



An  
Bord  
Pleanála

## Inspector's Report PL04.248375

**Development** 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.

**Location** The Waterfront, Inchydoney Road, Casement St. and Clark St. junction, Clonakilty Co. Cork.

<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	16/590
<b>Applicant(s)</b>	Lyonshall Ltd/
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with 30no. conditions
<b>Type of Appeal</b>	First Party against a special development contribution condition
<b>Appellant(s)</b>	Lyonshall Ltd.

**Observer(s)** None  
**Date of Site Inspection** 24/07/16  
**Inspector** John Desmond.

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## 1.0 Site Location and Description

- 1.1. The application site is located at the southeast side of Clonakilty town, within what is referred to by the Council as the Waterfront lands (former GAA grounds) to the south and east of the N71 (from west to east - Casement Street, Clarke Street and Croppy Quay) and east and north of Inchydoney Road (local road). The northwest section of the Waterfront lands has been redeveloped for higher order uses and the planning history (and zoning objective) suggests progressive redevelopment of these lands for town centre-type mixed uses.
- 1.2. The site has a stated area of 1.195ha. It comprises a regular block of c.1ha located centrally along the southern boundary of the Waterfront lands, with a spur to the west connecting to and encompassing part of the N71 and its junction with Inchydoney Road and a portion of the existing plaza at the northwest corner of the Waterfront lands. The northwest, north and east sections of the application site overlap the red line boundary of the application reg.ref.16/591, subject of concurrent appeal PL05.248374.
- 1.1. The Waterfront lands are generally flat and low-lying but have been subject to significant infilling in recent years. The town's wastewater treatment plant is located c.100m to the east and the Clonakilty Model Railway Village tourist attraction c.125m to the southeast, with the intervening land undeveloped. A discount food store (Lidl) has recently been developed to the southwest of Inchydoney Road. At time of inspection, the lands south of Lidl were and south of Inchydoney Road were in agricultural use.
- 1.2. The existing site entrance is onto the N71 at its junction with the Inchydoney, located at a sweeping bend on the major road, a short distance from another similar sweeping bend to the north. The character of the N71 north from the proposed site access, is that of a distributor road, being a wide carriageway (estimate 10m, excluding pavement), with sweeping horizontal alignment, partial hard-shoulders, almost no frontage development access, few junctions, poor pedestrian facilities (including a vague, uncontrolled pedestrian crossing c.30m to the north) and no on-street parking except on the west side of Clarke Street.

- 1.3. Westbound approach the junction with Inchydoney Road, the N71 has two lanes - a combined local access (to the site) and left-turn lane to Inchydoney Road, in addition to the through-traffic lane. However, the left-turn lane is not obvious due to the worn road makings and the use of the lane for car parking, despite double-yellow lines.
- 1.4. The character of the N71 changes to an urban street (Casement Street) west of the said junction. The carriageway narrows to c.6m, the street accommodates frontage residential and commercial and there are continuous pedestrian footways (and a zebra crossing c.100m to the west) and on-street parking.
- 1.5. The junction of the N71 with Inchydoney Road is a priority junction that is very poorly defined, with large corner radii and broad flares. The pedestrian facilities for crossing the N71 are remote - 30m north and c.100m west. The junction between the N71 and Clarke Street local road to the north is of similar design. I noted heavy traffic the N71 at the time of inspection.

## 2.0 **Proposed Development**

2.1. The proposed development comprises as follows:

- the construction of a supermarket with off-licence and all ancillary signage;
- 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;
- 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 a new vehicle access to / from the Inchydoney Road.

2.1.1. Supplementary documentation

- Planning Statement
- Flood Risk Assessment
- Traffic and Transport Assessment

- Stage 1 Screening Assessment
- Best Practice Guidelines Japanese Knotwood
- Otter and Kingfisher Assessment
- Land owner consent letter (Cork County Council and Dunowen Farm Investments Ltd)

2.2. Further information revisions (01/03/17) - included

Proposed junction: 24m diameter roundabout - KCC\_PRA\_D01  
 N71 pedestrian crossing overview - SLK3  
 N71 pedestrian crossing proposals - SKL4  
 Landscape master plan - L110  
 DMURS in the landscape - L101

### 3.0 Planning Authority Decision

#### 3.1. Decision

To **GRANT** permission subject to 30no. conditions.

Condition no.29 (subject of this 1<sup>st</sup> Party Appeal) is a special development contribution condition, requiring the (index-linked) payment of €127,375.00 to Cork County Council in respect of works proposed to be carried out for the provision of a signalised junction on the N71 fronting the site.

Condition no.11 requires the Clarke Street / Inchydoney Road / Casement Street junction (on the N71) to be upgraded (as indicated on drawing no. KCCC\_PRA\_D01 Rev D, 01/03/17) at the applicant's expense to a 24m diameter roundabout, with the details and timing of the junction upgrade to be agreed with the Planning Authority.

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

**Area Planner (11/11/16)** - The first report recommended further information be sought in respect of 19no. points, including *inter alia* (item no.1) relating to the

proposal for a roundabout junction at the entrance to the site Clarke Street / Casement Street junction in the context of previous development on the Waterfront Lands permitted on the basis of a signalised junction, (item no.2) compliance of the proposed vehicular access with DMURS and (item no.6) demonstration of compliance with TC-3 zoning objective including pedestrian priority and linkages both within the site and with the existing town context. Item no.8 requested the building be rotated slightly to provide a streetscape edge.

**Area Planner (23/03/17)** - The second (final) report of the Area Planner noted, inter alia, that (item no.1) the applicant proposes to provide a 24m roundabout at its own expense and is willing to pay a modest special development contribution towards the signalised junction solution; and that (item no.2) the applicant submits that the proposed roundabout complies with DMURS. The Area Planner considered the proposed roundabout to be non-compliant with DMURS and unsustainable in terms of pedestrian and cycling connectivity between the site and the town in the longer term. She noted that the Council's Traffic and Transport Engineer is willing to accept the provision of the amended roundabout, having regard to the constraints, up to 2025, by which time a signalised roundabout part-funded by the developer shall be operational. The Area Engineer's report was pending at time of the report. She recommended that permission be granted subject to 14no. conditions, including a condition requiring the upgrading of Clarke Street / Casement Street (N71) junction to a 24m roundabout and associated pedestrian crossings.

**Senior Planner (11/11/16)** - The first report of the concurred with the Area Planner's recommendation.

**Senior Executive Planner (27/03/17)** - The second report indicates the junction on Clarke Street / Casement street (N71) junction was a key concern of the Senior Planner's report 11/11/16, forming part of the further information request. It notes that the Traffic and Transport Engineer advises that a 24m roundabout should be provided at the applicants' expense and upgraded to a signalised junction by 2025, for which the applicant's should be required to pay 50% of the upgrade cost (25% levied each under this current application and the concurrent application reg.ref.16/591); and that the Area Engineer is satisfied with same subject to conditions including a financial contribution condition of €127,375 for the provision of

a signalised junction on the N71, representing the full cost of the installation of a signalised junction (€254,750) levied at 50% between this application and the said concurrent application. She recommended that permission be granted subject to 30no. conditions, including a special development contributions condition (no.29) requiring payment of €127,375.00 for the provision of a signalised junction on the N71.

