



An
Bord
Pleanála

Inspector's Report

ABP-319742-24

Development

PROTECTED STRUCTURE:

Demolition of quayside infrastructure.
Construction of bulk product intake/outtake, storage, and transport infrastructure with all associated site works. NIS submitted.

Location

Site bounded by Alexandra Road, Branch Road No. 1 and railway, Branch Road No. 3 and Alexandra Basin, Dublin Port, Dublin 1.

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

4585/23

Applicant

Dublin Port Company

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

First Party v S48 and S49
Development Contributions

Appellant

Dublin Port Company

Observer(s)

None

Date of Site Inspection

N/A

Inspector

Joe Bonner

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1.0 Site Location and Description

- 1.1. The site of the proposed development extends to 7.348ha within Dublin Port on the north side of the River Liffey, c380m north east of the northern end of Tom Clarke Bridge. The site is generally bounded by Alexandra Road to the north, Branch Road No.1 and rail line to the west, Branch Road No.3 to the east and Alexandra Basin to the south. A rail line runs through the site.
- 1.2. The u-shaped site accommodates the existing R&H Hall Silo Building (a protected structure, Ref No.8785) at its northwestern side, that stands 49.8m in height at its highest point, and the R&H flat stores standing 23.3m in height and McCairn's Yard at its northeastern side of the site, as well as lands at the southern end of the site alongside Alexandra Quay West, that includes the existing conveyor and tower system as well as the redundant transformer building at the western side of the site. The Odlums building is outside of the site, but stands between the Silo and the flat stores and has a maximum height of 52.15m. Other port related land uses and structures are located to the north, east and west of the site, with the waters of the harbour to the south.

2.0 Proposed Development

- 2.1. The proposed development includes works of demolition, removal, reinstatement and relocation to existing structures, including:
 - Demolition and removal of the existing quayside overhead bulk material conveyor system, associated elevator/weighing towers, redundant transformer building and weighbridge and associated infrastructure.
 - Reinstatement of window opening to the R&H Hall Silo Building, a protected structure, following removal of the elevated conveyor system (within its curtilage) together with internal and external repair works to the remainder of the building;
 - Relocation of existing rail line further northwards from the quayside, existing crane rails along the quayside and existing 30m high mast lighting (HML) tower;
 - Relocation of existing reefer gantries and 30m HML towers located at McCairn's Yard;

2.2. Proposed development also includes new works and structures which can be described as follows:

- Quayside and yard pavement upgrades and reinforcement works and installation of new 30m HML towers;
- Construction of a new bulk product silo facility at McCairn's Yard, to include intake/outtake of bulk product from vessels to quayside storage and onward transport. The facility will consist of 6 no. bulk product storage silo bins c.30.0m in height (c.1,701sq.m), below ground conveyor system from intake pit to silo bins (c.-7.5m), above ground conveyor system up to c.32.8m in height, bulk material out-loading building c.9.1m in height (c.234sq.m), weighbridge control office c.4.0m in height (c.59sq.m), motor control centre and switch room c.5.080m in height (c.70sq.m), intake elevator tower and weighting tower c.41.11m in height (c.97sq.m), bulk material intake building c.11.66m in height (c.2,326sq.m), administration office and welfare building c.6.8m in height (c.164sq.m), workshop and covered external area c.6.9m in height (c.592sq.m), weighbridges, associated infrastructure, skip area, chemical storage area, diesel tank bunded area, ancillary lighting, and automated gate entry;
- Provision of a new substation c.2.97m in height (c.196sq.m);
- Provision of 2 no. new reefer gantries and;
- New access and egress onto Alexandra Road, provision of International Ship and Port Security (ISPS) fencing and gates to matching existing fencing, internal roads, ancillary car and bicycle parking, ancillary lighting, waste management facilities and all associated site development works including revised utilities/drainage arrangements and construction compound.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 18th of April 2024, Dublin City Council issued a decision to grant permission subject to the attachment of 12 conditions, one of which was later removed.

Conditions No's 2 (Section 48) and 3 (Section 49) refer to development contributions, which are the subject of this appeal and are set out in full below:

Condition No 2

- A development contribution in the sum of €450,205.60 shall be paid to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.

Condition No 3

- A development contribution in the sum of €206,682.00 shall be paid to the Planning Authority in respect of the LUAS C1 Line Scheme. This contribution shall be paid prior to the commencement of development or in such a manner as may otherwise be agreed in writing with the Planning Authority. The amount due is payable on commencement of development. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution in respect of the public infrastructure and facilities benefitting development in the Luas C1 line area as provided for on the Supplementary Development Contribution

Scheme made for the area of the proposed development under Section 49 of the Planning & Development Act 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. First Planning Officer's Report – on initial application

- The planning authority issued a request for further information in accordance with the planning officer's recommendation.
- No references were made in the report or in the request for further information, to development contributions, however, the planning officer's description of the development describes the individual elements of the proposed development and the following are considered relevant to the appeal.
 - The applicant is seeking to undertake substantial works which will enable Alexandra Quay West, the subject site, to handle 'multi-functional vessels'. These proposed works will complement the proposed upgrades and redevelopment of key walls and other infrastructure, as permitted under the Alexander Basin redevelopment (ABR) project (ABP Ref. PA0034).
 - The largest part of the development will involve the construction of 6 no. silos in McCains yard, with a combined capacity of 30,000 tonnes.
 - The development will include a bulk material intake building, a bulk material out-loading building, administrative and welfare buildings, a workshop, a weighbridge, substation, motor control room, bicycle and car parking.
 - The development will facilitate the relocation of the R&H Hall operations from the existing silo building to the new and more modern silo facility, while the development will also facilitate the future redevelopment and regeneration of the existing R&H silo building.
 - The proposal can be said to facilitate port development is considered to be acceptable.

3.2.2. Other Technical Reports on initial application

- Engineering Drainage Division – 27th of October 2023 – No objection subject to conditions (not related to Development Contributions)
- EHO – 7th of November 2023 – No objection subject to conditions (not related to Development Contributions)
- Transportation Planning – 9th of November 2023 – Recommended further information to address concerns raised by Irish Rail.
- Archaeology Section – 23rd of November 2023 – No objection subject to conditions (not related to Development Contributions). Reference is made to a 2020 report that states that the gantry would be a significant obstacle to quayside operations particularly where an increase in port related activity is anticipated as a result of the permitted Alexandra Basin Redevelopment (ABR) project (PA.0034).
- Conservation Officer – 23rd of November 2023 – Further information recommended, but if permission was to be granted conditions were proposed (not related to Development Contributions).

