



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312623-22

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<b>Development</b>	33 apartments, six-storey building. A Natura Impact Statement (NIS) was submitted at further information stage.
<b>Location</b>	Monsignor O'Flaherty road, Coollegrean, Killarney, County Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	21271
<b>Applicant(s)</b>	IPH Killarney Holdings Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	First Party vs Financial Contribution
<b>Appellant(s)</b>	IPH Killarney Holdings Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	29 <sup>th</sup> of April 2022.
<b>Inspector</b>	Adrian Ormsby

## 1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.16ha and is located in Killarney town centre on lands zoned Mixed Use M2- Town Centre. The site can be described as a vacant underutilised brown field site on the corner of Monsignor O'Flaherty road and Chapel Lane. Monsignor O'Flaherty road is a cul de sac but there are proposals by the council to link the road to the Bohereen-Na-Goun road west of the site under the Killarney Inner Link Road project.
- 1.2. The site is enclosed by high palisade fencing towards its eastern boundary and galvanised style hoarding further west. The eastern part of the site is hard surfaced with the western part remaining greenfield.
- 1.3. The Folly stream runs from north to south along the sites western boundary. It is culverted over on the Monsignor O'Flaherty road with a grid cover protecting it from waste and intrusion. A wavin pipe exits the surfaced area of Monsignor O'Flaherty road which appears to be the outfall of the public surface water drain. While it was not possible to inspect the stream bounding the site it is note the submitted AA screening report and NIS describe it as heavily modified to form a drainage channel and is constructed of concrete.

## 2.0 Proposed Development

- 2.1. The application originally comprised of
  - A 6 storey apartment building
  - 36 no. Apartments
    - 25 no. 2 bedroom apartment units and
    - 11 no. 1 bedroom apartment units
  - 15 car parking spaces,
  - 79 communal bicycle parking,
  - 227 sq.m communal amenity space
  - Vehicular access from the existing cul de sac

- 2.2. Further Information was requested on the 07/05/21 which raised concerns over the quality of design, extent of car parking, surface water pollution and management of adjacent stream, need for AA screening, road safety audit and others.
- 2.3. The Applicants responded on the 24/08/21. The response included-
- Revisions to the design
  - A 6 storey apartment building with top floor set back
  - 33 no. Apartments
    - 23 no. 2 bedroom apartment units and
    - 10 no. 1 bedroom apartment units
  - 9 car parking spaces
  - 79 bike storage spaces
  - 310 sq.m communal amenity space
  - An NIS has been submitted
- 2.4. The application was readvertised with Significant Further Information submitted on the 06/09/21
- 2.5. Clarification of Further Information was sought on the 27/10/21 in relation to surface water management issue and congestion in the Folly Stream.
- 2.6. The Applicants sought an additional three months to deal with the application on the 28/10/21
- 2.7. The Applicants responded on the 04/11/21 with a revised engineering report.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority decided to grant permission on the 06/01/22, subject to thirty six (36) conditions. The following conditions are off note to this appeal-

- C6- Standard Development Contribution of €39,087.00

- C7- Special Development Contribution of €87,000 to be paid. This was broken down as follows-

Item	Cost
<p><b>Contribution toward to upgrading of the Folly Stream</b></p> <p>A contribution towards the Survey, Removing Materials and Upgrading the Sections of the Folly Stream downstream of the Proposed Development</p>	€60,000
<p><b>Contribution towards footpath improvements works</b></p> <p>A contribution toward the cost of the provision of a drop kerb to allow for the proposed entrance of the development, as well as a contribution toward the upgrade of 95m of footpath adjacent to the proposed development</p>	€19,000
<p><b>Contribution towards Public Lights Infrastructure</b></p> <p>A contribution towards the cost of relocating the 2 Public Lights to facilitate this development</p>	€8,000
<b>Total</b>	<b>€87,000</b>

