

Dublin City Council
"RZLT Map",
Active Land Management Unit,
Planning and Property Development Department,
Block 4, Floor 2 Civic Offices,
Wood Quay,
Dublin 8,
D08 RF3F

1 April 2025

Re: Dublin County Council's Determination to include Parcel ID DCC000064293 on the RZLT Annual Draft Map for 2026.

A Chara,

We, McCutcheon Halley of Kreston House, Arran Court, Arran Quay, Dublin 7, act on behalf of our client,

This submission relates to Parcel ID No. DCC000064293 (the "Parcel") and is made pursuant to Section 653D of the Taxes Consolidation Act 1997 (TCA), as amended. The Parcel is owned by our client and is included by Dublin City Council (DCC) on the Residential Zoned Land Tax (RZLT) Annual Draft Map for 2026, see Figure 1.

The criteria for including land in the draft RZLT maps are set out in legislation. Guidance has been issued by the Department of Housing, Local Government and Heritage for the assistance of local authorities. The relevant legislation and Guidance documents are as follows;

- Part 22A of the TCA
- Guidelines on the Operation of Residential Zoned Land Tax (RZLT) RZLT Registration
- the RZLT Guidelines (Revenue, March 2025)
- Residential Zoned Land Tax Guidelines for Planning Authorities (Department of Housing, Local Government and Heritage, June 2022)

It is noted that the referenced Guidelines are for assistance only, they cannot extend the scope of the legislation. In so far as there is any conflict between the wording of the legislation and that of Guidelines, the legislation takes precedence. Without prejudice to this, our submission also outlines why, having regard to the RZLT Guidelines, the lands should be excluded.

1.1 Parcel ID DCC000064293

Parcel ID DCC000064293 is part of the Mass Road, Dublin 12, and the draft map identifies that it covers an area of approximately 0.84 hectares. It is noted that our calculation of the area identifies the Parcel as encompassing 0.823 hectares.



Figure 1 Parcel ID No. DCC000064293 Residential Zoned Land Tax - Annual Draft Map for 2026 (Source: Department of Housing, Local Government and Heritage)

Please see **Attachment 1** for the required Site Location Plan to a scale of 1:1,000.

Proof of Ownership is included in **Attachment 2**.

1.2 RZLT History: Parcel ID DCC000064293

The site was included on the draft 2025 map published in February 2024. A submission was made to Dublin City Council ("DCC") in March 2024 setting out why it should not be included in the 2025 Map, but DCC issued a determination on 28 June 2024 ("the DCC 2024 Determination") that the site should be included in the 2025 map.

An appeal was submitted to An Bord Pleanála on 31 July 2024.



By Order of An Bord Pleanála ("the Board") dated 17 October 2024, it was again determined that the site should remain in the 2025 map ("the Board's 2024 Determination).

An application for Judicial Review (see Section 1.4) of the Board's 2024 Determination is now pending before the High Court under Record No. 2024/1586JR. The reasons why the Board's 2024 Determination is wrong and unlawful is set out in full in the Statement of Grounds and Affidavit of in those proceedings. For the same reasons, it is submitted that the DCC 2024 Determination and its decision to include the site in the draft 2026 map are wrong.

It would appear that both DCC and An Bord Pleanála ("the Board") made similar errors in their respective assessments of the site and in the application of the relevant legal provisions when making their respective determinations in relation to the 2025 map. The following sets out a summary of the errors in law and errors of fact common to the DCC 2024 Determination and the Board's 2024 Determination. It would appear that the same errors in law and errors of fact have again led DCC to include the site in the draft 2026 map . The reasons they are wrong are set out below at paragraphs (i) to (iv) . DCC is now requested to remove the site from the 2026 map for these reasons.

