



An  
Bord  
Pleanála

## Inspector's Report ABP-300796-18

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<b>Development</b>	A mixed use development of 97 no. residential units, a childcare facility, commercial units and communal private and public open space
<b>Location</b>	Harbour Road/Martins Lane, Robinstown (Tyrrell), Mullingar, Co Westmeath.
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority Reg. Ref.</b>	17/6067
<b>Applicant(s)</b>	Kelbuild Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Kelbuild Limited.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	Not Inspected.
<b>Inspector</b>	Karen Kenny

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## 1.0 Site Location and Description

1.1. The site is in the townland of Robinstown on the northern side of Mullingar Town. It is a greenfield site with a stated area of 2.75 hectares. The site is bordered to the north west by a narrow laneway (Martins Lane), to the east by a feeder canal that runs into the Royal Canal and to the west by a recently completed Medical Centre. The site is accessed from Harbour Road to the west via a recently constructed link road that serves the adjacent Medical Centre.

## 2.0 Proposed Development

- 2.1. The development consists of 97 no. residential units (65 no. houses and 32 no. apartments), a childcare facility and 2 no. commercial units (Class 2 & 3) with associated access roads, carparking and open spaces.
- 2.2. The apartments are contained in two blocks along the western site boundary with houses to the rear (east). Block 1 comprises a commercial unit at ground level and 16 no. apartments on first, second, third and fourth floors. Block 2 comprises a creche and commercial unit at ground level and 16 no. apartments on first, second, third and fourth floors.
- 2.3. The development includes:
- A pocket park with a stated area of 2,185 square metres,
  - A linear open space along the feeder canal with a stated area of 2025 square metres.
  - The extension of a link road from Harbour Road through the site to the north-western site boundary.
  - Provision of a new (upsized) culvert under the feeder canal that runs along the northern and eastern site boundaries.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. The proposed development was deemed to Materially Contravene objectives of the Westmeath County Development Plan 2014-2020 relating to the provision of public open space and a roadway. Following a consultation process under Section 34 (6) of the Planning and Development Act 2000 (as amended) the members of Westmeath County Council approved the Material Contravention of the Development Plan in respect of Planning Ref. 17/6067 at a meeting of the Council on the 11<sup>th</sup> Day of December 2017.

Permission was granted subject to conditions. Conditions no. 6, 7 and 23 as set out below are the subject of this appeal.

#### Condition No. 6:

Prior to the commencement of development or as otherwise agreed in writing with the Planning Authority, the developer shall pay the sum of €147,373.20 (one hundred and forty seven thousand, three hundred and seventy three euros and twenty cents) as set out below, to the Planning Authority as a contribution, in accordance with Westmeath County Council's Development Contribution Scheme adopted in 2013, in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority, and that is provided or that it is intended will be provided by, or on behalf of, the Council.

The contribution payable will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the development contribution will be updated annually on the 1<sup>st</sup> January in accordance with changes to the Wholesale Price Index (Building and Construction), (Capital Goods) and penalty interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme:-

Class of Infrastructure	Rate per unit / m2	No/m2	Amount of Contribution
A. Open Spaces, cultural, recreational and community facilities,	€681	96	€65,376.00
	€6.75	1026	€6,925.50

amenities and landscaping works, town and village improvement – including land acquisition.			
B. Roads, car parking, infrastructure to facilitate public transport, cycle and pedestrian facilities and traffic calming measures – including land acquisition.	€681 €9.45	96 1026	€65,376.00 €9,695.70
C. Waste water treatment facilities, Sewers and drains – including land acquisition.	€1363	-----	Now collected by Irish Water
D. Water Treatment Facilities & Water Mains – including land acquisition	€1363	-----	Now collected by Irish Water
Total			€147,373.20

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Westmeath County Council in respect of the provision / improvement of public services / infrastructure benefiting development in the area of the Planning Authority.