The following conditions are also considered relevant to this appeal-

- C9. All Surface/Storm Water Drainage shall be designed and constructed as per Engineering & Construction Report and Drawings received by the Planning Authority on 04/11/2021.
- C10. The developer shall ensure that all the necessary Statutory Approvals required to carry out works to the Folly Stream are arranged prior to the commencement of any works on same.
- C11. The developer shall provide a Concrete Box Culvert with internal dimensions of width of 1.2m and a depth of the 1m along the Folly Stream to the satisfaction of the Planning Authority. This Box Culvert shall be in lieu of the proposed 450mm Diameter Pipe. The installation of this Box Culvert and Surface Water Access Manholes shall be inspected by Kerry County Council. The Applicant shall give due notice on and shall allow Kerry County Council access to the site for said inspections.
- C12. The developer shall construct 2 No. Surface Water Access Manholes on the Folly Stream to the satisfaction of Kerry County Council. The location of

these access manholes shall be agreed with the Killarney Municipal District Engineer prior to commencement of the development.

- C13. The developer shall allow enough space (2.5m x2.5m) upstream of the Folly Stream for a Temporary Access in order to enable Kerry County Council to install a Concrete Box Culvert of Similar Design along its section of the Folly Stream.
- The reason for conditions 9-14 is stated as '*In the interests of orderly development and to prevent flooding.*'

## 4.0 Planning Authority Reports

### 4.1. Planning Reports

The three planners report generally reflects the decision of the Planning Authority.

### 4.2. Other Technical Reports

- Housing Estate Unit
  - 06/04/21- will not be taken in charge, other issues raised
- County Archaeologist
  - 06/04/21- No mitigation required
- Fire Authority
  - 20/04/21- no objection
- Roads Transportation & Marine (RTM)
  - 06/05/21- Further Information required including road safety audit and a survey required of the Folly stream.
  - 26/10/21- The Applicants should be requested to demonstrate the Folly Stream has sufficient capacity to accept attenuated surface water.
  - 09/12/21- Conditions recommend including Special Development Contribution and other surface water related conditions as set out in section 3.1 above.

- Biodiversity Officer-
  - 23/04/21- Further Information required including an AA screening report.
  - 26/10/21- Clarification as requested by RTM section required to complete AA.
  - 13/12/21- Adverse effects on the integrity of a European Sites excluded.
- Environment Section
  - 30/04/21- Further Information required, concerns over discharge to the Folly Stream raised
  - 26/10/21- No objection subject to conditions

#### 4.3. Prescribed Bodies

- Irish Water-
  - 12/04/21- no objection
- Inland Fisheries Ireland
  - 14/04/21- no addition to wastewater treatment system should contribute to overload or potential for poor discharge to Killarney National Park SAC
- Kerry National Roads Design Office-
  - 20/04/21 No observations
- Department of Agriculture, Food & Marine
  - 10/09/21- No observations

#### 4.4. Third Party Observations

- Two third party submissions were received. Concerns raised can be summarised to include-

- The proposal is too high, too close, overly dense and not of a scale relevant to the city or town nor the district/ neighbourhood street nor the site context. Out of character with the general area.
- The proposal elevates the importance Building Height Guidelines over the statutory development plan. Proposal would materially contravene the Development Plan and 2018 apartment standards guidelines.
- Not consistent with the NPF.
- Communal amenity space poorly considered
- Overlooking
- Lacks amenity and parking facilities

## 5.0 Planning History

- This Site-
  - 13205380, a private car park, **Grant**, 25/06/13

## 6.0 Policy Context

### 6.1. Legislation

#### 6.1.1. Planning and Development Act 2000 (as amended)

- Section 48 Development Contributions states-
  - *(1) A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).*
  - *(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.*

*(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority*

*(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.*

- *(10) (a) Subject to paragraph (b), no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.*

*(b) An appeal may be brought to the Board where an Applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority*

## **6.2. Ministerial Guidelines**

### **6.2.1. Development Contribution Scheme for Planning Authorities - Circular PD4/2003**

- *Level of Contributions*

*The purpose of introducing the development contribution scheme is to introduce transparency into the way in which development contributions are levied and applied. Planning authorities must ensure that, when a prospective developer examines a scheme, he or she will be able to clearly see the level of contribution they are expected to pay, as well as the basis for levying the contribution. Therefore a development contribution scheme must state clearly the level of contributions to be payable under the scheme, including any different levels of contributions in respect of different classes or descriptions of developments.*