- i. The Board and DCC in their respective determinations each erred in law by misinterpreting and/or misapplying the provisions of sections 653A and 653B(c)(ii) of the TCA 1997, Part 1 of the Planning and Development Act 2000 (as amended) (the "PDA 2000"), and Part 2 of the Planning and Development Regulations 2001 (as amended) (the "Regulations"), in determining that the Site was "vacant or idle" for the purposes of section 653B(c)(ii) of the TCA 1997. In particular, the Board and DCC erred in law and/or in fact in concluding that a material change of use of the Site had taken place for the purposes of the PDA 2000 without the benefit of planning permission. Further, both in relation to this conclusion and its application of section 653B(c)(ii) generally, the Board and DCC acted irrationally, failed to take into account relevant considerations and/or took into account irrelevant considerations.
- ii. The Board and DCC in their respective determinations each erred in law by misinterpreting and/or misapplying the provisions of section 653B(b) of the TCA 1997, in determining that the Site met the criterion that it may have access, or be connected, to public infrastructure and facilities, including in particular foul sewer drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development, and in relation to these matters the Board and DCC acted irrationally, failed to take into account relevant considerations and/or took into account irrelevant considerations.
- iii. The Board and DCC in their respective determinations erred in law and in fact by misinterpreting and/or misapplying the provisions of section 653B(c)(iii)(III) and (V) of the TCA 1997, in determining that the Site was not required for, or integral to, occupation by (1) energy infrastructure and facilities and/or (2) water and wastewater infrastructure and facilities, and in relation to these matters the Board and DCC acted irrationally, failed to take into account relevant considerations and/or took into account irrelevant considerations.



iv. The Board and DCC in their respective determinations erred in law by failing to consider whether the Site met the criteria for inclusion on the Draft Map on the relevant dates identified in Part 22 of the TCA 1997 and in relation to this matter the Board and DCC failed to take into account relevant considerations and/or took into account irrelevant considerations.

1.3 Judicial Review Proceedings (2024/1586JR)

To allow DCC to properly consider the matter and take any advice it needs to take before making its determination in relation to the 2026 map, it is considered appropriate that the full facts and legal arguments as are currently before the High Court should be made available to DCC and that all relevant documents should be provided to DCC.

Accordingly, we are attaching;

- The Statement of Grounds in the High Court Proceedings (Attachment 3)
- The Grounding Affidavit of (Attachment 4)
- The Book of Exhibits to the Affidavit of (Attachment 5). This includes the submissions to and determination by DCC and the Board in relation to this Parcel in 2024 as well as all other documents relevant to the proper assessment of this Parcel as required under the Section 653 TCA.

Each of the issues raised in the Statement of Grounds and Affidavit of applies to the recent decision of DCC to include the Parcel in the draft 2026 map and DCC is requested;

- to consider each of those issues in making its evaluation pursuant to Section 653E TCA 1997 as amended and
- ii. to exclude the site from the final map.

Attachments 3-5 provide the evidence that that based on a correct interpretation of the strict wording of the legislation, the Parcel does not now and did not satisfy the relevant criteria as defined in Section 653B of the TCA on either of the relevant dates being;

- 1 January 2025 (the last date for consideration of whether the Parcel meets the relevant criteria for inclusion in the RZLT map) and
- 1 January 2023 (the date which triggers a liability to RZLT in 2026)

and, therefore, the Parcel must be excluded.

1.4 Conclusion

In summary, our client seeks the exclusion of their land from the Annual Draft Map for 2026 for the following reasons:



- 1. The Parcel is zoned for a mixture of uses including residential use and is therefore land which is referred to in paragraph (a)(i) of Section 653B TCA. Such land may only be included on the map if it is reasonable to consider that it is vacant or idle. The Parcel is not vacant or idle because it is occupied by an operating business, and it is required for and integral to, the operation of that trade which is carried out on the Parcel. Further the use of the Parcel by is a fully authorised use. Further details of this including a comprehensive analysis of the planning history is set out;
 - a. Under **Core Ground 1** in the Statement of Grounds (**Attachment 3**, commencing at page 4).
 - b. At section 1.4.3, page 18 of the Appeal to the Board arising from the DCC 2024 Determination.(**Attachment 5** Tab 29)
- 2. The Parcel is not "land which satisfies the relevant criteria" as defined in Section 653B of the Taxes Consolidation Act 1997 as amended ("the TCA), because it is not reasonable to consider that the Parcel may have access or be connected to a <u>public water supply</u> or <u>foul sewer drainage</u> necessary for dwellings to be developed and with sufficient service capacity available for such development. Further details of this including a comprehensive analysis of the services in the vicinity and the appropriate interpretation of Section 653B are set out;
 - a. Under **Core Ground 2** in the Statement of Grounds (**Attachment 3**, commencing at page 14).
 - b. At section 1.4.1 (page 8) and section 1.4.2 (page 17) of the Appeal to the Board arising from the DCC 2024 Determination (**Attachment 5** Tab 29).
- 3. The RZLT map incorrectly and unlawfully fails to exclude the parts of the Parcel which it is reasonable to consider are required for or are integral to occupation by energy infrastructure and facilities and water and wastewater infrastructure and facilities. Further details of this including a comprehensive analysis of the services in the vicinity and the appropriate interpretation of Section 653B are set out;
 - a. Under **Core Ground 3** in the Statement of Grounds (**Attachment 3**, commencing at page 22).
 - b. At section 1.4.4 (page 27) of the Appeal to the Board arising from the DCC 2024 Determination (**Attachment 5** Tab 29).

This submission therefore requests that DCC conclude in its forthcoming Notification of Determination that Parcel ID No. DCC000064293 does not meet the relevant criteria and so should not be included in the final RZLT map to be published on the 31st of January 2026 and that Parcel ID DCC000064293 be removed from the Draft RZLT maps.

Should DCC invite Uisce Éireann or any third party to comment on this submission, then in accordance with the rules of natural justice, our client must be invited to comment on any submission or response before DCC makes a final determination.



Please do not hesitate to contact the undersigned should further information be required.



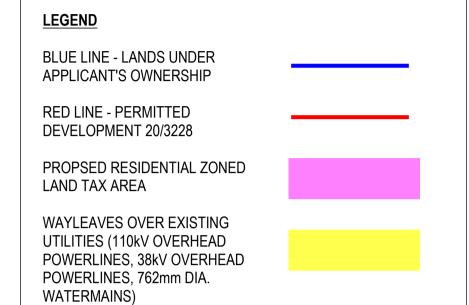
McCutcheon Halley Chartered Planning Consultants



