



An  
Bord  
Pleanála

## Inspector's Report ABP-303040-18

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<b>Development</b>	Motorway service area and rest area.
<b>Location</b>	Togher, Portlaoise, Co. Laois.
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	18/216
<b>Applicant(s)</b>	Pat McDonagh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Petrogas Group Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> & 27 <sup>th</sup> February 2019
<b>Inspector</b>	Michael Dillon

## 1.0 Site Location and Description

- 1.1. The site, with a stated area of 4.027ha, is located at Junction 17 on the M7 Motorway – immediately to the south of the town of Portlaoise, Co. Laois. The site (as outlined in red) includes pipeline runs to connect to surface & foul sewer networks and the watermain network within the Togher National Enterprise Park lands to the west and northwest. The site for the motorway service area (MSA) itself (approximately 2.9ha), is a lozenge-shaped, grassed field (which is heavily poached), surrounded on all sides by roads. It was dry under foot on the dates of site inspection in February 2019. There are two agricultural access points to the field from the L26965 county road. The high point (109.5m OD) is located near the western end; and the land slopes gently downhill to east (103.0m OD) and west (108.0m). The eastern end is approximately 3m below the level of the adjoining Junction 17 rotary. There are no watercourses either within or abutting the site. The field is surrounded by timber post & rail fencing with green, plastic-coated, mesh wire attached. There is semi-mature screen planting surrounding the site (with the exception of part of the northern boundary) – planted in association with the construction of Junction 17. There are over-ground, three-phase, electricity cables running along the northern boundary, and across the western portion of the site. Noise from the M7 Motorway was clearly audible throughout the site.
- 1.2. The M7 eastbound off-ramp to Junction 17 is located immediately to the south of the site. To the southeast, the site abuts the one-way, grade-separated rotary of Junction 17: linking with the N77 National Secondary Road (Portlaoise and Abbeyleix), and the L26965 county road to Cúl na Móna. To the north and west, the site abuts the L26965 county road. This is a fine wide road – constructed as part of the realignment of local roads in association with Junction 17. Sight distance at the proposed access/egress points is reasonable in either direction. There is public lighting on all roads in the area, and there is a footpath on the opposite side of the L26965 and on the rotary. The 80kph speed restriction applies in this area.
- 1.3. Work has recently commenced on the surface water drainage network for the Togher National Enterprise Park lands to the west and northwest. This involves constructing an access track from Watery Lane, to the site of the proposed foul pumping station which will serve the proposed MSA. The foul sewer and pumping station will

connect with an existing foul sewer adjacent to Watery Lane and the only two blocks constructed to date, within the Togher National Enterprise Park to the north. The watermain connection is located in the same vicinity.

- 1.4. Some 150m to the east of the site, on the opposite side of the N77 (former N7 Portlaoise to Abbeyleix road), is the Midway hotel/gym/food-court complex. There is no HGV parking at this facility, and coach-parking was temporarily blocked-off for facilitation of access works and a hoarding, in connection with construction of a recently-permitted filling station and shop, to connect with the food-court/hotel/gymnasium complex. Midway is linked to Portlaoise town centre by footpaths and a cycle-way along the N77. This facility has separate access and egress arrangements – located within the 80kph speed restriction zone on the N77. [I note that the N77 between Junction 17 and Portlaoise town centre was previously designated the R922 Regional Road – and whilst this numbering remains on road signs – it would seem that the N77 designation is the correct one].

## 2.0 Proposed Development

- 2.1. Permission sought on 9<sup>th</sup> April 2018, to construct a motorway service area (MSA) and rest area, comprising the following elements of note-
  - Single- and two-storey building (1,220m<sup>2</sup>) with retail area (maximum 100m<sup>2</sup>), and food-court at ground floor level; and restaurant seating/toilets at first floor level. The overall height of the building is 8.0m maximum.
  - Roof-top solar panels (209m<sup>2</sup>).
  - 'Drive-thru' fast-food facility.
  - Electricity sub-station.
  - Illuminated signage – 2 x totem pole (6m high).
  - Filling pumps at forecourt.
  - HGV fuelling area.
  - Underground fuel tanks at two locations.
  - Canopy over forecourt pumps.

- Parking for 144 cars, 20 HGVs, and 10 coaches.
- Bicycle parking.
- Electric car-charging points.
- New vehicular access/egress – with secondary egress point to L26965 road.
- Rain-water harvesting.
- Stormwater attenuation system and discharge to field drainage network within the Togher National Enterprise Park lands, to the west of the site.
- Foul waste discharge to planned foul sewer network within the Togher National Enterprise Park lands, to the northwest of the site.

2.1.1. The application was accompanied by the following documentation of note-

- Traffic & Transport Assessment – dated April 2018.
- Stage 1 Road Safety Audit – dated March 2018.
- Planning Application Cover Report (which includes a Design Statement at Appendix No. 1) – dated 9<sup>th</sup> April 2018.
- Drainage Design Report – dated April 2018.
- Letter of consent from LCC to the making of the planning application on lands in its ownership (for sewer lines and watermain).

2.2. A substantial additional information submission was made on 1<sup>st</sup> October 2018, and included the following points of note-

- Revised traffic figures to take account of future Togher National Enterprise Park traffic.
- Lighting Survey of the site and surrounding roads – including proposals to upgrade existing lighting on the L26965 – from the Junction 17 rotary as far as the secondary egress point.
- Provision of footpath along most of the north side of the site – to connect with the existing footpath network at the Junction 17 rotary.
- Pedestrian crossing on the L26965 near the site entrance.
- Drawing showing alterations to crash barrier on the L26965.

- Increased capacity of underground attenuation tank at eastern end of site. The tank will be provided with a diesel pump and a stand-by pump.

2.2.1. The response was accompanied by the following documentation of note-

- Drainage Report – dated August 2018.
- Stage 1 Road Safety Audit – dated July 2018.
- Letter from IW, confirming capacity within existing networks, for both water and wastewater – dated 14<sup>th</sup> November 2017.

### 3.0 Planning Authority Decision

By Order dated 25<sup>th</sup> October 2018, Laois County Council (LCC) issued a Notification of decision to grant planning permission, subject to 20 no. conditions – the following being of note-

1. The development shall be carried out in accordance with the plans and particulars submitted on 9<sup>th</sup> April and 1<sup>st</sup> October 2018.
2. Requires payment of a development contribution of €27,791.60.
- 4.b&c Relate to the new pedestrian crossing on the L26965.
- 4.d Requires provision of bollards along the L26965 – to prevent HGV parking.
5. Requires submission of Road Safety Audits.
7. Relates to archaeological appraisal of the site.
8. Relates to waste management during the construction phase.
10. Limits the hours of construction.
11. Relates to noise during the operational phase.
12. Requires that the retail unit not be subdivided.
13. Requires that no vehicles or goods are displayed for sale on or about the forecourt.
14. Requires that no advertising signs – other than the 2 totem signs or those shown on drawings submitted, be erected on the site. No backlighting of signs shall take place – other than for the filling station logo and prices.

16. Lighting shall be directed/cowled so as not to interfere with road users.

## 4.0 Planning History

4.1.1. There are no recent relevant planning permissions pertaining to this site. The Part 8 approved, Togher Central Access Route, has not yet been built. This road will connect the Clonminam Industrial Estate to the north, with Junction 17 to the east (at the junction of Watery Lane and the L26965 county road). Preliminary drainage works have recently commenced to facilitate construction of this access route.

4.1.2. Permissions of note in the area are-

**Ref. 17/538:** Refers to a Notification of decision to grant permission by LCC to Petrogas Group Ltd, to construct a filling station, retail convenience store and associated works at Midway, Togher, Portlaoise – on the east side of the N77 – close to Junction 17. This decision was the subject of two 3<sup>rd</sup> Party appeals to An Bord Pleanála (**ABP-300994-18**) – one of which was from TII. By Order dated 19<sup>th</sup> September 2018, the Board decided to grant planning permission, subject to conditions. Site clearance has recently commenced for this development.

**Ref. 18/502:** Refers to a Notification of decision to grant permission by LCC to Glanbia Cheese EU Ltd, to construct a mozzarella cheese plant within the Togher National Enterprise Park lands (to the west of the current appeal site) with access from the proposed Togher Central Access Road. This decision was the subject of a 3<sup>rd</sup> Party appeal to An Bord Pleanála (**ABP-302886-18**), which was subsequently withdrawn, on 1<sup>st</sup> March 2019.

## 5.0 Policy and Context

### 5.1. Project Ireland 2040 – National Planning Framework

The Plan does not make any reference to off-line motorway service areas.

### 5.2. Regional Guidance

The Midland Regional Authority Guidelines 2010-2022, acknowledge Portlaoise as a 'Principal' town. It contains a strategy for economic and employment growth – and

references the potential for Togher Inland Port to become a major transport hub and distribution centre. Upgrades to the M7 Motorway interchanges at Portlaoise will be necessary to facilitate the future development of Portlaoise, in order to minimise impact on the road network. The new Draft Regional Spatial and Economic Strategy will replace the Guidelines, when adopted.

### 5.3. Roads Guidelines

The '*Spatial Planning and National Roads Guidelines for Planning Authorities*', issued by the Department of Environment, Community and Local Government in 2012, set out planning policy considerations for areas outside of the 50/60km speed restriction zones. The Guidelines identify this type of site as 'off-line' (at a national road junction) in accordance with the typologies outlined at section 2.8. Section 2.7 states that PAs must exercise particular care in assessment of development proposals close to motorway interchanges – where there is potential to impact on the capacity/efficiency of the national road. The Guidelines require that facilities do not attract short or local trips.

#### 5.3.1. Section 2.7 – Development at National Road Interchanges or Junctions

Interchanges/junctions are especially important elements of national roads infrastructure that development plans and local area plans must take account of and carefully manage.

The location and capacity of interchanges/junctions on national roads are determined during the road planning process, in consultation with local authorities, taking account of a range of factors including anticipated inter-urban and interregional traffic volumes over a design horizon of at least 20 years. A key objective of the approach to road planning is to achieve a satisfactory level of service for road users and to protect and maintain that service over the design period applying to the mainline road and associated interchanges.

Therefore, planning authorities must exercise particular care in their assessment of development/local area plan proposals relating to the development objectives and/or zoning of locations at or close to interchanges where such development could generate significant additional traffic with

potential to impact on the national road. They must make sure that such development which is consistent with planning policies can be catered for by the design assumptions underpinning such junctions and interchanges, thereby avoiding potentially compromising the capacity and efficiency of the national road/associated junctions and possibly leading to the premature and unacceptable reduction in the level of service available to road users.

However, in certain circumstances, additional junctions, or enhancements to existing junctions on national roads, may become necessary to service development needs of national and strategic importance or in cases where a proposed development is demonstrated by the planning authority to be more appropriately located proximate to such junctions. In such circumstances, the NRA will support such capacity enhancements and development proposals where all of the following criteria are met:

- Demonstration of the need for additional connectivity by reference to policy considerations such as the National Spatial Strategy, Regional Planning Guidelines and in the Greater Dublin Area, the National Transport Authority's transport strategy.
- Consistency between the relevant development plan and the relevant plans and strategies mentioned above;
- Early identification, through the plan-making process, of appropriate strategic land uses, which will benefit from high quality access, such as nationally or regionally important employment clusters or intermodal transfer facilities (but excluding retail and residential development);
- Demonstration that all other options for servicing the development needs and, in particular, the regional and local roads network and the use of public transport solutions, have been examined and exploited to the fullest extent practicable;
- Demonstration that the additional traffic loading can be satisfactorily accommodated at the junction concerned and on the national road network;



- Ensuring that the proposed development will not give rise to an undesirable precedent for further traffic generating development at or in the vicinity of the proposed development;
- Demonstration that design complies with NRA Design Manual for Roads and Bridges (DMRB) standards;
- Satisfactory details of the proposed demand management measures; and
- Acceptable funding and delivery proposals for any required improvements.