**Senior Executive Planner (28/03/17)** - A supplementary (final) report issued noting the report of the Town Architect (27/03/17) and recommended an amendment to condition referring to external finishes.

### 3.2.2. Other Technical Reports

**Architect's Report (09/11/16)** – The issues raised by the Town Architect include concerns about connectivity with the old town centre (pedestrian desire lines), in particular the failure of the proposed N71 roundabout to cater for pedestrian crossing or safety in view of the requirement that the vehicular access comply with DMURS; and internal to the development, the landscape of the proposed embankment, way-finding and access, in view of the requirement for the development to comply with Universal Design. More detailed aesthetic issues were also raised.

**Architect's Report (27/03/17)** – No objection subject to conditions, including submission of specification for materials and detailed drawings for the pedestrian route finishes and material colour to satisfy DMURS.

**Area Engineer Report (11/11/16)** – The AE was satisfied that the applicant assessed the traffic issues in the vicinity. Although he was satisfied it could work as a short-term solution, he raised concern about associated issues, inter alia:

- i) additional unnecessary works and expense (including land-take) to implement short-term scheme when long term solution is required to facilitate existing developments permitted on the basis of a signalised junction being provided;
- ii) concern for pedestrians and cyclist in the roundabout junction option;
- iii) implications of DMURS (which takes priority in this situation);
- iv) timescale for implementing proposal, plus costing and funding for various options.

**Area Engineer Report (27/03/17)** – No significant concerns raised and recommended permission be granted subject to 18no. conditions, including a special development contribution to sum of €127,375 and requiring the N71 entrance junction to revert to access only (no egress) when the junction becomes signalised, the submission of specification for materials and detailed drawings for the pedestrian route finishes and material, the provision of 24m roundabout to the N71, and the carrying out of a RSA 2 and 3 for the said roundabout.

The report includes estimated breakdown of costs for the Special Development Contribution, to a total estimated sum of €396,750 which expressly excludes the sum of €120,000 for land acquisition of one of two relevant parcels which has been acquired by the applicant.

Regarding DMURS, he noted the roundabout is not ideal to facilitate pedestrian and cyclists, but that there is provision for uncontrolled pedestrian crossing points on same and provision for improvements to an existing crossing point to link the Waterfront to the Feagle river (walking towards the town) and the narrowing of the Croppy Road (all off-site) which would act as traffic calming measures, and that the onsite layout takes on board the DMURS principles.

**Traffic & Transport Report (21/03/17)** – Noted the most significant issue arising is that access to the site is from a critically important junction on the N71, the only National Route in West Cork – a critical regional strategic route, which also forms a critical part of the town's one-way traffic system with Casement Street (the only route for eastbound traffic in the town) being subject to high traffic volumes especially at peak.

Proposed roundabout is a short-term solution but will not serve the needs of pedestrians and cyclists and is not a sustainable medium to long-term solution. Signalisation of the junction, incorporating a right-turn lane from Casement Street, is required to manage all movements. S.12.0 (p.17) of the applicant's TTA confirms that the proposed roundabout will likely have sufficient capacity to 2025, but thereafter it will be necessary to signalise the junction with right-turning movements from Casement Street (west arm) and in-traffic movement to the application site.

No objection subject to 2no. conditions, including: provision of roundabout at applicant's expense as per FI drawing (KCC\_PRA\_D01 Rev D dated 17/02/17) to be

operational prior to the development coming into operation; provision of signalised junction to N71 / Inchydoney Road to be operational by 2025 or as soon as reasonably practical thereafter, 25% of the cost of which is to be contributed by the applicant (plus 25% on concurrent application).

**Environment Report (20/10/16 & 10/03/17)** – No objection subject to standard type conditions.

**Estates Primary Report (21/10/16)** – No objection.

### 3.3. **Prescribed Bodies**

**An Taisce (12/10/16)** – The proposed development should not exacerbate car dependency and should comply with objective TCR-11 of the Cork County Development Plan.

**Irish Water (22/10/16)** – No objection subject to standard conditions.

**Transport Infrastructure Ireland (10/11/16)** – A pro-active approach towards transport mitigation measures needs to be addressed, implemented and monitored in full.

The costs for the upgrade and /or traffic improvements necessitated by traffic generated by proposed development should be met by the developer.

### 3.4. **Third Party Observations**

A letter of observation was received from Elma Keohan of 12 Casement Street, Clonakilty. She submits that no agreement has been reached on proposal to purchase part of her property due to a difference of opinion on the impacts, quality of life and financial, the proposed changes would have on her home.

## 4.0 **Planning History**

### **Waterfront lands**

**PL04.248374 / Reg.Ref.16/591:** Concurrent First Party appeal against the attachment of a Special Development Contribution under Section 48(2)(c) of the

Planning and Development Act, 2000, as amended, in respect of a grant of permission by Cork County Council for a 3-storey primary care centre and 3no. retail units, relocation and replacement of ramp, stairs, roadways and carpark, with roundabout and vehicular access on an overlapping site, at the Waterfront, Inchydoney Road, Casement St. and Clark St. junction, Co. Cork.

**PL04.247766 / Reg.Ref.16/502:** The Board (11/04/17) directed the Council to **ATTACH** condition no.25, concerning a special development contribution for works which, the Board was satisfied conformed to the provisions of Section 48(2)(c), constituted specific exceptional costs not covered by the General Development Contribution Scheme and which benefitted the proposed development, and that the apportionment of the costs of the works in question (sum of €75,000 applied) was reasonable and proportionate as between the various development that would benefit from the works concerned scheme.

**Reg.ref.16/246:** Permission **GRANTED** (26/09/16) for retention of alterations to the elevations of building H (amended under permission reg.ref.08/50005), proposed alterations to existing elevations, and for permission to change the use of the first floor from permitted retail to residential use, consisting of 2 no. two-bedroom apartments and a two-bedroom duplex apartment, plus parking spaces and all associated site works

**Reg.ref.16/103:** Permission **GRANTED** (25/10/16) for site development works 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.

**Reg.ref.15/483:** Permission **REFUSED** (19/10/15) 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.

**Reg.ref.12/50005:** Permission **GRANTED** (22/10/12) for alterations to 3-storey building permitted under PL50.238118, comprising reduction to 2 storeys, omission of the Events Centre and Arts and Culture Centre at first and second floors (construction, fit out and use of the first floor of the altered building to be the subject of a separate planning application).

**PL50.238118 / Reg.ref.10/50009:** Permission **GRANTED** by the Board (18/08/11), upholding the decision of the local planning authority to grant permission for change of plan to permitted development reg.ref.07/5005 (in lieu of building L and part building K according to McCutcheon Halley Walsh Consultant's report on applicant subject of this current appeal), including the construction of a 3-storey building of 5,845-sq.m the ground floor consists of a discount retail store including an off licence, storage and plant (1,465-sq.m), 2 no. retail / commercial units (215-sq.m & 100-sq.m), café / restaurant (105-sq.m). The first floor (2,070-sq.m) comprises of retail area and the second floor (1,745-sq.m) 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 117no. car parking spaces (100 for the discount retail store), extension to existing boardwalk, plant rooms, signage and all associated site works. The following three conditions were attached to the Board decision, each for the reason '*in the interest of traffic safety*'.