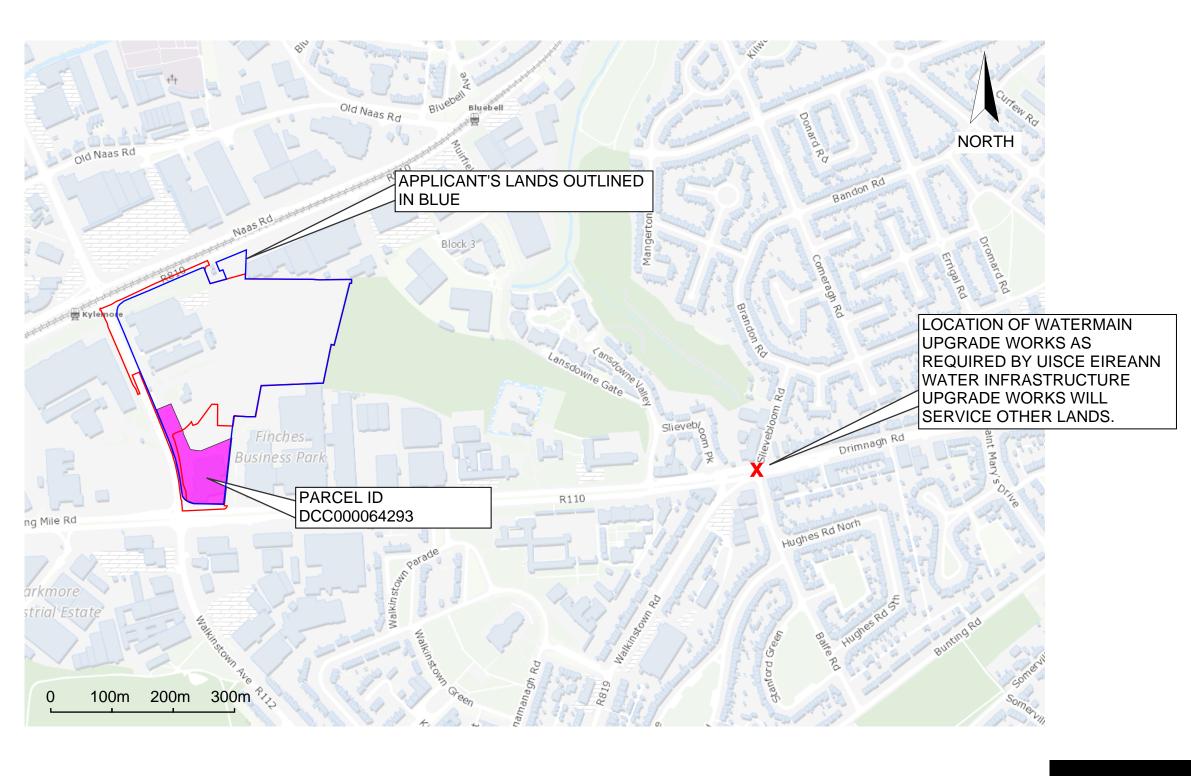
ATTACHMENT 1

Site Location Plan

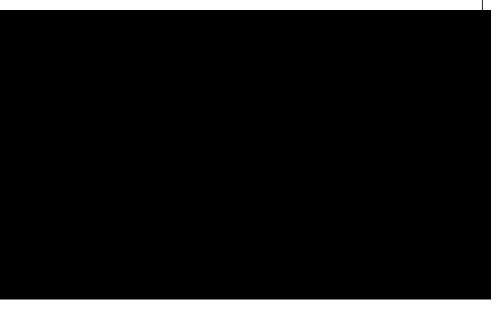
- TOPOGRAPHICAL SURVEY & GPR SURVEY CARRIED OUT BY 3RD PARTY SPECIALIST CONTRACTORS, DOB & ASSOCIATES TAKES NO RESPONSIBILITY FOR ACCURACY OF SURVEY INFORMATION.
- MAIN CONTRACTOR TO ESTABLISH INDEPENDENTLY ORDANCE DATUM ON SITE FOR LEVELS TO MAILIN HEAD DATUM AND CO-ORDINATES FOR SETTING OUT TO NATIONAL GRID.
- MAIN CONTRACTOR TO VERIFY ALL UNDERGROUND SERVICES ON THE SITE INCLUDING ALL ANOMALIES NOTED ON THE GPR SURVEY AND TO TAKE ALL NECESSARY PRECAUTIONS PRIOR TO ANY EXCAVATIONS ON THE SITE.
- REFER TO M&E ENGINEERS DRAWINGS FOR DIVERSION / DEMOLITION OF ALL UNDERGROUND ELECTRICAL CABLES / DUCTS, TELECOM DUCTS, LIGHTING DUCTS,







Rev.	Note	Date	Drawn	Check
S2.P01	ISSUED FOR INFORMATION	28.03.24	PD	PD
S2.P02	ISSUED FOR INFORMATION	28.03.24	PD	PD
S2.P03	ISSUED FOR INFORMATION	01.04.25	PD	PD





