



An  
Bord  
Pleanála

## Inspector's Report PL 91.249186

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<b>Development</b>	Development of 201 houses, crèche and associated site works.
<b>Location</b>	Baunacloka, Castlemungret, Co. Limerick.
<b>Planning Authority</b>	Limerick City & County Council
<b>Planning Authority Reg. Ref.</b>	16/1196
<b>Applicant(s)</b>	Homely Developments Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	First Party & Third Parties
<b>Appellant(s)</b>	Homely Developments Ltd. Power family (withdrawn) Seán O'Grady (withdrawn) Eamonn O'Brien (dismissed)
<b>Observer(s)</b>	Kieran Barry & Elizabeth Barry
<b>Date of Site Inspection</b>	7 <sup>th</sup> November 2017
<b>Inspector</b>	Michael Dillon

## 1.0 Site Location and Description

1.1. The site, with a stated area of 9.14ha, is located in Mungret, on the southwestern fringe of suburban Limerick. Access to the site is currently from the R510 Regional Road and a small cul de sac laneway serving as access to the Mungret Monastic Complex and adjacent graveyards, farmland and one-off houses. It is not possible to pass two cars along much of the length of this laneway. The site is generally flat grassland, with fields separated by hedgerows and broken-down dry-stone walls.

## 2.0 Proposed Development

2.1. Permission sought on 22<sup>nd</sup> December 2016, for housing development comprising the following elements-

- Demolition of existing house (120sq.m).
- Construction of 201 dwelling units – comprising 138 no. semi-detached, 29 no. terraced, 17 no. duplex and 17 no. apartment units.
- Construction of crèche (320sq.m).
- New access roads through the site, with principal access off the R510 Regional Road.
- Connection to public sewers and watermains.

2.2. The layout was varied by way of additional information submissions – with provision for 203 units – comprising 152 no. semi-detached, 8 no. terraced, 23 no. apartments, and 20 no. duplex units.

## 3.0 Planning Authority Decision

By Order dated 9<sup>th</sup> August 2017, LCCC issued a Notification of decision to grant planning permission, subject to 51 no. conditions. Arising from the peculiar nature of this appeal, it now falls to the Board to consider only condition 7, against the imposition of a special contribution for the construction of the Mungret Distributor Road as follows-

7. The developer shall pay to Limerick City & County Council a special contribution of €206,250.00 (two hundred and six thousand, two hundred and fifty euro) in accordance with Section 48 (2) (c) of the Planning and Development Acts, 2000-2015 for the construction of Mungret distributor link road under LIHAF. The contribution shall be paid prior to the commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment.

**Reason:** It is a requirement of the Planning & Development Acts, 2000-2015 that a condition requiring a special contribution in accordance with the Development Contribution Scheme made under Section 48 (2) (c) of the Act be applied to the permission.

## 4.0 Planning History

Consideration of planning history is not relevant to the type of appeal before the Board. There is no recent relevant planning permission on this site which might shed light on the application of special contributions.

## 5.0 Policy Context

### 5.1. Development Plan

- The relevant document is the Southern Environs Local Area Plan 2017 (SELAP). The majority of the site is zoned “Residential Development Area”. That portion of the site (northwest), closest to the Mungret monastic complex, is zoned as “Special Control Area”.
- An indicative Proposed Distributor Road Network is shown through the site – linking the Quinn’s Cross Roundabout at the junction of the R859 and R510 to the north, with the R526 (former N20) to the south. The indicative network shows the distributor road network looping around behind the former Mungret College to re-emerge on the R859 at the junction with Moore’s Road (which road provides the link on to the N69 to the northwest. A further link is indicated connecting the distributor road through the appeal site to the R510.

Objective T 4 states- “It should be noted that the alignment of the new roads in the plan is indicative only and they shall definitely be aligned as part of the detailed design and development process. Similarly the location of junctions is indicative and the exact position for construction purposes will be dependent on detailed design”.