*2. The junction between the development and the N71 shall be signalised in accordance with the recommendations of the MHL and Associates proposal Scenario 2 with 3-phases, with an in-only access for traffic. All design and civil works associated with the installation of the signalisation of this junction shall be carried out by the developers at their own expense and to the satisfaction of the planning authority.*

*3. Prior to commencement of development, a detailed road junction design including a Stage 2 road safety audit shall be commissioned by the developers at their own expense to take account of the proposed junction layout including an in-only route from the N71. This road safety audit shall be extended to include existing and proposed development within the overall Waterfront development. Upon completion of the installation of the new signalised junction, a stage 3 road safety audit shall be commissioned by the developers and the recommendations of this audit shall be carried out by the developers at their own expense.*

*4. The signalised junction with the N71 and the new access onto the Inchydoney Road shall be fully operational prior to the first use of the development.*

**Reg.ref.10/50004:** Permission **GRANTED** (10/08/10) for retention of change of use of building J and part of building J from commercial / office to use as a school plus associated works.

**Reg.ref.08/50009:** Permission **GRANTED** (12/06/08) for change of plan for permitted development reg.ref.07/5005 including construction of west side of building K only, omission of basement carpark there-below, and change of use to retail at first floor and commercial at second floor, with reduction of 12no. apartments to 6no., with modifications and façade alterations. Phase 1 of 5.

**Reg.ref.08/50005:** Permission **GRANTED** (30/05/08) for change of use for permitted development reg.ref.07/5005 including to retail/commercial use at first floor and to office/commercial use at second floor, omitting 5no. apartments, to building H, with increase in height to accommodate services. Phase 1 of 5.

**Reg.ref.08/5004:** Permission **GRANTED** (14/05/08) for change of plan for permitted development reg.ref.07/5005 including relatively minor increases in floor area to ground floor bank and first and second floor offices and minor elevation modifications to building J, and temporary site entrance, road layout and parking. Phase 1 of 5.

**Reg.ref.07/50005:** Permission **GRANTED** (10/10/07) for demolition of GAA Clubhouse building and development of mixed use development of c.36,000-sq.m on c.4.2ha site.

### **Other lands– TC-3 zoned land west / southwest of Inchydoney Road**

**Reg.ref.16/703:** Permission **GRANTED** by the Planning Authority (final grant 25/10/17) to John and Barbara Nugent for a mixed-use development comprising 8no. residential apartments and 4 no. retail/retail service units (approximately 316-sq.m GFA commercial) on TC-3 zoned lands southwest of Inchydoney Road, south of the indicative southern bypass road line. Condition no. 32 required a special contribution payment of €15,000 in respect of works for the provision of a signalised junction on N71 / Inchydoney Road.

**PL50.241423 / 12/50014:** Permission **GRANTED** by the Board (10/09/13) for the development of a Licensed Discount at Inchydoney/Island Road (in the townland of Youghals), Clonakilty, County Cork. Condition no.8 of the decision stated:

*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.*

## 5.0 Policy Context

### 5.1. Development Plan

#### **Cork County Development Plan 2014-2020**

**Objective TM 3-1: National Road Network** - a) *Seek the support of the National Roads Authority in the implementation of the following major projects: [ ...] Key Regional Projects - N 71 (Cork – Clonakilty – Skibbereen and Bantry).*

**Objective TCR 11-1: Aligning Retail Development and Transport** - a) *Promote and support retail (and town centre development) which is in line with national transport policy on Smarter Travel and seeks to make town centres/retail locations as attractive and accessible as possible by public transport, cycling and walking in particular.*

c) *Promote Mobility Management Measures through Local Area Plans that both improve accessibility of town centre and retail areas while aiming to develop a pedestrian and cyclist friendly urban environment and street life.*

**West Cork Municipal District Local Area Plan 2017** (effective from August 21<sup>st</sup>, 2017) – **Introduction Section 1.1.1** *...It sets out the detailed planning strategy and land use zoning as appropriate for the towns and villages of the Municipal District, with the exception of that part of Clonakilty Town, formerly administered by Clonakilty Town Council, where the Clonakilty Town Development Plan 2009 remains in force ... and will continue as the relevant development plans for the former Town Council areas until the adoption of the next Cork County Development Plan in 2020.*

**Clonakilty Town Council Development Plan 2009-2015** (remains in effect until the adoption of the Cork County Development Plan 2020)

**Zoning Objectives Map 3A –**

The site is zoned objective TC-3 for Town Centre Mixed Use objective.

**'Short term relief road'** route traverses the east of the site.

**Section 3.4.3 Town Centre 3 (TC-3):** *These areas are seen as a logical progression and expansion of the old town centre and town centre mixed uses. With the exception of very small scale infill sites and infill developments of less than 0.5 acres or the substantial reconstruction / refurbishment of existing structures new developments will generally be expected to comply with the following requirements:*

- 1. Have regard to Town Centre Strategy detailed above and if required to accommodate such retail, civic, service and publicly accessible uses at ground floor level as this strategy will determine. This is in the interests of encouraging the animation of this town centre area and minimising the "deadening" effect produced by parking and apartments at ground level.*
- 2. All development shall take place in accordance with an overall master plan which the Town Council will encourage the property owners and stakeholders to prepare and which shall be approved by the Town Council.*
- 3. It shall be an objective to encourage the maximisation of the provision of off street parking so as to maximise the area at ground level for pedestrian and amenity purposes.*
- 4. It shall be an objective to encourage the provision of the maximum of pedestrianisation and pedestrian priority areas practical in the zoned area.*

*In general, and where practical, the location of waste bins and waste and recycling facilities underground will be encouraged. As much ground level open space as practical shall be landscaped for pedestrian and amenity uses in order to enhance the urban ambience of the area. Roof gardens where appropriate with the design of the building will be encouraged.*

**Section 6.1 Accessibility –** [...] *Clonakilty Traffic and Transportation Study: At present the 'Clonakilty Traffic and Transportation Study' is in progress and is not expected to be completed for some time. [...] Pending the completion of this study a*

*holding position is being adopted by the Development Plan and the recommendations of the final report can be adopted as a variation or amendment to either the draft Plan or the Final Plan. In the meantime, it considered prudent to retain the line of the three option corridors for one or more relief routes indicated in the current 2003 Plan.*

**Section 2.11.2 - In approaching these objectives, the overall strategy will be to implement the following in varying degrees of detail:**

Zoning and rezoning lands for town centre and mixed uses in the vicinity of the exiting Town Centre.

