



An
Bord
Pleanála

Inspector's Report ABP-302361-18

Development	The construction of an extension to internal access road from Maple Avenue with associated works including public lighting and the development of 2 no. plots generally for industrial, warehouse, storage and logistic use and associated site works.
Location	Plots 2 and 9, Dublin Inland Port, South of Dublin Airport Logistics Park.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F18A/0139
Applicant(s)	Dublin Port Company
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	First Party against Special Contribution
Appellant(s)	Dublin Port Company
Observer(s)	Dublin Airport Authority (DDA)
Date of Site Inspection	None
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The subject development is located to the south/east of the Dublin Airport Logistics Park which is located to the west of the R122 Finglas to Naul Road and to the east of the M2 motorway. A central access road labelled as Spine Road A/Elm Road provides a link between the R122 and the former N2, now the R135 and in turn the M2. Large warehousing units are located within the Dublin Airport Logistics Park though the overall lands forming this development are only partially built upon at present.
- 1.2. Access to the site is currently provided from Cedar Drive, off Elm Road which connects the R135 to the R122 (located to the east of the landholding). To the south east is the Baleskin recreation centre and a mechanical workshop. It is noted that there is a Masterplan for the larger area.

2.0 Proposed Development

- 2.1. This proposal is for development at Plots 2 and 9, Dublin Inland Port, south of Dublin Airport Logistics Park, off Maple Avenue, Coldwinters, St. Margaret's, Co. Dublin and is to consist of the following:
 - The construction of an extension to internal access road from Maple Avenue with associated works including public lighting and the development of 2no. plots generally for industrial, warehouse, storage and logistic uses.
 - Plot 2 (c.5.42ha) is to consist of a maintenance/repair/service workshop building of c.1,050sq.m and an ancillary two storey office and reception building of c.297sq.m; 3no. container storage gantries of 250sq.m each; high strength ground surface treatment including underground drainage, ducting, attenuation, utility infrastructure to facilitate stacked shipping container storage; wheel wash area; bunded fuel storage; lighting towers (c.35m); 3m high fence along the external site boundary; 2.05m high fence along internal site boundary; gate access; and; ancillary staff car and cycle parking.
 - Plot 9 (c.0.67ha) is to consist of a maintenance/repair/service workshop building of 994sq.m and ancillary offices over two floors of c.461sq.m; high strength ground surface treatment including underground drainage, ducting,

attenuation, utility infrastructure to facilitate stacked shipping container storage; lighting towers (c.35m); 3m high fence along the external site boundary; 2.05m high fence along internal site boundary; site access; and; ancillary staff and cycle parking.

- The application also includes for attenuation ponds, ESB substation; security cameras, signage, associated landscaping, boundary treatment and site works on an overall site of c.8.45ha.

2.2. The documentation submitted with the application includes the following:

- A letter of consent from Dublin Port Company
- Planning Report – RPS Group Ltd
- Engineering Planning Report – Atkins
- Design Statement – Atkins
- Traffic and Transport Assessment – Atkins
- Mobility Management Plan – Atkins
- Outline C&D Waste Management Plan – Atkins
- Outline Construction Management Plan – Atkins
- Stage 1 Flood Risk Assessment – Atkins
- Planning and Engineering Drawings – Atkins
- Built Heritage Assessment Report – Byrne Mullins & Associates, Archaeological & Historical Consultants
- AA Screening – Faith Wilson, Ecological Consultant
- Landscape Strategy Report – Cunnane Stratton Reynolds, Land Planning and Design
- Tree Survey – ditto
- Landscape Drawings - ditto

3.0 Planning Authority Decision

3.1. Decision

On the 24th of July 2018 Fingal County Council granted permission for the proposed development subject to 19no. conditions. These generally relate to infrastructural, drainage, construction, landscaping and development contributions. It is of note that they subsequently removed condition no.15 as both condition nos. 15 and 16 related to the same issue i. e hours of operation.

Condition no.6(a) is of particular relevance, to the First Party Appeal i.e:

The developer shall comply in full with the following (a) to (d), note only (a) is the subject of this appeal:

- a) *The developer shall pay a special contribution of €202,950, under Section 48(2)(c) of the Planning and Development Act 2000 in respect of the upgrade and signalisation of the junction at Site 13.*

Reason: In the interest of traffic safety and in the interest of adequate infrastructure provision.

