequately cater for pedestrians or cyclists within a town centre setting. Similarly, the proposed roundabout will not adequately deal with traffic movements and flows in the long term. It is likely that as development progresses on the wider site, the proposed roundabout works will be superseded thus it would be preferable to progress the final solution.

N.B. At this point I would refer the Board to the table appended to the Planning Authority's submission which includes a detailed estimate of the costs associated with the signalisation of the N71 Junction (including land acquisition costs) and the apportionment of same towards the proposed development.

7.3. Further Responses

Response of the Applicant to the Submission of the Planning Authority:

- Notwithstanding the Planning Authority's justification of the proposed works on the basis of the long-term wider traffic management benefits for Clonakilty and the submission of the costs of said works in addition to the apportionment

of same, it is considered that the Planning Authority has failed to identify the specific benefits for the proposed development and, therefore, the special development contribution does not comply with the legislative requirements of Section 48(2)(c) of the Act or accord with the provisions of the *'Development Contributions, Guidelines for Planning Authorities'*.

- The signalisation of the N71 junction will not benefit the proposed development and, in this regard, whilst the planning authority has highlighted that the signalisation of the N71 junction is a long-term solution, the Board is advised that the Traffic and Transport Assessment prepared in support of the subject application has concluded that the signalisation of the junction will not be required to accommodate the traffic volumes associated with the proposed development. The signalisation of the roundabout will only be required when the remainder of the 'Waterfront' site is developed and, based on traffic projections and analysis carried out in the TTA, is unlikely to be required until after 2022 which is likely to be outside the 5-7 No. year horizon for special development contributions.
- The applicant has no interest in, and will not benefit from, the development of the remainder of the 'Waterfront' site which is retained in different ownership. Furthermore, the applicant has no control over when and for what purpose the wider site will be developed.
- The proposed development will benefit from the immediate upgrade of the N71 junction in the form of a roundabout as an interim measure that will improve the current operation of the junction pending its future signalisation. In this regard it should be noted that the TTA has reached the following conclusion:

'The conclusion of the TTA is that Junction 1, reconfigured as a mini-roundabout, has adequate capacity to cater for the proposed change of use to a distillery and associated restaurant / café up to 2022'.

Furthermore, the Planning Authority has no objection to the proposed roundabout and the Senior Engineer, Traffic and Transportation, has noted that the:

‘Applicant proposes to upgrade the junction in question by altering it to a mini-roundabout configuration and the TTA has identified that this configuration will give significant additional capacity to the junction over and above the current configuration. I have no objection to this proposal.

It should be noted that the proposed development does not give rise to significant peak time traffic volumes and so its impact on the junction is not very significant. It does however give rise to right turning movements which are problematic at this junction and does involve exiting traffic from the site which cannot be accommodated with the current junction configuration’.

- It is considered that the roundabout (which is to be provided by the applicant at a cost of €57,515 excluding VAT) is the only piece of public infrastructure which will benefit the very specific requirements of the proposed development. Indeed, as the signalisation of the N71 junction is likely to be outside the 5-7 No. year horizon of the special development contribution and thus will not benefit the proposed development, Condition No. 25 does not comply with the requirements of Section 48(2)(c) of the Planning and Development Act, 2000, as amended.
- The *‘Development Contributions, Guidelines for Planning Authorities’* state that Planning Authorities should be vigilant and *‘ensure that the necessary monitoring and control procedures are in place to prevent double charging’*. They further state that:

‘The practice of “double-charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution’.

The proposed development consists of the change of use of 2 No. existing buildings which were previously permitted under PA Ref. No. 07/50005 (Subsequent to the governing permission, alterations were permitted to

Buildings H, J & K and these buildings and associated hard and soft landscaping works have been completed to the northwest of the site). Building 'J' and part of Building 'K' had permission to accommodate Gaelscoil Chloch na gCoillte on a temporary basis, but this use has ceased and the buildings have since remained unoccupied save for 6 No. existing apartments.

The ground and upper floors of the buildings were never used for the permitted use, but the development contributions (which included a contribution towards the upgrade of the local road network) were paid in full.

- The proposal involves a less intensive use and the TTA states that:

'Traffic generation from the proposed change of use is significantly less than the use granted planning permission which is a positive traffic impact for the N71 junction. It should also be noted that the junction currently operates above capacity (107.8%) for a significant portion of the day and would benefit from both presented layout options'.