Second Planning Officer's Report – in respect of response to further information

- The planning authority decided to grant permission in accordance with the recommendation of the planning officer, which included conditions 2 and 3 relating to Section 48 and Section 49 development contributions.
- The basis for the calculation of the Development Contributions does not form part of the planning officer's report, (but they are included in the grounds of appeal and in the response of the planning authority to the appeal and will be addressed in the assessment section of this report).

Other Technical Reports on response to further information

- Engineering Drainage Division – 10th of April 2024 – as per initial report.
- Transportation Planning – 5th April 2024 – No objection subject to conditions (not related to Development Contributions).
- Conservation Officer – 10th April 2024 – Notes that the proposed repairs to halt further deterioration of the protected structure are welcome and that more comprehensive proposals will be submitted when an end use is identified for

the building. Conditions recommended (not related to Development Contributions).

3.3. Prescribed Bodies

3.3.1. Reports on initial application

- Transport Infrastructure Ireland – 19th of October 2023 – The proposed development falls within the area for the adopted Section 49 Supplementary Development Contribution Scheme Luas Red Line Docklands Extension (Luas C1). The Section 49 scheme lists several exemptions where the levy does not apply. If the application is successful and not exempt, a Section 49 Luas Line condition to apply.
- Iarnród Éireann – 7th of November 2023 – Observations only. Not related to development contributions.
- Health and Safety Authority – 5th of October 2023 – No objection. Not related to development contributions.
- Submissions were invited but not received from 1) An Taisce, 2) Department of Housing, Local Government and Heritage, 3) The Heritage Council, 4) Fáilte Ireland; 5) An Chomhairle Ealaíon; 6) Irish Rail; 7) Irish Water.

3.3.2. Reports on response to further information application

- Iarnród Éireann – 21st March 2024 – Observation only, stating Dublin Port Company has engaged with Irish Rail and are satisfied for the development to proceed. (Not related to development contributions). This was provided as part of the applicant's response to the request for further information rather than directly from Iarnród Éireann.

3.4. Third Party Observations

- None

4.0 Planning History

- 4.1. The planning officer's report sets out a comprehensive planning history with 12 previous applications cited, and I refer the board thereto. For the purposes of this

appeal, in respect of development contributions, I consider that the following planning history is relevant:

- **P.A. Reg. Ref. 3859/19** – Permission granted by Dublin City Council on the 27th of November 2019 for demolition of redundant warehouse building known as 'Stack R Warehouse' (c. 6,600sqm); demolition of redundant ESB pumphouse and adjacent switchroom (c. 285sqm) at Berth 31/32 (Ocean Pier) and the installation of gantries and increase in the stacking area on a site of 7.575ha, that includes McCairn's Yard from the current application site, where the new silos and other structures are to be built. It is relevant as no development contribution was charged in respect of the application, and refers to that part of the current application site, where the proposed silos and other structures would be built.
- **P.A. Reg. Ref. 4507/18** – Temporary permission granted for 5 years, on the 25th of April 2019, for facilities to cater for cruise ship operators to include: a marquee (c.2,250sq.m) 8m in height, 300 car parking spaces, bus and car drop off area, fencing 2m in height, mini-roundabout, 6m access off Tolka Quay Road and all associated site development works at Tolka Quay Road; and; a marquee (c.1750sq.m) c.8m in height at Ocean Pier. The initial decision to grant permission included S48 and S49 development contribution conditions, but the decision was later amended and the sums owed in respect of the conditions was reduced to €0 in the final grant.
- **ABP Ref. PA0034** – Permission granted by the Board on the 8th of July 2015, to Dublin Port Company, for a period for 10 years, for a Strategic Infrastructure Development consisting of the redevelopment of Alexandra Basin and Berths 52 and 53 together with associated works in Dublin Port. No development contributions were charged in respect of the application.
- **P.A. Reg. Ref. 2318/16** – Permission granted on the 26th of May 2016 for a development in Dublin Port that included 69.6sqm of new buildings. Conditions were attached imposing Section 48 and Section 49 Development contributions were attached in the amounts of €4,878.16 and €2,644.80. The imposition of the contributions was not appealed.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

5.1.1. The Dublin City Development Plan 2022-2028 came into effect on the 14th of December 2022 and is the relevant plan in relation to this application. The site is zoned 'Z7 – Employment Heavy', the objective for which is 'to provide for the protection and creation of industrial uses, and facilitate opportunities for employment creation including Port Related Activities.'

5.1.2. Section 14.7.7 states that:

- 'The majority of these (Z7) lands are located in the Port area and at the Diageo/ Guinness complex', and 'the primary uses in these areas are those that can result in a standard of amenity that would not be acceptable in other areas. Such activities include industry (other than light industry), manufacturing, repairs, open storage, waste material treatment, utility operations, and transport operation services'.

5.1.3. The following uses are all 'Permissible Uses in Z7 zoned areas:

- Port-related industries and facilities, storage depot (open), warehousing.

5.1.4. Policy SC7 'Dublin Port' states that it is a policy:

- To support and recognise the important national and regional role of Dublin Port in the economic life of the city and region and to facilitate port activities and development, having regard to the Dublin Port Masterplan 2040.

5.2. Dublin City Council Development Contribution Scheme 2023 - 2026

5.2.1. The Dublin City Council Development Contribution Scheme 2023 – 2026 is effective in respect of planning applications lodged with Dublin City Council from 1st April 2023 and this application was submitted on the 4th of October 2023.

5.2.2. Paragraph 3(c) of the Scheme states that 'a scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provision of the scheme'.

5.2.3. Paragraph 6 sets out three classes of development to which contributions would apply, namely, residential and industrial/commercial.

- 5.2.4. Paragraph 8 states that ‘under the scheme, Dublin City Council will, when granting a planning permission under Section 34 of the Act, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the city.
- 5.2.5. Paragraph 9 sets out a single contribution rate per square metre for both industrial and commercial developments. Note 2 to Paragraph 9 states that ‘the floor area of proposed development in a...commercial development shall be calculated as the gross floor area. This means the area ascertained by the internal measurements of the floor space on each floor of a building (including internal walls and partitions) and including mezzanine floors’.
- 5.2.6. Section 10 sets out the types of development that will not be required to pay development contributions, including:
- Change of use from one commercial use to another. Any net additional source space will be charged at the commercial rate.
- 5.2.7. Section 11 sets out the types of development that will be liable for a reduced rate of development contribution, including:
- Where an applicant is granted permission to demolish in part or in full an existing building and replace it with another, then the development contribution payable is to be charged on the net additional floor space created;
 - Open storage/ hard surface commercial space development, other than car parking, shall be liable for development contributions at one third of the commercial rate;
 - Temporary permission shall be liable for development contributions of one-third of the applicable rate of contribution.