- *Appealing Development Contributions*

*A developer can only appeal a general development contribution on the basis that the terms of the scheme were not properly applied. In order to minimise*



*this type of appeal the planning authority should ensure that the terms of scheme are clearly stated and that planners and administrative staff implement the scheme in a way that is consistent and equitable.*

#### 6.2.2. Development Contribution Scheme for Planning Authorities - Circular PD 5/2007

- *This circular sets out revised guidance agreed on foot of the deliberations of the Interdepartmental Committee. It is intended to supplement, not replace, circular letter PD 4/2003. It should be noted that no legislative changes are proposed at this time, and the general terms of sections 48 and 49 will therefore continue to apply.*
- *.....Authorities are reminded that one of the primary objectives in introducing the current schemes was to bring greater transparency the way in which development contributions are levied and applied. It is essential therefore that all prospective developers can clearly identify from a scheme the level of payment required in addition to the basis for the levy in the first instance.*

#### 6.2.3. Development Contributions - Guidelines for Planning Authorities (January 2013)

- 'Status of the Guidelines' - Page 2-

*This guidance updates and supplements non-statutory guidance previously issued in Departmental Circulars PD 4/2003 and PD 5/2007*

- Transparency (Page 21)
  - *A development contribution scheme must state clearly the level of contributions to be payable under the scheme, including any different levels of contributions in respect of different classes or descriptions of developments, the percentage of reduction to be applied to development attracting such reductions and development deemed to be exempt from the payment of development contributions .*

#### 6.2.4. Development Management – Guidelines for Planning Authorities (2007)

- Section 7.12 of the Guidelines provides guidance on planning conditions relating to development contributions.
- Section 8.12 of these Guidelines refers to appeals regarding development contribution conditions.

### 6.3. Local Planning Context

- The Kerry County Council Development Contribution Scheme 2017 (DCS)
- Kerry County Development Plan 2015-2021
- Killarney Town Council Development Plan 2009-15 as extended and varied (Variation no 4 Killarney Town Plan adopted 17th December 2018).

### 6.4. Natural Heritage Designations

- Killarney National Park, Macgillycuddy's Reeks And Caragh River Catchment SAC 000365 is located as close as c.350m south of the site
- Killarney National Park SPA 004038 is located as close as c.350m south of the site.

### 6.5. EIA Screening

- Not for consideration due to nature of this appeal

## 7.0 The Appeal

### 7.1. Grounds of Appeal

7.1.1. This first party appeal relates solely to Condition no. 7 of Kerry County Council's decision, which requires the payment of a Section 48 (c) Special Development Contribution of €87,000.00. The grounds of appeal can be summarised as follows-

- The charge is neither exceptional nor specific to the development.
- They are not necessary to support the proposal and the Killarney Inner Link Road project identifies the councils intentions to replace the culvert in question. It follows that perceived issues in terms of 'removing materials' from the culvert at this location will be addressed.
- The General Development Contributions Scheme states that projects to be funded include the "refurbishment, upgrading, enlargement and replacing..." of sewers, service connections or surface water mains.

- Appendix A of the scheme states that the Killarney Inner Link Road will be funded by the scheme.
- Section 4 of the scheme identifies that public lighting as a category of development funded by general contributions collected.
- No basis for the calculation of the special contributions in question has been provided which is contrary to the legislation and the Development Management Guidelines 2007.
- The contributions levied by the local authority do not accord with the principles of reasonableness or proportionality, having regard to the Development Contributions Guidelines for Planning Authorities 2013
- There is clear planning precedent where An Bord Pleanála have omitted or modified special planning contributions for road and public lighting improvements in circumstances similar to this appeal i.e. ABP-301156-18

## **7.2. Planning Authority Response**

- None received

## **7.3. Observations**

- None received

## **8.0 Assessment**

### **8.1. Introduction**

- 8.1.1. The appeal relates to condition no. 7 only, which imposes a Special Development Contribution in accordance with the provisions of Section 48 (2) (c) of the Planning and Development Act 2000 (as amended).

### **8.2. Legislation and Guidance**

- 8.2.1. Section 48 (10) (b) of the Act makes provision for an appeal to be brought to the Board where an Applicant considers that the terms of the relevant development

contribution scheme have not been properly applied in respect of a condition laid down by the Planning Authority.