#### **Condition No. 7**

Prior to the commencement of the development or as otherwise agreed with the Planning Authority, the developer shall pay the sum of €64,769 (sixty four thousand, seven hundred and sixty nine euros) (2.534ha at a rate of €25,560 per hectare), to the Planning Authority as a contribution, in accordance with the Council's Supplementary Development Contribution Scheme pursuant to Section 49 of the Planning and Development Act 2000 as amended, in respect of public infrastructure (Clonmore Link Road & Robinstown Link Road) that will benefit the development to which planning permission relates when carried out.

The contribution payable will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the development contribution will be updated annually on the 1<sup>st</sup> January in

accordance with changes in the Wholesale Price Index (Building and Construction), (Capital Goods).

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred by Westmeath County Council in respect of the provision of public infrastructure that will benefit the development herein permitted in accordance with the terms of the Supplementary Development Contribution Scheme – Clonmore Link Road & Robinstown Link Road in accordance with Section 49 of the Planning & Development Act 2000 as amended.

### **Condition No. 23**

Prior to the commencement of the development the developer shall pay a special contribution of €201,900 (two hundred and one thousand and nine hundred euros) to facilitate the construction of the Harbour Link Road to access the site.

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred by Westmeath County Council in respect of the provision of public infrastructure that will benefit the development herein permitted in accordance with Section 48 (2) (c) of the Planning & Development Act 2000.

## **3.2. Planning Authority Reports**

### Planning Reports

3.2.1. The Planning Officers Report following initial assessment of the application includes the following considerations:

- The development is not in accordance with zoning objectives and transport objectives of the Development Plan.
- Adverse ecological impacts indicated.
- Concerns raised in relation to the design and layout of the scheme, including design of apartment blocks, compliance with national guidance set out in the Design Standards for New Apartments Guidelines and DMURS, car parking provision and privacy distances.
- Concerns raised by District Engineer in relation to surface water management, movement of water infrastructure and flooding.

3.2.2. Further information was sought in relation to issues including ecological impacts, design and layout of development, car parking provision, flood risk management and landscaping. The Planning Officers Report following receipt of further information recommended that permission be refused for 3 no. reasons summarised as follows:

- Development materially contravenes the zoning and transport objectives of the Westmeath County Development Plan 2014-2020.
- Insufficient information to demonstrate that the development provides an adequate level of amenity for the proposed residences, particularly with regard to daylight and sunlight levels. The level of car parking provision and distribution throughout will result in unauthorised parking on footpaths, roadways and shared surfaces within the development, which would be harmful to the visual amenities and functioning of the estate.
- The proposed development would endanger public safety by reason of traffic hazard due to the provisions for refuse vehicles.

### 3.2.3. Other Technical Reports

Area Engineer: Following receipt of further information the report of the Area Engineer concludes that car parking provision is not satisfactory, surface water attenuation is not satisfactory and the turning heads for trucks are not satisfactory.

Transportation: No objection subject to conditions.

DOS Mullingar District: A memo on file from the Director of Services for the Mullingar Municipal District recommends the following conditions:

- Financial contribution of €64,769 under S49 Supplementary Development Contribution Scheme for the Clonmore Link Road & Robinstown Link Road.
- Provision of a new link road from the existing access road to the primary care centre to the north western boundary of the site. The condition to acknowledge that the standard of road required is

in excess of what is required to serve the proposed development and that the Council commits to contributing a maximum of €200,000 towards the cost of this roadway.

- Special Contribution of €201,900 in respect of the Harbour Link Road covering 21.9 % of the estimated cost of this link road.

### **3.3. Prescribed Bodies**

DCHG: Further information in relation to nature conservation did not adequately address issues raised. Conditions recommended to address concerns raised in the event of a grant of permission.

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

- 3.4.1. A total of four submissions were received and considered by the Planning Authority during the consideration of the application. The issues raised do not relate to financial contributions and as such are not relevant to the subject appeal.

## **4.0 Planning History**

None.