3.2. Planning Authority Reports

Planner's Report

The Planner had regard to the locational context of the site, planning history and policy, the submissions made and the documentation submitted and their comments included the following:

- Compliance with the Zoning Objective – acceptable in principle.
- They have regard to the development proposal and note an overview/ masterplan drawing for the future development of these lands. They also refer to the Landscape Drawings.
- They provide that it is not foreseen that the proposed development will have a negative impact on the amenity of the area.
- There are no residences in close proximity – the Baleskin Reception is 200m from the site, and they note that this will be a 24hour operation.

- Considering the location of the site adjacent to the N2/M2 it is important that the development does not visually dominate the area.
- They have regard to the comments made in the inter departmental reports.
- They note the Transportation Planning Section has no objection and that a special contribution for the upgrade onto the old N2 will be conditioned if permission is to be granted.
- They note the comments of the DAA, and provide that noise insulation will be required and conditioned as will the use of cranes on the site.
- They have regard to the comments about attenuation areas and consider that this issue can be addressed by way of a condition if permission is granted or by F.I. The attenuation areas should be suitably designed to not attract birds to the area.
- The site area is large and there is potential for the finding of archaeological material on these lands. They note mitigation measures set out in the Cultural Heritage Report.
- They considered the AA Screening assessment is acceptable and that a Stage 2 AA is not required.

They concluded that the proposed development and uses associated with Dublin Port acceptable however they had some concerns regarding the height of development and layout of Plot 2.

Further Information Request

- They had some concerns about the height and visual impact with regard to proposed development on Plot 2, the western side of the site being adjacent to the N2/M2 Primary Route. They requested revised plans to take into account consideration of an alternative location or layout for this development or further screening of the container units would be more appropriate.
- Revised details and plans demonstrating the provision of revised attenuation areas to serve this development. This includes regard to prevention of birds. *It shall be clearly indicated what measures are undertaken to prevent the*

attraction of birds to these water courses. The applicant is advised to contact the Parks and Green Infrastructure in this regard.

Further Information Response

RPS has submitted a response on behalf of the applicant and this includes the following:

- Revised indicative layout, details and drawings.
- Reduction in height of the containers and they note measures proposed to achieve this.
- Elevations and sections accompanying the landscape masterplan illustrating the landscaping measures. A Landscape and Visual Issues Statement has also been prepared.
- They invite the inclusion of a condition relative to the carrying out of these measures and regulating the development or use of any land which adjoins, abuts or is adjacent to the land to be developed as provided for under section 34(1)(4)(a) of the Planning and Development Act 2000, as amended.
- They invite a submission relating to the notional location of heights as illustrated within the response package along the boundary with the N2/M2 corridor.
- They also ask the PA to consider a condition which enables the notional location of stacking heights as indicated on the response drawings as the proposed screening measures mature through a further planning application in the future.

Item 2 Attenuation Ponds

- They note contact with the Parks and Green Infrastructure Division of the Council and include revised drawings i.e: *Updated plan drawings indicating additional sections through the proposed ponds; Additional sections through the proposed ponds at location with no incoming/outcoming headwalls.*

- In response to the DAA referral observation, Atkins Ornithologist carried out a Potential Bird Hazard Report which outlines the Bird Strike Risk and mitigation measures to reduce the risk.
- Netting is now proposed to each of the attenuation ponds as outlined in this Report and they provide details of revised plans.
- They note that the Parks and Green Infrastructure Division have confirmed that the attenuation proposals are acceptable in principle subject to a planting plan being submitted to include the planting outline details as per the technical information provided.
- A revised Landscaping Masterplan for the overall site has also been submitted.
- They provide that the applicant welcomes a condition seeking the submission of a detailed planting plan relating to the attenuation proposals for agreement with the PA.

3.3. Other Technical Reports

Water Services Department – They have no objection subject to conditions on rainwater harvesting and surface water treatment and being in compliance with current codes of practice.

Transportation Planning Section – They have regard to the Traffic and Transport Assessment submitted and are satisfied that there would be no negative traffic impact associated with the proposed development for all sites analysed except Site 13. They note that the applicant has not proposed any works to upgrade the junction at Site 13. They also have regard to Parking, Internal Layout, Mobility Management Plan and Construction Phase. They have no objection but recommend conditions including the special contribution of €202,950.