In approaching these objectives, the overall strategy will be to implement the following in varying degrees of detail: The indicative provision of a relief road along with provision of other accessibility measures such as cycle lanes, pedestrian areas etc. to ensure maximum accessibility for all stakeholders and modes of movement. The provision of any relief road that passes across Clonakilty Bay will pass through Clonakilty Bay cSAC and Clonakilty Bay SPA and will therefore be subject to the restrictions and conditions imposed by these designations, including Environmental Impact Assessment and Article 6 Appropriate Assessment.

**Cork County Development Contributions Scheme 2004** – The Scheme, as adopted, is for a period of twenty years in line with the time periods of the Cork Area Strategic Plan and North and West Cork Strategic Plan.

*Basis for Determining Contributions: [...] Only that part of the capital expenditure, which will benefit new development, is used in the calculation of the amounts to be met by the levies on new development. Expenditure on National Roads was excluded from the calculations because the benefit of these works is not limited to the local authority areas within which they are built.*

Table G9: Target Development Contributions for Non-residential Developments

Special Contributions: *In addition to the terms of the Scheme, a Special Contribution may also be required, under Section 48(2)(c) of the Act, in respect of **any** [Cork County Council's own emphasis] development where specific exceptional costs not covered by the Cork County Council Development Contribution Scheme are incurred*

*by any Local Authority in respect of public infrastructure and facilities which benefit the proposed development.*

(Note, rates revised 2015).

## 5.2. Other Reference Documents

Development Contribution Guidelines (2013)

Development Management Guidelines (2007)

## 6.0 The Appeal

### 6.1. Grounds of Appeal

This First Party appeal by Lyonshall Limited is against the Special Development Contribution condition, condition no.29 attaching to the Planning Authority decision. The grounds of appeal may be summarised as follows:

- The sum of €127,375 is onerous, disproportionate and inconsistent with recent decisions and contributions levied by the Council and the Board for provision of a signalised junction on N71 (PL04.247766 and PL50.241423).
- The sum of €127,375, attached to this permission and also under condition no.31 of concurrent permission reg.ref.16/590, represents 100% of the estimated remaining cost for the provision of a signalised junction on N71.
- This is contrary to the *Development Contributions Guidelines for Planning Authorities* (2013) (the DCG) which state: *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.*
- The approach contrasts with the basis and justification provided by Cork County Council to the Board (January 2017) on PL04.247766 (Clonakilty Distillery application), which indicated that a contribution of 1/6<sup>th</sup> the total cost (€516,750) of junction upgrade would be levied (€75,000) on 6no. proposed 'future development on The Waterfront site and nearby zoned lands', taking account of the €67,000 already levied on Lidl (PL50.241423).

- The TTA highlights that the proposed enlarged roundabout can accommodate the development of the Distillery and Visitor Centre (reg.ref.16/502), the supermarket (reg.ref.16/590), the proposed development and background traffic up to 2025.
- TII and Cork County Council agree that signalisation of the N71 junction is a long-term solution ultimately required to cater for volumes on the national route, in addition to facilitating future development of the town. The proposed upgrade will therefore have significant benefits to the wider travelling public, including pedestrians and cyclists.
- The applicants have no objection to paying an appropriate contribution. A more equitable approach in accordance with the Guidelines would be for the special development contributions to '*offset only a portion of the costs of public infrastructure and facilities*', whereby 50% is funded through special development contributions and 50% by the Local Authority / TII to reflect the wider benefits.
- Breakdown of costs for the special development contribution provided in the Area Engineers' Report (27/03/17):
  - These are consistent with those submitted to the Board (January 2017) under PL04.247766;
  - Are updated to allow for recent acquisition of 3<sup>rd</sup> party lands at the junction by Lyonshall Ltd, estimated by the LA at €120,000 – this does not take account of the true actual cost amounting to €170,000 inclusive of additional costs;
  - Takes account of €75,000 to be paid by Clonakilty Distillery Ltd (PL04.247766);
  - Inclusive of the special development contribution of €67,000 made by Lidl, the remaining costs are estimated at €254,750;
  - The AE does not explain the departure from apportioning the remaining costs between 6 future developments and recommend same be split between the two concurrent development proposals.

- The application of special development contributions in an equitable manner consistent with the approach approved by the Board under PL04247766 would result in €75,000 each for this and the concurrent application.
- The application of €127,375 is inconsistent and penalises the applicant's for acquiring 3<sup>rd</sup> party lands required to facilitate the future signalisation at a cost of €170,000. This cost should be discounted from the special development contribution, consistent with the approach approved of by the Board, thereby negating the need for the special development contributions on permissions reg.ref.16/591 and reg.ref.16/590.
- The proposed roundabout junction upgrade to be delivered under the proposed development will facilitate the provision of the signalised junction in future, such as ducting for traffic signals and the movement of existing services. A more equitable approach to funding the upgrade of the N71, in accordance with the Guidelines, would consider the said improvements to be the applicants' contribution.

#### 6.1.1. Documentation in Supporting of Grounds of Appeal

##### **Report by MHL & Associates Consulting Engineers**

- The site is currently served by an access from [N71] junction at Clarke Street and Inchydoney Road, previously permitted as an in-only access.
- The permission granted under PL04.247766 [reg.ref.16/502] for change of use to distillery and visitor centre included the provision of a mini-roundabout at this [N71] junction [adjacent the site entrance], which was shown by the TTA to provide significant additional capacity over the current and permitted layouts.
- A 24m roundabout is now proposed in lieu of the mini-roundabout, through acquisition of lands, with a significant increase in capacity as supported by the TTA.
- The TTA, using ARCADY 08 modelling, indicates the proposed junction has capacity to accommodate the distillery and visitor centre, the primary health care unit, discount retail store and background traffic (20% up to 2032 as

agreed with the County Council, providing a robust future appraisal) up to 2025

- Junction signalisation would subsequently be required, depending on actual traffic growth rates.
- Full development of the site and future traffic flows will necessitate signalisation of the N71 junction, with short right-turning lane on west arm and in-only access [to the site] and egress to Inchydoney Road.
- The N71 junction signalisation and upgrade works are dependent on land acquisition at the junction. It is submitted that the decision to grant permission reflects the desire of the Council to pursue this solution through CPO.
- The junction signalisation will provide better pedestrian connectivity between the Waterfront site and the town centre.
- The proposed development includes elements that will facilitate provision of the signalised junction, including ducting for signals and movement of existing services and the detailed design will be agreed with the County Council prior to commencement of the roundabout.
- The proposed signalisation may not be required if TII and Local Authority monitoring determines that the roundabout junction is operating efficiently and safely.

**Development of a Primary Health Care Centre and a Discount Retail Store, Waterfront, Clonakilty, County Cork, Traffic and Transport Assessment, Non-Technical Summary**, prepared by MHL & Associates Consulting Engineers (19/09/16). This details of the TTA are consistent with MHL's response to the appeal. Points of note include:

- The assessment assumes a peak hour traffic generation of the completed development between 13.00-14.00 hours based on TRICS. Table 5.2 indicates that a drive-thru restaurant and a retail warehouse are also proposed, in addition to distillery visitor centre and café, Aldi and the PHCC [this is full development in the TTA].