5.3. Section 49 - Luas Docklands - Development Contribution Scheme 2023-2026

- 5.3.1. The site lies entirely within the boundary of the Section 49 Supplementary Development Contribution Scheme for Luas Docklands that was made on the 2nd of September 2013.
- 5.3.2. Section 10 ‘Rate of Levy’ states:

- In determining appropriate rates of levy for the Scheme, consideration was given to the quality of service being provided by Luas Docklands, to the objective of avoiding the diversion of development from the area due to excessive rates of levy and to the estimated benefit to different classes of development.

- Three different classes of development have been identified requiring the payment of contributions, namely Residential, Commercial and Retail. The rates of levy to be applied to each class of development reflect the relative benefits which accrue to that class and are Residential: €2,000 per unit; Commercial: €38 per sqm; Retail: €43 per sqm.

5.3.3. Section 11 'Exemptions' includes the following:

- j. Ancillary surface car parking;

5.3.4. Section 12 'Reductions' provides for certain categories of development to be liable for a reduced rate of development contributions under the Scheme, including:

- c. Open storage/hard surface commercial space development, other than car parking, shall be liable for development contributions at one third of the commercial rate.
- e. Temporary permissions shall be liable for development contributions at one-third of the applicable rate of contribution.

5.4. **Dublin Port Masterplan 2040 (reviewed 2018)**

5.4.1. This document is referenced in the applicant's planning report and in the planning officer's reports. The foreword to the document states that:

- Dublin Port Company (DPC) is a State owned commercial company responsible for operating and developing Dublin Port. Dublin Port is the largest freight and passenger port in Ireland with all cargo handling activities being carried out by private sector companies operating in intensely competitive markets within the Port.

5.4.2. Chapter 4 'Planning for the Future – Anticipating Future Trend' includes a section titled 'Bulk Solid' which includes products from the agricultural, energy, mining and construction sectors. It states that:

- To accommodate the existing and anticipated level of trade in Bulk solid and to facilitate other types of freight activity over the period of the Masterplan, some

improvements and consolidation of existing areas for handling these materials will be required.

5.4.3. Chapter 8, referring to the national economic impact of Dublin Port states that:

- Dublin Port is a key facilitator of merchandise trade in and out of Ireland and is a critical impact on the national and regional economies.
- The Competition and Consumer Protection Commission (2013) recognised that Dublin Port has the scale and critical mass to justify investment in the supporting infrastructure for unitised trade and generates more operating profit than all the other ports in the State combined.

5.4.4. Chapter 11, which sets out a 30 year horizon for the port states that:

- DPC is a robust and financially strong company as shown by the summary of its financial performance over the five years to 2017.
- DPC's ability to raise project debt will directly depend on future earnings (EBITDA). Growth in EBITDA will come from a combination of volume growth, cost control and increases in port infrastructure charges.

5.4.5. It also noted that the port had a turnover of between €68.375 million in 2012 and €85.497m in 2017 with growth in turnover experienced in each year, while operating profits also grew over those years, from €32.818m in 2013 to €46.512m in 2017.

5.5. Planning and Development Regulation

5.5.1. Some of the terminology in the development plan is not defined in the plan such as commercial or industrial, while the applicant has relied on the definitions of industry and industrial process, as they are set out in the Article 5 of the Planning and Development Regulations 2001 (as amended), which are:

- "industrial building" means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;
- "industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is –
 - (a) for or incidental to the making of any article or part of an article, or

for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,

and for the purposes of this paragraph, "article" includes-

- (i) a vehicle, aircraft, ship or vessel, or
 - (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;
- “industrial undertaker” means a person by whom an industrial process is carried on and “industrial undertaking” shall be construed accordingly;
 - “port” includes any buildings, roads and vehicle parks ancillary to the operation of the port;
 - “port operational building” means a building other than a hotel, required in connection with the movement or maintenance of ships, or with the embarking, disembarking, loading, discharge or transport of passengers, livestock or goods at a port including customs or passport control facilities and sanitary and phytosanitary and health checks and control facilities, associated administrative offices or other similar facilities directly related to and forming an integral part of the building;
 - “state port company” has the same meaning as “managing body of the port” as defined by Regulation 2(1) of the European Union (Port Services) Regulations 2019 (S.I. No. 128 of 2019);

5.6. Regulation 2(1) of the European Union (Port Services) Regulations 2019

- 5.6.1. Dublin Port Company is named as a ‘managing body of the port’ in Regulation 2(1).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Background

- The first party grounds of appeal raise the following by way of background:
 - The site is currently used primarily for the offloading of material product, such as animal feeds, which is then stored in the existing buildings on site (R&H

Hall silo building and flat stores), before onward distribution by Heavy Goods Vehicles (HGVs).

- Industrial buildings and industrial processes are defined in the Planning and Development Regulations. The proposed development is not considered to be an industrial facility and the storage and distribution activities to be undertaken at the subject site do not constitute industrial activities.
- The development is not considered to be a commercial activity. Commercial is not defined in the development contribution schemes or the Planning and Development Act or Regulations. The development plan does not provide a definition of commercial; the land use zoning envisages commercial development being located in Urban Villages (Z4) and the Inner Suburban and Inner City Mixed-Used (Z10) areas. This indicates that Dublin City Council understand commercial land use to mean office type development rather than logistics or transport.
- The request for further information and the response thereto is not material to this appeal.

6.1.2. Grounds of Appeal - Condition No 2 (Section 48 Contribution)

- The proposed development primarily facilitates unloading of ships, temporary storage and distribution using HGV's and aligns with a 'Port Operational Building' as defined the Planning and Development Regulations.
- While the 'Port Operational Building' definition relates to exempted development, it is appropriate, as there is no definition in the development contribution schemes or the Planning Act, for commercial land use.
- It is clear that the development is not an industrial process or building.
- A port operational building is not considered to be a commercial or industrial use and condition No.2 should be removed, as it is an incorrect application of the development contribution scheme.
- The board is asked to consider a Dublin Port planning precedent cited in support of the appeal, which refers to Planning Reg. Ref. 4507/18, where DCC accepted development contributions had mistakenly been applied to a

proposed development regarding temporary ancillary facilities and reduced the contributions to zero (€0).