It should be noted that the Roads Act, 1993, as amended, prohibits the granting of planning permission for any development of land entailing direct access to/from motorways.

### 5.3.2. Section 2.8 – Service Areas

The presence of long sections of motorways and high quality dual carriageways on the network of national roads and EU work time requirements under Directive 2002/15/EC and Regulation SI 561/2006, support the provision of service areas for road users who wish to rest during longer journeys and/or avail of fuel, toilet and food facilities. These facilities may come in the formats outlined below.

*On-line Motorway Service Areas:* The NRA is directly involved in securing on-line motorway service areas in accordance with the provisions of the Roads Act 1993, as amended. As part of these arrangements, the NRA seeks to acquire the necessary lands and to obtain relevant statutory approvals. The intention to provide these on-line service areas should be catered for in relevant development plans.

NRA on-line motorway service areas incorporate extensive parking and also facilities that cater specifically for the refuelling, refreshment and toilet needs of drivers and passengers. No provision is made for hotel or other accommodation facilities, nor extensive retail outlets. The Authority's service areas are designed to discourage infrastructure from becoming destinations in their own right.

Proposals for service areas on motorways may only be brought forward by local authorities/NRA and, as a consequence, private developers may not

independently provide on-line motorway service area facilities alongside such roads.

*Off-line Motorway Service Areas at National Road Junctions:* In the preparation of their plans, planning authorities may consider policies for the provision for off-line motorway service area facilities with reference to the requirements and advice included in the most up-to-date NRA guidance on the location and layout of the NRA's service areas and also similar type existing or planned privately promoted service facilities within existing towns/settlements and located in the general environs of the relevant road corridor.

A proliferation of private off-line service area facilities at national road junctions should be avoided. It is therefore important that a coordinated approach between planning authorities should be undertaken in consultation with the NRA as part of the drafting of development plans.

In addition, facilities proposed for inclusion in service areas should be of a type that avoids the attraction of short, local trips, a class of traffic that is inconsistent with the primary intended role for motorways and other national roads and associated junctions in catering for strategic long-distance inter-urban and inter-regional traffic. Furthermore, to permit a service area to become a destination for local customers would be contrary to Government planning policy on retail and town centres as set out in Retail Planning Guidelines 2005. The consequence of this would be to threaten the viability of businesses in cities, towns or other local centres.

*Roadside Service Facilities at Non-Motorway National Roads and Junctions:* A proliferation of service area facilities along rural sections of national roads and/or associated junctions, where the maximum speed limit applies, would create significant safety risks and affect the level of service available to road users, as well as impact on the viability and vitality of existing urban settlements. In general sufficient road side facilities exist on non-motorway national road network, which also passes through or is in close proximity to a significant number of urban town and villages where such facilities can be provided for in a sustainable manner.

#### **5.4. National Roads Authority Service Area Policy**

5.4.1. This August 2014 document, issued by the NRA (now TII), sets out a policy basis for service areas on the national road network. TII will supply on-line service areas. Within such, are Type 1 – for large scale service areas, and Type 2 – which will include parking, picnic and toilet facilities, but without the main amenity building or fuel facilities. Type 1 areas should be no more than 100km apart, but in practice this will mean a shorter separation distance. Where the gap is greater than 85km, a Type 2 service area should be provided. It is acknowledged that a number of off-line facilities already exist – notwithstanding preference for on-line facilities. On the M7, the Mayfield (Junction 14) and the Moneygall (Junction 23) facilities are quoted as-

- providing appropriate level of parking for cars and HGVs;
- being located within a few hundred metres of the dual carriageway;
- remaining open for 24 hours; and
- permitting commercial vehicles to park for longer periods: including overnight.

5.4.2. Ballacolla on the M8 (Junction 3) could also be considered to provide the requisite level of facilities for motorists. TII does not advocate or oppose development of off-line service areas – where there is no plan in the short-term to medium-term to provide on-line facilities: “TII has no role in determining how off-line developments should be delivered” (p.15). Provision of on-line facilities will be reviewed in 2019. Signage will be provided on national roads to off-line service areas, but only where they meet the specified criteria set out at section 3.3.2. There are brown informational signs for many off-line facilities within close proximity to the network that provide services for motorists at present, principally fuel, refreshment and toilet facilities.

#### **5.5. Retail Planning – Guidelines for Planning Authorities**

These Guidelines, issued by the Department of Environment, Community and Local Government in April 2012, impose a cap of 100m<sup>2</sup> of retail floor space within petrol filling stations (Section 2.4.3).

## 5.6. Development Plan

- 5.6.1. The relevant document is the Laois County Development Plan 2017-2023. In relation to 'Enterprise & Employment' zoning, the Plan states-

To provide lands for enterprise and employment use, more specifically low input and emission manufacturing, campus-style offices, storage uses, wholesaling and distribution, commercial services with high space and parking requirements that may not be suitable for town centre locations.

The purpose of this zone is to provide for activities which will generate employment and encourage enterprise. Warehousing, commercial, enterprise and ancillary services should be provided in high quality landscaped campus style environments, incorporating a range of amenities.

The uses in this zone are likely to generate a considerable amount of traffic by both employees and service traffic. Sites should therefore have good vehicular and public transport access. The implementation of Mobility Management Plans will be required for such developments as they provide important means of managing accessibility to these sites.

Within this zoning, 'restaurant' is Open for Consideration; 'convenience retail of less than 100m<sup>2</sup>' is Open for Consideration; 'petrol station' is Open for Consideration; and 'heavy commercial vehicle park' is Open for Consideration.

- 5.6.2. Section 5.1 in relation to Economic Development states, that it is the policy of the Council to-

**ECN 2** Develop Togher, on the southern outskirts of Portlaoise, as a National Enterprise Park as designated in the National Spatial Strategy and Midland Regional Planning Guidelines;

- 5.6.3. Section 6 deals with infrastructure. Sub-section 6.1.2.4 deals with service stations, and states-

Transport Infrastructure Ireland (TII) is directly involved in securing on-line motorway service areas in accordance with the provision of the Road [sic] Act 1993, as amended. They have no development or operational role in relation to private sector facilities in the vicinity of the national road network, even though the developments in question might include service for motorists.

*The Spatial Planning and National Roads – Guidelines for Planning Authorities* (DoECLG, 2012) state that it is important that off-line service facilities do not become a destination for local customers which would undermine government policy and threaten the viability of towns and village centres and the proliferation of such facilities should be avoided. The Guidelines also state that roadside service facilities at non-motorway national roads and junctions where the maximum speed limit exists have the potential to create safety risks and affect the level of service available to road users.

5.6.4. It is the policy of the Council to:

**TRANS 25** Consider proposals for petrol filling stations/service stations/truck parking facilities subject to compliance with the following general principles and the design standards contained in the development management standards in Section 8 of the Plan:

- a. Such developments at or near national roads shall be assessed having regard to NRA Guidance contained in Spatial Planning and National Roads Guidelines for Planning Authorities (DECLG, 2012) and the NRA Service Area Policy (2014), or as amended.
- b. The provision of such facilities on those sections of regional roads and local roads where the maximum speed limit applies will generally be discouraged, unless an overriding need for the development in that location is clearly demonstrated.
- c. The proposed development would not result in traffic safety hazards, serious traffic congestion, or the undue obstruction of other road users.
- d. The proposed development would not result in adverse impacts on the environment and local amenities.
- e. The proposed development would not result in an undue proliferation of such facilities.
- f. The proposed development would not undermine the vitality of retail services in local villages in contravention of the retail objectives of this Plan.
- g. The proposed development shall not contravene other policies of this Plan.

**TRANS 26** Advance Togher, Portlaoise as the primary location for off-line motorway services and other uses in line with the Togher National Enterprise Park Masterplan (adopted by Laois County Council in April 2010).

5.6.5. Section 8 deals with the location and pattern of development. In relation to petrol filling stations, Development Management Standard DM30 states-

Applications for filling stations should have regard of [sic] the Retail Planning: Guidelines for Planning Authorities (DECLG, 2012) and the Spatial Planning and National Roads: Guidelines for Planning Authorities (NRA/TII, 2012) also take account of the following:

- 1) Be located within urban areas within speed limits;
- 2) Access to filling stations will not be permitted closer than 35 metres to a road junction;
- 3) Frontage on primary and secondary routes must be at least 20 metres in length;
- 4) All pumps and installations shall be set back at least 5 metres from the roads;
- 5) A wall, of a minimum height of 0.5 metres, must separate the forecourt from the public footpath;
- 6) All external lighting should be cowled and directed away from the public roadway to prevent traffic hazard;
- 7) A proliferation of large illuminated projecting signs will not be permitted at filling stations - Generally only one such sign will be permitted;
- 8) Turbo-drying or car washing facilities will be located so as not to interfere with residential amenities;
- 9) Petrol filling stations can include an associated shop (no more than 100 sq.ms. (net retail floorspace) that provides for the sale of convenience goods.
- 10) An undue concentration of filling stations shall not be permitted, as in the past oversupply has led to closures with resulting unsightly derelict filling stations;

11) Late night opening will only be permitted if it does not impact adversely on nearby residences;

12) A landscaping Plan will form part of any Planning application.

## 5.7. Local Area Plan

5.7.1. The Portlaoise Local Area Plan (LAP) – 2018-2024 is of relevance. It came into effect on 19th November 2018. The site is zoned ‘Enterprise & Employment’. In relation to this zoning, the LAP states-

**Objective:** To provide for enterprise and employment activities.

**Purpose:** To accommodate commercial and enterprise uses that are incapable of being situated in a town centre location, including low input and emission manufacturing, campus style offices, storage uses, wholesaling and distribution, commercial services with high space and parking requirements. Business Park type development shall be provided in high quality landscaped campus style environments, incorporating a range of amenities.

The Togher National Enterprise Park has the potential to be a major boost to the economy of Portlaoise and to contribute to the growth of the County and the Region as a whole.

The uses in this zone are likely to generate a considerable amount of traffic by both employees and service traffic. Sites should therefore have good vehicular and public transport access. The implementation of mobility management plans will be required to provide important means of managing accessibility to these sites.

5.7.2. Section 9 of the LAP deals with economic development. Zoning within the area caters for a wide range of land uses – including distribution, retail warehousing, factory warehousing, showrooms, industrial development, services and an event centre.

**Policy ED P1** states that the it is the Policy of the Council to-

Develop Togher, as a National Enterprise Park, as per the Masterplan prepared by ARUP and set out under Appendix 1 of the Local Area Plan. The National Enterprise Park will be focussed in particular on trade warehousing,

distribution, logistics and other uses associated with the transport industry. Other suitable uses include off-line motorway services, retail warehousing, offices and conference facilities, leisure uses such as hotels, catering and indoor sporting facilities. Provision is also made within Togher for the development of significant heavy, light and ICT industry uses as well as general enterprise uses. In order to deliver the Togher National Enterprise Park, an implementation programme will be developed to include direct marketing campaigns to drive economic development.

- 5.7.3. The development is in accordance with the policies identified within the LAP for the development of the Togher lands.

## 5.8. **Togher Masterplan 2018**

- 5.8.1. A Masterplan was prepared in 2010, in association with the Department of Environment, Heritage and Local Government and the National Roads Authority (now TII): to realise the economic and employment potential of commercial freight; development of a local road infrastructure; complementary land uses; an extended site to provide critical mass; and improvement in the environment and landscaping. A Design Guide was produced in association with the Masterplan. The new Togher Masterplan 2018, is included within the Portlaoise LAP; and includes the Clonminam Business Park lands to the north. The appeal site is identified as a potential motorway service station location – along with the Midway site on the opposite side of the N77 (both sites being within Character Area 1). A landmark structure is indicated for the eastern end of the site. Section 4 of the Masterplan states-

The area is intended to provide high-quality motorway service development, which will not only generate employment within the Togher area but will attract flexible working activities and passing trade. This strategic zone serves to plug the lands into the national road network. The zone has an overall area of approximately 6.23 Ha of land currently entirely zoned for Enterprise and Employment. The land is currently zoned for Enterprise and Employment, a 4.32 Ha plot consists the existing Midway Food Court development and Maldron Hotel, and a 2.89 Ha plot is, at the time of writing, subject to a live planning application for a motorway service area (Reg. Ref. 18/216).