- The Mungret monastic complex and its constituent buildings and wells are all National Monuments under protection- LI013-009-001 to LI013-009-008 (none of which are within the red line boundary of the site, but many of which are located immediately outside it). To the southeast of the site are further archaeological sites (enclosures) LI013-131 & LI013-132.
- The Mungret monastic complex constituents are also Protected Structures.
- A detailed map (No. 6) is provided for guidance of future development of lands at Mungret – indicating potential access points, indicative frontage development, walking routes, cycle paths, and the Special Control Area around the Mungret monastic complex.
- The area is indicated as not being subject to flooding from the Shannon River and its tributaries.

## 5.2. Natural Heritage Designations

5.2.1. The site is neither within nor immediately adjoining any European site. The closest such are the River Shannon and River Fergus Estuaries SPA (Site code 004077) which is 1.5km distant, and the Lower River Shannon SAC (Site code 002165) is 1.5km distant.

5.2.2. The Conservation Interests of the River Shannon and River Fergus Estuaries SPA (Site code 004007), located to the north of the site, are as follows-

- Cormorant (*Phalacrocorax carbo*)
- Whooper swan (*Cygnus cygnus*)
- Light-bellied Brent Goose (*Branta bernicla hrota*)
- Shelduck (*Tadorna tadorna*)
- Wigeon (*Anas penelope*)

- Teal (*Anas crecca*)
- Pintail (*Anas acuta*)
- Shoveler (*Anas clypeata*)
- Scaup (*Aythya marila*)
- Ringed plover (*Charadrius hiaticula*)
- Golden plover (*Pluvialis apricaria*)
- Grey plover (*Pluvialis squatarola*)
- Lapwing (*Vanellus vanellus*)
- Knot (*Calidris canutus*)
- Dunlin (*Calidris alpina*)
- Black-tailed godwit (*Limosa limosa*)
- Bar-tailed godwit (*Limosa lapponica*)
- Curlew (*Numenius arquata*)
- Redshank (*Tringa totanus*)
- Greenshank (*Tringa nebularia*)
- Black-headed gull (*Chroicocephalus ridibundus*)
- Wetland and Waterbirds

5.2.3. The conservation interests of the Lower River Shannon SAC (Site code 002165), located to the northeast of the site, are as follows-

- Sandbanks which are slightly covered by sea water all the time
- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Coastal lagoons
- Large shallow inlets and bays
- Reefs
- Perennial vegetation of stony banks

- Vegetated sea cliffs of the Atlantic and Baltic coasts
- Salicornia and other annuals colonising mud and sand
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
- *Margaritifera* (Freshwater Pearl Mussel)
- *Petromyzon marinus* (Sea Lamprey)
- *Lampetra planeri* (Brook Lamprey)
- *Lampetra fluviatilis* (River Lamprey)
- *Salmo salar* (Salmon)
- *Tursiops truncatus* (Common Bottlenose Dolphin)
- *Lutra* (Otter)

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. There were two 3<sup>rd</sup> Party appeals against the decision of LCCC to grant planning permission – both of which were subsequently withdrawn. A further 3<sup>rd</sup> Party appeal was dismissed by the Board. This left only the 1<sup>st</sup> Party appeal against condition 7 – requirement to pay a special contribution.
- 6.1.2. The appeal from HRA Planning, agent on behalf of the applicant, Homely Developments Ltd, received by the Board on 5<sup>th</sup> September 2017, can be summarised in bullet point format as follows-

- This appeal is against condition 7 only. This condition requires payment of a special contribution of €206,250 towards construction of the Mungret Distributor Road under the Local Infrastructure Housing Activation Fund (LIHAF). The terms of the scheme have not been properly applied.
- The construction of this Distributor Road is not a specific exceptional cost, as the infrastructure has already been identified as a cost in the Development Contribution Scheme adopted by LCCC.
- The calculation of the amount is unclear. Particular works should be specified, and only developments which will benefit from the infrastructure in question should be liable to pay the levy. It is stated that the contribution was calculated on the basis of €1,000 per residential unit – irrespective of size, and that apartments are charged at 75%, whilst commercial units are charged at €50 per sq.m. In contrast, the Development Contribution Scheme apportions development contributions on a sq.m basis for residential units. The total cost of providing the road has not been stated.
- No account is made of provision of land to accommodate the Distributor Road. The line of the road through the site has partly sterilised land within the site. In effect, the applicant has handed over the land for the road, with no allowance/discount made in the amount of contribution. Some lands for development within Mungret will not be affected by the road line, but will benefit from its construction.
- The proportion of the capacity of the distributor road that will benefit existing development has not been calculated.
- Circular letter PD 4/2003 in relation to Development Contributions states that contributions should be levied in an equitable manner.
- The application of this special contribution goes against the spirit of the LIHAF Scheme, and the objective to facilitate the provision of affordable housing for the community. The €226 million building activation scheme is aimed at making housing more affordable. The applicant has an affordability clause included in the notification of decision to grant permission (no. 4). The developer will be required to comply with the LIHAF affordability clause for housing units sold within any year. The developer has already committed to