6.1.3. Grounds of Appeal - Condition No 3 (Section 49) Luas

- They acknowledge that the site lies within the boundary of the Luas Section 49 Supplementary Development Contribution Scheme and that there are three rates applicable to residential, commercial and retail development.
- None of the 13 exemptions are relevant to the proposed development.
- Following receipt of the decision to grant permission, the applicant's agent queries the application of the supplementary contribution and requested its removal. as a clerical error, under Section 146A(1)(a)(i) of the Planning and Development Act.
- DCC cited the submission of TII, which does not have a statutory role in Supplementary Development Contribution Schemes, as responsibility lies with the local authority.
- The proposed development primarily facilitates unloading of ships, temporary storage and wider distribution.

6.1.4. Conclusion

- The proposed development comprises a port operational building and it is not a commercial or industrial building.
- The imposition of the S48 and Section 49 development contribution is considered inappropriate.

6.1.5. Both development contribution schemes have been appended to the appeal.

6.2. **Planning Authority Response**

6.2.1. The Planning authorities responds dated the 14th of June 2024 stated:

- Having reviewed the application, the planning authority has concluded that the S48 and S49 development contributions were required due to the nature of the development and its location within the S49 scheme area.

- DCC disagrees with the appellant's position that no contributions are due. The rates are applied to commercial applications under both schemes.
- The purpose of the port is for commercial activities although it could be argued that the equipment employed for the daily use in the port is industrial. It is a business and therefore would be classed as a commercial enterprise. Therefore, the appropriate (commercial) rate was applied to this development.
- The appellant makes reference to P.A. Reg. Ref. 4507/18 where the contribution was reduced to zero. This was done following a review that determined the development was temporary in nature and did not require any additional services. Therefore, a development contribution was not appropriate.
- The planning authority asked that the board uphold the decision of the planning authority and do not remove the two conditions.

6.2.2. The response is appended by the S48 Development Contribution calculations. It indicates that the floor area of the new buildings is 5,439sqm, from which an allowance was provided for the demolition of 1,643sqm and contributions were charged in respect of a floor area of 3,769sqm. The applicable rate is €118.60 per sqm, bringing the contribution in condition No 2 to €450,205.60.

6.2.3. The response also included the S49 Supplementary Development Contribution calculations, wherein the contribution applies to the entire area of the proposed new buildings, being 5,439sqm of commercial development, chargeable at a rate of €38 per square metre.

6.3. **Observations**

- None

6.4. **Applicant's Further Response**

6.4.1. The applicant responded to the Planning Authorities observation on the appeal on the 9th of July 2024. The response addresses two matters of principle being:

- The nature of the development and whether it falls within the scope of the development contribution schemes
- Where did the location of the development alone is sufficient basis for applying a section 49 contribution.

6.4.2. Nature of the proposed development and scope of contribution schemes

- DCC's response is suggesting that all development other than residential development and those specifically excluded under the scheme shall be subject to the commercial/ industrial rates. The applicant does not agree was such an interpretation which would be contrary to the provisions of Section 48(2)(a) and (b) and Section 49(2)(a) and (c) of the Planning and Development Act 2000 (PDA), as amended, with the relevant extracts from both included in the response, which effectively state that both schemes must set out the basis for the determination of the amount of the contribution.
- Neither the Section 48 or Section 49 scheme defines nor describes industrial/commercial development and neither scheme states that all development other than residential will be considered to be industrial/ commercial. The only further description of industrial/ commercial development within the section 48 scheme is in Table B - Appendix 1, which includes a projection of the amount of industrial/ commercial floor space which has formed the basis for determining the contribution rate. There is no indication however, of what uses/ activities are deemed to fall within this description/quantum.
- The first party appeal set out the applicant's considered interpretation of what can reasonably be deemed to be included or not within the industrial/commercial class of development in the absence of any clarification or definition within the schemes themselves. Based on this interpretation, the applicant submits that neither the section 48 nor 49 scheme makes provision for payment of a contribution for a class of development such as port operational building. In the absence of such provision within the schemes, the applicant contends that conditions two and three would be contrary to the provisions of section 48(2)(a) and (b) and Section 49(2)(a) and (c) of the PDA.

6.4.3. Application of section 49 scheme on basis of location of the proposed development only

- Notwithstanding the argument made above, the applicant does not agree with DCC's interpretation, that the development falling within the boundary of the S49 Scheme is sufficient basis for applying a contribution.
- DCC's interpretation appears to align with the submission of TII.
- The attachment of the S49 contribution is contrary to section 49(1)(c) of the PDA, which states that a planning authority may, include conditions requiring the payment of a contribution in respect of any public infrastructure service or project that would benefit the development to which the permission relates when carried out.
- Section 49(1)(c) means that a section 49 condition may only be attached when the public infrastructure service to which the contribution scheme relates specifically benefits the development subject of the permission.
- The proposed bulk silo facility is reliant on marine vessels and road based HGV traffic. Clearly this is not a use which will benefit from the extension of the Luas and on this basis the applicant submits that condition 3 is contrary to the provisions of section 49(1)(c) of the PDA.
- The extent of DCC's consideration is that the development lies within the boundary of the section 49 supplementary development contribution scheme, and it does not appear that DCC considered whether the Luas extension would benefit the development.

6.4.4. Precedent for reduction of contributions

- Whilst it is acknowledged that the precedent referred to in the appeal P.A. Reg. Ref. 4507/18 is a temporary development, the applicant submits that the current proposal does not give rise to a requirement for any additional services.
- While the applicant considers that no S48 contribution should apply to the proposed 'port operational building', if the board does determine that the proposed development falls within the scope of industrial/commercial for the S48 scheme, a reduced rate should apply. This is because the new silo will replace the existing R&H Hall silo usage/activity building. The application involves the modest relocation of an existing use/activity and will not give rise to new demands for public infrastructure and services. The site is already accessed by HGV which will continue for the new building. The new building is on the site of an existing hardstand area which is

already subject to surface water drainage requirements. The proposal to relocate the silo activity to the new building will not give rise to any new demands for parks and open space facilities, community facilities and amenities or urban regeneration facilities and amenities.

6.4.5. Conclusions

- The applicant does not consider the proposed development falls within the scope of a reasonable interpretation of an industrial/commercial class of development referenced in the DCC S48 and S49 schemes. It would be contrary to the provisions of Section 48(2)(a) and (b) and Section 49 (2)(a) and (c) of the PDA to apply conditions 2 and 3.
- The application of condition 3 would be contrary to Section 49(1)(c) as the Luas extension will not benefit the proposed development, which is a bulk product silo facility, which will be reliant on marine vessels and HGV's and not on public transport.
- Should the board determine that the development comprises an industrial/commercial development and should be subject to a section 48 contribution, the amount should be substantially reduced as the development effectively comprises the local repositioning of an existing use and accordingly will not generate new demand for public infrastructure or services.