5.8.2. Section 4 goes on to state-

The access arrangement should be of a type that avoids the attraction of short, local trips or the locations becoming destinations for local customers.

5.8.3. Section 5 of the Masterplan identifies a segregated cycle route along the L26965 to the north of the site – linking the Togher Central Access Route to the west with the M7/N77 rotary to the east. There is a cycle network on the N77 Abbeyleix Road out of Portlaoise – as far as Midway.

## 5.9. Natural Heritage Designations

There are no natural heritage designations either within or immediately abutting the appeal site. The closest such is the Ridge of Portlaoise proposed Natural Heritage Area (pNHA) – an esker located approximately 1.4km to the northeast of the site.

## 5.10. EIA Screening

- 5.10.1. Schedule 5 of the Planning and Development Regulations, 2001 (as amended), sets out development for the purposes of Part 10 (Environmental Impact Assessment). A motorway service area is not included within Part 1. Within Part 2, Class 10 deals with infrastructure projects. Reference is made to an area of greater than 2ha within a business district, 10ha within other parts of a built-up area and 20ha elsewhere. The area of the site is not built-up – the site being on the fringe of the town of Portlaoise, but even if considered to be a built-up area – would be 29% of the threshold, or 14.5% of the threshold for lands considered to be ‘elsewhere’. The lands are zoned for development, and are located immediately adjacent to a motorway interchange. There are no watercourses within or immediately abutting the site. It is proposed to connect to the extended town foul sewer network, amended land drainage network to the east (following on-site attenuation and treatment of hydrocarbons), and to the extended water supply network for the town. There are no sites of ecological importance in the immediate vicinity.
- 5.10.2. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental

impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. There were originally two 3<sup>rd</sup> Party appeals against the Notification of decision to grant planning permission: one, from James Warren, was subsequently withdrawn.

6.1.2. The appeal from David Mulcahy Planning Consultants Ltd, agent on behalf of the 3<sup>rd</sup> Party appellant, Petrogas Group Ltd, Block 17, Joyce Way, Parkwest, Dublin 12 – received by An Bord Pleanála on 20<sup>th</sup> November 2018, can be summarised in bullet point format as follows-

- The need for an MSA at Togher, as identified in the Togher Area Masterplan 2018, has already been met, as Petrogas recently obtained permission to construct a filling station/shop at the Midway food-court complex, which is situated approximately 150m to the east. The Midway complex already has a large food-court and parking area, and will become a *de facto* off-line motorway service area. Petrogas already operates the Midway food-court and parking area.
- A second MSA would result in a proliferation of such facilities at this motorway junction, would confuse motorists, and would cause the Midway complex to fail – from a commercial perspective. This is contrary to the *Spatial Planning and National Roads Guidelines for Planning Authorities* 2012. Particular care needs to be taken to avoid compromising the capacity and the efficiency of national road junctions.
- It is accepted that it is not the role of the Board to restrict competition between service providers. Midway has struggled, since inception, to achieve a sustainable economic operating model, but this has improved of late, with a change of hotel operator, and Petrogas taking over the operation of the food-court. Midway is now a vibrant stopping-off point for traffic on the M7 and N77: this will further increase with construction of the filling station. Further

upgrades are planned – to include HGV fuelling and parking, and local road improvements to the nearby Meelick road.

- The development would be contrary to the NRA *Service Area Policy* 2014. It is acknowledged that the document does not deal with off-line service areas. There are off-line MSAs at J14 (Mayfield) to the north of Portlaoise and at J23 (Moneygall) south of Portlaoise. The document does not identify the need for an on-line motorway service area in between. The document will be reviewed in 2019, and it is reasonable to assume that Midway will be acknowledged as an off-line motorway service area – to meet the needs of this stretch of the M7.
- The Togher Masterplan identifies this site as being suitable for motorway services – along with the Midway lands.
- It is noted that TII have objected to this application – on grounds of proliferation of such services at nearby Midway and Ballacolla.
- The applicant points to the growth in population of Portlaoise to support the development of a second MSA at Junction 17. This would appear to indicate that the applicant wishes the development to service local traffic.
- The LCC Planner's Report did not discuss the Petrogas application at Midway – merely indicating that a decision was awaited from An Bord Pleanála.
- The Board has twice refused permission for a filling station at Midway – on the grounds that it would compromise the carrying capacity of the road network at Junction 17.
- The average size of off-line MSAs in the immediate vicinity, are considerably larger than off-line MSAs elsewhere on the motorway network. This means that existing facilities have more than enough capacity to serve the needs of motorway users.
- It is acknowledged that the Midway parking area does not provide for significant HGV parking – although it does provide for coach parking.
- There is no evidence submitted that Midway food-court is over-trading. There is ample room on the site for future expansion – if required. The applicant has

provided no detailed commercial information in relation to the need for a second MSA.

- The applicant has underestimated the number of trips involved, applied inappropriate junction analysis, and underplayed the impact on delays to traffic on the national road network. In particular, turn-in percentages from the N77 have been underestimated – lower than the turn-in rates used for the Petrogas application at Midway. Junction 17 is a gyratory, and does not function as a standard roundabout. It allows for higher speeds than a standard roundabout. AM and PM peak queuing on the L26965 and the N77 at Midway is likely to occur – adversely affecting the L26965 junction and the Meelick road junction with the N77. The development will also lead to increased queuing on the M7 eastbound off-ramp.
- The appellant considers that a new arterial road linking the Togher lands with the N77 (shown in Figure 25 of the Togher Masterplan), should be constructed prior to the MSA – in order to minimise peak traffic delays on the L26965 and the N77 at the Meelick road junction.

6.1.3. The appeal is accompanied by a copy of Traffic-based submission from Atkins – dated November 2018.

## 6.2. Applicant Response

6.2.1. The response of McCarthy Keville O’Sullivan, Planning & Environmental Consultants, agent on behalf of the applicant, Pat McDonagh, received by An Bord Pleanála on 21<sup>st</sup> December 2018, related to two 3<sup>rd</sup> Party appeals (one of which has subsequently, been withdrawn). The response can be summarised in bullet point format as follows-

- The development will not result in a proliferation of MSAs. It is acknowledged that the Manor Stone MSA at Ballacolla is approximately 30km south of Portlaoise, but it is on the M8 – and so cannot serve M7 northbound traffic.
- The site is identified for motorway services in the Togher Masterplan 2018.

- The *Spatial Planning and National Roads Guidelines for Planning Authorities* 2012 do not ban MSAs at junctions. They require care to be taken in assessing applications.
- The site is zoned for 'Enterprise & Employment' use in the Portlaoise LAP 2018-2024. The principle of the development is supported by the zoning. In particular, polices TRANS 25 & TRANS 26 of the County Development Plan support the development.
- The development will not have a negative impact on traffic safety at Junction 17 or its carrying capacity. Traffic modelling was correctly used in assessing the impact of the development on roads and junctions. The LCC Roads Design Section had no objection to the development – subject to attaching appropriate conditions.
- It is noted that TII has not appealed the decision of LCC.
- Petrogas Ltd. is a competitor, and it is considered that the appeal is vexatious. The appellant has a long history of objecting to planning applications made by competitors. The appeal should be disregarded and rejected by the Board.
- It is the intention of the applicant to commence construction immediately, on receipt of permission.

6.2.2. The response submission is accompanied by the following documentation of note-

- List of submissions made by Petrogas Ltd. to planning applications.
- Traffic Response to 3<sup>rd</sup> Party submissions [one of which was subsequently withdrawn] – carried out by CST Group, Chartered Consulting Engineers – dated December 2018.
  - No evidence has been provided by Petrogas Ltd. in relation to the claim that 50% of the traffic to the existing Midway development comes from the direction of Portlaoise. Study of documentation submitted with the application for a filling station at Midway does not bear out the claim of 50%.
  - The 2034 design year for the model is the most strenuous test – as mainline traffic on the M7 is expected to increase year-on-year.

- The analysis of turn-in traffic to the appeal site is robust – estimating 536 trips in the AM peak (0830-0930 hours) and 463 trips in the PM peak (1700-1800 hours).
- The ARCADY model nowhere states that it is only suitable for ‘standard type’ roundabouts.
- The Togher Masterplan Transport Assessment used ARCACY for Junction 17 assessment.
- PICADY is not used at roundabouts – but at standard T-junctions and crossroad junctions. Roundabout traffic is one-direction only.
- Traffic modelling carried out for the Togher Masterplan 2018, indicates that Junction 17 will have capacity to deal with full development of the Masterplan lands, beyond 2033.
- TII acknowledges that the Togher Masterplan Transport Assessment has provided for the proposed MSA in phasing proposals up to 2023 – Phase 1 of the proposed Masterplan.
- Construction of the arterial road linking the Togher lands with the N77 should be commenced in Q1 of 2019. This should alleviate the concerns of Petrogas Ltd.
- All observations of TII were comprehensively addressed in the additional information submission made by the applicant to LCC, on 1<sup>st</sup> October 2018.
- The ‘drive-thru’ element will not attract additional trips from the town – as ‘drive-thru’ facilities already exist at two locations within the town. But even if some trips are drawn from these existing ‘drive-thru’ restaurants at peak hours – there will still be capacity at the relevant junctions.
- Flows at Junction 17 are relatively low, and merge/diverge traffic travelling to/from the MSA will not impact significantly. This was confirmed by ARCADY modelling carried out for the junction.

### 6.3. Planning Authority Response

The response of Laois County Council (LCC), received by An Bord Pleanála on the 21<sup>st</sup> December 2018, can be summarised in bullet point format as follows-

- The site is located on zoned and serviced land, within the development boundary of the town. It complies with the Portlaoise LAP and the Togher Masterplan.
- There is no direct access to the interchange or to the motorway.
- There is extensive parking provision on the site – with separation for HGVs and coaches.
- A detailed Traffic & Transport Assessment was submitted – together with a Road Safety Audit.
- Additional information in relation to traffic was submitted by the applicant.

### 6.4. Second 3<sup>rd</sup> Party Response to First 3<sup>rd</sup> Party Appeal

6.4.1. The response of David Mulcahy Planning Consultants, agent on behalf of Petrogas Ltd, received by An Bord Pleanála on 23<sup>rd</sup> November 2018, was made, following a request from An Bord Pleanála to comment on the other 3<sup>rd</sup> Party appeal from James Warren. I note that the 3<sup>rd</sup> Party appeal, to which this submission purports to respond, was subsequently withdrawn. The response submission includes new issues, not raised in the original 3<sup>rd</sup> Party appeal. Notwithstanding the withdrawal of the appeal [ and in consideration that the application is being considered *de novo*, by the Board], it is proposed to summarise the issues raised therein, as this response was subsequently referred to the other parties to the appeal for comment. The issues raised can be summarised in bullet point format as follows-

- The location of the site is over the minimum distance recommended by TII, and TII has itself objected to the development.
- The development of the Togher Masterplan lands would appear to depend on the current application being successful – particularly in relation to drainage – and the need for a foul pumping station within the Togher Masterplan lands. This pumping station will also serve other lands within the Masterplan

boundary. It is acknowledged that LCC has ample lands to construct its own foul pumping station.