- Traffic forecasting is determined using the NRA Project Appraisal Guidelines, [Unit 5.5] Link-Based Traffic Growth Forecasting (2011) medium growth factors.
- Modal split was assumed to be taken into account in the TRICS data.
- Trip distribution was assumed to be in line with existing recorded flows, with 10% pass-by trip factor [i.e. existing trips diverted to the site].
- PICADY ARCADY and LinSig were used to model the three alternative junction designs: priority junction, roundabout junction, signalised junction, respectively.
- The existing priority junction was found to be operating in excess of capacity currently, at ratio of flow to capacity (RFC) of 107.8% (RFC of 85% is considered to be at capacity), with queuing for right turning traffic from N71 Casement Street to Inchydoney Road.
- Figures 9.1 and 9.2 shows the turning movements at the mini-roundabout junction in 2020 and 2032, respectively, with the development.
- Mini-roundabout reaches capacity in 2020 with the proposed development, but with land acquisition to accommodate modification it could operate at RFC of 76% in 2020. With all development (inclusive of drive-thru restaurant and retail warehouse) an RFC of 82% is achievable (see table 10.2), and would operate well beyond 2020 depending on the level of development within the Waterfront site.
- Modification of the roundabout including land-take at the NW corner of junction. Pedestrian facilities are to remain as located, distant from the junction. It proposes that the existing uncontrolled crossing to the north becomes a controlled crossing in the interest of safety and to link the site to the town centre. It is submitted that this should be accompanied by a traffic calming scheme on the approach from Faxbridge Roundabout (north) funding through previously paid development contributions.
- It is submitted that the N71 western arm will operate an RFC of 57% in the weekday AM peak with the mini-roundabout, without development, in 2016, but reaches capacity in 2020 with the full development.

- The roundabout access is to be 25m diameter mini-roundabout in accordance with TF16/07 and TD50/04 DMRB.
- It is submitted that the signalisation of the junction as a cross road junction does not significantly improve capacity over and above the modified roundabout solution. Table 11.1 indicates that with full development, the signalised cross-roads junction would have an RFC of 87% in 2032. It will require land acquisition (fig.11.2 refers) and will result in loss of on-street parking.
- The signalised junction provides for 12 second all-red pedestrian phase operating on a demand basis which provides better pedestrian connectivity to the town centre.
- A Road Safety Audit can be carried out as a condition of planning.
- Submits that the proposed mini-roundabout will act as a traffic calming device on N71, facilitate use of more sustainable modes of transport and have minimal, if not positive, environmental impact.
- Longer term the development of a right turn lane serving the Inchydoney bound traffic from the west would facilitate the signalisation of the junction with benefits for both vehicular and pedestrian traffic.

## 6.2. Planning Authority Response

The response from the Council's Executive Engineer (Roads Operations), received 22/05/17, may be summarised as follows:

- (Executive Engineers response 22/05/17) In addition to the existing development contributions, the balance of the funding for the junction improvements will come from lands within the applicant's control. As the junction improvements may have to progress before the remainder of the site is developed the special contribution is being levied against the two applications to include for improvements that could facilitate further development of the site.

### 6.3. Observations

None.

### 6.4. Further Responses

A more detailed response was received from the Council's Executive Engineer (Roads Operations) on 06/07/17. The main points of the response may be summarised as follows:

- Planning permission PL50.241423 allowed for a signalised junction in this location with capacity for 2no. right turning vehicles from N71 Casement Street (west arm) onto Inchydoney Road, with all works fit within the existing public road boundary.
- Contributions have been received from Lidl towards installation of the improvement allowed for under PL50.241423 and works carried out to provide for ducting in preparation for traffic signals to be installed as progress on the Waterfront development resulted in traffic demand for same.
- Traffic analysis carried out as part of all applications (and from the AE's experience of the junction) concluded that the improvement allowed for under PL50.241423 is not a satisfactory option.
- A breakdown of estimated total costs (€396,750.00) for the junction works are tabulated and take account of the contribution cost to Lidl (€67,000.00) and to the Distillery development (€75,000.00), and the outstanding costs to be recouped through special development contributions (€254,750.00).
- The remaining required funding for the improvements will come from lands within the applicant's control and the junction improvement works may have to progress before the remainder of the site is developed and the special development contribution has been levied on the two sites at this stage to include for improvements that could facilitate further development of the land.
- If the contributions were not levied at this stage it could lead to the roads authority having to fund the necessary junction upgrade works benefitting the development in the absence of further development taking place on the remaining lands.

- The assessment of the proportion of the contribution to be levied to the Distillery application (1/6<sup>th</sup>) (PL04.247766) was based on all contributions for the junction upgrade coming from the old GAA grounds, including the development of the Primary Care Centre (1/3<sup>rd</sup>), supermarket (1/3<sup>rd</sup>) and the undeveloped area (1/6<sup>th</sup>).
- Allowance for the land cost of acquisition on the Eurospar side of the junction was taken out of the contribution.

In response to the S.132 request, the Planning Authority submitted the following details from the Council's Executive Engineer (Roads Operations) on 04/12/17:

Item no.1 – Necessary land acquisition.

- Outline of lands to be acquired are detailed on submitted drawing no. KCC\_PRA\_D01 which illustrates the proposed layout for a 24m diameter roundabout.
- Areas A and D are 3<sup>rd</sup> party private lands to the northwest and southwest of roundabout junction. Areas B and C, to the southwest of the proposed junction, are in the ownership of Clonakilty UDC and Cork County Council, respectively [and appear to comprise public pavement].

Item no.2 – Outstanding ducting works.

- Ducting is in place across Casement Street, with two chambers and ducting in place across Inchydoney Road (Map item no.2 attached indicating existing and required ducting to junction – N71/Island Road Junction Improvement Option – Option 1).
- No sockets, sleeves, power supply ducting is in place and further ducting, chambers, access boxes, the lights and road lining are needed at an estimated cost €42,500.

Item no.3 – Extent of lands attracting special development contribution condition for subject signalised junction upgrade.

- The area of land that will benefit from the works are highlighted in yellow on submitted copy of zoning map 3A. This area includes the block of land zoned TC-3 (inclusive of the application site) south and east of N71, east and north

of Inchydoney Road and west of the wastewater treatment plant lands. In addition, the portion of TC-3 zone lands west / southwest of Inchydoney Road, south of the indicative roads line objective. The Council submits that the latter area will have 4 commercial and 4 apartments proposed,

Item no.4 – Projected timeframe for commencement and completion of signalised junction upgrade.

- The timeframe for implementation is stated as within the life of the permission and as required by progress of development and traffic generated by the development.

## 7.0 **Assessment**

The issues arising under this appeal may be addressed under the following headings:

- 7.1 Introduction
- 7.2 Principle
- 7.3 Need for upgrade
- 7.4 Total costs and allowable deductions
- 7.5 Apportioning of costs

### 7.1. **Introduction**

- 7.1.1. This is a First Party appeal against the attachment of a Special Development Contribution under Section 48(2)(c) of the Planning and Development Act, 2000, as amended. No other appeal has been brought by any other person under Section 37 of the decision of the Planning Authority. Under Section 48(13)(a) the Board may only determine the matters under the appeal and I will therefore limit my assessment to consideration of the relevant condition.
- 7.1.2. Condition no.29 requires the payment of €127,375.00 (index-linked), at least one month prior to commencement of development, in respect of specific exceptional

costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out for the provision of a *signalised* junction on the N71 fronting the site, which will be carried out by Cork County Council. A similar condition for the same sum was attached to the Council's decision to grant permission under concurrent application reg.ref.16/590, subject of concurrent appeal PL04.248374, on an overlapping site within the applicant's control.