- The signalisation of the N71 junction was conditioned as part of ABP Ref. No. PL50.241423 as follows:

'The junction of the N71 and the Island Road shall be upgraded at the developer's expense in accordance with Option 1, as submitted with the Barry and Partners report to the planning authority on the 28th day of September, 2012. Final details of the upgrade and details of its implementation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety and convenience'.

It is also understood that the Council has agreed the cost of the junction signalisation with Lidl Ireland GmbH and that the timing of the works will be determined by the Local Authority.

The proposed change of use will not require any new or upgraded infrastructure / services or result in any significant intensification of the demand placed on existing infrastructure. Instead, the proposal will result in a significantly reduced burden on public infrastructure than that previously permitted.

- Development contributions have already been paid for the existing buildings on site whilst the signalisation of the N71 junction has similarly been authorised and paid for in accordance with Condition No. 8 of ABP Ref. No. PL50.241423. Therefore, payment of €75,000 as a special development contribution towards the provision of a signalised junction on the N71 amounts to 'double charging', is inequitable and does not accord with *the 'Development Contributions, Guidelines for Planning Authorities, 2013'*.
- The *'Development Contributions, Guidelines for Planning Authorities, 2013'* recommend that development contributions should not be applied to proposals for a change of use as follows:

'waivers in the case of change of use permissions, where change of use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure (including, for example, transport infrastructure)'.

The only upgrading of public infrastructure required by the subject proposal concerns the improvement of the N71 junction which will be undertaken by the applicant in the context of the development despite the fact that the TTA has concluded that *'Traffic generation from the proposed change of use is significantly less than the use originally granted planning permission which is a positive traffic impact for the N71 junction'*. Therefore, as the proposed development will reduce the demand placed on existing infrastructure, including transport infrastructure, it is submitted that a waiver from development contributions would be appropriate in this instance having regard to the *'Development Contributions, Guidelines for Planning Guidelines'*.

8.0 Assessment

- 8.1. This is an appeal made under the provisions of Section 48 of the Act and therefore the Board is restricted to considering Condition No. 25 alone and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the condition that has been appealed.
- 8.2. Condition No. 25 requires the payment of a special development contribution in the sum of €75,000 towards the cost of works proposed to be carried out *for the*

provision of a signalised junction on the N71 fronting the site which will apparently benefit the proposed development. From a review of the available information, it would appear that this special contribution was imposed on the recommendation of the Senior Planner following discussions with the Area Engineer and the Senior (Roads) Engineer wherein a detailed costing for the signalisation of the N71 junction was calculated and the decision made that it was appropriate to apportion the costs of same onto those developments likely to impact on traffic movements at the junction. The rationale for the imposition of this special development contribution is further elaborated in the response of the Planning Authority to the grounds of appeal which effectively states that the proposed development is reliant on access from a critically important junction off the N71 National Road in Clonakilty town centre and that whilst the applicant's proposal to provide a mini-roundabout at this junction will serve to alleviate the likely traffic impact in the short-term, the signalisation of the junction (including the provision of a right-hand turning lane from Casement Street) will ultimately provide a more effective and sustainable means of managing traffic flows in the longer-term, particularly as development progresses on the wider 'Waterfront' site. In further support of the foregoing, reference has been made to the right-hand turning movements associated with the proposed development and the potential for same to obstruct the free-flow of traffic along the public roadway (unless a right-hand turning lane is provided) in addition to the need to provide for controlled crossing opportunities for both pedestrians and cyclists. Accordingly, it has been submitted that the only sustainable solution for access to the application site is by way of the signalisation of the N71 Junction and that is reasonable for the applicant to make a contribution towards the cost of same (as per the accompanying breakdown of the estimated cost appended to the response to the grounds of appeal).

- 8.3. In response to the inclusion of Condition No. 25 the applicant has submitted that the Planning Authority has failed to provide a satisfactory justification for the imposition of the special development contribution of €75,000 pursuant to the provisions of Section 48(2)(c) of the Planning and Development Act, 2000, as amended. In this regard specific reference has been made to the fact that the signalisation of the N71 junction is already provided for under Condition No. 8 of the grant of permission issued in respect of PA Ref. No. 12/50014 / ABP Ref. No. PL50.241423 whilst it has

also been asserted that the proposed development is not, in itself, reliant on the aforementioned junction improvement works given that the subject application includes for the provision of a new mini-roundabout arrangement which will satisfactorily address the traffic movements arising from the proposed change of use. Furthermore, it has been submitted that no account has been taken of those development contributions already paid in respect of the existing buildings on site (i.e. Buildings 'J' & 'K') and the contention that the subject proposal involves a change of use to a less intensive form of usage than was originally permitted and constructed (though not occupied) on site.