7.0 **Assessment**

7.1. Introduction

- 7.1.1. This is a first party appeal against planning conditions 2 and 3 of a decision to grant permission, which require development contributions to be paid in accordance with section 48 and section 49 of the Planning and Development Act 2000 (as amended) respectively.
- 7.1.2. Section 48(10)(b) of the Planning and Development Act 2000, as amended, makes provision for such an appeal to be brought to the Board, where an applicant considers that the terms of the relevant development contribution scheme or schemes have not been properly applied in respect of any condition laid down by the planning authority.

- 7.1.3. The Board must operate within the statutory confines set out in the Planning and Development Act and other legislation and as this is an appeal in relation to the application of development contributions only, and no other appeals have been made, the legislation provides that the Board will not determine the application as if it were made to it in the first instance and will only determine whether or not the terms of the Development Contribution Scheme have been properly applied by the planning authority in respect of conditions 2 and 3, and the board cannot inquire into nor determine the merits or otherwise of the Scheme itself.
- 7.1.4. In that respect, I note that a final grant of permission was issued by the planning authority on the 13th of August 2024, which indicates that the applicant has furnished to the planning authority security for payment of the full amount of both contributions specified in conditions 2 and 3 of the decision to grant permission, in accordance with Section 48(10)(c) of the planning and Development Act 2000 (as amended).
- 7.1.5. I have previously set out the grounds of the appeal in section 6.1 above, as well as the response of the planning authority in section 6.2 and the applicant's further response in section 6.4, and while the key issue to be considered by the board is whether or not the terms of the Section 48 and Section 49 Development/Supplementary Development Contribution Schemes have been properly applied by the planning authority, in order to address the conditions themselves, it is first necessary to examine relevant matters as set out and referred to in the application documentation. I consider there that the appeal can be assessed under the following headings:
- Is the proposed development an industrial or commercial use?
 - The application – Dublin Port Company
 - The intended occupant of the building
 - Conclusion on use of building
 - Condition No 2 – (Section 48 Contribution)
 - Reduced Section 48 Contribution
 - Precedent
 - Condition No 3 – Section 49 Luas Contribution

- Benefit of Luas
- Legislation
- Conclusion

7.2. Is the proposed development an industrial or commercial use?

- 7.2.1. In the first part of the grounds of appeal, the applicant states that the proposed development is consistent with the definition of 'Port Operational Building' set out in the Planning and Development Regulations 2001 (as amended), and is neither an industrial nor commercial land use class.
- 7.2.2. In section 5.6 above, I have set out the definitions of industrial building, industrial process and industrial undertaker and in that respect, I would concur with the applicant and I am satisfied that the proposed development would not constitute an industrial process, as the proposed development would facilitate the unloading of bulk material from ships at the quayside, which is subsequently stored temporarily, before wider distribution using HGV's. Therefore, I am satisfied that the proposed buildings would not constitute industrial buildings, and as a consequence neither the applicant nor the intended end user of the building would be deemed an industrial undertaker, for the purpose of this application.
- 7.2.3. Given the lack of a definition of a commercial land use in either the development contribution scheme or the Planning and Development Act, the applicant considers that the proposed development is consistent with the definition of 'Port Operational Building' and is therefore not considered to be a commercial lands use.
- 7.2.4. The full definition of 'Port Operation Building' is set out in Section 5.6 of this report. I have extracted relevant elements of it and set them out below to read as 'port operational building' means a building...required in connection with the...loading, discharge or transport of...goods at a port including ...phytosanitary and health checks and control facilities, associated administrative offices or other similar facilities directly related to and forming an integral part of the building'.
- 7.2.5. I would concur with the applicant and I am satisfied that the structures that form part of the proposed development and are subject to contributions in conditions 2 and 3, would be consistent with the definition of 'port operational building'.

7.2.6. Following from the above, the applicant's grounds of appeal argue that the proposed development does not constitute a commercial development. Question 10 of the planning application form indicates that the development will include new buildings with a combined floor area 5,439sqm, and in response to question 14, the application fee has been calculated based on 7 No. class 4 buildings and 2 No class 8 structures (See table 7.1 below). The areas are also confirmed in the schedule of floor areas submitted with the application, that also included details of the floor areas of the existing buildings and structures on site that are to be either retained or demolished.

Table 7.1 – Floor Areas of Proposed Buildings

Class	Description of Building	Area (smq)
4	Bulk Material Outloading Building	234
4	Administration Office/Welfare Building	164
4	Weighbridge Control Office	59
4	Motor Control Centre (MMC) & Switch Room	70
4	Bulk Material Intake Building	2,326
4	Substation	196
4	Workshop and Covered Area	592
8	Intake Elevator Tower and Weighing Tower	97
8	Bulk Material Silo Storage (6 No)	1,701
	Total	5,439

7.2.8. It is not in dispute that the development will include 5,439sqm of new floor area and as I stated earlier, I agree with the applicant that these structures/buildings would constitute port operational buildings and are not industrial buildings. However, I do not agree with the applicants when they claim that 'port operational buildings' could not be considered to be commercial building and I will examine that in more detail in sections 7.3 and 7.4 below.

7.3. The application – Dublin Port Company

- 7.3.1. It is the applicant's case that the proposed development is a 'port operational building' and should not be subject to any development contributions, as the development contribution schemes do not include reference to such a use, or at the very worst a reduced rate of contribution should apply, and I will deal with reduced contributions in Section 7.7 below.
- 7.3.2. The applicant is 'Dublin Port Company, which according to the response to question 4 of the planning application form is a company registered with the Companies Registration Office. The company was registered on the 28th of February 1997 and is listed on the CRO website as a DAC-Designated Activity Company (limited by shares) (Licenced Company).
- 7.3.3. I refer the board to Section 5.4 above, which addresses the Dublin Port Masterplan, which the applicant referred to in their planning report. In summary, the cited extracts from the Masterplan state that 1) Dublin Port Company (DPC) is a State owned commercial company responsible for operating and developing Dublin Port 2) all cargo handling activities are carried out by private sector companies operating in intensely competitive markets within the Port; 3) Dublin Port generates more operating profit than all the other ports in the State combined; 4) DPC's ability to raise project debt will come (from)...increases in port infrastructure charges; 5) Operating profits grew from €32.818 million in 2012 to €46.512 million in 2017.
- 7.3.4. The planning application drawings show that in addition to the site outlined in red, that Dublin Port Company is in control of all lands within the port area, which were outlined in blue on the site location map.
- 7.3.5. On the basis of the information provided and referred to by the applicant in the application and in the appeal, I am satisfied that the applicant, Dublin Port Company, is a commercial company, and I am also satisfied that occupants and users of lands and building within the port, such as the buildings subject to this application, operate as separate private commercial companies to Dublin Port Company, and for this privilege they pay a charge to Dublin Port Company. I am further satisfied that there is nothing in the application or appeal to suggest or confirm that the proposed

buildings would not be operated as a commercial premises, notwithstanding that they meet the definition of 'port operational building'.