- The volume of trips to the MSA from the N77 has been underestimated.
- The junction analysis is wholly inappropriate, as Junction 17 is a gyratory and does not function as a standard roundabout. The 80kph speed restriction applies on the gyratory. This requires larger gap acceptance times for traffic trying to get onto the gyratory.
- There is significant risk of a material impact on the national road network arising from significant delays and queues on the L26965 and on the M7 eastbound off-ramp. The applicant's ARCADY model significantly overestimates the residual capacity at junctions – particularly the M7 eastbound off-ramp, and the L26965, for the AM peak; and the N77 and L26965 for the PM peak.
- There is a significant risk of a material impact on the local road network – L26965 and N77.
- The arterial route shown in Figure 25 of the Togher Masterplan is required as a mitigation measure, prior to opening of the MSA.
- It is remarkable that TII has not lodged an appeal against this development – particularly where TII did appeal against the filling station at Midway, ref. 17/538 (ABP-300994-18).
- There is potential flood risk to the site – no flood risk assessment was undertaken. There have been no detailed site investigations carried out – to determine the characteristics of the soil. Surface water may potentially be contaminated and may impact on European sites. Details of surface water pumps have not been submitted. The lagoon may not be appropriately designed (no drawings submitted), and may result in flooding outside of the lagoon area. It is not clear if drains within the Togher Masterplan area have the capacity to accept surface water from this development. Risk of fuel spillage has not been properly addressed. Future ownership of the foul pumping station has not been addressed; and it is not clear who will be responsible for its maintenance.



6.4.2. The submission is accompanied by a report from Atkins – dated December 2018.

### 6.5. Circulation of 1<sup>st</sup> Party Response to 3<sup>rd</sup> Party Appeals

The response of McCarthy Keville O’Sullivan, agent on behalf of the applicant, Pat McDonagh, received by An Bord Pleanála on 21<sup>st</sup> December 2018, was circulated to the other parties to the appeal – requesting comment on or before 28<sup>th</sup> January 2019.

6.5.1. The response of David Mulcahy Planning Consultants Ltd, agent on behalf of Petrogas Ltd, received by An Bord Pleanála on 28<sup>th</sup> January 2019, can be summarised in bullet point format as follows-

- The appeal is not vexatious. All Petrogas Ltd. observations on planning applications are based on legitimate planning concerns. None have ever been deemed vexatious by An Bord Pleanála. TII was a regular observer on the applications referred to by the applicant.
- The development of the filling station at Midway is due to commence on 6<sup>th</sup> February 2019 – and will be completed by June 2019.
- The development will result in over-proliferation of MSAs in this area.
- The applicant conveniently fails to make reference to the Obama Plaza, Moneygall (Junction 23) and the Mayfield (Junction 14) MSAs on the M7.
- The applicant has failed to justify why two MSAs are required at Junction 17.
- The development directly contravenes section 2.8 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* 2012.
- The fact that TII did not appeal the Notification of decision to grant planning permission, cannot be taken as an indication that TII has no objection to the development. Reservations about the development were expressed to LCC.
- When the applicant refers to the MSA ‘kick-starting’ development of the Togher National Enterprise Park lands – it fails to note that the recently commenced Midway development will already have ‘kick-started’ such development – and so, the second MSA is not required.

- There is no proof submitted that the ‘drive-thru’ element will not impact negatively on development in the town.
- The development is in conflict with policy TRANS 25 of the Development Plan, in relation to over-proliferation, and negative impact on the town centre.
- The applicant has over-stated the sight visibility at the junction, and has used an outdated version of the traffic modelling software.
- Trip generation at the site is considerably higher than that included in the Togher Masterplan analysis, and will, therefore, have a greater impact on Junction 17.
- Microsimulation (VISSIM) is the most appropriate tool for modelling complex junctions: it has been used for motorways and interchanges.
- The new arterial road to connect the Togher National Enterprise Park with the N77, would require closure of the L26965/Junction 17 gyratory.

6.5.2. The submission is accompanied by the following documentation of note-

- Report from Atkins – dated January 2019.
- Traffic & Transportation Assessment for the Midway Filling Station, from Atkins – dated September 2017.
- Traffic, Drainage and Water Response to Request for Further Information, from Atkins – dated December 2017.

## 6.6. Circulation of Second 3<sup>rd</sup> Party Response to First 3<sup>rd</sup> Party Appeal

The response of David Mulcahy Planning Consultants Ltd, agent on behalf of Petrogas Ltd, received by An Bord Pleanála on 23<sup>rd</sup> November 2018, was circulated to the other parties to the appeal – requesting comment on or before 28<sup>th</sup> January 2019.

6.6.1. The response of McCarthy Keville O’Sullivan, agent on behalf of the applicant, Pat McDonagh, received by An Bord Pleanála on 28<sup>th</sup> January 2019, can be summarised in bullet point format as follows-

- The Togher Masterplan is a vision for balanced regional development within a national enterprise park. The plan seeks to increase economic activity and

stimulate investment, regeneration and development. The site is located within the Motorway Service Zone of the overall lands – Character Area 1. The MSA is part of the enabling phase of the overall development.

- The suggestion that the development be delayed pending the construction of a planned arterial road, is of no relevance in this context. Direct access between the Masterplan lands and Junction 17 is a key element of the plan for the area.
- There is a clear need to provide an MSA on the M7 at this location. The NRA Service Area policy refers to Type 1 service areas at least every 100km on the dual carriageway network. In addition, where the gap between Type 1 service areas is more than 85km, a Type 2 service area should be provided. The existing service areas either side of Portlaoise are 79km apart. Existing Type 1 service areas are provided at Junction 14 Mayfield and Junction 23 Moneygall. No Type 2 service areas exist on the M7 between these two Type 1 service areas. There is no minimum separation distance between Type 2 MSAs, stipulated within the document.
- Between 2014 and 2018, traffic counts indicated a 15% increase in volume.
- The *Spatial Planning and National Roads Guidelines for Planning Authorities* 2012, deals with the siting of service areas at national road junctions (sections 2.7 & 2.8). The proposed development is an off-line MSA. The Laois County Development Plan provides for filling stations/service stations/truck parking at policies TRANS 25 and TRANS 26 – the latter specifically referencing Togher.
- The site is zoned for MSA use in the Portlaoise LAP 2018. Policy ED P1 specifically references off-line MSA at Togher. The Togher Masterplan is considered to be part of the LAP.
- An Bord Pleanála recently granted planning permission for a service area at Midway – ref. 17/538 (ABP-300994-18). This site is approximately 300m to the east of the appeal site. This development does not provide services for HGVs. It does not provide for shower/wash facilities for road users, tourist information or a play area for children. The permitted development at Midway will not, therefore, constitute an MSA under the TII definition.

- Within the limits of reasonable provision, it is necessary to induce competition between providers, where otherwise operators might act as monopolists or cartels.

6.6.2. The submission is accompanied by the following documentation of note-

- List of motorway service areas/petrol filling stations on the national motorway network.
- Traffic & Drainage Response to 3<sup>rd</sup> Party submission to An Bord Pleanála – dated January 2019.
  - Local trips estimated to visit the Togher site at the AM and PM peak are higher than those given for the Midway service station development – so rather than being an under-estimation, such figures are likely to be an over-estimation.
  - Analysis for the Midway petrol filling station does not include turn-ins from the M7.
  - The appellant analyses the rotary as a series of closely-spaced, priority T-junctions. The interchange is a roundabout – and not a series of T-junctions. Two-way traffic does not exist on the mainline – rather one-way traffic on the rotary mainline. Notwithstanding that PICADY is not the correct model to use, the applicant has modelled the east-bound off-ramp for the AM peak in 2034, with the MSA traffic only. The results obtained by the applicant reveal queuing levels of 29.5% of the figure quoted by the appellant.
  - The appellant states that the VISSIM tool/software should be used to estimate the capacity of Junction 17. This model is used in large transport network situations, within urban areas, with multiple junctions (including signalised and non-signalised junctions). Its primary purpose is to predict flows through a network where the driver has a choice of routes through an urban area. ARCADY is a recognised tool/software to assess non-signalised roundabouts. No data has been provided by the appellant in relation to the VISSIM analysis undertaken.

- The Southern Orbital Route (extended) will allow for some traffic to bypass the town centre – which is its principal aim – rather than reducing traffic at Junction 17. The assessment carried out by ARUP for the Togher Masterplan Transport Assessment, in relation to base flows in 2033, AM and PM peak hour, (prior to development within the Togher lands), are predicted to remain unchanged at Junction 17 after the Southern Orbital Route is opened. There is no foundation to the claim made by the appellant that the Southern Orbital Route should be constructed prior to development of the MSA. The arterial route linking the Togher lands with the N77 (as referred to by the appellant) is only a part of the tentative Southern Orbital Route. There is no detailed design, and the route has yet to be finalised. There is no reference within the Togher Masterplan to a roundabout junction at the arterial road and the access to Midway and the Meelick road, and no reference to upgrade of N77 northbound to two lanes between Junction 17 and the new roundabout. It is not clear where these references come from. There is no reference within the Togher Masterplan to the closure of the L26965 at Junction 17: there are no plans to close this road – now or in the future. The L26965 forms part of the linkage between the Togher lands and Junction 17. Construction of the Togher Central Access Route will commence in 2019 – which should ensure that it is in place prior to opening of the MSA. This road will serve the proposed Glanbia cheese factory – currently in the planning process.
- The site is within Flood Zone C – an area not at risk of flooding. There is no need for flood risk assessment.
- The eastern portion of the appeal site drains to the Junction 17 motorway drainage network (and ultimately to the Triogue River). The western portion of the site drains ultimately to the Clonminam Stream. The drainage of the eastern portion of the site will be diverted into the Clonminam Stream catchment by way of pumping. The Clonminam Stream ultimately flows into the Triogue River – to the north of Portlaoise – so diverted flow will arrive back in the Triogue River – some 7.6km downstream. The field drainage network to the west of

the site forms part of the drainage of the Togher National Enterprise Park – and was deemed by the PA to have capacity to accept surface water from the development.

- The River Barrow and River Nore SAC is more than 15km downstream of the site, and will not be impacted by drainage arrangements.
- The surface water lagoon will remain within the ownership of the applicant and will be subject to regular maintenance. If required by the Board, the lagoon volume can be increased by 20%.
- The site is not suitable for soakways – determined by opening of five trial pits, on 23<sup>rd</sup> January 2018.
- Details of the surface water pump chamber, pump site and sample maintenance agreement are now provided at Appendix C.
- The stormwater network is designed to contain a 1-in-100-year rainfall event. There will be no flooding of adjacent lands.
- Hydrocarbon interceptors will be provided on all surface water outfalls. The specified interceptor has the capacity to contain 1,750 litres of spillage, prior to activation of an alarm – and an overall capacity of 20,000 litres. An accidental delivery spillage would result in release of 5,000-7,000 litres. The specified units fully cater for the forecourt, HGV refuelling area, and fuel delivery bays.
- No fencing of the lagoon is required – arising from the shallow side slopes. If the Board requires it, the lagoon can be fenced-off.
- There is no requirement for pre-connection permission from IW.
- The Moneygall MSA, operated by the applicant, has a metered water supply. The flows for the proposed development at Togher are based on the Moneygall facility – 32.5m<sup>3</sup> per day.
- The location of the foul pumping station within the Togher Masterplan lands, was selected in consultation with LCC. The pumping station applied for will service the MSA only. It can subsequently be expanded – to serve other developments within the Togher National Enterprise Park. Maintenance of the facility will be the responsibility of the

applicant – until such time as LCC may choose to expand it. Such would be subject to future planning application(s).