8.2.2. As this appeal relates to a special development contribution only, the Board cannot determine the application as if it was made to it in the first instance and is confined solely to the consideration of whether the terms of the scheme have been properly applied.

8.2.3. Section 48 (2) (c) of the Act states-

*“A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.”*

8.2.4. Further guidance on Special Contributions is provided in section 7.12 of the Development Management Guidelines, 2007 and the Development Contributions Guidelines for Planning Authorities of 2013 and Departmental Circulars PD 4/2003 and PD 5/2007 and summarised where relevant in section 6.2 above.

8.2.5. It is clear from the legislation and the guidance that a requirement for a Special Contribution should only be made in respect of a particular development, whereby demands likely to be placed on the public services and facilities are deemed to be exceptional, thereby incurring costs not covered by the General Development Contribution Scheme.

8.2.6. It is worth highlighting that conditions 9 to 13 specify the Council's requirements in relation to surface water disposal/management and include specific works to the Folly Stream. Condition 11, 12 and 13 require the Applicants to provide a culvert in lieu of a pipe, surface water access manholes and temporary access upstream to install another culvert. I note the Applicants have not taken the opportunity to appeal any of these conditions.

### 8.3. Kerry County Council's Justification

8.3.1. The specific breakdown of works and costs are set out in condition 7. The breakdown is taken directly from the Councils Roads Transportation & Marine (RTM) department's report dated 09/12/21.

8.3.2. This condition requires the payment of €87,000. This has been calculated as follows-

Item	Cost
<b>Contribution toward to upgrading of the Folly Stream</b> A contribution towards the Survey, Removing Materials and Upgrading the Sections of the Folly Stream downstream of the Proposed Development	€60,000
<b>Contribution towards footpath improvements works</b> A contribution toward the cost of the provision of a drop kerb to allow for the proposed entrance of the development, as well as a contribution toward the upgrade of 95m of footpath adjacent to the proposed development	€19,000
<b>Contribution towards Public Lights Infrastructure</b> A contribution towards the cost of relocating the 2 Public Lights to facilitate this development	€8,000
<b>Total</b>	€87,000

8.3.3. The council have not submitted any comments or further justifications on the grounds of the first party appeal.

### 8.4. 'Specific Exceptional Costs'

8.4.1. The requirements of section 48 (2) (c) detail 'specific exceptional costs' that are not covered by Kerry County Councils Development Contribution Scheme (DCS). The DCS lists a number of applicable projects under two categories. I set out the relevant categories and projects for consideration as follows-

- Roads & Transport Infrastructure Projects
  - Killarney Inner Link Roads (incl. Deerpark to N22 & Muckcross Road to Ross Road)
  - Climate Change / Flood Relief Works

- Town Centre Enhancement Works
- Development of Laneways
- Community & Amenity Infrastructure Projects
  - Walking & Cycling trails

Contribution toward to upgrading of the Folly Stream

8.4.2. The first item the council have sought a contribution for (€60,000) is the ‘Survey, Removing Materials and Upgrading the Sections of the Folly Stream downstream of the proposed development’.

8.4.3. The relevant projects from the DCS are considered-

- The Killarney Inner Link Road
- Climate Change / Flood Relief Works

8.4.4. The Applicants argue in their appeal that the Planning Authority propose delivering the road under the Part 8 process and the scope of works include upgrades to the Folly Stream/culvert. They provide an excerpt drawing of the Roads project which shows a new concrete culvert to replace the existing grated channel. These works are shown to the north of the site and not downstream of the development. In the absence of any information on the file or from the Council, I have reviewed the scope of the projects as advertised on e-tenders<sup>1</sup>. This appears to be where the Applicants have sourced their excerpt.

8.4.5. I have also reviewed the Councils CPO proposals for the Killarney Inner Link Road<sup>2</sup> where they are seeking to acquire lands on a permanent and temporary basis for the purpose of providing vehicular and pedestrian linkages for the link road i.e. between Bohereen na Gunn Bohereen-Na-Goun west of the site and to Monsignor O’Flaherty Road along the northern boundary of the site.