## **5.0 Policy Context**

### **5.1. Development Contributions Guidelines for Planning Authorities, 2013**

- 5.1.1. The following extracts from Section 2 Supporting Economic Development are considered to be relevant:

- While it is expected that planning authorities will ensure that developers make an appropriate contribution towards the costs of public infrastructure and facilities, the local authority must ensure that it avoids levying development contributions that are excessively high. Development contributions are



ultimately designed to offset only a portion of the costs of public infrastructure and facilities.

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

## **5.2. Westmeath County Council Development Contribution Scheme 2013**

5.2.1. The Westmeath County Council Development Contribution Scheme 2013 provides a system for levying development contributions for public infrastructure and facilities.

- Section 6, sets out the levels of contribution required within the area of Westmeath County Council.
- Section 7, includes exemptions / reductions in respect of certain classes of development including social and affordable housing, sheltered / supported housing and not for profit childcare facilities.
- Section 8, sets out provisions for the payment of contributions. This section states that if a developer is required to provide facilities or infrastructure in excess of the immediate needs of the proposed development, the Planning Authority may enter into an agreement with the developer to off-set development contributions against such provisions of public facilities.
- Section 12 states that Westmeath County Council and Athlone Town Council may, in addition to the terms of the General Development Contribution Scheme require the payment of a special contribution in respect of a particular development where specified exceptional costs not covered by a scheme are incurred in respect of public infrastructure and facilities which benefit the proposed development.
- An indicative list of projects that may be undertaken and the estimated volume of expenditure under the scheme in the period up to 2020 is set out in Appendix A of the Scheme.

### **5.3. Supplementary Development Contribution Scheme for Clonmore Link Road and Robinstown Link Road, Mullingar, 2013**

5.3.1. This Supplementary Development Contribution Scheme is additional to the general scheme and provides for specific contributions for the Clonmore Link Road and Robinstown Link Road, within Mullingar Town. The scheme applies to all current and future zoned land in the town of Mullingar.

- The scheme states that the level of contribution to be paid under the Scheme, except where an exemption applies is €25,560 per hectare for new development.
- Section 2.6.7 states that if a developer is required to provide facilities or infrastructure in excess of the immediate needs of the proposed development, the Planning Authority may enter into an agreement with the developer to off-set development contributions against such provisions of public facilities.
- Section 2.7, includes exemptions / reductions in respect of certain classes of development including exemptions for social and affordable housing, sheltered / supported housing and not for profit childcare facilities.

### **5.4. Natural Heritage Designations**

None.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A first party appeal has been received in respect of Financial Contributions applied by conditions no. 6, 7, and 23 of the notification to grant permission. The grounds of appeal can be summarised as follows:

- The Planning Authority have not assigned a suitable value to proposed infrastructure works that would benefit the wider area.
- Financial contributions should be reduced to reflect public infrastructure provision including the provision of a public open space provided as part of

the Mullingar Greenway, a new link road extension that would serve lands outside of the site, a new culvert under the feeder canal to provide an upsized surface water outlet that will facilitate development in the wider environs, communal rooms provided in association with sheltered accommodation and a community childcare facility that is above the standard requirement of the development.

- It is argued that allowances have not been properly afforded either through the General Development Contribution Scheme, Supplementary Development Contribution Scheme, or Special Development Contribution.

### **Condition No. 6 - General Development Contribution Scheme**

- The Class A<sup>1</sup> contribution sum of €72,301.50 fails to take account of the proposal to provide a public open space of 2,025 square metres as part of the development which would form part of the Mullingar Greenway. The appeal submission contends that the cost of providing this public open space (land acquisition and landscaping) is €72,301.50. A 50% to 100% discount is sought.
- The applicant contends that there is 655 square metres of commercial floorspace proposed. The calculation under Condition No. 6 is based on 1026 square metres. It is argued that the creche and community rooms (combined floor area of 371 square metres) are exempt from the requirement to pay a contribution.
- It is argued that social housing provision should also be exempted from the requirement to pay a contribution based on the terms of the General Scheme.