## 7.2. Principle

- 7.2.1. Section 48(2)(c) provides that a planning authority may, in addition to the terms of a development contribution scheme, require the payment of a special contribution in respect of a particular development where specific exceptional cost not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.
- 7.2.2. Section 48(12)(a) provides that the special development contribution condition shall specify the particular works carried out or proposed to be carried out to which the contributions relates and that (b) where the works in question (i) are not commenced within 5 year so the date of payment (or of final instalment where appropriate), (ii) have commenced but not been completed within 7 years of the date of payment, or (iii) where the local authority decides not to proceed with the works or part thereof, the contribution shall be refunded (in full or a portion thereof, as appropriate).
- 7.2.3. The principle of attaching a special development contribution for the upgrade of the said N71 junction was accepted by the Board in its decision (31/03/17) to direct the Council to attach a similar condition to the sum of €75,000 under PL04.247766 / Reg.Ref.16/502 on an overlapping site within the Waterfront lands. In its reasons and considerations, the Board stated that it was '*satisfied that the public infrastructure and facilities... (that is the provision of a **signalised** junction on the N71 fronting the subject site) would benefit the proposed development (including facilitating safe pedestrian and cyclist access to the development, improving traffic safety by providing for enhanced right turning movements into the site, and reducing congestion on the N71 at this junction), and that the imposition of this condition conforms to the provisions of section 48(2)(c).* The Board also considered the apportionment of costs reasonable and proportionate between the various benefiting developments and that the works constituted specific exceptional costs not covered

by the General Development Contributions Scheme (Cork County Council Development Contribution Scheme 2004, updated rates 2015).

- 7.2.4. As the nature of the junction works and the General Development Contributions Scheme are unchanged and the proposed development is located within the Waterfront development lands, overlapping the application site subject of PL04.247766, covered by zoning objective TC-3 under the Clonakilty Town Council Development Plan 2009-2015 (still operative) it is not necessary to revisit these issues.
- 7.2.5. The appellant has not disputed that the proposed upgrade of the junction would benefit the proposed development. The appellant has not disputed that the proposed upgrade of the junction is a specific exceptional cost not covered by the Council's General Contribution Scheme. It submits, however that, having regard to the *Development Contribution Guidelines* (2013) which provide that development contributions should 'offset only a portion of the costs of public infrastructure and facilities'<sup>1</sup>, 50% of the costs should be funded by the Local Authority / TII to reflect the wider benefits of the junction upgrade. The said guidelines also state that the 'primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed'<sup>2</sup>, in combination with other sources (mainly exchequer) of funding. However, the wording of the guidance is somewhat ambiguous (the sections referred to by the appellants do not expressly refer to special development contributions) and it does not provide any guidance specific to special development contributions.
- 7.2.6. There is no indication from the local authority in response to the appeal (or TII) that there are other funds available to upgrade this existing junction on the N71. The observation to the application from TII submitted that the costs for the upgrade and /or traffic improvements necessitated by traffic generated by proposed development should be met by the developer. It should be noted that the Board did not reduce the special development contribution figure in the previous case to take account of the potential for other sources of funds.
- 7.2.7. The *Development Management Guidelines* (2007) does not indicate that a special development contribution condition should only part fund such infrastructure, but it

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<sup>1</sup> P.10.

<sup>2</sup> P.3.

suggests (p.85) that where the benefit of deriving from the particular infrastructure is more widespread the Council should consider spreading the costs over the relevant geographical area by way of a revised or separate development contribution scheme. In this instance there no separate or revised DCS has been made.

- 7.2.8. The junction upgrade would benefit the wider public, however the applicant has not demonstrated that the junction upgrade would be necessary in the absence of the development of the Waterfront lands. Whilst the N71 carries significant through-traffic levels and TTA reports that the junction is currently operating in excess of capacity (up to 107.8% compared to operational capacity of 85%), the Waterfront lands and other TC-3 lands have already been developed and generate operational traffic at this junction and the development of these lands can be expected to be the main beneficiaries of the junction upgrade, not the straight-through traffic on the N71. The applicant has not demonstrated that it is feasible to secure funding through additional sources. I therefore consider it reasonable and appropriate to fund the required junction upgrade solely through special development contributions.

### **7.3. Need for infrastructure**

- 7.3.1. The applicant disputes the need for the proposed upgrade beyond the mini-roundabout junction and enlarged / modified roundabout junction proposed by the applicant in further information submission (01/03/17), which is submitted to operate within capacity up to 2025.
- 7.3.2. The applicant submitted a Traffic and Transport Assessment report by MHL with the application (21/09/16). The submitted TTA is absent the appendices and therefore it is not possible to verify the underlying assumptions and methodology employed. The TTA was not disputed in the reports of the Council's Area Engineer or by its Traffic and Transport Section. The TTA looks at the capacity of three possible upgrade designs for the N71 / Inchydoney Road junction – a mini-roundabout, an enlarged / modified roundabout and a signalised crossroad junction - against medium background traffic growth rate, having regard to a number of different development scenarios.
- 7.3.3. The 'full development' scenario includes the proposed development (the proposed supermarket and etc.), the proposed primary health care centre - PHCC (concurrent

appeal PL04.248374 / reg.ref.16/591), the permitted Distillery and Visitor Centre (reg.ref.16/502), in addition to a drive-thru restaurant and retail warehousing (possible future development not currently proposed). The other development scenarios, the results for which are set out in tables 10.1 and 10.2 of the TTA, are not clearly stated.

- 7.3.4. The TTA reports the existing priority junction layout (modelled using PICADY) is operating at a ratio of capacity to flow (RFC) of 107.8% and is a need for an upgrade. In this regard the detailed results and appendices are not provided to enable a full understanding of the output and it is not stated what arm of the junction the capacity and queuing occurs.
- 7.3.5. The TTA found that the proposed replacement junction, a mini-roundabout (Fig 10.1, diameter not stated – modelled using Arcady 08) would reach capacity by 2020 with the proposed supermarket, the proposed PHCC and permitted distillery in place. It found that the capacity could be increased sufficient to accommodate the stated development with an enlarged / modified roundabout of increased diameter (to 25m – Fig 10.2), with increased flare lengths and entry widths (and requiring land-take). The appellant submits that the TTA demonstrates that the proposed enlarged roundabout can accommodate the proposed development, the proposed PHCC, the permitted Distillery and Visitor Centre and background traffic up to 2025.
- 7.3.6. The TTA modelling (using LinSig) found that the upgrade of the N71 junction to a signalised crossroads junction (Fig 11.2) does not significantly improve capacity over the enlarged / modified roundabout solution, and would exceed its capacity by 2032 with at RFC of 87% (table 11.1). However, the LinSig modelling appears to take account of 12 second all-red pedestrian phase operating on a demand basis whereas there is nothing to indicate that the PICADY and ARCADY modelling take account of pedestrians. The models do not therefore do not appear to compare like for like and the capacity of the roundabout junctions may be considered overstated as a result.
- 7.3.7. The TTA indicates that the proposed enlarged / modified roundabout has a diameter of 25m<sup>3</sup>, whereas FI drawing KCC\_PRA\_D01 states 24m (or 12R, consistent with measuring the drawing). The roundabout diameter and other design details affect

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<sup>3</sup> Note, the TTA does not state the diameter of the initial mini-roundabout

Arcady capacity results and it is therefore likely that predicted capacity of the interim roundabout junction has been overstated in the TTA. Without the provision of the model details and assumptions it is not possible to determine whether it is accurate or not.