8.4.6. The special contribution sought is for works downstream of the application site. In this context and based on the information available to me and submitted on the file, I am satisfied the special contribution works are not provided for under the Killarney

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<sup>1</sup> <https://irl.eu-supply.com/ctm/Supplier/PublicPurchase/158238/0/0?returnUrl=transactions.asp>

<sup>2</sup> <https://www.kerrycoco.ie/killarney-inner-link-road/>

Inner Link Road project of the DCS, notwithstanding the proximity of works just north of the site to the existing culvert and the likely proposals to drain surface water from the link road to the Folly Stream.

8.4.7. Works such as a survey, removing material and upgrading the sections of the stream could be considered general maintenance work to a stream. However, such works are generally done for reasons such as flood prevention especially in urban environments and having regard to the potential impacts of Climate Change. Climate Change/Flood Relief Works are clearly provided for in Appendix A under the category of Roads & Transport Infrastructure Projects of the DCS.

8.4.8. The special contribution of €60,000 is therefore not considered a 'Specific Exceptional Costs' in this context as it is already provided for within Climate Change / Flood Relief Works as set out in the DCS.

Contribution towards footpath improvement works

8.4.9. The second item the Council have sought a contribution for (€19,000) is the provision of a drop kerb to allow for the proposed entrance of the development and for upgrade of 95m of footpath adjacent to the proposed development.

8.4.10. The relevant projects from the DCS are considered-

- The Killarney Inner Link Road
- Town Centre Enhancement Works
- Development of Laneways
- Walking & Cycling trails

8.4.11. The tender mapping for the Killarney Inner Link Road as per footnote 1 (Page 14) does not provide works to the existing footpath. In the absence of further input from the Planning Authority in this context, I am satisfied the subject footpath improvement works are not provided for in the Inner Link Road project.

8.4.12. The site is a designated 'Opportunity site' located on lands zoned 'M2 Town Centre' as per the Killarney Town Zoning map Variation no. 4. In this context, I consider the upgrade of 95 metres of footpath with a dropped kerb at the site entrance to reasonably fall within 'Town Centre Enhancement Works' and therefore are provided for in the DCS.

8.4.13. The subject footpath runs along the northern boundary of the site which is a cul de sac. I do not consider this a laneway or a walking & cycling trail for the purpose of the DCS notwithstanding the potential delivery of the Inner Link Road.

8.4.14. The special contribution of €19,000 therefore is not a 'Specific Exceptional Costs' in this context, as it is considered already provided for within 'Town Centre Enhancement Works' as set out in the DCS.

Contribution towards Public Light Infrastructure

8.4.15. The third item the Council have sought a contribution for (€8,000) is the cost of relocating two public lights to facilitate the development.

8.4.16. Having considered the sites zoning and Town Centre location, the relocation of two public lights to facilitate the development would reasonably fall within 'Town Centre Enhancement Works' and therefore are provided for in the DCS.

8.4.17. The special contribution of €8,000 is not a 'Specific Exceptional Costs' in this context, as it is already provided for within 'Town Centre Enhancement Works' as set out in the DCS.

**8.5. Are the works 'public infrastructure and facilities which benefit the proposed development'.**

8.5.1. The first test to be considered under this section is if the Folly Stream in the context of condition 7 is "public infrastructure and facilities". Section 48 (17) of the Act details what "public infrastructure and facilities" mean.

- Paragraph 'c'- states
  - *the provision of roads, car parks, car parking places, surface water sewers and flood relief work, and ancillary infrastructure,*
- Paragraph 'e' states-
  - *the refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, surface water sewers, flood relief work and ancillary infrastructure*
- Paragraph 'h' states-
  - *any matters ancillary to paragraphs (a) to (g)*