providing affordable units on the site, thereby satisfying obligations under LIHAF. The levying of a special contribution on top of the affordability clause is, in effect, double charging.

- Circular letter PL 10/2016 was issued to provide guidance to local authorities on the information to be submitted in seeking funding for specific schemes under LIHAF. One of the requirements was- “Confirmation that the cost of providing that infrastructure from other publicly funded sources is unavailable and/or, where funded through the housing project(s) concerned, would make the provision of housing uneconomic, unaffordable or restricted in number and phasing of delivery”. Therefore, LCCC, in order to qualify for funding in the first place, would have confirmed with the Department that the provision of a financial levy on houses to facilitate development of the distributor road would have resulted in uneconomic and unaffordable houses.
- Departmental guidance on the LIHAF scheme made it clear that LAs have to match the funding element. LAs have access to loan finance options through the Housing Finance Agency at attractive rates of interest, and the Department has stated that sanction for such borrowing will be given due consideration. It is understood that matching funding is not intended to come from the providers of the housing units.
- A financial contribution is already levied on the developer (€456,178) under Condition 6 of the Notification of decision to grant planning permission. The application of a special contribution amounts to double-charging for the same element of infrastructure.
- Section 48(1)(c) allows for application of a special contribution 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”.
- Appendix B of the LCCC Development Contribution Scheme 2017-2021 details the range of capital projects included in the scheme. Both the Mungret Distributor Road additional phases and the distributor roads as identified in Local Area Plans are listed as capital projects already included in the Development Contribution Scheme. Objective T 4 of the SELAP (extended



until 2021) seeks the provision of new link roads as detailed on Map no. 3 (which includes the Mungret Distributor Road).

- The Mungret Distributor Road has been planned for the last six years.
- Additional levies, if required from Mungret, should have formed the basis of a Supplementary Development Scheme, if required.
- Condition 7 should be removed in its entirety.
- It is acknowledged that the PA may require the payment of contributions towards the provision of the distributor road, even where other sources of funding are available.

## 6.2. Planning Authority Response

The response of LCCC, received by the Board 4<sup>th</sup> October 2017, addressed all appeals. Since the 3<sup>rd</sup> Party appeals have been withdrawn/dismissed, I intend to address only comments in relation to the 1<sup>st</sup> Party appeal, which can be summarised in bullet point format as follows-

- In August 2016, the Department of Housing, Planning, Community and Local Government (DoHPC&LG) announced €200m funding under LIHAF – 75% to come from the exchequer and 25% from the LAs. The objective of the fund is to provide infrastructure to relieve critical infrastructure blockages, to enable accelerated delivery of housing in urban areas. Applications from LCCC for Mungret and Greenpark (amongst others) were successful. However, the LA must provide 25% of the cost.
- There is a significant land bank at Mungret. The total length of the new distributor link road network will be 2.94km. The full total sought by LCCC for this distributor road was €14.5m, but only €10.5m was approved – regard being had to the potential for phasing of development. Works proposed include the upgrading of roads to allow for development of 450 residential units (200 of which will be developed on the subject appeal site) by 2021, with a potential for 2,700 units overall. The submission includes a drawing showing the proposed phasing of the distributor road network.