6.6.3. The response of Laois County Council, received by An Bord Pleanála on 28<sup>th</sup> January 2019, can be summarised in bullet point format as follows-

- Whilst TII made two submissions to LCC (10<sup>th</sup> May & 24<sup>th</sup> October 2018), the agency did not make an appeal to An Bord Pleanála.
- The PA carried out a robust assessment of the application in relation to zoning, traffic, drainage, lighting, and compliance with national and regional guidance.
- ARCADY is a well-recognised and proven traffic-modelling tool. TII never questioned the validity of the ARCADY modelling, and neither did the Roads Design Section of LCC.
- In its second submission to LCC, TII advises, *inter alia*, “that the Togher Masterplan Transport Assessment has provided for the proposed Service Area on the subject site in phasing proposals up to 2023; Phase 1 of the proposed Masterplan. TII are generally satisfied with the scope and recommendations arising from the Togher Masterplan Transport Assessment”.
- Having regard to the separation distances involved, and the availability of supporting foul and surface water drainage infrastructure, the PA is satisfied that the development will not impact negatively on Natura 2000 sites.

## 6.7. Observations

None received.

## 7.0 Assessment

The principal issues of this appeal relate to development plan policy, national guidelines in relation to MSAs, traffic and drainage.

## 7.1. National & Regional Policy

- 7.1.1. National and regional guidance is silent in relation to an appeal such as this one – except in the sense of supporting employment and job creation. The Midland Regional Authority Guidelines 2010-2022, refer to the potential of the Togher Inland Port to become a major transport hub and distribution centre. The proposed development will facilitate the achievement of this aim. The proposed development will result in the short-term creation of 70 construction jobs, and the long-term creation of 100 operational jobs.
- 7.1.2. In relation to the *Spatial Planning and National Roads – Guidelines for Planning Authorities* 2012, the site is located outside the 50/60kph speed restriction zones; and so, would appear to come within the compass of the Guidelines. I note the comment of the Roads Design Section of LCC, in relation to the necessity to reduce the 80kph speed restriction in this area to 60kph, to facilitate the provision of a pedestrian crossing on the L26965, in proximity to the main access/egress. The development is an off-line MSA. Section 2.8, dealing particularly with service areas for motorways or high-quality dual carriageways, identifies a number of typologies – of which the ‘Off-line Motorway Service Areas at National Road Junctions’ would appear to be the relevant one. I do note that the proposed development does not take access from either the M7 or the N77, but rather the L26965 local road – although it is in close proximity to Junction 17. In relation to this typology, the Guidelines state- “In the preparation of their plans, planning authorities may consider policies for the provision for off-line motorway service area facilities with reference to the requirements and advice included in the most up-to-date NRA guidance on the location and layout of the NRA’s service areas and also similar type existing or planned privately promoted service facilities within existing towns/settlements and located in the general environs of the relevant road corridor”. I consider that this has occurred in this instance in relation to the preparation of the Portlaoise LAP 2018-2024 and, by way of appendix to it; the Togher Masterplan 2018. Both of these plans are of recent date, and there was input from TII in relation to their making. Section 2.8 goes on to state- “A proliferation of private off-line service area facilities at national road junctions should be avoided. It is therefore important that a coordinated approach between planning authorities should be undertaken in consultation with the NRA as part of the drafting of development plans”. Permission



has recently been granted by the Board (ABP-300994-18) for a 'bolt-on' filling station development to the existing food-court/hotel/gymnasium at nearby Midway. This development has recently commenced; and it is stated by the 3<sup>rd</sup> Party appellant that it will be open by June 2019. I would not consider that the development of a second similar-type facility at Togher would comprise a 'proliferation' as envisaged by section 2.8 of the Guidelines – particularly where the planning authority has liaised with TII in relation to the zoning, and the identification of the site as suitable for motorway services within the Togher Masterplan 2018. The zoning within the LAP clearly identifies two sites for MSA use – separated by the N77. The applicant notes that the Midway development does not provide for HGV fuelling or parking, and has parking for just five coaches – notwithstanding that the appellant states that such facilities will be provided in the future. The proposed development does provide for HGV fuelling and parking – and so cannot be considered in the same MSA category as Midway. Section 2.8 goes on to state- "In addition, facilities proposed for inclusion in service areas should be of a type that avoids the attraction of short, local trips, a class of traffic that is inconsistent with the primary intended role for motorways and other national roads and associated junctions in catering for strategic long-distance inter-urban and inter-regional traffic. Furthermore, to permit a service area to become a destination for local customers would be contrary to Government planning policy on retail and town centres as set out in Retail Planning Guidelines 2005. The consequence of this would be to threaten the viability of businesses in cities, towns or other local centres". It is difficult to discourage local trips to a development such as this one. I would, however, be satisfied that the development is located a sufficient distance from the town centre of Portlaoise, so as to discourage local trips – particularly where there are two existing 'drive-thru' fast-food facilities in town centre. I further note that the Midway food-court, on the N77 Abbeyleix Road, is located closer to the town centre, and would be more likely to capture local trips from the town, than would the proposed Togher site. The appeal site would, however, have some attraction in terms of local trips from the Togher National Enterprise Park (when, and if, developed). But trips from such development could not be regarded as drawing trade from the town centre – as the National Enterprise Park is not within the town centre and is not, in any case, yet developed.

7.1.3. Section 2.7 of the Guidelines deals more generically with development at National Road interchanges or junctions – emphasising the need to protect the carrying capacity of the national roads – developed at considerable cost, as a means of facilitating inter-urban and regional traffic, rather than local traffic. The section more properly addresses the development plan-making process, rather than individual planning applications. The proposed development does not envisage any upgrades to Junction 17. Some minor changes are proposed in relation to crash barriers and a pedestrian crossing on the L26965 – but such changes will not have any impact on the carrying capacity of Junction 17 itself.

7.1.4. The National Roads Authority's *Service Area Policy 2014*, is of some relevance – although not statutory guidance for planning authorities or the Board. The Policy references the *Spatial Planning and National Roads – Guidelines for Planning Authorities 2012*. TII will supply on-line service areas. Within such, are Type 1 – for large scale service areas, and Type 2 – which will include parking, picnic and toilet facilities, but without the main amenity building or fuel facilities. Type 1 areas should be no more than 100km apart, but in practice this will mean a shorter separation distance. Where the gap is greater than 85km, a Type 2 service area should be provided. The applicant argues that the proposed development is in the nature of a Type 2 on-line service area; a contention I would not hold with. The Policy is quite clear, in only referring to on-line MSAs. The proposed development contains a good deal more than parking and toilets (whilst not providing picnic areas) – the Type 2 on-line service area. The Policy acknowledges that a number of off-line facilities already exist – notwithstanding preference for on-line facilities. On the M7, the Mayfield (Junction 14) and the Moneygall (Junction 23) facilities are quoted as providing-

- an appropriate level of parking for cars and HGVs;
- a site located within a few hundred metres of the dual carriageway;
- a facility remaining open for 24 hours; and
- commercial-vehicle parking for longer periods including overnight.

Ballacolla on the M8 Motorway (Junction 3) could also be considered to provide the requisite level of facilities for motorists. TII does not advocate or oppose development of off-line service areas – where there is no plan in the short- to

medium-term to provide on-line facilities. I note the categorical statement that- “TII has no role in determining how off-line developments should be delivered” (p.15). Provision of on-line facilities is to be reviewed in 2019. Signage will be provided on national roads to off-line service areas, but only where they meet the specified criteria set out at section 3.3.2. It would seem that the proposed development would not meet all of the requirements set out at 3.3.2 – particularly in relation to 24-hour opening; but could do so in the future.

## 7.2. County Development Plan Considerations

7.2.1. Within the ‘Enterprise & Employment’ zoning of the Laois County Development Plan’, ‘restaurant’ is Open for Consideration; ‘convenience retail of less than 100m<sup>2</sup>’ is Open for Consideration; ‘petrol station’ is Open for Consideration; and ‘heavy commercial vehicle park’ is Open for Consideration. The development is in accordance with the County Development Plan zoning.

7.2.2. Policy ECN 2 states- “Develop Togher, on the southern outskirts of Portlaoise, as a National Enterprise Park as designated in the National Spatial Strategy and Midland Regional Planning Guidelines;”. The proposed development is in accordance with this policy.

7.2.3. It is the policy of the Council to:

**TRANS 25** Consider proposals for petrol filling stations/service stations/truck parking facilities subject to compliance with the following general principles and the design standards contained in the development management standards in Section 8 of the Plan:

a. Such developments at or near national roads shall be assessed having regard to NRA Guidance contained in Spatial Planning and National Roads Guidelines for Planning Authorities (DECLG, 2012) and the NRA Service Area Policy (2014), or as amended.

b. The provision of such facilities on those sections of regional roads and local roads where the maximum speed limit applies will generally be discouraged, unless an overriding need for the development in that location is clearly demonstrated.

- c. The proposed development would not result in traffic safety hazards, serious traffic congestion, or the undue obstruction of other road users.
- d. The proposed development would not result in adverse impacts on the environment and local amenities.
- e. The proposed development would not result in an undue proliferation of such facilities.
- f. The proposed development would not undermine the vitality of retail services in local villages in contravention of the retail objectives of this Plan.
- g. The proposed development shall not contravene other policies of this Plan.

The proposed development is in accordance with the requirements of this policy – as elaborated upon elsewhere within this Inspector’s Report.

7.2.4. It is the policy of the Council to

**TRANS 26** Advance Togher, Portlaoise as the primary location for off-line motorway services and other uses in line with the Togher National Enterprise Park Masterplan (adopted by Laois County Council in April 2010) – [now replaced by the 2017 Plan]. The proposed development is in accordance with this policy.

7.2.5. Section 8 deals with the location and pattern of development. In relation to petrol filling stations, Development Management Standard DM30 states-

Applications for filling stations should have regard of [sic] the Retail Planning: Guidelines for Planning Authorities (DECLG, 2012) and the Spatial Planning and National Roads: Guidelines for Planning Authorities (NRA/TII, 2012) also take account of the following:

- 1) Be located within urban areas within speed limits;
- 2) Access to filling stations will not be permitted closer than 35 metres to a road junction;
- 3) Frontage on primary and secondary routes must be at least 20 metres in length;
- 4) All pumps and installations shall be set back at least 5 metres from the roads;
- 5) A wall, of a minimum height of 0.5 metres, must separate the forecourt from the public footpath;

- 6) All external lighting should be cowled and directed away from the public roadway to prevent traffic hazard;
- 7) A proliferation of large illuminated projecting signs will not be permitted at filling stations – Generally only one such sign will be permitted;
- 8) Turbo-drying or car washing facilities will be located so as not to interfere with residential amenities;
- 9) Petrol filling stations can include an associated shop (no more than 100 sq.ms. (net retail floorspace) that provides for the sale of convenience goods.
- 10) An undue concentration of filling stations shall not be permitted, as in the past oversupply has led to closures with resulting unsightly derelict filling stations;
- 11) Late night opening will only be permitted if it does not impact adversely on nearby residences;
- 12) A landscaping Plan will form part of any Planning application.

The proposed development meets the requirements set out above. In particular, I would note that the speed limit on the L26965 is to be reduced from 80kph to 60kph, whilst at the same time noting that the access/egress to the Midway food-court and petrol filling station is located within the 80kph speed restriction zone on the N77. A second petrol filling station could not be considered an undue proliferation of such facilities at a major motorway junction. There are no nearby residences which would be impacted by late-night opening hours. A landscape plan accompanies the application, and the layout conforms to the requirements of the Development Management Standards.

### 7.3. Local Area Plan Considerations

- 7.3.1. The Portlaoise Local Area Plan came into effect on 19<sup>th</sup> November 2018 – where Notification of decision to grant planning permission was issued by LCC prior to this date – on 25<sup>th</sup> October 2018. The site is zoned ‘Enterprise & Employment’. In relation to this zoning, the LAP states-

**Objective:** To provide for enterprise and employment activities.

**Purpose:** To accommodate commercial and enterprise uses that are incapable of being situated in a town centre location, including low input and emission manufacturing, campus style offices, storage uses, wholesaling and distribution, commercial services with high space and parking requirements. Business Park type development shall be provided in high quality landscaped campus style environments, incorporating a range of amenities.

The Togher National Enterprise Park has the potential to be a major boost to the economy of Portlaoise and to contribute to the growth of the County and the Region as a whole.