3.4. Prescribed Bodies

Irish Water – They have no objection subject to conditions.

Daa (Dublin Airport Authority) – They note their concerns about Attenuation Ponds (relevant to prevention of Bird Attractant), Airport Noise Zones and Crane Use where they recommend a number of mitigation measures.

4.0 Planning History

The Planner's Report refers to the planning history relevant to the area. These include the following granted permission subject to conditions by the Council:

- Reg.Ref. F16A/0598 – permission for the development of a 40m access road off Maple Avenue; a gated entrance incorporating two large feature walls of 6m in height; installation of a landmark container sculpture at the new entrance; the erection of a 3m palisade security boundary fence; signage; and new external lighting.
- Reg.Ref. F15A/0606 – permission for an access off St. Margaret's Road (R122) to the south of the current Dublin Airport Logistics Park including a new junction, a 270m access road, a permanent site boundary and all necessary services on a site comprising 1.56ha.
- Reg.Ref. F05A/0582 – permission for site development works, services and ancillary buildings for a proposed logistics and warehousing park on a site of 49.36ha, The access road to the north of the site was included with this application.

Other applications in the area refer to the provision of individual warehousing units such as F06A/0049, F06A/0333, F07A/0389, F07A/1605 and F16A/0128.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

The area of the proposed development is located in an area designated with the zoning objective 'GE' i.e: *To provide opportunities for general enterprise and employment.*

Vision: Facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in good quality physical environment. General Employment areas should be highly accessible, well designed, permeable and legible.

The northern part of the subject site is located partially within the Inner Airport Noise Zone with the remainder within the Outer Airport Noise Zone. Objective DA07 seeks to: *Strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone, and actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of a second runway are not unreasonable to minimize the adverse impact of noise on existing housing within the inner and outer noise zone.*

A recorded monument is located to the western side of the site – DU14-016 refers to the enclosure in this location.

5.2. Fingal County Council Development Contributions Scheme 2016-2020

This is the pertinent scheme. Section 17 relates to Special Development Contributions and provides:

A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Fingal County Council Development Contribution Scheme 2013 – 2015 are incurred by the Council in the provision of a specific public infrastructure or facility. (The particular works will be specified in the planning conditions when special development contributions are levied). Only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to An Bord Pleanála.

5.3. Development Contributions - Guidelines for Planning Authorities 2013

The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in performance of their functions under the Planning Acts.

The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed. Development contributions have enabled much essential public

infrastructure to be funded since 2000 in combination with other sources of, mainly exchequer, funding. Discussion is had of the concept of the General Development Scheme, Special Contributions and Supplementary Contributions Schemes.

Special Development Contributions may be imposed under section 48(2)(c) of the Planning and Development Act 2000 as amended. This is discussed further in the context of the Assessment below.

Chapter 2 provides Key Messages for Supporting Economic Development. This includes as quoted by the Appellant: *Development contributions are not cash-cows: there is an important balance to be struck between the funding of public infrastructure and the need to encourage economic activity and promote sustainable development patterns. It is essential that development contribution schemes do not impede job creation or facilitate unsustainable development patterns.*

6.0 The Appeal

6.1. Grounds of Appeal

RPS Group Ltd has submitted a First Party Appeal on behalf of the Applicant – Dublin Port Company. This appeal is solely against the Special Development Contribution as set out in Condition No. 6(a) of the Council’s permission. They provide a background to the proposed development and have regard to the Legislative and Policy Basis for the imposition of Special Contributions. Their grounds of appeal include the following:

- A key issue for the Board in considering this appeal is if the subject development shall generate specific exceptional costs for the Council i.e the special development contribution should only be imposed if the subject development necessitates upgrade and signalisation of the junction at Site 13.
- The traffic analysis attached in Appendix C and summarised in Section 5 indicates and as set out in the TTA included with the planning application and enclosed in Appendix B provides that there is no requirement to upgrade the junction at Site 13 because of traffic that may be generated by the proposed development of Plots 2 and 9. A Summary of Traffic Assessment Findings is given in Section 4 to support this issue.