### **Condition No. 7**

- Condition no. 7 relates to the Section 49 Supplementary Development Contribution Scheme for the Clonmore Link Road & Robinstown Link Road. The scheme applies a cost of “€25,560 per hectare for new development”. The site area is 2.75 hectares. The contribution is calculated based on a net site area of 2.534 hectares (less 0.216 ha) that excludes a proposed link road. The site area should be discounted to 2.089 hectares to exclude total open

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<sup>1</sup> Class A. Open Spaces, cultural, recreational and community facilities, amenities and landscaping works, town and village improvement – including land acquisition.

space provision (4,200 square metres) and the area of the link road (4,210 square metres). A case is also made for the deletion of this condition on the basis that the Supplementary Scheme allows for the off-set of contributions in cases where a developer is required to provide facilities or infrastructure in excess of the immediate needs of the proposed development.

### **Condition No. 23**

- Condition no. 23 applies a Special Contribution under Section 48 (2) (c) of the Act in respect of costs incurred in the construction of the initial section of the Harbour Link Road completed in 2017. The appeal argues that the link road extension proposed under the subject application and as required by condition no. 13.8 is over and above the necessary standards to facilitate the proposed development and that the provision of same is undermined directly by the application of a separate unnecessary Special Development Contribution under Conditions No. 23 for the first phase of this road. This contribution does not recognise the significant contribution the applicant is making to the extension of the Harbour Link Road.
- Condition no. 13.8 requires the provision of an extension to the partially completed Harbour Link Road within the site. The condition as worded states that the standard of road is in excess of that which would be required to serve the proposed development and in this regard, the Council will contribute a maximum of €200,000 towards the cost of this road. The applicant is being double or even triple charged by Condition no. 23 when the General Scheme for Class B<sup>2</sup> Infrastructure is also taken into account. The costs of the link road extension is calculated at c. €382,000. The applicant seeks the retention of Condition no. 13.8 and the removal of Condition no. 23, in addition to a discount in the Class B Infrastructure calculation under Condition No. 6.

### **Other**

- It is proposed to provide a new culvert under the Feeder Canal which will address surface water back up from the under-sized pipe on the subject lands

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<sup>2</sup> Class B. Roads, car parking, infrastructure to facilitate public transport, cycle and pedestrian facilities and traffic calming measures – including land acquisition.

and will also benefit the wider area. Whilst it is acknowledged that the local authority has not sought to collect a contribution for this type of infrastructure, the applicant wishes to establish the ability to recognise that the application presents a planning gain in terms of public infrastructure. The applicant is seeking the Boards consideration and ultimately a ruling on same to establish the position of a public infrastructure credit for negotiations which will need to occur with Irish Water.

## **Planning Authority Response**

### **Condition no. 6**

- The scheme was applied according to the Westmeath County Council Development Contribution Scheme 2013-2020.
- The site area is 2.75 hectares and the open space provided is 4,210 square metres, which represents 15.3% of the site. The applicant has not deducted pedestrian walkways and shared space which are specific to the residents from the general calculation.
- The applicant has not provided public open space beyond that required under the Mullingar LAP, which applies a 40% open space and a 60% mixed use zoning to the lands.
- The culvert under the feeder canal was proposed by the developer to alleviate flooding within the site and demonstrate compliance with OPW specifications regarding Section 50 and SUDS.
- The creche and communal facilities within the apartment blocks were proposed by the developer. The communal unit by virtue of its internally accessed first floor location within blocks is only applicable to the development and not to the wider community.

### **Condition no. 7**

- In applying the Supplementary Development Contribution Scheme the PA deducted the 0.216 hectare area of a road bed, which will serve future development lands, from the site area of 2.75 hectares, resulting in a net area

of 2.534 hectares. This allowance resulted in a financial contribution of €64,769. The contribution would have been €70,290, based on the full site.