- 7.3.8. The proposed modified / enlarged roundabout is stated as being to Design Manual for Roads and Bridges (DMRB) TD16/07 and TD50/04 standards. The DMRB is not the appropriate road design standard for this location. In urban areas within the 50kph speed limit the standards and principles under the Design Manual for Urban Roads and Streets (2013) apply. Both roundabout designs are classified as large roundabouts ( $R > 7.5\text{m}$ ) under DMURS and should be restricted to areas with lower levels of pedestrian activity and, as part of any upgrade works, should be replaced with signalised junctions. As indicated in the Area Planner's Report (23/03/17) and suggested in the Council's Traffic and Transport Engineer's report's (11/11/16 and 27/03/17) and in the reports of other departments, also, the proposed roundabout and proposed modified / enlarged roundabout are contrary to DMURS. The Area Planner ultimately deferred to the willingness of the Council's Traffic and Transport Engineer to accept the roundabout as an interim solution.
- 7.3.9. Heavily trafficked roundabouts are notoriously difficult for pedestrians and cyclists to navigate, especially where controlled pedestrian crossing / cycle facilities are not provided, as the flow of vehicles can exercise a continuous right of way. The proposed roundabout may therefore actually exacerbate the already extremely difficult and highly dangerous situation encountered by pedestrians needing to cross the N71 at this junction, as it will enable freer flow into / out of Inchydoney Road. The provision of a signalised junction that fully complies with the design standards and principles of DMURS is therefore essential to sustainably and safely accommodate the development of the Waterfront and other zoned development lands in this area. I am satisfied, based on the information available to me, that the upgrade of the existing junction to a signalised crossroad junction is needed, regardless of any capacity improvements that can be achieved for motorised vehicular traffic through the proposed interim junction improvement scheme.<sup>4</sup>

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<sup>4</sup> I note the objective for a southern relief road (short term) on the Zoning Objective's Map (3a) and referred to under section 6.2 of the Town Development Plan which traverses the east of the site. Whilst the drawings to permitted development reg.ref.16/703 to the south of the Lidl site suggests

#### 7.4. Total costs and allowable deductions

- 7.4.1. The total cost of implementing the signalised junction is estimated at **€396,750** by the Local Authority and a breakdown for same is attached to the AE report of 01/03/17 and in the Authority's response of 06/07/17. The cost estimates are as per those on reg.ref.16/502 / PL88.247766, except that €120,000 cost of acquiring one of two parcels of facilitating lands has been expressly omitted as it has now been acquired by the applicant. The total cost inclusive of all relevant land acquisition is **€516,750**, as calculated by the Council and accepted by the Board on the said previous case.
- 7.4.2. The infrastructure cost estimates allow for €240,000 for the acquisition of land adjacent the southwest and northwest of the junction, amounting to over 46% of the total junction cost. In response to the further information request it stated that the applicants have recently gained control of additional lands at the northwest corner of the junction (Eurospar car park) which will allow the implementation of the modified / larger roundabout. The applicant did not object to paying a modest contribution towards the future upgrade of the junction, but requested that the Planning Authority be mindful of the cost and public benefit of the larger, medium term roundabout solution in calculating the special development contribution. In this regard the applicants proposed a condition be attached requiring the junction be upgraded at the cost of the developer to a 24m diameter roundabout and condition no.12 attached to the permission requires same.
- 7.4.3. The Planning Authority deducted the full estimated cost of the acquisition of said lands to the northwest (€120,000; the applicant submits that the true cost is €170,000) from the total estimated cost before apportioning costs. Assuming the said land parcel acquired by the applicant is necessary for the signal upgrade, the expenditure made by an applicant should be deducted from their contribution sum, after being apportioned between parties / sites and not deducted from the overall estimated costs of the scheme prior to apportioning. In this case it makes no

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that the route is being pursued by the Council, the applicant's submitted masterplan makes no provision for the route on its lands and the Planning Authority has not raised this as an issue in its assessment of this case or of other recent cases. Whilst the provision of the route would likely affect the need for the signalisation of the subject junction, this falls outside the considerations of the Board under the limits imposed by s.14(13)(a). It is not taken into account in the applicant's TTA.

practical difference given the Authority's decision to apportion all remaining costs between the two concurrent applications by the same applicant, Lyonshall Ltd.

7.4.4. Notwithstanding the Board's decision under PL88.247766, the question arises as to whether the land acquisition costs are relevant costs. No drawings of the proposed signalised junction have been submitted on file other than a small image contained on p.16 of the applicant's TTA (Fig.11.2). This differs from 'option 1' junction design required to be implemented under PL50.241423<sup>5</sup>, providing a right-turn lane eastbound on N7. In response (04/12/17) to the s.132 request for the Council to detail the parcels of land required for implementation of the signalised junction upgrade, the Council detailed the land-take required to implement the interim roundabout junction on a copy of application drawing KCC\_PRA\_D01.

7.4.5. For the purposes of determining this issue the Board has little option but to assume the signalised junction upgrade design would be line with applicant's drawing under TTA Fig.11.2, although the Board may take the view that the Planning Authority has not identified the nature/scope of the works involved sufficient to explain the basis of its calculations having regard to the advice of the Development Management Guidelines (2007)<sup>6</sup>. A signalised junction design as per Fig.11.2 does not require any land-take to the northwest, but does entail land-take to the southwest. I therefore consider only the cost of land acquisition to the southwest of the junction to be a reckonable cost<sup>7</sup>. The total reckonable cost of the signalised junction upgrade scheme is **€396,750**.

7.4.6. **Deductions** - As I have concluded there is no land-take required to the northwest to facilitate the signalised junction upgrade and have excluded these costs, there can be no allowable deduction for the applicant's acquiring of same (the appellant

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<sup>5</sup> Note, the junction layout 'option 1' (not to scale) submitted 04/12/17 by the Planning Authority in response to the s.132 request, relates to condition no.8 of PL50.241423, which the Council's Engineer seems to have accepted as insufficient based on the applicant's TTA.