7.3.2. Policy ED P1 states that the it is the Policy of the Council to-

Develop Togher, as a National Enterprise Park, as per the Masterplan prepared by ARUP and set out under Appendix 1 of the Local Area Plan. The National Enterprise Park will be focussed in particular on trade warehousing, distribution, logistics and other uses associated with the transport industry. Other suitable uses include off-line motorway services, retail warehousing, offices and conference facilities, leisure uses such as hotels, catering and indoor sporting facilities. Provision is also made within Togher for the development of significant heavy, light and ICT industry uses as well as general enterprise uses. In order to deliver the Togher National Enterprise Park, an implementation programme will be developed to include direct marketing campaigns to drive economic development.

Off-line motorway services are specifically mentioned in this policy, and so the proposed development is in accordance with it.

#### 7.4. **Togher Masterplan Considerations**

7.4.1. The Togher Masterplan is referenced in Policy ED P1 of the Portlaoise Local Area Plan – referred to as Appendix 1 of the LAP – J17 National Enterprise Park Masterplan Document. The appeal site is identified as a potential motorway service station location – along with the Midway site on the opposite side of the N77 (both sites being within Character Area 1). A landmark structure is indicated for the eastern end of the site. I note that the proposed development does not provide for this landmark structure – and no reference is made to it in any of the appeal

documentation. Section 4.5 of the Masterplan states- “The area adjacent to Junction 17 of the M7 has been identified as a potential location for off-line Motorway services while providing a sense of arrival to those entering the Togher lands from the M7 through a Gateway comprising buildings of significant architectural value”. The proposed development would not realise this aim of the Masterplan. In relation to Character Area 1 – The Motorway Service Zone, Section 4.7 states- “The area is intended to provide high-quality motorway service development, which will not only generate employment within the Togher area but will attract flexible working activities and passing trade. This strategic zone serves to plug the lands into the national road network. The zone has an overall area of approximately 6.23 Ha of land currently entirely zoned for Enterprise and Employment. The land which is currently zoned for Enterprise and Employment, includes a 4.32 Ha plot consisting of the existing Midway Food Court development and Maldron Hotel, and lands associated with a live planning application for a new filling station and ancillary uses (Reg. Ref. 17/538); and a 2.89 Ha plot which is subject to a live planning application for a motorway service area (Reg. Ref. 18/216)”. The Togher Masterplan clearly envisages a motorway service area function for both this appeal site, and the Midway site on the N77.

- 7.4.2. Section 4.7 goes on to state- “The access arrangement should be of a type that avoids the attraction of short, local trips or the locations becoming destinations for local customers”. The location of the site, remote from the town centre, in itself, will act as a disincentive for local trips – other than from future development within the Togher National Enterprise Park, if such trips can be considered local – in that they will not constitute a draw from the town centre. As referred to elsewhere within this report, Midway is more likely to attract local trips – being located closer to the centre of Portlaoise than the appeal site.

## 7.5. **Layout & Design**

- 7.5.1. The site is to be landscaped – largely comprising grassed areas to separate various elements of the circulation and car-parking. Specimen trees and ornamental shrubs are to be used to increase the attractiveness of the development. Existing screen planting on the northern boundary of the site is to be removed to facilitate improved sight visibility at the access/egress points. It would be important that existing screen

planting on the other three sides of the site be retained – in particular to screen the site from view from the M7 and Junction 17. There is a clear pedestrian network throughout the site – aided by signage for both motorists, motorcyclists, cyclists and pedestrians. Car, motorcycle and coach parking is located closest to the service building – separated from HGV parking and refuelling, which are located further away. HGVs would be likely to use the second egress point at the western end of the site – to obviate the need to navigate around the services building to depart from the egress on the northern side of the site. This arrangement will largely serve to separate out HGV and other forms of traffic visiting the development.

7.5.2. The application is accompanied by a Design Statement – Appendix No. 1 of the Planning Application Cover Report. The forecourt building is a single- and two-storey structure – with maximum height of 8.0m. Roof-mounted plant will be above the single-storey element, and will be screened. Similarly, the roof-mounted solar panels will be on the flat roof of the single-storey element. A small delivery yard is provided to the rear of the building. There is an electricity sub-station incorporated into the building. External finishes will comprise stone, hardwood cedar cladding (or alternative equivalent), metal panel, painted nap plaster, and glazed curtain wall. The forecourt canopy will have a curved profile, and will be maximum 7.3m in height.

7.5.3. External signage will be affixed to the first-floor level of the forecourt building at four different points – each sign measuring 1.0 x 4.2m. One of these signs, on the south side of the building, is directed at the motorway. It serves no purpose other than to attract attention from motorway traffic, and should be omitted from any grant of planning permission. Signage drawings for the individual franchises within the food-court, indicate a range of different sign sizes for six different outlets. There will be two totem signs, measuring 2.0 x 6.0m at the two access/egress points on the L26965. Development Management Standard DM30-7 of the County Development Plan states- “A proliferation of large illuminated projecting signs will not be permitted at filling stations – Generally only one such sign will be permitted;”. I would consider that the second of these signs (at the egress point at the western end of the site) is unnecessary and redundant, as there will be little traffic approaching the site from this direction, and being at an egress point – would be of no value in directing motorists to the MSA. A condition should be attached to any grant of permission, requiring the omission of this second totem sign.



- 7.5.4. At ground floor level there is a retail element (100m<sup>2</sup>) – in accordance with the cap set out at section 2.4.3 of the *Retail Planning – Guidelines for Planning Authorities*. Condition 12 of the Notification of decision to grant planning permission required that this retail unit not be sub-divided. This would appear to be reasonable. The intention of the cap is to restrict the draw of the filling station for local trips – something which could detract from the vibrancy of the town centre.
- 7.5.5. I note that there is no playground facility within the site. Neither is there any showering facilities for motorway users or picnic area, facilities which would be required at a Type 1 and Type 2 on-line MSA.
- 7.5.6. I would be satisfied that the proposed site layout and building design and acceptable – subject to caveats relating to excessive signage.

## 7.6. **Water**

### 7.6.1. Water Supply

The Togher Masterplan 2018, indicates that there is a watermain within the L26965 county road to the north of the site. However, it is not proposed to connect to this watermain. The development will be provided with water from the public mains, via a 1.1km run through the Togher National Enterprise Park – following the route of the foul sewer to serve the development. The supply will be metered. A letter from IW, submitted by way of additional information on 1<sup>st</sup> October 2018, indicated that there was capacity within the network, for the proposed development.

### 7.6.2. Foul Effluent Disposal

The application is accompanied by a Drainage Design Report – dated 4<sup>th</sup> April 2018. Foul effluent from the forecourt building (estimated at 24m<sup>3</sup> per day), is to be discharged by gravity through a 150mm diameter pipe at the western end of the site, across the L26965 and into the drainage network of the Togher National Enterprise Park (not yet constructed). I note that surface water drainage work to facilitate road construction within the Togher National Enterprise Park has recently commenced. The run required to connect to existing foul drains at the northern end of the National Enterprise Park, is of the order of 1.1km. Provision is made for a pumping station roughly half way along the run. This pumping station will provide for 24-hour emergency storage capacity. Preliminary design requirements for this pumping

station have been submitted with the application. The station will serve other lands within the Togher National Enterprise Park. The route of the foul sewer conforms to the line indicated within the Togher Masterplan 2018. A letter from IW, submitted by way of additional information on 1<sup>st</sup> October 2018, indicated that there was capacity in the network for the proposed development. The proposed sewer line and pumping station may serve other development within the National Enterprise Park. This would necessitate upgrading the pumping station. Such would have to be subject to a planning application in the future. I would see no difficulty with the proposals put forward.

### 7.6.3. Surface Water Disposal

The application is accompanied by a Drainage Design Report – dated 4<sup>th</sup> April 2018. Discharge is to be limited to greenfield run-off rates of 18.28 l/s (subsequently reduced to 15.5 l/s) for the entire site. Surface water from the western end of the site will flow by gravity to a 331m<sup>2</sup> attenuation pond (259m<sup>3</sup> capacity); subsequently upsized to 650m<sup>2</sup>, located across the L26965, within a field adjacent to the M7. A submission to An Bord Pleanála from the applicant, indicated a willingness to upsize the attenuation pond – to increase its capacity by 20%, should the Board deem this necessary. The M7 is located in cut – just to the south of this attenuation pond. In the unlikely event that the pond over-topped, water could discharge to the motorway drainage network to the south. A condition should be attached to any grant of permission requiring the capacity to be increased by 20%. I note that the applicant owns the land in this area. The applicant points out that the shallow attenuation pond would be dry for most of the time. I would not see that it is necessary to fence this feature off from adjoining agricultural land. Outfall from the western portion of the site will be via an hydrocarbon interceptor. The outfall from the development (controlled by Hydrobrake mechanism), will see excess surface water diverted to the attenuation pond. Surface water discharge will necessitate the construction of an open drain (0.4km) just inside the existing fence/hedgerow boundary of the M7 – to connect with an existing land drain to the west, by means of gravity flow. Work has recently commenced on upgrading this land drain, in association with the development of a road network to serve the Togher National Enterprise Park. The 0.4km route is in line with the surface water drainage indicative schematic for the Togher National Enterprise Park – as shown on Figure 28 of the Togher Masterplan

2018. Surface water drainage for the eastern part of the site will drain to an underground attenuation tank (176m<sup>3</sup> capacity) – subsequently increased to 190m<sup>3</sup> capacity – at the eastern extremity of the site. Hydrocarbon interceptors are to be provided for inflows to the sump. This area represents a local low point – from which outfall appears to be to the Junction 17 drainage network. Road drainage for part of Junction 17 would naturally flow to this low point. A pump chamber is to be installed (with rising main) to connect this outfall to the aforementioned attenuation pond on the opposite side of the L26965. This pump chamber will be fitted with duty and stand-by pumps. These arrangements are acceptable. The proposed development will not result in any significant impact on field drainage within the Togher National Enterprise Park, arising from the attenuation control measures to be put in place.

#### 7.6.4. Flooding

There are no watercourses on any of the site boundaries – although roadside drainage is in place for the roads around the site. The L26965 is provided with road drainage and gullies. The site is undulating – sloping generally downhill from west to east. It is proposed to alter ground levels slightly, to facilitate the development. The eastern extremity of the site represents a local low-point – from which outfall appears to be to the Junction 17 drainage. The Togher Masterplan 2018, includes at Figure 16, an extract from the CFRAM mapping, showing flood risk in the area. Whilst sections of the M7 to the south of the site are shown to be at risk of flooding – the appeal site itself is not indicated as being at risk from flooding. The proposed development will not result in flooding of any adjacent lands, and is acceptable.

### 7.7. **Access, Traffic & Parking**

- 7.7.1. The L26965 was constructed as part of Junction 17, and is wide enough for two HGVs to pass with ease. There is a single, unbroken white line in the centre of the road where it abuts the site. The 80kph speed restriction applies in this area. There is a footpath on the opposite side of the road, and public lighting is in place. Sight distance at the access/egress is reasonable in either direction. Sight distance at the egress point, at the western end, is reasonable in either direction. There will ultimately be a roundabout constructed on the L26965 at this secondary egress point – part of the Togher Central Access Route. An existing crash barrier, located in proximity to the northeastern boundary of the site with the L26965, is to be removed

to facilitate construction of a 2m wide footpath along most of the northern boundary of the site. Re-profiling of slopes in this area of the site will permit the removal of the crash barrier – which is in place due to changes in levels in this area. A pedestrian crossing on the L26965 is to be provided close to the main site access/egress – which will require the speed limit to be reduced to 60kph. These arrangements are indicated on drawings submitted by way of additional information on 1<sup>st</sup> October 2018. The L26965 currently serves a limited area to the south of the M7 and Portlaoise Rugby Club, and also Watery Lane to the north – a narrow county road serving farmland and sporadic one-off housing. However, there are plans to construct the Togher Central Access Route – which will connect Junction 17 with the Togher National Enterprise Park to the west and northwest – and onward to Clonminam Industrial Estate to the north. Consent is in place for this road, and development has recently commenced on drainage works to facilitate its construction. The L26965, on the northern boundary of the site, will form part of the link between the Togher National Enterprise Park and Junction 17.