- 8.4. In assessing the subject appeal, I would refer the Board in the first instance 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 in this respect I note 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".

- 8.5. In addition, I would refer the Board to the *'Development Contributions, Guidelines for Planning Authorities, 2013'* which state the following:

'A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public

infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution’.

8.6. 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.

8.7. From a review of the available information, it is of relevance at the outset to note that with the exception of the special development contribution required by Condition No. 25, the Planning Authority has not sought to impose any other development contributions on the proposed development and in this regard I would specifically refer the Board to the final Planner’s Report held on file which states that development contributions are not considered to be applicable on the basis that the *‘proposed uses would attract the same or lower contributions rate as already permitted’*. Whilst the Cork County Council General Development Contribution Scheme, 2004 does not include any express provision whereby a reduced rate of the development contribution applicable (or indeed an exemption from any requirement to pay a development contribution) may be applied in those instances where a proposed change of use does not lead to a need for new or upgraded infrastructure / services or result in a significant intensification of demand being placed on existing infrastructure (e.g. transport infrastructure) despite the *‘Development Contributions, Guidelines for Planning Authorities, 2013’* requiring planning authorities to include waivers for such development proposals in development contribution schemes, it is notable that the Planning Authority would appear to have adopted such an approach in its assessment of the subject proposal. Accordingly, I am inclined to concur with the applicant that given the decision of the Planning Authority not to attach a general development contribution in respect of the proposed development, seemingly on the basis that the proposed change of use would not give rise to any increased demand on public services / infrastructure, it would appear to be somewhat unreasonable to impose a special development contribution in the absence of any significant traffic impact consequent on the subject proposal over and above that already associated with the permitted use of the existing buildings on site. It is of further relevance to

note that development contributions would also appear to have been paid in respect of the existing buildings on site and their permitted usage.

8.8. With regard to the suggestion by the applicant that the road improvement works (i.e. the signalisation of the N71 junction fronting the application site) which will be funded (in part) by the special development contribution are not actually required to facilitate the proposed development, I would refer the Board to the submitted Traffic and Transport Assessment which states that whilst the existing priority junction is already operating over-capacity at a 'Ratio of Flow to Capacity' of 107.8%, the re-configuration of the junction as a mini-roundabout (as has been proposed in the subject application) would allow it to operate within capacity up to and including 2022 with the proposed development in place thereby significantly improving the operation of the N71 at this location, although it is subsequently conceded that the further development of the wider 'Waterfront' site (as proposed in PA Ref. Nos. 16/590 & 16/591) would reduce the timeframe for the satisfactory operation of the re-configured junction to 2020. In this respect it is of particular relevance to note that the Engineering and Traffic & Transport Depts. of the Local Authority both accepted that the applicant's proposal to upgrade the existing junction to a mini-roundabout would provide additional capacity and did not object to the proposed development on traffic grounds. Whilst I would acknowledge the desirability of signalising the junction in order to 'future-proof' it against the development of the remainder of the 'Waterfront' site (as has been suggested by both the Local Authority and the Traffic & Transport Assessment), and although the subject proposal may ultimately benefit to some extent from any such works, in my opinion, it is apparent that the proposed development is not in itself dependent on the signalisation of the existing junction. Accordingly, I am inclined to suggest that in this instance it would be inappropriate to levy the subject proposal for works which, whilst ultimately benefitting the proposed development at some undefined future date, would effectively exceed the specific requirements of the proposed change of use.

8.9. In addition to the foregoing, the grounds of appeal have referenced the specific requirements of Condition No. 8 of the grant of permission issued in respect of PA Ref. No. 12/50014 / ABP Ref. No. PL50.241423 which states the following:

'The junction of the N71 and the Island Road shall be upgraded at the developer's expense in accordance with Option 1, as submitted with the Barry

and Partners report to the planning authority on the 28th day of September, 2012. Final details of the upgrade and details of its implementation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety and convenience’.