- The Development Contribution Scheme for LCCC, adopted on 23<sup>rd</sup> January 2017, includes, at Appendix B, a range of capital projects, amongst which is 'Mungret Distributor Roads additional phase'. This is grouped with a range of construction project costs, with an overall allocation from the Development Fund of €39,900,000. This relates to Phase 1 outlined in Figure 2 [sic.]. The construction costs of this section of roadway amount to €4,913,305.80 and was included in advance of a decision on the LIHAF funding. 75% of this will be funded under LIHAF, and the remaining 25%, €1,228,326.40, is to be funded by LCCC, and cost recouped by whatever mechanism is deemed appropriate.
- Phase 1 was included in the Development Contribution Scheme, as a priority, as the lands are in LA ownership, and the Department of Education is seeking a site for a post-primary school on these lands. Therefore, delivery of the necessary infrastructure to access these lands was considered vital.
- LCCC does not consider that double charging has resulted in this instance, as additional phases of the distributor road had not been accounted for in the Development Contribution Scheme. The allocation of funding from the Department will not meet the cost requirements of the construction of the road network, and the LA does not have the means to cover the shortfall, without resort to a bank loan.
- The total cost of the road infrastructure is €14,919,363.19; the allocation from DoHPC&LG is €7,880,000; the outstanding amount to complete the road infrastructure is €7,120,000, which includes the 25% matching funding to be provided by the LA from its own resources, of €2,625,000.
- LCCC is in the process of preparing a Supplementary Development Contribution Scheme under Section 49. The Scheme will specify the area of lands, which are benefitting from the LIHAF funding. In the interim, the LA determined that a special contribution be applied, and it was agreed to set it at €1,000 per dwelling, 75% of this amount for apartments, and €50 per sq.m of non-residential floorspace.
- The approach in terms of recouping the matching funding by means of special/supplementary contributions, has been discussed with DoHPC&LG.

- Even with the Development Contribution Scheme levy and the special contribution levy, the applicant will still be able to supply affordable housing in accordance with LIHAF conditions.
- The application of a special contribution in this instance is the only effective way of ensuring the delivery of the infrastructure proposed under LIHAF, and matching the funding provided by the DoHPC&LG.
- Whilst the LA acknowledges the affordability clause attached to the permission in terms of the delivery of housing, the applicant should acknowledge the delivery of infrastructure to enable the delivery of that housing.

### 6.3. 1<sup>st</sup> Party Response to 2<sup>nd</sup> Party Response

6.3.1. The response of HRA Planning, received by the Board on 6<sup>th</sup> November 2017, can be summarised in bullet point format as follows-

- LCCC confirms that it is in the process of preparing a Supplementary Development Contribution Scheme for the LIHAF lands. The applicant agrees that this is the appropriate mechanism under which additional contributions should be levied.
- LCCC has attempted to retrospectively justify the apportionment of costs of €206,250, the apportionment of costs for construction of the road remains unclear.
- No allowance appears to have been made for the cost of the land of the road through the appeal site. Additional information submission required provision of a road width of 18.5m for road, footpath, cycle path and landscaping through the site. Construction will require ceding of 0.57ha to the LA. Not all development lands within Mungret will have to accommodate such a significant section of the distributor road.
- Condition 32 requires ceding of 1.3ha to the LA at the Mungret monastic complex.
- The PA contests that the section of Mungret distributor road referred to in the Development Contribution Scheme relates to Phase 1 only. There is no

reference to Phase 1 anywhere in the Development Contribution Scheme, and nor is there any mention made of phasing within the SELAP.

- Condition 6 already requires the applicant to pay a general development contribution levy. This levy includes roads and infrastructure.
- LCCC confirm that the Development Contribution Scheme was adopted in advance of LIHAF. Accordingly, the full cost of the road was factored into the Development Contribution Scheme. 75% of the cost of the road will now be funded under LIHAF, but yet the Development Contribution Scheme still charges the full cost of the road, and this cost remains levied on the proposed development under Condition 6, notwithstanding that only 25% of the of the road remains to be funded by LCCC.
- Cost benefit analysis carried out by the applicant as required by the LIHAF scheme determined that the special contribution increases the cost of a three-bedroom semi-detached unit from €273,051.69 in June 2017, to €289,676.92 in September 2017, an increase of €9,328.76 per three-bedroom unit.

#### 6.4. **Observations**

There is one observation from Kieran Barry & Elizabeth Barry, 'Ravenhill', Baunacloka, Mungret, received by the Board on 29<sup>th</sup> September 2017. Arising from the peculiar circumstances of this appeal, there is a live observation which cannot be considered, due to the withdrawal/dismissal of all 3<sup>rd</sup> Party appeals, and the restriction placed on what the Board may consider to the terms of Condition 7 of the Notification of decision to grant planning permission. For this reason, there is no reason to summarise the submission made by the observers, as the Board is precluded from considering this appeal *de novo*.