### **Condition no. 23**

- The special contribution relates to costs that are directly associated with the construction of a link road to the south of the site that was completed in 2017. The 12.547 hectares of land within the Robinstown Framework Plan Area are strategically located relative to the centre of Mullingar Town, however they had limited development potential due to restricted access. Westmeath County Council took a strategic position and advanced a CPO process to develop a link road to these lands. This link road is not included in the General or Supplementary Development Contribution Schemes and a special contribution was devised on the principle of percentage of land served to project ratio. The direct costs associated with the link road (inc. construction / CPO / legal) are apportioned only to the area of land served by the roadway i.e. 12.547 hectares (Map 2 refers).
- The cost of the link road in 2017 was €1,00,000. The subject application has an area of 2.75 hectares. This is 21.917% of the framework plan lands and attracts a contribution €219,175.8. The area of roadbed related to the proposed link road extension was deducted from the site area, reducing the percentage to 20.19% and the contribution to €201,900, as outlined in condition no. 23.

### **Condition no. 13.8**

- The extension to the new link road is necessary to serve this proposed development and is considered to be an integral part of the development and is required to achieve the orderly development of other adjoining lands. It is acknowledged that the standard of road required is in excess of that which would be required to serve the proposed development and in this regard, Westmeath County Council will contribute a maximum of €200,000 to the cost of the road, as detailed in the condition.

## **6.2. Observations**

None.

### 6.3. Further Response

A further response has been received from the applicant. The issues raised that are additional to issues raised in the grounds of appeal, can be summarised as follows:

- Financial contributions under Section 48 and 49 of the Act are discretionary with the Act stating that they 'may' be applied. There is an implied flexibility to recognise infrastructure and facilities provided over and beyond what is required to facilitate a development.
- The developer could have ignored the inclusion of road infrastructure, open space specific to the Mullingar Greenway, surface water infrastructure.
- If the infrastructure that is proposed was excluded Condition no. 6 and Condition no. 23 would be unaltered. The only benefit accruing is the net site area used in respect of the Special Contribution for the Robinstown Link Road.
- In relation to the reference to land zoning, it is argued that the Open Space zoning is 'a cautionary reservation' only. Addendum No. 2 to the Strategic Flood Risk Assessment of the Plan, states that pending the installation of appropriate surface water infrastructure and flood mitigation measures that lands affected by Pluvial Flooding shall be reserved for Open Space and that they can be freed up for development upon the installation of surface water infrastructure.
- The childcare provision is based on consultation with operators and the childcare committee and exceeds the requirement of the subject development.
- In relation to condition no. 23, the applicant proposes to construct the link road extension, which would facilitate future development lands, at no cost to the Planning Authority. The applicant is happy to collaborate with the Planning Authority and has already ceded lands to the Council outside of the site for a significant element of the link road from Harbour Road. The undertaking to extend the road, in addition to the provision of linking land to

serve a Primary Care Centre, needs to be recognised by the Planning Authority.

- Contributions are normally sought where a development places an infrastructural impact which cannot be taken account of on site. In this instance the site reduced the infrastructural impact and burden on the PA and this should balance the burdens in the interests of natural justice.

## 7.0 Assessment

7.1.1. The first party has appealed Conditions No. 6, 7 and 23 of the notification to grant permission. Condition No. 6 relates to the general Westmeath Development Contribution Scheme, 2013 and is appealed under Section 48 (10) (c) of the Planning and Development Act 2000 (as amended). Condition No. 7 relates to a Supplementary Development Contribution Scheme and is appealed under Section 49 (3) of the Act. Condition No. 23 relates to a Special Contribution under Section 48 (2) (3) of the Act and is appealed under Section 48 (13) (a) of the Act.

7.1.2. Sections 48 and 49 of the Act hold that where an appeal received by the Board that relates solely to a condition dealing with a contribution applied under the above Sections of the Act, 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. The subject appeal is therefore confined to the consideration of whether or not the terms of the General Contribution Scheme, the Supplementary Development Contribution and of Section 48 (2) (c) of the Planning and Development Act 2000 (as amended) were properly applied.