8.10. Having reviewed the plans and particulars approved under ABP Ref. No. PL50.241423, it can be confirmed that ‘Option 1’ as referenced above provides for the upgrading of the junction of the N71 and the Island Road by way of signalisation with the associated provision of pedestrian facilities and right-hand storage for 2 No. PCUs. Therefore, it would appear that the signalisation of the existing junction serving the subject site is to be improved in its entirety as part of another development and at the expense of a third party. Given that the report of the Area Engineer with regard to the subject proposal states that *‘Development contributions have been paid and infrastructure has been put in place for the implementation’* of the junction signalisation works approved as part of ABP Ref. No. PL50.241423, it would appear that there is an intention to proceed with that development and thus the relevant developer would be obliged to comply in full with the terms and conditions of that grant of permission, including the requirement to provide for signalisation of the N71 junction. Consequently, I would have serious concerns that the imposition of the special development contribution sought by the Planning Authority in respect of the subject proposal could be interpreted as a mechanism by which to burden the applicant with costs attributable to an entirely separate development and which are not ‘specific’ or ‘exceptional’ to the development presently under consideration.

8.11. In relation to the assertion by the applicant that no allowance has been by the Planning Authority in its calculation of the special development contribution for the costs associated with the reconfiguration of the N71 junction in the form of a mini-roundabout (which will not only serve the proposed development but will also have a beneficial impact on wider traffic management in the immediate area), I would accept that the breakdown of costs supplied by the Planning Authority in response to the grounds of appeal would appear to support the applicant’s position. However, I would suggest that it is perhaps of greater relevance to note that the decision to grant permission for the proposed development as issued by the

Planning Authority will effectively give rise to a scenario whereby the applicant will be obliged to provide a new roundabout and to also pay monies towards works which would replace said roundabout in the short-term i.e. within 5-7 years (Indeed, circumstances could also potentially arise whereby there will be a conflict between the junction configuration demands of the subject proposal and the development permitted under ABP Ref. No. PL50.241423). In my opinion, such a scenario is clearly both unreasonable and undesirable.

- 8.12. By way of further comment, I would advise the Board that prior to the dissolution of Clonakilty Town Council, the Town Development Contribution Scheme (as updated in 2010) would appear to have reflected the provisions of the Town Development Plan, 2009 which includes an objective to have regard to the final report of the Clonakilty Traffic and Transportation Study (once available) in the assessment of development proposals in the town. In this regard it should be noted that the Final Draft Clonakilty Traffic and Transportation Study was published in 2011 and included a proposal for the signalisation of the N71 junction fronting the application site at Clarke Road / Casement Street. It is unclear whether these signalisation works would have been considered in the formulation of the Clonakilty Town General Development Contribution Scheme thereby negating any requirement for a special development contribution towards same or if these provisions were subsequently deemed to have been incorporated in the Cork County Council General Development Scheme (seemingly negating any requirement for a special development contribution).
- 8.13. Having considered the available information, I am inclined to conclude that the special development contribution sought by Condition No. 25 of the notification of the decision to grant permission is unwarranted on the basis that the works in question exceed the specific requirements of the proposed change of use and cannot be considered to constitute a specific exceptional cost in relation to this particular development. Furthermore, the monies sought would appear to be unnecessary in light of the payments already made with regard to Condition No. 8 of the grant of permission issued in respect of PA Ref. No. 12/50014 / ABP Ref. No. PL50.241423 which stipulates that the developer of that project should undertake the junction signalisation works at his own expense.

8.14. Accordingly, on the basis of the foregoing, it is my opinion that the attachment of Condition No. 25 as a special development contribution fails to meet the requirements of Section 48 of the Act.

9.0 Recommendation

9.1. On the basis of the foregoing I consider that the Planning Authority has erred in its imposition of a special development contribution and, therefore, it is my recommendation that the Planning Authority should be directed accordingly to **REMOVE** Condition No. 25 for the reasons and considerations set out hereunder.

10.0 Reasons and Considerations

The Board considered that the item imposed under condition number 25 for payment of €75,000 (seventy-five thousand euro) as a special development contribution towards the cost of works proposed to be carried out involving the provision of a signalised junction on the N71 fronting the site does not accord with the provisions of section 48(2)(c) of the Planning and Development Act, 2000, as amended, as it has not been established that this constitutes a specific exceptional cost in relation to this particular development.

Robert Speer
Planning Inspector

20th March 2017