#### 6.5. **Prescribed Bodies**

By letters dated 19<sup>th</sup> October 2017, the Board circulated the appeal to the following-

- An Taisce.
- The Heritage Council.
- An Chomhairle Ealaíon.

- Fáilte Ireland.

There were no responses received.

## 7.0 Assessment

### 7.1. Special Contribution

#### 7.1.1. Section 48(13)(a) of the Act states-

Notwithstanding *sections 37 and 139*, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under *section 37* of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal. Therefore, the Board is precluded from consideration of this appeal *de novo*.

#### 7.1.2. The key issue in this appeal, therefore, is whether or not the costs as set out in Condition no. 7, properly constitute specific exceptional costs, not covered by a development contribution scheme and which would be incurred by LCCC in respect of public infrastructure and facilities which benefit the proposed development.

#### 7.1.3. Section 48(17) of the Act states-

In this section-

“public infrastructure and facilities” means-

- (a) the acquisition of land,
- (c) the provision of roads...

#### 7.1.4. In my assessment of the appeal, I refer to the Limerick City & County Council Development Contribution Scheme 2017-2021 (as adopted on in January 2017), as the ‘scheme’. Where reference is made to the ‘Act’, the relevant act is the Planning and Development Act 2000 (as amended).

#### 7.1.5. Condition 6, requiring payment of a development contribution of €456,178 under the terms of the Development Contribution Scheme, has not been appealed by the 1<sup>st</sup> Party and, therefore, stands.

- 7.1.6. Reference by the 1<sup>st</sup> Party appellant to condition no. 32 of the Notification of decision to grant planning permission (relating to transfer of lands to LCCC in the vicinity of the Mungret monastic complex), is not relevant to the consideration of this appeal. This condition has not been the subject of a 1<sup>st</sup> Party appeal and, therefore, stands.
- 7.1.7. Condition no. 4 of the Notification of decision to grant planning permission relates to compliance with the LIHAF agreement and understanding between the applicant and LCCC. This condition is not the subject of a 1<sup>st</sup> Party appeal and, therefore, stands. The LIHAF scheme is administered by the DoHPC&LG. The operation of this scheme is not a matter for the Board's consideration. Compliance with the terms of the scheme is a matter of private agreement between LCCC and the applicant – outside the remit of the planning acts. The appellant points out that the scheme was adopted in advance of LIHAF funding awards, and the full cost of the Mungret Distributor Roads must have been factored into the computation of costs for the scheme.
- 7.1.8. Section 48(1)(c) of the Act states-
- A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development 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.
- 7.1.9. Section 48(12) of the Act states-
- Where payment of a special contribution is required in accordance with *subsection (2) (c)*, the following provisions shall apply-
- (a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,
- 7.1.10. The LCCC Development Contribution Scheme provides for development contributions for residential development on a per sq.m basis (€20) with reduction to €7 for certain types of sites. The 1<sup>st</sup> Party appeal argues that the special contribution required does not distinguish between housing types and applies a bald €1,000 to each house, irrespective of size, a 75% rate to apartments (again irrespective of size) and then a per sq.m charge of €50 for commercial units. This, it is argued, is an unfair method of measurement of the amount of a contribution. Having regard to

the fact that the two schemes are different, the LA is entitled to calculate them on a different basis, and it is not a matter for the Board to determine on what basis rates should be applied (per unit/per sq.m etc.).