- 7.3.6. I also note by reference to Sections 10 and 11 of the 'Dublin City Council Development Contribution Scheme 2023-2026' (Section 48 DCS) and to Sections 11 and 12 of the 'Dublin City Council Supplementary Development Contribution Scheme – LUAS Red Line Docklands Extension (Luas C1)' (Section 49) that 'port operational building' is not a class or type of development that is exempt from the payment of contributions and no reduced rate of contribution would apply to such uses.

7.4. The intended occupant of the building

- 7.4.1. Following my conclusion that the applicant, Dublin Port Company is a commercial Company, and because Section 39 of the Planning and Development Act provides that a grant of permission shall enure for the benefit of the land and of all persons for the time being interested therein, I will now address the intended occupant of the new buildings.
- 7.4.2. Both the applicant's 'Planning Report' and 'Planning Stage Engineering Report' refer on numerous occasions to the name of the intended user / occupant of the proposed silos and associated buildings as R&H Hall, which is also relevant to the applicant's claim that the proposed development is neither a commercial nor industrial development.
- 7.4.3. Section 1.0 'Introduction' to the Planning Report states that the proposed development will relocate R&H Hall Operations from the silo building to a new silo/bin storage facility and associated new transfer facilities to McCairn's yard. It goes on to describe the existing R&H Hall operations, and explains that bulk material product is stored in the existing R&H Hall silo building and flat stores, from where it is collected by HGV. It also states that the works to secure the existing R&H Hall building, which is a protected structure are only phase 1 works, that the R&H Hall building would be adapted for another use in a future planning application and that a Masterplan exercise would be carried out for its future repurposing.
- 7.4.4. What this tells us is that R&H Hall, the occupant of an existing silo building, is being relocated to a new building, but it also confirms that the building they currently occupy, will be reused for another, as of yet unidentified purpose. This second

revelation is relevant to the claim made by the applicant that if they are to be charged a contribution or contributions, that the level of the development contributions charged should be set at a reduced rate, and I will address this point later in my assessment.

- 7.4.5. Section 4 of the Planning Report 'Rationale for Proposed Development' states that the removal of the conveyor system will increase the activity on the quayside and allow multiple vessels to get loaded or unloaded simultaneously. It continues by reiterating that the completion of this facility (new silos and associated buildings) will allow H&R Hall to relocate their current bulk operations to the new facility.
- 7.4.6. The report states that the facility will operate on a 24 hour basis, using a fully automatic pre-booking system, while access to the site is to be via a number plate recognition at automatic gates, which will be managed by R&H Hall.
- 7.4.7. Section 5 states that the existing premises from which R&H Hall operate are no longer fit for purpose and a modern facility is required.
- 7.4.8. It also notes that the presence of the overhead conveyor system impedes operations at Dublin Port, preventing the full realisation and benefits of the permitted ABR project (ABP Ref. PA0034). It continues by stating that DPC is committed to ensuring effective use of port lands, within the limits of the current land franchising system with various tenants and operators of Port lands. This proposed development makes more effective use of the site by allowing for the multipurpose user of the berths, while also improving handling facilities for bulk cargo.
- 7.4.9. Following on from above, the 'Planning Stage Engineering Report' refers to extensive engagement between DPC and R&H Hall to design and plan for operations. Paragraph 2.3 states that the proposal therefore, as agreed between DPC and R&H Hall, is to develop a new silo bin storage facility to the east of the current R&H Hall bulk storage facilities in an area historically known as McCairn's Yard.
- 7.4.10. It continues to state that for efficient operation of the new facility, there will also be provision for administrators, maintenance and storage buildings along with associated ancillary facilities such as car parking and waste management.

- 7.4.11. The new system will have treble the capacity of the existing conveyor system, so it will be critical to reducing vessel discharge duration and in turn will increase berth availability to other operators at the quayside.
- 7.4.12. It continues by stating that following completion of this new facility at McCairn's Yard, R&H Hall will relocate their current bulk operations at the protected silo building and adjacent non protected stores to this new facility.
- 7.4.13. It also states that it is intended that responsibility for the protected R&H Hall Silo building will be transferred to DPC upon completion of the works and the masterplanning exercise for its future repurposing is proposed along with an internal repair and conservation strategy as part of this planning application.
- 7.4.14. On the basis of the information provided by the applicant, I am satisfied that the proposed development will benefit both the applicant DPC and R&H Hall.
- 7.4.15. The information contained in the application clearly indicates that R&H Hall will occupy the new buildings, while DPC will take over the management and future plans for the existing R&H Hall building. For the purpose of addressing the appellant's contention that the proposed buildings/structures that are the subject of development contributions in Conditions 2 and 3, I consider it necessary to investigate the nature and extent of the business operated by R&H Hall, the company that is clearly indicated as the intended user of the new silos and associated buildings.
- 7.4.16. R & H Hall's website (www.rhhall.ie) states that it has been the leading supplier to the Irish feed industry of grain and non-grain feed ingredients since 1839 and that it is Ireland's biggest importer and supplier of animal feed ingredients for feed manufacturing through its extensive trading, purchasing, shipping and storage capability. R&H Hall is a commercial company with accounts filed annually with the Companies Registration Office and I am satisfied that it operates on a commercial basis.
- 7.4.17. I am satisfied that the intended user of the new buildings/structures to be built on foot of the grant of permission is R&H Hall, which operates as a commercial company.
- 7.4.18. Whether the final user of the building is R&H Hall or some other similar operator, I am satisfied that the proposed structures, which are the elements of the

development that have been subject to the development contributions, are intended to be used for commercial purposes.

7.5. Conclusion on use of building

7.5.1. I am satisfied that the buildings which are listed in table 7.1 above and are the subject of the two development contributions, constitute port operational buildings and I am further satisfied that both Dublin Port Company (the applicant) and R&H Hall (the intended occupant/user/operator of the new buildings) are both companies that operate on a commercial basis. Therefore, I consider that the proposed development constitutes commercial development for the purposes of the Section 48 Development Contribution Scheme and the Section 49 Supplementary Development Contribution Scheme,

7.5.2. I will now address the specific conditions.

7.6. Condition No 2 – (Section 48 Contribution)

7.6.1. The provisions of the Planning and Development Act 2000 (as amended) provide that the Board, in considering appeals solely relating to Development Contributions, has to decide whether or not the terms of the relevant Development Contribution Scheme have been properly applied by the planning authority. It cannot inquire into nor determine the merits or otherwise of the Scheme itself. The appellant has expressly argued that the terms of the Scheme have not been properly applied and the appeal is accepted as valid on this basis.