- Section 5 of the Appeal Statement provides a Review of Proximate Planning Applications. This has been undertaken to ascertain if Special Development Contributions have been imposed on other comparable developments and if there is a consistency of approach. Approximate locations have been shown on Fig. 5-1.
- The Review of proximate recent planning application decisions indicates that the imposition of a Special Development Contribution is not consistent with the approach taken towards other recent planning applications in the immediate vicinity.
- All the traffic assessments undertaken for the proposed developments note that future traffic growth in the area is derived from a number of trip generators including, the proposed development, other permitted/planned development and general background traffic growth.
- The imposition of this Special Development Contribution in the subject application is not considered to be consistent with other proximate comparable applications.
- The traffic analysis undertaken indicates that in all analysed scenarios including AM and PM Peaks; Opening Year with Development, Opening Year +5 with Development, Opening Year +15 with Development, the existing junction will operate satisfactorily and will not impact on the operation or safety of the N2 mainline flow.
- The traffic generated by the proposed development of Plots 2 and 9 does not require or necessitate the upgrade of the R135/N2 junction and any upgrade of the junction will benefit wider development in the area.
- They request the Board to remove Condition no.6 (a) attached to the Notification of Decision to Grant Permission.

6.2. Planning Authority Response

Fingal County Council have made two separate response to the grounds of appeal.

- They note that the Fingal County Council Operations Department has estimated the costs for the upgrade of the R135 and the N2 North Bound Slip priority junction to a signalised junction at €202,950.
- They also note that the subject application relates to the development of the first two plots only of the overall masterplan for Dublin Inland Port and note the combined potential future impact on the R135 and the N2 North bound Slip priority junction following the development 'All Plots'.
- They have regard to adjacent future planning applications and note that the PA recently applied the same special condition and amount in respect of the upgrade and signalisation of the R135 and N2 north bound off Slip priority junction to a Strategic Infrastructure Development – SID/03/18 that also demonstrated a negative impact on the subject junction.
- A Levy for the full amount of the junction upgrade was applied in that case in the event, that only one of the developments is constructed. In the event, that both developments are constructed, the cost will be divided equally and any remainder costs reimbursed to each contributing developer. In the event, that there are more approved developments granted in the vicinity of the junction, the cost will be applied and will be shared out on a pro-rata basis.
- They conclude that the PA decision requires that the applicant be levied for the full cost of the upgrade and signalisation of the R135 and the N2 North Bound off Slip priority junction. In the event, that the PA decision is upheld, they request that Conditions no. 5(f), 6 and 21 are included in the Board's determination.

Subsequent Response

- They note that the proposed development has shown that it will have a direct impact on the junction of the M2 Northbound slip road and the R135. No mitigation measures to minimise this impact have been included in this application.
- The extent of all of, the Dublin Port Authority lands as indicated in the application constitutes 17% of the lands identified as contributing towards the cost of upgrading the junction. Consequently, the proposed development

should contribute 17% of the junction upgrade costs or €202,950 x 0.17= €34,501.50. They recommend that the condition be revised to state this amount.

Subsequent First Party Response

RPS Group LTD have made a response to the Fingal County Council submission.

This includes the following:

- The DPC welcome the implicit acceptance that the upgrade and signalisation of the R135/N2 junction as described will provide increased vehicular which will facilitate the subject development and the future development of the Dublin Inland Port lands as well as the Irish Water Proposals (SID/03/08) and other development.
- They refer to the Council's acknowledgement that the upgrade will provide for other developments and consider that this gives additional weight to their view that the imposition of a condition requiring the DPC to pay the entire cost for the upgrade of the R135/N2 junction prior to any construction works is unfair and unreasonable.
- The admission by the FCC, is sufficient cause for the Board to remove Condition no. 6 a) attached to the Notification of Decision to Grant Permission.
- They would like to know the rationale for the allocation of the cost (€202,950) of the R135/N2 junction.
- They query who will be required to pay the special development contribution and also, how will the level of the contribution be calculated.
- They question the implementation of Financial Control and how transparent this will be.
- They consider that the imposition of this condition is unfair and unreasonable and request the Board to remove this condition.
- The analysis by Atkins Consulting Engineers concerning the 6% increase in traffic relative to the proposed development and to the junction upgrade may

guide the Board in their calculation of the development contribution. They include a Report relative to this issue.