- 7.1.11. Appendix B of the scheme lists a “sample” (my emphasis) of projects to be funded from the Development Fund. Listed amongst them is ‘Mungret Distributor Roads additional phase’, ‘Distributor Roads as identified in Local Area Plans’, and other less explicit items which could perhaps be provided within a proposed housing development, like- ‘Cyclepaths’, ‘Footpath extensions’, ‘Housing Estate Enhancements’ etc. The very use of the word “sample” within Appendix B would seem to imply that the list is neither exhaustive nor even comprehensive, simply being a list of the larger items which were taken into consideration in drawing up the scheme. It is clearly stated on the final page of the scheme – “It should be noted that the Scheme is an indicative list of current demands for infrastructure from the various directorates and other projects may be substituted where appropriate while staying within the overall approved budget and where they are identified in the Development Plans or Local Area Plans.
- 7.1.12. The SELAP was adopted in 2011 – to run until 2017. This date has been extended to 2021. Map 6 is of the most relevance to this appeal site. The map shows an indicative Distributor Road & Associated Junction Layout and footpath//cycle path and public lighting along the identified Distributor Roads. There is one such Distributor Road link running north/south through the appeal site – linking to Quinn’s Cross Roundabout at the junction of the R859/R510 to the north. There is an additional connection shown from this north/south route to the R510 to the east (a short way to the north of St. Nessian’s PS). Only a very small section of this Distributor Road network is in place – recently constructed to serve as access to the newly-constructed schools – Gaelscoil an Raithín and Limerick East Educate Together NS. This section of road (approximately 0.2km) is located immediately to the south of the R859 at a newly-created crossroads at the Moore’s Road junction (in the northwest of Map no. 6). Apart from this, no section of the Distributor Road network outlined in Map 6 is in place.
- 7.1.13. LCCC states that the overall length of the Mungret Distributor Road network is 2.96km. This is represented on Figure 1 of the 2<sup>nd</sup> Party response to the 1<sup>st</sup> Party appeal – received by the Board on 5<sup>th</sup> October 2017. I note that there are four

phases shown on this drawing. Phase 1 is the distributor road off the R589, which curls around the back of the former Mungret College (of which approximately 0.2km is already constructed to serve Gaelscoil an Raithín and Limerick East Educate Together NS). The current appeal site is indicated as being Phase 2, whilst Phase 3 would connect Phases 1 & 2, and Phase 4 would provide the ultimate link to the R536 (former N20) to the south.

7.1.14. The planning application was lodged with LCCC on 22<sup>nd</sup> December 2016. Additional information was submitted on the 26<sup>th</sup> January, 7<sup>th</sup> June and 13<sup>th</sup> July 2017. A Traffic & Transport Assessment, submitted on 7<sup>th</sup> June 2017, indicates a revised distributor road network through the site, to omit the connection to Quinn's Cross Roundabout, and the replacement of the R510 link with one further to the north – indicated as an orange line on Figure 9 (p.17) of the aforementioned document. This has significantly reduced the length of distributor road through this appeal site and has resulted in a site with more development area for housing. The length of distributor road through the current appeal site (as revised by way of additional information submission), is approximately 0.3km. At a width of 18.5m, this equates to approximately 0.555ha of land. Much of this land would be required to facilitate an access road network to the site, whether it serve a distributor road purpose or not.

7.1.15. The final Planner's Report (undated) calculates the rate of special contribution on the following basis-

158 dwellings @ €1,000 per unit = €158,000.

43 no. apartment/duplex units @ €750 per unit = €32,250.

320sq.m Crèche @ €50 per sq.m = €16,000.

Total €206,250.

The additional information submission of 7<sup>th</sup> June 2017, increased the number of housing units to 160. Therefore, the amount of special contribution stipulated is €2,000 short, and should in fact read €208,250. This shortfall has not been commented upon by either party to the appeal.

7.1.16. The question of whether the cost of construction of the Mungret Distributor road has been included in the Development Contribution Scheme, needs to be first addressed. Appendix B of the scheme refers somewhat vaguely to 'Mungret