<sup>6</sup> *...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 for the calculation, including how it is apportioned to the particular development (p.74).*

<sup>7</sup> The said detailed junction design appears inconsistent with the requirements of DMURS in terms of length of corner radii at the southwest and northwest and the overall scale of the junction, the absence of pedestrian facilities of the east arm of the crossroads and the widths of the pedestrian pavements and it may therefore be possible to further reduce the scale of the junction to avoid land acquisition. Should the final design not entail land-take to the southwest, it is possible to refund the relevant portion of costs to the applicant under s.48(12)(c).

submits that the true cost is €170,000). In this regard, no deduction was applied by the Planning Authority.

- 7.4.7. The applicant submits that credit should also be given to the applicant for works facilitating the signalised junction that would be carried out by the applicant in implementing the proposed roundabout junction. Although I consider this reasonable, the applicant has not provided a detailed breakdown of the relevant costs to justify an appropriate deduction.
- 7.4.8. In its further response to the appeal (06/07/17) and clarified in response on 04/12/17, the Council's Engineer indicated that ducting works have already been carried out to the west and southern arms of the junction on foot of the Lidl permission and that outstanding works (trenching, chambers, lights and road markings) are estimated at €42,000 (map 'option 1' 04/12/17). Whether the Planning Authority agrees for the applicant to carry out any or all of these outstanding works in lieu of payment is outside the scope of the Board's determination and may be agreed by the parties separately. Accordingly, the Board should not apply a deduction in favour of the applicant in this regard.
- 7.4.9. That the applicant has or may entail possibly significant expenditure for its implementation of an interim scheme, as required by condition no. 12 of the permission, is not relevant to the special development contribution condition for the required signalised junction upgrade. The applicant is therefore not entitled to a deduction in respect of same.
- 7.4.10. The Council has deducted an existing contribution of **€67,000** paid / to be paid by Lidl (site opposite the southwest of the Waterfront lands). The Lidl development was not subject of special development contribution<sup>8</sup> but agreed an additional contribution in lieu of undertaking junction improvements to N71 required by condition no.8 of PL50.241423 / 12/50014. The Council also deducted the special development contribution of **€5,000** conditioned on the neighbouring distillery development (PL04.247766). Subsequent to the decision under appeal, the Planning Authority granted permission (reg.ref.16/703, final grant 25/10/17) for a moderate-sized mixed-use development on TC-3 lands to the southwest (south of Lidl) to which a special development contribution for the sum of **€15,000** was applied

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<sup>8</sup> It is also outside the land area to which the special development contribution conditions are indicated as applicable, as detailed by the Planning Authority in its s.132 response.

in respect of the subject signalised junction upgrade. This sum should also be deducted from the total remaining costs to be apportioned. The total sum relevant to apportioning therefore calculates at €239,750.

## 7.5. Apportioning costs between benefitting development

- 7.5.1. Under PL04.247766 the Planning Authority indicated that the outstanding balance was to be apportioned between the then proposed Distillery development plus five other developments on the Waterfront lands and other nearby zoned lands (not identified on a map or otherwise). This was accepted as reasonable by the Board.
- 7.5.2. The Planning Authority has subsequently changed its approach and decided to levy the outstanding balance of costs on two developments (the supermarket subject of this appeal and the concurrent PHCC proposal, both located on the Waterfront lands) instead of five. The Council's Traffic and Transport Report (21/03/17) recommended that the total costs be apportioned 50% between the two concurrent applications, i.e. 25% each (~~€99,187.50~~ based on the total reckonable cost of €396,750), but without any reference to previous contributions levied.
- 7.5.3. In the further response to the appeal, the Council Engineer submitted that the assessment of the proportion of the contribution to be levied to the Distillery application (1/6<sup>th</sup>) (PL04.247766) was based on all contributions for the junction upgrade coming from the old GAA grounds [the Waterfront lands], including the development of the Primary Care Centre (1/3<sup>rd</sup>), supermarket (1/3<sup>rd</sup>) and the undeveloped area (1/6<sup>th</sup>). This is contradicted by the estimate of costs submitted by the Council on 25/01/17 to PL04.247766, which provided for apportioning of costs to '*estimated future development on Waterfront site **and nearby zoned lands***'.
- 7.5.4. In response to this current appeal the Planning Authority has justified its revised approach on the basis that the remaining required funding for the junction improvements will come from lands within the applicant's control (i.e. the two concurrent appeal sites and the undeveloped site adjacent to the east). The Authority explains that the junction improvement works may have to progress before the remainder of the site is developed and the special development contribution has been levied on the two appeal sites, at this stage, to include for improvements that could facilitate further development of the applicant's land. Without the contributions

the roads authority may have to fund the said junction upgrade works in advance of any development taking place on the remaining lands.

- 7.5.5. In response to the s.132 request, the Planning Authority has outlined the area to which the special development contribution is to apply (on zoning map 3A). This includes the applicant's remaining parcel of land to the east (c.0.8ha), an adjacent parcel (c.0.7ha) of Waterfront lands (zoned TC-3) to the east not in the applicant's control and 1.2ha of land (also zoned TC-3) to the southwest of Inchydoney Road (south of Lidl, but including site Reg.ref.16/703) which is also not in the applicant's control, in addition to the two concurrent appeal sites (c.1.5ha) and the developed (or developing) west section of the Waterfront lands (c.0.7h).
- 7.5.6. That the Planning Authority has decided to apportion costs to only a portion of those lands, effectively on the basis that development applications have been forthcoming, is within the power of the Authority. There is no statutory provision that the special development contribution must be paid by all benefitting developments and there is no formula under the Act as to how such contributions should be apportioned across benefitting developments. I therefore conclude that the Planning Authority is entitled to apportion the outstanding costs between the two-proposed development on a 50:50 basis, which equates to **€119,875** per development.

## 8.0 Recommendation

Having regard to the nature of special development contribution condition no.29 the subject of the appeal and to the provisions under section 48 of the Planning and Development Act, 2000, as amended, based on the reasons and considerations hereunder, the Board directs the Council to **AMEND** condition no.29 to the sum of **€119,975**.

## 9.0 Reasons and Considerations

Having regard to the planning history of the site, the pattern of existing and permitted development on the site and in the vicinity, and the documentation submitted as part of the application and appeal, including details of traffic levels and road improvement proposals, the Board is satisfied that the public infrastructure and facilities that are

the subject matter of the appeal (that is, the provision of a signalised junction on the N71 fronting the subject site) would benefit the proposed development (including facilitating safe pedestrian and cyclist access to the development, improving traffic safety by providing for enhanced right turning movements into the site, and reducing congestion on the N71 at this junction), and that the imposition of this condition conforms to the provisions of Section 48 (2)(c) of the Planning and Development Act 2000, as amended. Furthermore, on the basis of the documentation submitted by the planning authority to An Bord Pleanála on the 6<sup>th</sup> July 2017 and on 4<sup>th</sup> December 2017, including details of costings, the Board is satisfied that the apportionment of the costs of the works in question was reasonable and proportionate as between the various developments that would benefit from the works concerned, and that these works constitute specific exceptional costs that are not covered by the General Development Contribution Scheme.

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John Desmond  
Senior Planning Inspector

7<sup>th</sup> February 2018