ATTACHMENT 2

Proof of Ownership

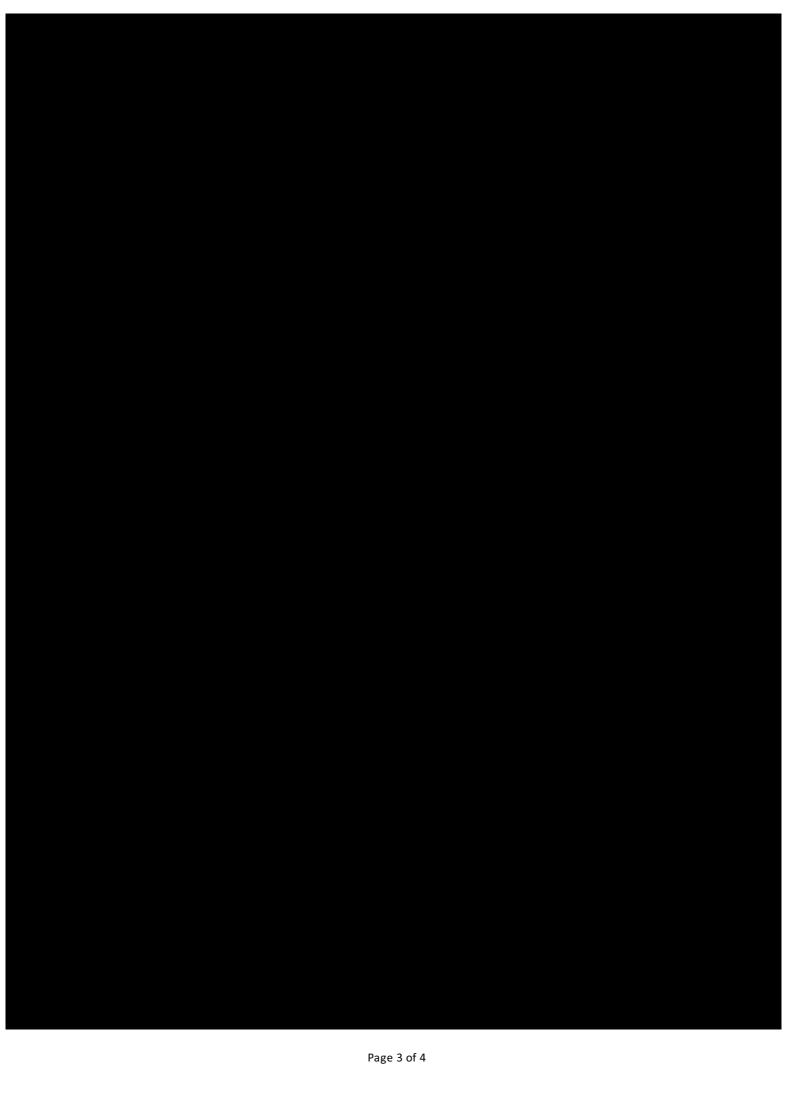
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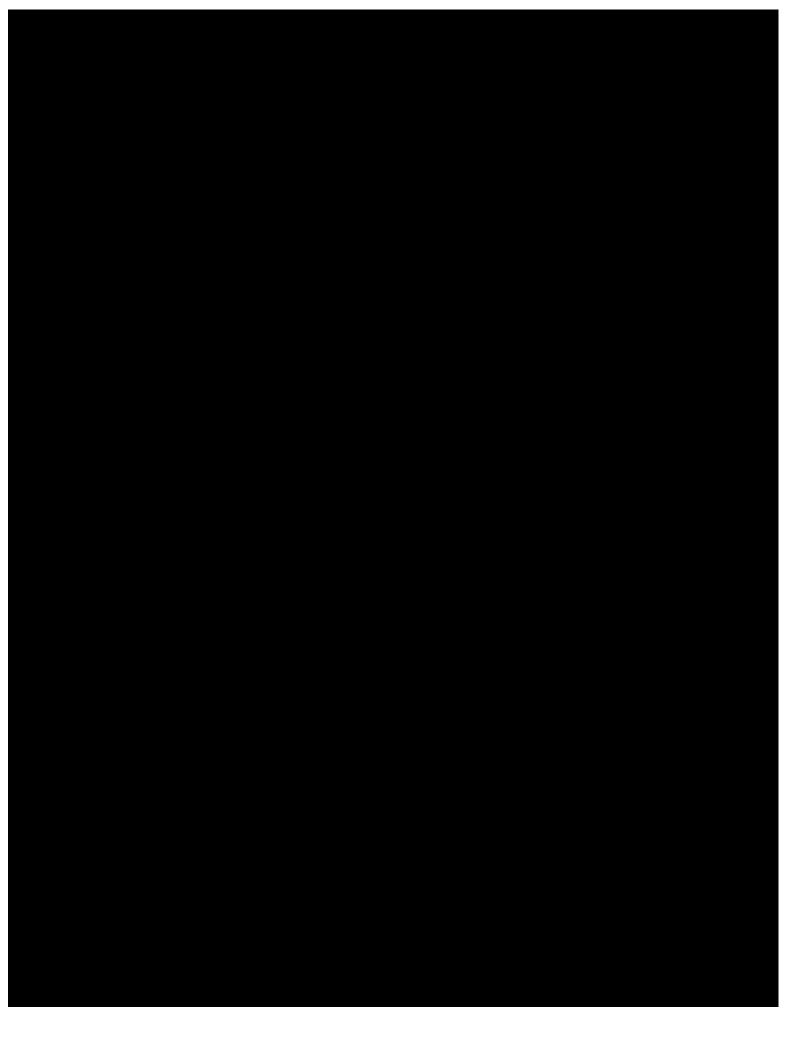
Land Registry