Distributor Roads additional phase'. The word phase is in the singular. The Distributor road, as indicated within the LCCC submission to the Board (Figure 1), has four phases. Phase 2 is the one of most relevance to the appeal site. However, Figure 1 indicates the older layout of the Distributor Road in this location – with the connection through to Quinn's Cross Roundabout shown. This was removed by way of additional information submission to LCCC. Notwithstanding this, I would be satisfied that Phase 2 is the relevant one for the appeal site. The SELAP was adopted in 2011, and the Distributor Road network was indicated within this Plan – Map no. 6 being the relevant one for the appeal site. Having regard to the age of the Plan and the adoption of the scheme in January 2017, it is difficult to comprehend how the construction of the Mungret Distributor Roads was not included in the scheme, notwithstanding the vague wording in Appendix B. Added to this, Appendix B clearly includes 'Distributor Roads as identified in Local Area Plans'. The Mungret Distributor Roads have been clearly identified in the SELAP since 2011. Again it is difficult to understand how this reference could be taken as anything other than an indication that the Mungret Distributor Roads were included within the scheme. It is the contention of the LA, that only the cost of Phase 1 of the Mungret Distributor Roads was included within the scheme – something which is at odds with the wording of Appendix B. The LA contends that the additional phases of the Distributor Road (2, 3 & 4) were not included in the scheme, notwithstanding that there was a live planning application before the Council for housing at Phase 2 at the time the scheme was adopted. Obviously, when drawing up a scheme, the LA has to have regard to works which are likely to be required/completed during the period of the scheme – in this instance 2017-2021. It may be that it was felt that the housing would not be completed within this timeframe. However, permission was nonetheless granted for 203 units. On balance, I would be inclined to agree with the contention of the appellant, that the costs of the Distributor Road either are or should be covered by the scheme itself, and should not attract the need for a special contribution.

- 7.1.17. It has been contended that the appropriate mechanism in this instance would have been a Supplementary Development Scheme under section 49 of the Act. However, there is none such in place at present, and whether there ought to be or not is a moot point. I note that LCCC has indicated that it is in the process of preparing a

Supplementary Development Contribution Scheme. If LCCC was concerned that the proposed development would not be properly provided with a distributor road network, then it was open to the PA to refuse planning permission on grounds of prematurity by reference to any prospective deficiency in the road network serving the area. This option was not chosen, and permission was granted, with the inclusion of a special contribution for the construction of the road.

7.1.18. The appellant argued that the cost of land acquisition for the road (approximately 0.57ha) had not been factored into consideration when attaching the special contribution condition. This point is now moot – regard being had to the conclusion that the special contribution should not have been required of the developer. The indicated line of the Distributor Road through the site has been clearly outlined on the relevant Development Plan for the area – the SELAP. The section of distributor road to be constructed through this site will serve the proposed housing development; and until such time as Phases 1 & 3 or 3 & 4 are constructed, will be of little or no use to others. In other words, the road will almost completely serve the needs of residents of the proposed housing development only. It may serve as pedestrian/bicycle access to the Mungret monastic complex when landscaping in the northwestern part of the site is completed. However, such access usage may be limited – particularly where access already exists to the Mungret monastic complex from the existing road network in the area. Residents from the proposed development will be beneficiaries of other sections of the Mungret Distributor Roads when completed – providing alternative access to the R859 and R526 and to the community and other facilities which are/will be provided within the wider Mungret area.

7.1.19. Section 48(12) of the Act requires that the particular works to be carried out by the LA should be specified in relation to the application of a special contribution. LCCC has not given any indication of the costs of construction of the portion of the Mungret Distributor Road through the appeal site. Some justification has been given as to the cost of providing Phase 1 of the Mungret Distributor Roads, but this phase does not provide any access to the appeal site, and will not do so until Phase 3 is constructed to join Phases 1 & 2. It would seem reasonable that a breakdown of the costs of the provision of the Mungret Distributor Roads through the appeal site should be given to the applicant, in order to allow for comment.

## 7.2. Other Issues

### 7.2.1. Appropriate Assessment

Arising from the nature of the appeal, issues of appropriate assessment do not fall to be determined by the Board.

### 7.2.2. EIS Recommendation

Arising from the nature of the appeal, the issue of whether sub-threshold EIS should be considered in relation to this planning application is moot. The yellow EIS Recommendation Form attached to the file is no longer of relevance.

### 7.2.3. Social & Affordable Housing Units

The applicant has indicated that agreement has been made with LCCC in relation to provision of Social & Affordable housing units as required under Part V of the Planning and Development Acts. As this appeal relates solely to the attachment of a special contribution, the issue of Social & Affordable housing units is not subject to consideration by the Board, notwithstanding that the applicant has referred to such provision within the 1<sup>st</sup> Party grounds of appeal.

## 8.0 Recommendation

I recommend that condition 7 be removed.

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**Michael Dillon,  
Inspectorate.**

**21<sup>st</sup> November 2017.**