7.1.3. I consider that the key issues in this appeal can be addressed under the following headings:

- Development Contribution Off Sets
- Condition No. 6 General Development Contribution Scheme
- Condition No. 7 - Supplementary Development Contribution Scheme – Clonmore Link Road & Robinstown Link Road
- Condition No. 23 - Special Contribution



- Other Issues

## 7.2. Development Contribution Off Sets

- 7.2.1. The grounds of appeal argue that the Planning Authority have not assigned a suitable value to infrastructural works that would benefit the wider area. A reduction in financial contributions is sought under the general scheme (condition no. 6) and under a special contribution (condition no. 23) to reflect the costs associated with the provision of part of the Mullingar Greenway, a link road extension, communal rooms and a community childcare facility.
- 7.2.2. Section 245 of the Planning and Development Act 2000 (as amended) gives power to a planning authority to offset monies due to it under the Planning and Development Act. Section 245 states that *“where a sum is due under this Act to any person by a planning authority and, at the same time, another sum under this Act is due by that person to that authority, the former sum may be set-off against the latter either, as may be appropriate, in whole or in part”*.
- 7.2.3. This provision is recognised in the ‘Payment of Contribution’ sections of the Westmeath County Council General Contribution Scheme and the Supplementary Development Contribution Scheme which state that *“if a developer is required to provide facilities or infrastructure in excess of the immediate needs of the proposed development, the Planning Authority may enter into an agreement with the developer to off-set development contributions against such provisions of public facilities in accordance with Section 34 of the Act”*. The inclusion of a condition requiring the payment of a contribution in respect of public infrastructure and facilities benefiting a development is provided for under Sections 48 and 49 of the Planning and Development Act. While off-sets can be applied against financial contributions, this should not alter the sum of the contribution, in my view. I consider that the terms of the Scheme were correctly applied in this regard and that off-sets, where applicable, should be negotiated separately between the relevant parties.

## 7.3. Condition No. 6 General Development Contribution Scheme

- 7.3.1. Condition no. 6 relates to contributions under the General Contribution Scheme. The appeal argues that the stated floorspace for “industrial / commercial and other types

of development” is overstated at 1026 square metres. It is argued that the creche (245 square metres) and communal rooms within the apartment blocks (126 square metres) are community facilities and are exempted under the Scheme.

- I consider that the communal rooms are ancillary to the residential units in Blocks 1 and 2, which attract development contributions in their own right. I would note that the rooms are positioned at first floor level and are not independently accessible from outside of the blocks. I am of the view that this floorspace does not fall within the description of “industrial / commercial” floorspace detailed in the Scheme and that the floorspace should not attract a contribution in its own right.
- The terms of the exemption for childcare floorspace detailed in Section 7 of the Scheme relates specifically to ‘not for profit childcare facilities’. The proposed facility is a commercial facility and does not, therefore, fall within the terms of the exemption. I consider that the terms of the scheme have been correctly applied in respect of the childcare floorspace.

7.3.2. The appeal argues that Condition No. 6 fails to take account of the proposal to provide a public open space that would form part of the Mullingar Greenway and have wider public benefit. A discount of 50% to 100% is sought based on the estimated cost of providing this open space. The issue of off-sets is discussed in detail in Section 7.2 above. In relation to the extent of open space provided I would note that the Westmeath County Development Plan and Mullingar Local Area Plan require open space provision in new residential developments at a rate of ‘15% minimum of the gross site area’. The gross site area is 2.75 hectares, resulting in a minimum open space requirement of 4,125 square metres. The combined open space provision is 4,210 square metres, and exceeds the ‘minimum’ standard by 85 square metres (2%). I would concur with the view expressed in the Planning Authority’s response. The level of open space provision does not constitute an over provision by reference to the standards set out in the Development Plan or Local Area Plan for the area.