6.3. Observations

An Observation has been submitted by the Dublin Airport Authority (DAA). This has regard to the conditions of the Council's permission and includes the following:

Attenuation Ponds

- As an airport operator, daa has a general concern with standing open bodies of water and ponds. This can act as a bird attractant and hence pose an aviation hazard in the vicinity of the airport.
- They note that this application proposes to reallocate an existing artificial pond located to the east of the site and create two smaller separate attenuation ponds.
- They have regard to the Potential Bird Hazard Report (Atkins) which outlines the risk of bird strike and provides recommendations to mitigate this risk and note the revised sections showing the proposed ponds with bird netting to reduce the proposed development from serving as a bird attractant.
- They provide that the documentation submitted as part of the additional information has been reviewed by their Airport Ornithologist and note details of their findings relative to bird prevention measures.
- This includes access for periodic inspection and maintenance of fencing etc. Also, that should the development be decommissioned or cease operation for a period of more than 1 year, all surface water attenuation ponds should be removed from site within 3 months at the expense of the developer/operator as appropriate. They request the Board to include a condition to this effect.

Outer Noise Zone

- The proposed development is located within the Outer Airport Noise Zone.
- They refer to Objective DA07 of the Fingal CDP relative to noise, which seeks to strictly control inappropriate development and require noise insulation.

- They note Condition no.11 of the Council's permission relative to noise mitigation measures. The daa, requests that in the event of a grant of permission for the proposed development on appeal, that a condition be attached requiring the proposal be provided with noise insulation to an appropriate standard having regard to the location of the site within the Outer Airport Noise Zone.

Crane Use

- The proximity of the proposal to the airport means that operation of cranes during construction may cause concerns in relation to air safety and at a minimum, requires further detailed assessment in relation to flight procedures at Dublin Airport. Condition no.10 of the Council's permission provides that the use of cranes during construction shall be agreed in advance with the PA following consultation with the Irish Aviation Authority and the Dublin Airport Authority. They request that should the Board be mindful to grant permission that a condition to this effect be attached.

7.0 Assessment

7.1. Regard to Development Contributions

- 7.1.1. Section 48 of the Planning and Development Act 2000, (as amended) details the methodology and guiding principles by which Development Contributions Schemes should be arrived at. The wording of S.48(10)(b) of the 2000 Act states that *'an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the Planning authority'*. The wording of this section is restrictive in so far as it limits consideration of such appeals to the application of the terms of the adopted development contribution scheme and the powers of the Board to consider other matters.
- 7.1.2. In this case the Applicant, Dublin Port Company is the subsequent Appellant. It is noted that the application of the General Development Contributions Scheme is not the subject of the current appeal. This appeal pertains solely to Condition no.6(a) of

the Council's permission which concerns a Special Contribution for the upgrade of the N2 slip road/R135 junction, referred to as Site 13 in the TTA.

- 7.1.3. Dublin Airport Authority are the subsequent Observers. However, it is of note that they have not submitted a separate Third Party Appeal. Section 48 (13)(a) includes: *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 application is not being considered 'de novo' and issue in question in this case is solely in regard to the application of the Special Development Contribution and whether it is deemed to be applicable and justifiable in this case.

7.2. Regard to the Special Development Contribution

- 7.2.1. Section 48(2)(c) of the Planning and Development Act 2000 as amended provides for special development contributions i.e: *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.*
- 7.2.2. Regard is also had to Section 48(12) which notes that where payment of a special condition is required in accordance with Section 48(2)(c) the following provisions shall apply: (a) *the condition shall specify the particular works carried out, or proposed to be carried out, by the local authority to which the contribution relates.* Section 48(12)(b) provides in summary, regard to the time periods for the carrying out the works by the local authority and refers to the possibility of a refund if the works are not carried out.
- 7.2.3. The Development Contributions Guidelines for Planning Authorities 2013 notes that: *A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or*

facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution. Regard is also had to Section 17 of the Fingal County Development Contributions Scheme as quoted in the relevant section in the Policy Section above.

7.2.4. It is noted that Condition no.6(a) of the Council's permission relative to the Special Development Contributions specifically is: *in respect of the upgrade and signalisation of the junction at Site 13.* Therefore, it is considered that it is applicable in principal as something not covered by the General Section 48 Scheme. However, the question is whether it and including the level of contribution requested is justifiable.