- 7.7.2. The development will have separate access and egress points from the L26965 county road on the northern boundary of the site. In addition, there will be a further egress point (largely for HGVs), at the western end of the site – onto the L26965. This will also function as an emergency access to the MSA.
- 7.7.3. The application was accompanied by a Traffic & Transport Assessment – dated April 2018. A report on file from Transport Infrastructure Ireland (TII), indicates that it neither endorses nor opposes in principle, the provision of MSAs such as this one; but will assess the application in terms of road safety, capacity and protection of investment in national roads. TII acknowledges that LCC has zoned the site for this type of development (section 6.1.2.4 of the Development Plan – and associated policy TRANS 25). It is noted that Policy TRANS 26 specifically identifies this site for off-line motorway services. TII is concerned at the proliferation of such off-line facilities – at adjacent Midway and nearby Ballacolla, Co. Laois. However, the applicant points out that the MSA at Ballacolla is located on the M8, and so cannot serve north-bound traffic on the M7. The closest on-line MSAs on the M7, are at Junction 14 (Mayfield) to the north, and Junction 23 (Moneygall) to the south. These are separated by a distance of 79km. There are no plans by TII to provide an on-line MSA in this area. The proposed off-line MSA is located sufficient distance from the

closest on-line MSAs, to allow for provision of off-line services to motorists on the M7, without unduly impacting on the on-line provision of services.

- 7.7.4. The application was accompanied by a Stage 1 Road Safety Audit – dated March 2018. This audit states that access to the site was originally to be from a new roundabout on the L26965, but that this was changed to a simple priority junction – with separate access/egress arrangements. The audit identified potential difficulties at the access/egress, pedestrian safety issues, complex internal road layout, and need for an emergency egress point. Following a request for additional information, a revised Stage 1 Road Safety Audit was submitted on 1<sup>st</sup> October 2018. This audit recommended a stop junction at the L26965, roadside signage on the L26965, traffic-calming within the development, visibility improvement at the secondary egress, and ways to discourage informal parking on the L26965 – blocking visibility splays at egress points. This latter problem was to be solved through provision of bollards on the L26965. I note that there are already timber bollards on either side of the L26965 to discourage unauthorised parking. Condition 5 of the Notification of decision to grant planning permission related to future Road Safety Audits for the development. Such should be included as a condition in any grant of planning permission to issue from the Board.
- 7.7.5. Drawings submitted indicate parking for 20 HGVs, 10 coaches and 144 cars. Motorcycle parking is also provided adjacent to the forecourt. Bicycle parking has not been indicated on drawings submitted. A condition should be attached requiring provision of at least 10 bicycle-parking spaces adjacent to the entrance to the service building. HGV parking is separated out from the remainder of parking. The proposed arrangements are acceptable in terms of pedestrian and traffic safety.
- 7.7.6. Section 5 of the Togher Masterplan identifies a segregated cycle route along the L26965 to the north of the site – linking the Togher Central Access Route to the west with the M7/N77 rotary to the east. There is a cycle network on the N77 Abbeyleix Road out of Portlaoise – as far as Midway. The proposed development will not have any impact on the cycle network in the area, and will provide facilities for cyclists within the forecourt area.
- 7.7.7. The appellant argues that the traffic modelling undertaken for the development was not sufficiently rigorous, and underestimated the level of traffic queuing which would

occur at the AM and PM peaks – particularly on the M7 eastbound off-ramp, the L26965, and the M77 southbound at Midway. The applicant contends that the ARCADY modelling tool was the appropriate one, and that Junction 17 functions as a rotary rather than a roundabout. Neither TII nor the Roads Design Office of LCC had any objection to the use of ARCADY modelling. The applicant did not include opening year (2019) or opening year plus 5 (2024) figures, arguing that the opening year plus 15 (2034), was the strictest test – arising from continued year-on-year traffic growth on the road network. I would be satisfied that the applicant has provided a robust justification for the traffic modelling undertaken. Access to the site is from a county road, where I note that access to the Midway development is located on a National Secondary Road. Access to both MSAs is within the 80kph speed restriction zone – although there are plans to reduce the speed on the L26965 to 60kph, to facilitate the introduction of a pedestrian crossing on this road. The Togher Masterplan was subject to a strategic traffic modelling, based on traffic counts undertaken in 2018. Key junctions were modelled using traffic modelling software.

- 7.7.8. The appellant contends that the Togher MSA should not proceed pending the construction of a future arterial road to the north of the L26965. Figure 7 of the Togher Masterplan indicates existing and proposed roads for the town of Portlaoise (where the arterial road is not referenced); whereas the Central Access Route within the Togher National Enterprise Park, and a section of road to link the Meelick road with the R425 Regional Road to the east of Midway (as part of the Southern Orbital Route), are indicated. Figure 25 of the Masterplan references a ‘Proposed Corridor for Future Arterial Road’ within lands to the north of the L26965 – most of which are outside of the Togher Masterplan lands. This corridor would link to the Meelick road – and would form part of the Southern Orbital Route. There is no reference made to the closure of the L26965 at Junction 17. The L26965 forms an essential part of the Togher Central Access Route link to Junction 17. Section 5.5 of the Masterplan states- “The immediate intervention in the proposed movement network envisages the Togher Central Access Route linking the Old Knockmay Road and the N77 through the plan lands”. The arterial route referred to by the appellant is a ‘proposed corridor’ at the moment. There is no requirement for such a road to proceed – to allow the proposed MSA to proceed.

## 7.8. Appropriate Assessment

### 7.8.1. General Comment

Drainage ditches within the Togher National Enterprise Park, to the west and northwest, are in hydrological connectivity with the Barrow River some 13.5km to the north (as the crow flies) – via the Golf Club Stream/Knockmay Stream and the Triogue River. Arising from the amount of culverting of watercourses in the vicinity of the Clonminam Industrial Estate, it is difficult to distinguish flow patterns from field drains to the Knockmay Stream or the Golf Club Stream. However, the question is to some extent academic, as both streams ultimately flow into the Triogue River – the former to the north of Portlaoise, and the latter within the town. I calculate the distance by watercourse from the point of discharge, to the Barrow River (via the Triogue River), to be some 18.5km (as far as the River Barrow and River Nore SAC boundary). Drainage ditches within the wider area are being, and will be further, diverted in association with the construction of the Togher Central Access Route. The site is located neither within nor immediately adjacent to any European Site. I propose to carry out a Stage 1 screening for appropriate assessment, using six steps as follows-

### 7.8.2. Step 1 – *Identify European Sites which could potentially be affected by the motorway service area (source-pathway-receptor model)*

The closest European sites are as follows-

- Slieve Bloom Mountains SPA (Site code 004160) – some 8.5km northwest of the site.
- Slieve Bloom Mountains SAC (Site code 000412) – some 10.3km northwest of the site.
- River Nore Special Protection Area (Site code 004233) – some 10.0km to the southwest of the site.
- River Barrow and River Nore SAC (Site code 002162) – some 9.0km southwest of the site; some 10.5km to the east of the site; and some 10.0km to the northwest of the site (all as the crow flies).

The site is not in hydrological connectivity with the first three of these European sites, which can, therefore, be excluded from consideration. The fourth site must be

included in consideration of impacts – arising from hydrological connectivity – located some 18.5km downstream.

7.8.3. Step 2 – *Identify the Conservation Objectives of the relevant site(s)*

The qualifying interests of the River Barrow and River Nore SAC, are as follows-

- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.
- Reefs.
- Salicornia and other annuals colonising mud and sand.
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*).
- Mediterranean salt meadows (*Juncetalia maritimi*).
- Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation.
- European dry heaths.
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels.
- Petrifying springs with tufa formation (Cratoneurion). [Annex I]
- Old sessile oak woods with Ilex and Blechnum in the British Isles.
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*). [Annex I]
- *Vertigo moulinsiana* (Desmoulin's whorl snail).
- *Margaritifera margaritifera* (Freshwater pearl mussel).
- *Austropotamobius pallipes* (White-clawed crayfish).
- *Petromyzon marinus* (Sea lamprey).
- *Lampetra planeri* (Brook lamprey).
- *Lampetra fluviatilis* (River lamprey).
- *Alosa fallax fallax* (Twite shad).
- *Salmo salar* (Atlantic salmon) – but only in fresh water.



- *Lutra lutra* (Otter).
- *Trichomanes speciosum* (Killarney fern).
- *Margaritifera durrovensis* (Nore freshwater pearl mussel).

The Conservation objectives for the 12,373ha site, are to maintain the favourable conservation condition of Desmoulin's whorl snail, White-clawed crayfish, Estuaries, Mudflats and sandflats, Salicornia, Killarney fern, Water courses of plain to montane levels, European dry heaths, Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels, Petrifying springs: and to restore the favourable conservation condition of Sea lamprey, Brook lamprey, River lamprey, Twite shad, Atlantic salmon, Atlantic salt meadows, Otter, Mediterranean salt meadows, Nore freshwater pearl mussel, Old sessile oak woods, Alluvial forests. The status of the Freshwater pearl mussel is currently under review, to establish whether a site-specific conservation objective is set for this species.

7.8.4. Step 3 – *Identify the potential- a) likely, and b) significant, effects of the project with reference to the site's Conservation Objectives, in light of best scientific knowledge*

Potential impacts identified are-

- Impairment of surface water quality during the operational phase.

The separation of the site from the European site (SAC), is considered the principal buffer (18.5km by watercourse) – with roads, agricultural land, peatland, woodland and commercial/residential land uses intervening. There are no watercourses within the site or on its boundaries. However, it is proposed to construct a 400m length of open field drain, to discharge surface water from the site to the existing field drainage network to the west. This field drainage network connects to the Knockmay Stream/Golf Club Stream a further 700m to the northwest. This field drainage network is being, and will be, altered in association with the development of the Togher National Enterprise Park. The field drainage network is in connectivity with the Knockmay Stream / Golf Club Stream to the northwest, and ultimately the Triogue River – a tributary of the Barrow River.

7.8.5. Step 4 – *As above, but considering in-combination effects with other plans or projects*

The other plans which could have an in-combination effect, are the construction of the Togher Central Access Route, and the construction of a mozzarella cheese plant on lands to the west. The road will be constructed around the same time as the cheese plant, as it provides the necessary access to the site (or at least part of the road does). This road scheme was approved under the Part 8 process, and was subject to screening for appropriate assessment, as part of the Portlaoise Local Area Plan 2018-2024. The conclusion of that screening exercise was that there would be no impact on European sites. A Stage 1 Appropriate Assessment Screening was submitted with the mozzarella cheese plant planning application – wherein it was concluded that the development would not have an impact on any European site. The proposed development would not result in any in-combination effects with the road project or cheese plant project, assuming best practice measures are put in place during the construction and operational phases of the motorway service area – in relation to drainage. I note that land drainage works have already commenced for the road project.

7.8.6. Step 5 – *Identify any measures in place to reduce/lessen likely significant impacts on European sites*

During the operational phase, all foul effluent will discharge to the IW sewerage network for the town. This network will have to be extended to serve the site. Stormwater will be attenuated on site, using both an underground tank and an open pond; and will pass through hydrocarbon interceptors, prior to throttled outfall to an extended field drainage system to the west of the site.