- 8.5.2. In its natural state, I would not consider the Folly Stream to fall under the above definition. However, the stream has been subjected to culverting. This is most likely as a result of the development of land on either side of the stream and the urban area of Killarney for the purposes of managing stormwater and flood prevention.
- 8.5.3. The application site boundary suggests the Applicants do not own any part of the Folly Stream and it would appear from the information on file that the local authority are responsible for its management and maintenance as part of its overall surface water infrastructure.
- 8.5.4. Therefore, it appears to me that the proposed upgrade works to the culverted Folly Stream would reasonably fall under paragraphs 'e' of section 48 (17) of the Act i.e. upgrading surface water and food relief work ancillary infrastructure and therefore are '*public infrastructure and facilities*'.
- 8.5.5. The second test to consider is do the works '*benefit the proposed development*'. In question 20 of the application form the Applicants clearly propose disposing of surface water to the public sewer/drain i.e. the Folly Stream.
- 8.5.6. At Further Information (FI) stage the Applicants submitted a report detailing they attempted to survey the concrete culvert leaving the site but found it to be heavily congested with debris. This clearly suggests they could not survey any significant distance from the site.
- 8.5.7. At Clarification of Further Information (CFI) stage the Applicants were requested to demonstrate the stream had enough capacity to adequately accept the attenuated surface water from the development. They submitted an updated Engineering Design Report. This refers to an '*extensive survey of the Folly stream*' that concluded that downstream of the site was congested. As a result they proposes to install a 'hydro-brake vortex' in manhole MHS6 to control discharge from the site and to minimise downstream disturbance. They detail an existing greenfield run off rate calculated as 5l/s/ha (0.81 l/s). They contend the hydro brake vortex will provide a lower rate of 2.0 l/s/ha (0.32 l/s). Therefore it remains the Applicants intention to dispose of attenuated stormwater to the Folly Stream (or public sewer/drain) albeit at a lower rate than currently exists.
- 8.5.8. Notwithstanding the proposal to discharge at a lower rate to the Folly Stream over existing rates, the Applicants have failed to address the Local Authority's significant

concern over the capacity of the Folly Stream to cater for the development i.e. it is clear from the Applicants own survey that significant blockages exist within the Folly Stream and these blockages are very close to the application site.

- 8.5.9. As a result there is a risk the site if developed may not be able to dispose of surface waters should the Folly Stream becoming fully blocked at this point or if the stream flows were significantly reduced. In such a scenario, periods of significantly heavy rainfalls could subject the developed site to some degree of flooding where the impact will be far greater than if not developed. This is further supported by conditions 11 and 13 of the Planning Authority's decision for the proposed development.
- 8.5.10. Condition 7 requires a special contribution towards upgrading the Folly Stream. The upgrades would provide increased capacity in the existing culverted stream to accept stormwater from this site and without the works as detailed in condition 7 it would appear the proposed development may have been refused. As a result I am satisfied that the works required to upgrade the Folly Stream would certainly benefit the development by removing a risk of flooding.
- 8.5.11. Condition 7 also requires a contribution towards the costs of footpath improvement works and public lighting. It is clear that these works are public infrastructure and given their location directly along the northern and eastern boundaries of the site they would certainly benefit the proposed development.

## 8.6. Conclusion

- 8.6.1. Condition 7 of the Planning Authority's decision sought a Special Development Contribution towards the costs of upgrading the Folly Stream, footpath improvements works and towards public lights infrastructure.
- 8.6.2. I have considered these in the context of section 48 of the Act. I am satisfied they amount to a contribution for works that can be considered public infrastructure and facilities and they would benefit the proposed development. However, I consider the extent of these works are already provided for under the councils 2017 – 2023 DCS as they are projects that reasonable fall under projects of Climate Change / Flood Relief Works and Town Centre Enhancement Works as listed in Appendix A. They

therefore are not 'specific exemptional costs' as required by section 48 (2) (c) of the Act.

8.6.3. The Planning Authority should be requested to **REMOVE** condition number 7.

## 9.0 Recommendation

9.1. I recommend that the Board directs the Planning Authority to **REMOVE** Condition 7 and the reason therefor for the reasons and considerations set out below

## 10.0 Reasons and Considerations

It is considered that the contributions sought towards the costs of upgrading the Folly Stream, footpath improvements works and public light infrastructure are not 'specific exceptional costs' as required by section 48 (2) (c) of the Planning and Development Acts 2000 (as amended). It is considered that these works are provided for under Kerry County Council Development Contributions Scheme 2017-2023, Appendix A i.e. under the listed projects 'Climate Change / Flood Relief Works' and 'Town Centre Enhancement Works'.

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Adrian Ormsby  
Planning Inspector

17<sup>th</sup> of May 2022