7.2.5. In this case the Appellant provides that the traffic generated by the proposed development of Plots 2 and 9 does not require or necessitate the upgrade of the R135/N2 junction and any upgrade of the junction will benefit wider developments in the area. They also provide that a review of proximate comparable planning decisions indicates that the imposition of such a condition is not consistent with decisions with other applications. They request the Board to omit this condition. These issues are discussed further below, taking into account, the specifics of the case relevant to the imposition of the special contribution and having regard to the Council's response.

7.3. **Traffic Issues**

7.3.1. It must be noted that the proposed development is for the first two plots and access road extension within Dublin Inland Port. The proposed development of Plot 2 is to facilitate a container operator with respect to storage, repair, maintenance and logistics management of containers and container trailers. The proposed development of Plot 9 is to facilitate the fit-out, repair service and maintenance of refrigeration components to transport containers and the cleaning, servicing and overhauling of lorries, trucks and trailers. In support of the planning application a Traffic and Transport (TTA) prepared on behalf of the applicant by Atkins Consulting Engineers was submitted to the Council. The TTA considered 10 no. junctions located in the environs of Dublin Inland Port. Junction 13, is the junction between the R135 and the N2 NB off-slip. Fig.2-1 of the Appeal Statement shows the location of

Site 13 and this junction. The junction is a priority junction with the R135 as the major road and the N2 NB off-slip as the minor road. The Special Contribution is to facilitate the upgrading of this junction.

- 7.3.2. The Traffic Impact of the proposed development has been considered in the TTA submitted with the planning application. In summary this noted that all junctions have more than adequate capacity to cater for the development of the full Inland Port site, with the exception of Site 13. Section 6.27 provides that Site 13 performs adequately in assessment years considering the traffic generated as a result of Plots 2 and 9 of the Inland Port site, which are the subject of this application. They noted that the junction is approaching its capacity in the Opening Year +15 scenario.
- 7.3.3. The Council's Transportation Planning Section had regard to the TTA submitted with the application. They noted that the proposed development will use the existing accesses. Appendix C of the TTA contains the traffic model results. They are satisfied that there would be no significant negative traffic impact associated with the proposed development for all the sites analysed, except Site 13. They provide that the results for Site 13 indicate a reduction in the peak LOS (level of service) of the junction in the Opening Year + 5 scenario from A to B/D, and in the Opening Year + 15 from C to D/F. They note that the applicant has not proposed any works to upgrade the junction at Site 13. They recommend that: *The applicant shall pay a special contribution of €202,950 under Section 48(2)(c) of the Planning and Development Act 2000 in respect of the upgrade and signalisation of the junction at Site 13.* This was included as Condition no.6(a) of the Council's permission.

7.4. First Party Case

- 7.4.1. An additional Planning Appeal Transport Assessment has now been undertaken – Appendices B & C relate. The new assessment provides a more detailed analysis of the impact of the proposed development on Site 13. The existing junction was assessed for an Opening Year, Opening Year +5years and Opening Year+15 years scenarios. The Summary (Section 1.6) provides that the proposed development will result in an approximately 7% increase in the PCU (passenger car unit) traffic flows at the N2/R135 junction. In the Opening Year+15 years scenario traffic generated by the proposed development will amount to 5.6% of the traffic on the N2/R135 junction. This provides that the proposed development has a minimal and acceptable impact

on the N2/R135 junction. They provide that the junction in its current form, has sufficient capacity to accommodate capacity to accommodate the proposed development and the level of background traffic growth, as projected by TII. Also, that the additional traffic generated by the proposed development does not require any upgrade of this junction. They conclude that this junction will operate within capacity and will not impact on operation or safety of the N2 in all scenarios analysed, including the opening year +15 with development.