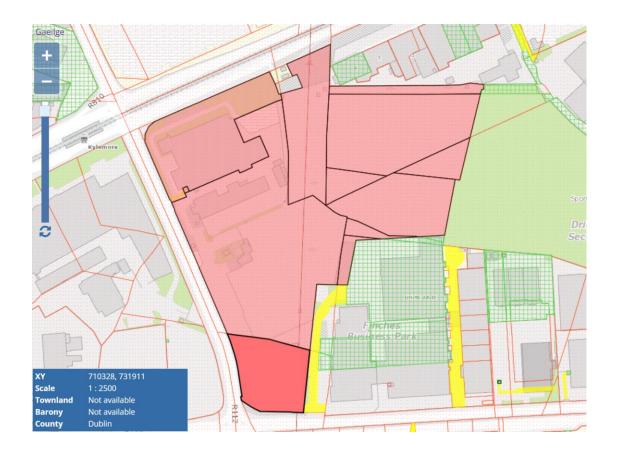
County Dublin	Folio 248746F	

Land Registry

County Dublin	Folio 248746F









ATTACHMENT 3

Statement of Grounds

THE HIGH COURT JUDICIAL REVIEW

Record No. 2024/ 1586 JR

IN THE MATTER OF PART 22A OF THE TAXES CONSOLIDATION ACT 1997 (AS AMENDED)

RETWEEN

	V Ex.				
		APPLICANT			
AND					
	AN BORD PLEANÁLA				
		RESPONDENT			
AND					
	DUBLIN CITY COUNCIL				
		NOTICE PARTY			
(4)	A DOME TO A DESCRIPTION OF THE PERSON OF THE				
(A)	APPLICANT'S NAME				
(TD)	A DDV TC LEVING A DODGE				
(B)	APPLICANT'S ADDRESS	A STATE OF THE PARTY OF THE PAR			
		THE HIGH COURS			
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(C)	APPLICANT'S DESCRIPTION	(2 0 DEC 2024			
		CENTRAL OFFICE			
		The state of the s			
(D)	RELIEF SOUGHT				
(1)	An Order of Certiorari by way of application for jud	licial review to quash the			
	Order of the Respondent, An Bord Pleanála ("the Board"), dated 17 October				
	2024 (Reference (Reference)) (the "Impugned				
	\	,			

determination of the Notice Party to include lands owned by the Applicant at

Longmile Road, Dublin 12 (the "Site") on the final map for Residential Zoned

Land Tax pursuant to Part 22A of the Taxes Consolidation Act 1997, as amended (the "TCA 1997").

- (2) Such declarations of the legal rights and/or legal position of the Applicant and (if and insofar as is appropriate) persons similarly situated and/or of the legal duties and/or legal position of the Respondent and/or the Notice Party as the Court considers appropriate.
- (3) If necessary, an Order for the discovery of documentation which is or has been in the power, possession or procurement of other parties hereto and which is relevant to any issue in these proceedings.
- (4) A Stay on the Impugned Order pending the determination of the proceedings.
- (5) A Stay on the operation of the Final Map in so far as it affects the Site the subject matter of these proceedings pending the determination of the proceedings
- (6) Such further or other relief as may appear appropriate.
- (7) An order providing for the costs of and incidental to these proceedings.

(E) GROUNDS UPON WHICH SUCH RELIEF IS SOUGHT

SECTION (E), PART A: CORE GROUNDS

The Applicant contends that the Impugned Order is *ultra vires* the Board and invalid on the following grounds.