7.3.3. The Planning Authority response also refers to the zoning objectives pertaining to the site, which includes a combination of ‘Open Space’ and ‘General Urban District’ zonings with a stated ratio of 40% to 60%. The applicant argues that the Open

Space zoning is 'a cautionary reservation' only and that the Strategic Flood Risk Assessment of the LAP states that the lands can be freed up for general development upon installation of appropriate surface water installations. I do not accept this argument. The Mullingar LAP is the relevant statutory plan for the area and sets out the zoning provisions that apply to the site to include Open Space zoned lands. I would note that the proposed mixed-use development encroaches onto lands that are zoned Open Space and that the decision to grant permission was deemed to be a material contravention of the zoning objective. However, this is not a matter for the Boards consideration under the subject appeal, as the appeal is limited to Conditions no. 6, 7 and 23 only.

7.3.4. The grounds of appeal argue that Social Housing units should be omitted from the contribution. The terms of the exemptions detailed in Section 7 of the Scheme include Social and Affordable housing units, which are purchased in accordance with an agreement made under Part V of the Act and other forms of sheltered housing. While it is possible that units within the scheme will come forward as social housing units, the number and location the units has not been finalised to date and any offsets that may arise would need to be negotiated separately in my view.

#### **7.4. Condition No. 7 - Supplementary Development Contribution Scheme – Clonmore Link Road & Robinstown Link Road**

7.4.1. Condition no. 7 relates to a Section 49 Supplementary Development Contribution Scheme for the Clonmore Link Road & Robinstown Link Road in Mullingar. The scheme applies to all current and future zoned land within the town of Mullingar, including the appeal site. The rate of contribution at "€25,560 per hectare for new development" is not disputed. The Planning Authority calculated the contribution based on a net site area of 2.543 hectares. The Planning Authority's response and an email on the file from the Director of Services dated 4<sup>th</sup> January 2018 states that the road bed of an extension to the Harbour Link Road (0.2160 hectares) is excluded from the calculation, resulting in a net site area of 2.534 hectares for calculation purposes. The appellants argue that the road and all public open spaces should be excluded, resulting in a net site area of 2.089 hectares. As discussed in detail in Section 7.3 above, I am of the view that the level of open space provision does not constitute an over provision by reference to the standards set out in the

Development Plan or Local Area Plan for the area. I am of the view that the open spaces are an integral part of the development and are part of the net site area. The omission of the road bed only is reasonable, in my view, as this is a strategic road that would serve lands outside of the site. On the basis of the foregoing, I am of the view that the terms of the Supplementary Development Contribution Scheme have been correctly applied.

## 7.5. Condition No. 23 - Special Contribution

7.5.1. Condition no. 23 relates to a Special Contribution of €201,900 applied under Section 48 (2) (c) of the Act to recoup costs incurred to facilitate the construction of the first phase of the Harbour Link Road. The grounds of appeal argue that the requirement to provide the next section of this road within the appeal site under Condition No. 13.8 is undermined by the application of a contribution for the initial section, under Conditions No. 23. It is argued that the condition fails to recognise the contribution that the applicant is making to the extension of the Harbour Link Road. Condition no. 13.8 relates to the extension of the Harbour Link Road within the site and states that the standard of road is in excess of what is required to serve the proposed development and that the Council will contribute a maximum of €200,000 towards the cost of this road. The appeal submission states that the cost of the link road extension is calculated at c. €382,000. The applicant seeks the retention of Condition No. 13.8 and the removal of Condition no. 23, in addition to a discount in the Class B Infrastructure calculation under Condition No. 6.

7.5.2. Condition no. 23 is a Special Contribution applied under Section 48 (2) (c) of the Planning and Development Act 2000 (as amended). Section 48 (2) (c) provides that *“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”*. The Harbour Link Road does not form part of the General Development Contribution Scheme (Appendix 1 refers) and as such, a special contribution can be applied. The Planning Authority’s appeal response states that the contribution relates to the cost of a link road to the south of the site that was completed in 2017. The response states that the Robinstown Framework Plan lands

are strategically located within Mullingar Town and had limited development potential due to restricted access. Westmeath County Council took a strategic position and advanced a process to develop a link road to these lands. A special contribution was devised for this road project on the principle of percentage of land served to project ratio. The framework plan area that will be served by the road is 12.547 hectares and the cost of the link road was €1,00,000. The net site area, excluding the roadbed of the proposed link road extension, equates to 20.19% of the land area with a resulting contribution of €201,900, as outlined in condition no. 23.