7.8.7. Step 6 – *Determine whether likely significant effects, either individually or in combination with other plans or projects, on European sites, can reasonably be discounted, on the basis of objective scientific information*

Having regard to, the nature and scale of the proposed development; the distance from the closest European sites; the proposal to attenuate surface water on the site and within an adjacent surface water pond, and to install hydrocarbon interceptors on outfalls; the proposal to connect to the public foul sewerage network; the proposal to connect to the revised land drainage network for the Togher National Enterprise Park: no Appropriate Assessment issues arise and it is not considered that the

proposed development would be likely to have a significant effect, individually or in combination with other plans or projects on an European site.

## 7.9. Other Issues

### 7.9.1. Development Contribution

Condition 2 of the Notification of decision to grant planning permission, required the developer to pay €27,791.60 (which included a 33% reduction in respect of job creation), to the Council. The applicant has not appealed this condition. A similarly-worded condition should be attached to any grant of permission to issue from the Board.

### 7.9.2. Lighting

The entire development will be floodlit during some of the hours of darkness. It is indicated that the facility will operate from 0600-2400 hours daily. A lighting survey was submitted with the application. By way of additional information submission of 1<sup>st</sup> October 2018, information was provided on existing public lighting on the road network in the area. It would be important that lighting does not cause glare to road users on the M7 or at Junction 17.

### 7.9.3. Waste

There are no structures on site to be demolished. Some screen planting will be removed on the L26965 boundary, to facilitate the construction of a new footpath and improve sight visibility. It is not indicated how much soil/subsoil, if any, will have to be removed from the site to facilitate development – but there is likely to be some. Condition 8 of the Notification of decision to grant planning permission related to preparation of a C&D Waste Management Plan. A similarly-worded condition should be attached to any grant of permission to issue from the Board. Waste receptacles should be provided throughout the site for use of patrons.

### 7.9.4. Archaeology

There are no archaeological sites indicated either within or immediately abutting the site. The area will have been partially disturbed and altered during the construction of Junction 17. The Department of Culture, Heritage and the Gaeltacht, recommended to LCC, that archaeological monitoring be undertaken. Condition 7 of

the Notification of decision to grant planning permission related to archaeological monitoring. Having regard to the extensive soil-stripping which will be undertaken, it would be prudent to attach an archaeological monitoring condition to any grant of permission from the Board.

#### 7.9.5. Employment

It is estimated that 70 jobs will be created during the construction phase; whilst 100 permanent jobs will be created during the operational phase. It is not indicated if these latter will be full-time jobs. The applicant considers that the development would be a way of kick-starting development within the Togher National Enterprise Park, but I do not see how the two would be connected. The MSA is directed at passing traffic on the M7/N77. It may, of course, serve some of the needs of future workers within the Togher National Enterprise Park in the future.

#### 7.9.6. Hours of Construction

Condition 10 of the Notification of decision to grant planning permission related to hours of construction – restricted to 0800-1830 Monday to Friday and 0900-1400 on Saturdays. Having regard to the location of the site immediately adjacent to the M7 and Junction 17 – and some 400m from the nearest house on the north side of the motorway, I would consider that these hours are unduly restrictive and could be expanded to 0700-1900 Monday to Saturday inclusive.

#### 7.9.7. Noise

Condition 11 of the Notification of decision to grant planning permission imposes noise restrictions during the operational phase of the development. It would be difficult to distinguish between noise from traffic on the site and noise from traffic on the adjacent motorway. This is not a residential or quiet rural area. There are no noise-sensitive receptors in the immediate vicinity – the closest house being 400m to the north of the site. The closest house to the south is 200m, but the M7 interposes. Of concern perhaps would be broadcast music or radio from the food-court or forecourt.

#### 7.9.8. Restrictions on Forecourt Sales

Condition 13 of the Notification of decision to grant planning permission, placed a restriction on goods for sale within the forecourt area and the sale of motor cars.

This would appear to be reasonable; and a similarly-worded condition should be attached to any grant of planning permission to issue from the Board.

#### 7.9.9. Competition

The appellant makes reference to the trading difficulties which have been experienced in the past at the Midway site. It is claimed that a second MSA could cause the Midway development to fail. It is acknowledged that it is not the role of the Board to restrict competition between service providers. The applicant counters that within the limits of reasonable provision, it is necessary to induce competition between providers, where otherwise operators might act as monopolists or cartels. I would agree with the contention that it is not the role of the Board to restrict competition – particularly where a site has been specifically identified in the Plan-making process, for MSA use.

#### 7.9.10. Hours of Operation

The applicant has indicated that hours of operation will be from 0600-2400 daily. There are no houses in the immediate vicinity. It would not appear necessary to restrict the hours of operation of this development – surrounded as it is by roads on all sides. To qualify for motorway signage for an off-line MSA; one of the requirements is 24-hour operation.

### 8.0 **Recommendation**

I recommend that permission be granted for the Reasons and Considerations set out below, and subject to the attached Conditions.

### 9.0 **Reasons and Considerations**

Having regard to-

- a) Policy ECN 2 of the Laois County Development Plan 2017-2023, in relation to the development of a National Enterprise Park at Togher;
- b) Policies TRANS 25 & TRANS 26 of the County Development Plan, in relation to petrol filling stations and to Togher, Portlaoise in particular, for motorway service areas;

- c) The zoning of the site for 'Enterprise and Employment' uses in the Portlaoise Local Area Plan 2018-2024;
- d) Policy ED P1 of the Portlaoise LAP dealing with the development of Togher, as per the Togher Masterplan;
- e) The identification of the site within the Togher Masterplan 2018, for potential motorway service station use;
- f) The 'Spatial Planning and National Roads – Guidelines for Planning Authorities' – issued by the Department of Environment, Community and Local Government in 2012;
- g) The 'Retail Planning – Guidelines for Planning Authorities' – issued by the Department of Environment, Community and Local Government in April 2012;
- h) The 'National Roads Authority – Service Area Policy' issued by the NRA in August 2014;
- i) The design and layout of the proposed development;
- j) The pattern of development in the vicinity – particularly the development of a motorway service area at nearby Midway, on the N77 Abbeyleix road; and to
- k) The proposals to connect to drainage and water supply networks within the Togher National Enterprise Park to the west and northwest of the site:

It is considered that, subject to compliance with the conditions set out below, the proposed development would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience, would not seriously impact on the amenity of properties in the vicinity, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 1<sup>st</sup> day of October 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the

planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, and the development shall be carried out and completed out in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The total net retail sales floor area, as defined in section 2.4.3 of the 'Retail Planning – Guidelines for Planning Authorities', issued by the Department of Environment, Community and Local Government in April 2012, shall not exceed 100 square metres. The floor area of the retail unit shall be operated as one single concession/unit, and shall not be sub-divided.

**Reason:** In the interest of clarity.

3. The external signage proposed for the southern elevation of the forecourt building, shall be omitted from the development. The second totem sign at the egress point, at the western end of the site, shall be omitted from the development.

**Reason:** To avoid visual clutter in the interest of visual amenity; and to remove potential distraction for motorists on the adjacent M7 Motorway.

4. Apart from the signage shown on the submitted drawings, as modified by condition 3 of this Order, no further advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity, and to allow the planning authority to assess any further signage through the statutory planning process.

5. The forecourt, or any other part of the site, shall not be used for the display of goods for sale. In particular, no motor sales shall be undertaken from this site.

**Reason:** In the interest of visual amenity and traffic safety.

6. A new pedestrian crossing shall be created on the L26965 county road, immediately adjacent to the proposed access/egress point; and shall be available for use by patrons, prior to commencement of trading at the motorway service area.

**Reason:** In the interest of pedestrian and traffic safety.

7. Ten bicycle-parking spaces shall be provided within or adjacent to the forecourt area.

**Reason:** To encourage cycling as a means of transport for employees; and to serve the needs of cyclists in the area.

8. The developer shall submit, for the written agreement of the planning authority, a Construction Environmental Management Plan (CEMP), and obtain written agreement for such, prior to commencement of development on site. This plan shall provide details of intended construction practice for the development; including-

(a) Location of the site and materials compounds, including areas identified for the storage of construction waste; areas for construction site offices and staff facilities; site security-fencing and hoardings; and on-site car-parking facilities for site workers during the course of construction;

(b) The timing and routing of construction traffic to and from the construction site and associated directional signage; to include proposals to facilitate the delivery of abnormal loads to the site; measures to obviate queuing of construction traffic on the adjoining road network; and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

(c) Containment of all construction-related fuel and oil within specially constructed bunds, to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;

(d) Means to ensure that surface water run-off is controlled, such that no silt or other pollutants enter local surface water drains.

A record of daily checks, that the works are being undertaken in accordance with the Construction Environmental Management Plan, shall



be kept for inspection by the planning authority. The developer shall provide contact details for the public to make complaints during the construction phase; and provide a record of any such complaints and any response to them, which may also be inspected by the planning authority.

**Reason:** In the interest of amenities, public health, and the environment, and, in particular, to protect water quality in adjacent streams and the Triogue River.

9. Hours of construction shall be limited to 0700-1900 Monday to Saturday inclusive – but excluding any bank holidays.

**Reason:** In the interest of amenity.

10. Piped music/radio shall not be broadcast externally within the site.

**Reason:** In the interest of residential amenity and the wider amenities of the area.

11. Floodlighting of the site shall be arranged, so as to not cause glare to users of public roads adjoining the site – in particular the M7 Motorway and Junction 17 interchange.

**Reason:** In the interest of traffic safety.

12. A series of timber bollards shall be erected (at the expense of the applicant), on either side of the proposed access/egress to/from the site (on either side of the L26956 county road. The positioning of the bollards shall be agreed in writing with the planning authority, prior to commencement of development. The development shall not commence trading until such time as the required bollards are in place.

**Reason:** To discourage kerbside parking by HGVs and other vehicles, which could restrict sight visibility for traffic at the access/egress points, in the interest of pedestrian and traffic safety.

13. The internal road network serving the proposed development, including junctions, parking areas, cycle parking, directional signage, footpaths and kerbs, shall comply with the detailed standards of the planning authority for such road works.

**Reason:** In the interests of amenity and of traffic and pedestrian safety.

14. A Stage 2 Road Safety Audit shall be submitted for the written agreement of the planning authority, prior to commencement of development. Stage 3 & Stage 4 Road Safety Audits shall be submitted for the written agreement of the planning authority during construction, and upon completion of the development, respectively.

**Reason:** In the interest of pedestrian and traffic safety.

15. Receptacles for waste shall be provided and be available for use at all times, on the premises, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development.

**Reason:** To provide for a satisfactory standard of development.

16. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In particular, the capacity of the surface water attenuation pond shall be increased by 20%.

**Reason:** In the interest of public health and to limit the possibility of flooding of the adjacent motorway to the south, in the interest of traffic safety.

17. All service cables associated with the proposed development (such as electrical and telecommunications), shall be located underground. The three-phase, over-ground, electricity cables on the northern site boundary and traversing the western portion of the site, shall be undergrounded – at the expense of the applicant.

**Reason:** In the interest of visual amenity.

18. Construction and demolition waste shall be managed in accordance with a Construction Waste and Demolition Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by

the Department of the Environment, Heritage and Local Government, in July 2006.

**Reason:** In the interest of sustainable waste management.

19. A workplace travel plan for the proposed development shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of trading at the motorway service area.

**Reason:** To encourage alternative means of getting to/from work for employees, in the interest of public health.

20. Landscaping of the entire site, as per landscape plans submitted with the application, shall be carried out within the first planting season following commencement of trading at the motorway service area; at the latest. Screen planting outside the site boundaries, on roadside verges, shall be retained in full; except where required to improve sight visibility at access/egress points, or to facilitate construction of a footpath on the northern boundary of the site. Any removal of screen planting from the roadside verges, shall only be carried out with the written agreement of the planning authority.

**Reason:** In the interest of visual amenity and biodiversity.

21. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve any archaeological heritage of the site, and to secure the preservation and protection of any remains that may exist within the site.

22. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Michael Dillon,**  
**Planning Inspectorate.**

**4<sup>th</sup> March 2019.**