7.6.2. Condition No 2 is set out in full in paragraph 3.1.1 above and can be summarised as:

2 A development contribution in the sum of €450,205.60 shall be paid to the planning authority in accordance with Dublin City Council's Section 48 Development Contribution Scheme.

7.6.3. The Section 48 development contribution was calculated on the following basis:

Section 48 Development Contributions					
	Rate per sqm	Proposed	Granted	Con. Area	Total €
Commercial Dev	€118.60	5,439.00	5,439.00	3796	€450,205.60

- 7.6.4. The total floor area of new buildings was stated in question 10 of the planning application form area to be 5,439sqm, while it also indicated that 1,643sqm of floor area would be demolished in the form of the conveyor, weighing towers and transformer building. The area to be demolished was discounted by the planning authority from the new floor area to give an area of 3,376sqm to be subject to a development contribution.
- 7.6.5. Note 2 to Paragraph 9 states that 'the floor area of proposed development in a...commercial development shall be calculated as the gross floor area. This means the area ascertained by the internal measurements of the floor space on each floor of a building (including internal walls and partitions) and including mezzanine floors.
- 7.6.6. Having reviewed the applicant's Gross Floor Area Calculation sheet I am satisfied that the contributions have been charged correctly in respect of all buildings/structures listed in Table 7.1, with the only element that needs further consideration being the 'workshop and covered area' which is stated in the applicants Gross Floor Area calculations to be 25.4m in length and 23.3m in width giving it a total floor area of 592sqm. This figure includes a building accommodating a hot works area, workshop, shared office and electrical room and an external yard that while roofed, is open on three sides, with the roof supported by a number of steel columns. The surface area of the external yard is 15.15m x 25.8m which is 390.87sqm.
- 7.6.7. I note that Section 11 of the Development Contribution Scheme includes a specific provision that 'open storage / hard surface commercial space, other than car parking, shall be liable for development contributions at one third of the commercial rate. I have examined the contribution scheme and also reviewed the Planning and Development Act and Regulations and found no definition 'building' to determine the status or otherwise of the covered yard. While the external yard in this case is roofed it is open on three sides, I would consider that it would constitute an 'open storage/hard surfaced commercial space rather, other than car parking', and for that reason, I consider that the external yard should therefore be liable for development contributions at one third the commercial rate in respect of the area of 390.07sqm.

7.7. Reduced Section 48 Contribution

- 7.7.1. The grounds of appeal argue that should the board determine that the development comprises industrial/commercial development, and should be subject to a section 48 contribution, then the amount due should be substantially reduced, as the development effectively comprises the local repositioning of an existing use and accordingly will not generate new demand for public infrastructure or services. I do not agree with the applicant's view on this matter for the reasons set out below.
- 7.7.2. In calculating the amount of the contribution due in Condition No 2, an allowance has been made in respect of the floor area of the structures that are to be demolished, namely the conveyor, weighing towers and transformer building, which collectively have a floor area of 1,643sqm. Section 11 of the Development Contribution Scheme 2023-2026, referring to developments which will be liable to a reduced rate of development contribution, states that 'where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be charged on the net additional floor space created'.
- 7.7.3. The existing silo building is not being demolished, and the existing building is not strictly being replaced, and this is confirmed in the application documents which clearly state that works will be carried out to the existing R&H Hall silo building as phase 1, to secure the building, while in the longer term it will be repurposed, subject to a masterplan and a separate planning application for an as yet unidentified use. However, the conveyor and weighing towers are operational elements of the existing R&H Hall silo facility and are being demolished, and I consider that the planning authority has acted fairly in determining that the existing floor area that is to be demolished, was part of the existing silo building. I am also satisfied from the information on the file, that the existing silo building will be put to some other use, other than as a silo, in the future. Therefore, I am satisfied that there will only be one silo on the site and that the planning authority was correct to charge a development contribution on the net additional floor space created only.
- 7.7.4. Bearing in mind that the applicant intends to repurpose the existing silo building for an as of yet unidentified use, I consider that the following exemption from the payment of development contributions, as set out in section 10 of the development

contribution scheme is relevant. It refers to circumstances where it is proposed to have a change of use from one commercial use to another, and in such cases only net additional floor space will be charged at the commercial rate. While it is not relevant to this application, in the interest of clarity, should the applicant seek to create a new commercial use for the existing R&H Hall silo building, in such circumstances, no development contributions would be applicable to such an application, other than net additional floorspace.

7.7.5. The applicant describes the current proposed development as a simple local repositioning of an existing use and accordingly will not generate new demand for public infrastructure or services. This does not mean that development contribution are not due in respect of the application and I do not agree with their opinion in that respect, as the proposed development is an entirely new building, which will have its own requirements for public services. The existing silo building will be the beneficiary of whatever services it currently enjoys, if and when it is put to some other use in the future and those benefits are non-transferable in respect of the retained building.

7.7.6. I am satisfied that the only available reduction in contributions payable on this application have been applied by the planning authority, in the form of deducting the floor area of that part of the existing of the buildings that are to be demolished from the gross floor area of the new proposed building and I am further satisfied that no other reductions should apply in respect of Condition No 2, the Section 48 contribution.

7.8. Precedent

7.8.1. As part of the grounds of appeal the applicant cites a precedent (P.A. Reg. Ref. 4507/18) which they consider lends further weight to the proposed development being port operational building and not a commercial building and has asked the board to consider this precedent, because in their opinion, many of the activities undertaken within Dublin port are not commercial and should not be subject to the development contribution scheme. I have previously concluded that the nature of the development is commercial.

7.8.2. However, the appeal makes that case that the DCS provides that a temporary permission shall be liable for development contributions of one-third of the applicable rate of contribution, that the current proposal does not give rise to a requirement for

any additional services, and that the proposed development primarily facilitates unloading of ships, temporary storage and distribute using HGV's. The go on to state that Dublin City Council accepted development contributions had mistakenly been applied to a proposed development regarding temporary ancillary facilities in P.A. Reg. Ref. 4507/18 and reduced the contributions to zero (€0) and the same should apply in respect of condition no 2 of this application.