7.5.3. I consider that there is an onus on a Planning Authority under Section 48 of the Act to demonstrate the need for a Special Contribution and to provide a clear basis for the level of contribution applied. I am of the view that the appeal response demonstrates the need for the project and the basis for the contribution. While I would note that no documentation has been provided to verify the cost of the road, I consider the cost to be reasonable on the basis of the works undertaken. I would also note that it is clear that the contribution does not relate to or overlap with the further road extension required under Condition 13.8 of the notification to grant permission. On this basis, I consider the application of a special contribution under Section 48 (2) of the Act to be reasonable based on the circumstances detailed in the response of the Planning Authority.

## 7.6. **Other Issues**

7.6.1. The applicant requests a determination from the Board in relation to a proposed culvert under the feeder canal, to establish the position of a public infrastructure credit for future negotiations with Irish Water. The grounds of appeal acknowledge that the local authority has not sought to collect a contribution for surface / storm water infrastructure. The appeal states that it is proposed to provide a new culvert under the Feeder Canal which will address surface water back up from an under-sized pipe on the subject lands that will also benefit the wider area. The applicant is seeking a ruling from the Board to establish that there is a public infrastructure credit in this instance, that can input into negotiations with Irish Water. I would note that planning authorities no longer apply development contributions in respect of water supply and wastewater infrastructure. Irish Water are empowered under the Water Services Acts to apply connection charges for new connections. The Board have no

jurisdiction in relation to connection charges under the Water Services Acts and cannot therefore make a determination in respect of this matter.

## 8.0 Recommendation

8.1. I recommend that the Board directs the Council under Section 48 of the Planning and Development Act 2000, as amended, to alter Condition no. 6 as follows.

Condition no. 6

Prior to the commencement of development or as otherwise agreed in writing with the Planning Authority, the developer shall pay the sum of €145,332.00 (one hundred and forty five thousand, three hundred and thirty two euros) as set out below, to the Planning Authority as a contribution, in accordance with Westmeath County Council's Development Contribution Scheme adopted in 2013, in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority, and that is provided or that it is intended will be provided by, or on behalf of, the Council.

The contribution payable will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the development contribution will be updated annually on the 1<sup>st</sup> January in accordance with changes to the Wholesale Price Index (Building and Construction), (Capital Goods) and penalty interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme:-

Class of Infrastructure	Rate per unit / m2	No/m2	Amount of Contribution
A. Open Spaces, cultural, recreational and community facilities, amenities and landscaping works, town and village improvement – including land acquisition.	€681	96	€65,376.00
	€6.75	4026	€6,925.50
		900	€6,075

B. Roads, car parking, infrastructure to facilitate public transport, cycle and pedestrian facilities and traffic calming measures – including land acquisition.	€681 €9.45	96 1026 900	€65,376.00 <del>€9,695.70</del> €8,505
C. Waste water treatment facilities, Sewers and drains – including land acquisition.	€1363	-----	Now collected by Irish Water
D. Water Treatment Facilities & Water Mains – including land acquisition	€1363	-----	Now collected by Irish Water
Total			€147,373.2 €145,332.00

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Westmeath County Council in respect of the provision / improvement of public services / infrastructure benefiting development in the area of the Planning Authority.

## 9.0 Reasons and Considerations

Having regard to the Westmeath County Council Development Contribution Scheme 2013, the Supplementary Development Contribution Scheme – Clonmore Link Road & Robinstown Link Road and Section 48 (2) of the Planning and Development Act 2000 (as amended), with the exception of the recommended alterations to Condition

no. 6 details in Section 8 above, it is considered that the terms of the Schemes and the Act have been properly applied in this instance.

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Karen Kenny  
Senior Planning Inspector

29<sup>th</sup> June 2018