- 7.4.2. Section 4 of the Appeal Statement provides a Summary of Traffic Assessment Findings. The First Party provides that these findings indicate that there is no requirement in the short to medium term to upgrade the N2/R135 junction and the impact of the proposed development at peak times will be to increase traffic by 5% - 7% only through the junction. This is given as 6% in their response to the Council's submission.
- 7.4.3. The Appellant provides that a review of proximate comparable planning decisions indicates the imposition of a Special Development Contribution is not consistent with other proximate decisions. This Review (Fig.5-1 shows the location of each of the cases relative to the subject application) found that only one of the five reviewed applications was found to have a requirement to pay a Special Development Contribution attached to its decision and this was a minimal amount to that currently proposed. Therefore, they consider that the imposition of €202,950 in the current application is not considered consistent with other proximate comparable applications. The First Party consider the level of contribution unequitable.

7.5. Planning Authority's Case

- 7.5.1. As noted they have made two separate responses to the grounds of appeal. Their response, for reference purposes contains extracts from the traffic modelling results in relation to Site 13 (the R135 and the N2 North bound Split priority junction), contained in Appendix C of the Traffic and Transport Assessment submitted by the applicant. This includes regard to the Opening year +5 and +15 year scenarios. This has regard to the figures submitted and notes that as a result of the proposed development (Plots 2 and 9 only) there will be a negative impact on Site 13 (the R135 and the N2 North Bound Slip priority junction). Also, that the applicant has not proposed any works to mitigate the demonstrated decrease in the level of service of

the R135 and the N2 North Bound Slip priority to improve capacity. They provide that given the proximity of the junction to the N2 primary route any negative impact on this junction is concerning. They note that the Transport Planning Section recommends the imposition of this levy for the cost of signalling the upgrade and signalisation of the R135 and the N2 North Bound off Slip priority junction.

7.5.2. This application only relates to the development of the first two plots of an overall masterplan for Dublin Inland Port and they provide that the combined potential future impact on the R135 and the N2 North Bound Slip priority junction following the development of 'All Plots' in the Opening Year +15 scenario is a reduction in peak LOS from A to D and in the Opening Year+15 from C to F. This will result in a queue length in vehicles backing onto the main N2 primary route from the subject application, which would not be desirable. They concluded that they require the applicant to be levied the full cost of the upgrade and signalisation.

7.5.3. They have regard to a Strategic Infrastructure Development (SID/03/18 which appears to be now the subject of a current appeal to the Board – ABP- 301908-18 – Greater Dublin Drainage Project) and refer to Adjacent Future Developments and note that in the event, that there are more approved developments granted in the vicinity of the junction, that the cost will be applied and will be shared out on a pro-rata basis.

7.6. **Conclusion**

7.6.1. It is of note that in the Council's subsequent response they noted that the signalisation of the junction of the M2 Northbound slip road and the R135 will mitigate against traffic on the the slip road backing up onto the M2. They provide that the Council have assessed the lands in the immediate vicinity of the junction with the same zoning that will have a direct impact on this junction and have determined a contribution for the upgrading of this junction pro rata based on the site area. The extent of all of the Dublin Port Authority lands as indicated in the application constitutes 17% of the lands identified as contributing towards the cost of upgrading the junction. Consequently, they provide that the proposed should contribute 17% of the junction upgrade costs or $€202,950 \times 0.17 = €34,501.50$.

7.6.2. Having regard to the documentation submitted I would consider that it has been demonstrated that it is appropriate in the circumstances as presented to include this special contribution condition and would consider that this pro rata figure is more equitable relevant to the current application and would recommend that if the Board decide to permit that Condition no.6(a) of the Council's permission be modified/reduced to include this amount.

8.0 Recommendation

8.1. I recommend that Condition no.6(a) of the Council's permission Reg.Ref. F18A/0139 be amended as below.

9.0 Reasons and Considerations

9.1. The Board considered the Fingal County Council Development Contributions Scheme 2016-2020 is the applicable contribution scheme in this case and regard is had to Section 17 relative to provision for Special Development Contributions as per Section 48(2)(c) of the Planning and Development Act 2000 (as amended). The Board considered that it was appropriate to apply a special contribution in this case towards the upgrade and signalisation of the junction at Site 13. Accordingly, it concluded that the Special Development Contribution applicable to the proposed development is as set out in the amended Condition no.6(a) of register reference F18A/0139 as set out below.

10.0 Condition 6(a)

The developer shall pay the sum of €34,501.50 (thirty four thousand five hundred and one euro and fifty cent) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of the upgrade and signalisation of the junction at Site 13. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in

default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Angela Brereton
Planning Inspector

9th November 2018