- 7.8.3. I do not concur with the applicants interpretation of or reliance on the relevance of the cited precedent, because this application is for a permanent structure unlike in P.A. Reg. Ref. 4507/18, which was for temporary structures. I would also disagree with the applicant's contention that the proposed development will not give her a raise to requirement for any additional services, because they have disregarded the fact that the existing silo building is being retained, and will be put to another use in the future which will also demand services, and I have pointed out in section 7.7 above, that it would be this future application, that would potentially benefit from a zero rate of development contributions depending on the nature of that application.
- 7.8.4. I am satisfied that the decision of the planning authority to reduce the development contributions to zero in respect of P.A. Reg. Ref. 4507/18 did not set a relevant precedent as that application related to a temporary permission, while this application is for permanent structures. I also note the grant of permission under P.A. Reg. Ref. 2318/16 (see section 4.1 above) where Section 48 and Section 49 Development contributions were attached to a grant of permission in respect of a new structure in the Dublin port area, and the imposition of the contributions was not appealed.

7.9. Condition No 3 – Section 49 Luas Contribution

- 7.9.1. In condition No 3, the planning authority attached a contribution of €206,682.00 based on a contribution rate of €38 per square meter of commercial development for the entire 5,439sqm of proposed new development.
- 7.9.2. I would concur with the applicant when the state that none of the 13 exemptions set out in section 11 of the supplementary development contribution scheme are relevant to the proposed development
- 7.9.3. Section 12 of the supplementary development contribution scheme lists categories of development that would be liable for a reduced rate of development contributions

including, 'open storage/ hard surface commercial space development, other than car parking, shall be liable for development contributions at 1/3 of the commercial rate'.

- 7.9.4. This is the same exemption that exists in the section 48 development contribution scheme and my conclusions in paragraphs 7.6.6. and 7.6.7 are relevant where I concluded in respect of one of the proposed structures being the 'workshop and covered area' that, while the external yard in this case is roofed it is open on three sides, I would consider that it would constitute an 'open storage/hard surfaced commercial space rather, other than car parking', and for that reason I consider that the external yard should therefore be liable for development contributions at one third the commercial rate in respect of an area of 390.07sqm.

7.10. Benefit of Luas

- 7.10.1. The applicant also argues that the proposed development does not benefit from the use of the Luas as it depends on marine and HGV traffic. While this is largely correct, and I acknowledge that the facility would operate 24 hours a day, the applicant did not factor into their appeal that the building will need to be staffed and while parking spaces are proposed to be provided, the development also makes provision for cycle and pedestrian access to the site. The proposed development would be a c1.1km walking distance from the Point Luas stop, which is less than a 15 minute walk. The applicant's Transport Statement made reference to pedestrian access. Therefore, I am satisfied that the proposed development would benefit from the provision of the Luas and the application of a Section 49 supplementary development contribution is appropriate.

7.11. Legislation

- 7.11.1. The applicant states that the development is not consistent with Section 48(2)(A) and (b) and Section 49 (2)(a) and (c) of the Planning and Development Act 2000, as amended. I have read these sections and I am satisfied that both development contributions schemes set out the basis for the determination of contributions in respect of different classes or descriptions of development and is consistent with these individual sub-sections of the Planning and Development Act 2000 (as amended).

7.12. Conclusion

- 7.12.1. Having assessed all of the available information in respect of the proposed development, I am satisfied that the applicant and the intended user of the proposed buildings are commercial operators as are the activities that they currently carry out and propose to continue carrying on within the application site. Notwithstanding that the proposed buildings and their uses are consistent with the definition of port operational buildings in the Planning and Development Regulations 2001 (as amended), there is nothing in either the section 48 or section 49 development contribution schemes to suggest that port operational buildings cannot be considered to be commercial buildings or that they are exempt from the payment of development contributions.
- 7.12.2. In reaching a conclusion in respect of both the section 48 and 49 contributions, I have had regard to the response to the planning authority to the grounds of appeal, which included, the basis for calculating the development contributions. I have also had regard to the clear indication in the contribution calculation sheets, that the floor area of the buildings that are to be demolished, should be deducted from the proposed gross floor area in respect of the proposed Section 48 contribution, but that no such deduction is provided for in the Section 49 supplementary development contribution scheme.
- 7.12.3. While the planning authority did not specifically refer to the individual buildings in its calculations and considered the entire floor area to be commercial, I have also concluded that the covered external yard should be liable to a reduced rate of contribution in respect of both the Section 48 and Section 49 contribution schemes as I consider it to constitute 'open storage/hard surfaced commercial space rather, other than car parking', and for that reason I consider that the external yard should therefore be liable for development contributions at one third the commercial rate in respect of the area of 390.07sqm.

8.0 Recommendation

Condition No 2

The board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, consider based on the reasons and considerations set out

below, that the terms of the development contribution scheme for the area had not been properly applied in respect of condition number 2 and directs the said council to AMEND condition number 2 so that it shall be as follows for the reason stated:

- 2 The developer shall pay to the planning authority a financial contribution of €417,178.26 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 the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provision of the scheme at the time of payment.

Amended calculations to accord with the Dublin City County Council Development Contribution Scheme 2023-2026 shall be as follows:

- A Total net floor area subject to development contribution = 3,796sqm
- B 3405.12sqm of commercial floor space charged at €118.00 per sqm = ` €401,805.34
- C 390.87sqm (the external covered yard charged at one third the commercial rate of €39.33 per sqm in accordance with Section 11 of the Development Contribution Scheme where 'open storage / hard surface commercial space, other than car parking, shall be liable for development contributions at one third of the commercial rate = €15,372.92.

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

Condition No 3

The board, in accordance with section 49 of the Planning and Development Act, 2000, as amended, consider based on the reasons and considerations set out below, that the terms of the Luas C1 Supplementary Development Contribution

Scheme for the area had not been properly applied in respect of condition number 3 and directs the said council to AMEND condition number 3 so that it shall be as follows for the reason stated:

3 The developer shall pay to the planning authority a financial contribution in the amount of €196,781.26 in respect of the LUAS Red Line Docklands Extension (LUAS C1) Scheme in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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.

Amended calculations to accord with the Dublin City County Council LUAS Red Line Docklands Extension (LUAS C1) Supplementary Development Contribution Scheme shall be as follows:

- A Total net floor area subject to development contribution = 5,439sqm.
- B 5,048.13sqm of commercial floor space charged at €38.00 per sqm = ` €191,828.94.
- C 390.87sqm (the external covered yard charged at one third the commercial rate of €12.67 per sqm in accordance with Section 12 of the supplementary Development Contribution Scheme where 'open storage / hard surface commercial space, other than car parking, shall be liable for development contributions at one third of the commercial rate = €4,952.32.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Joe Bonner

Senior Planning Inspector

16th September 2024