(1) The Board in making the Impugned Order erred in law by misinterpreting and/or misapplying the provisions of sections 653A and 653B(c)(ii) of the TCA 1997, Part 1 of the Planning and Development Act 2000 (as amended) (the "PDA 2000"), and Part 2 of the Planning and Development Regulations 2001 (as amended) (the "Regulations"), in determining that the Site was "vacant or idle" for the purposes of section 653B(c)(ii) of the TCA 1997. In particular, the Board erred in law and/or in fact in concluding that a material change of use of the Site had taken place for the purposes of the PDA 2000 without the benefit of planning

permission. Further, both in relation to this conclusion and its application of section 653B(c)(ii) generally, the Board acted irrationally, failed to take into account relevant considerations and/or took into account irrelevant considerations.

- (2) The Board in making the Impugned Order erred in law by misinterpreting and/or misapplying the provisions of section 653B(b) of the TCA 1997, in determining that the Site met the criterion that it may have access, or be connected, to public infrastructure and facilities, including in particular foul sewer drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development, and in relation to these matters the Board acted irrationally, failed to take into account relevant considerations and/or took into account irrelevant considerations.
- (3) The Board in making the Impugned Order erred in law and in fact by misinterpreting and/or misapplying the provisions of section 653B(c)(iii)(III) and (V) of the TCA 1997, in determining that the Site was not required for, or integral to, occupation by (1) energy infrastructure and facilities and/or (2) water and wastewater infrastructure and facilities, and in relation to these matters the Board acted irrationally, failed to take into account relevant considerations and/or took into account irrelevant considerations.
- (4) The Board in making the Impugned Order erred in law by failing to consider whether the Site met the criteria for inclusion on the Draft Map on the relevant dates identified in Part 22 of the TCA 1997 and in relation to this matter the Board failed to take into account relevant considerations and/or took into account irrelevant considerations.

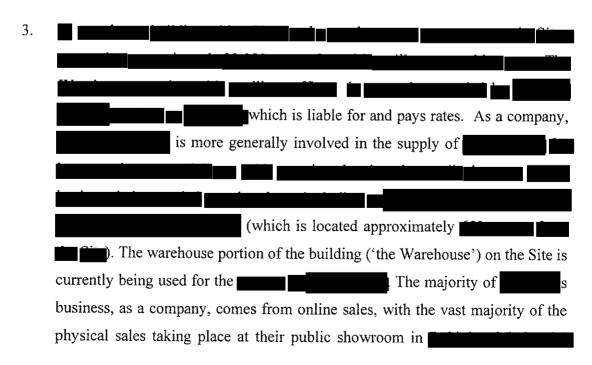
SECTION (E), PART B: PARTICULARS OF GROUNDS

CORE GROUND 1: The Board in making the Impugned Order erred in law by misinterpreting and/or misapplying the provisions of sections 653A and 653B(c)(ii) of the TCA 1997, Part 1 of the Planning and Development Act 2000 (as amended) (the "PDA 2000"), and Part 2 of the Planning and Development Regulations 2001 (as amended) (the "Regulations"), in determining that the Site

was "vacant or idle" for the purposes of section 653B(c)(ii) of the TCA 1997. In particular, the Board erred in law and/or in fact in concluding that a material change of use of the Site had taken place for the purposes of the PDA 2000 and the Regulations without the benefit of planning permission. Further, in relation to this conclusion and its application of section 653B(c)(ii) more generally, the Board acted irrationally, failed to take into account relevant considerations and/or took into account irrelevant considerations.

Context

- The Site is situate at the junction of Longmile Road and Walkinstown Avenue in Dublin 12 and measures 0.831 hectares. The Site is zoned Z14 - Strategic Development and Regeneration Areas in the Dublin City Development Plan 2022-2028. This envisages a mixture of uses, including residential use.
- 2. The Site immediately adjoins a larger site known as the fine the permitted development have recently commenced on foot of these permissions.



from the Site).

Relevant provisions of the TCA 1997

- 4. Section 653B of the TCA 1997 sets out the criteria having regard to which land is to be included in the draft residential zoned land tax map (the "Draft Map") to be prepared by a local authority pursuant to section 653C of the TCA 1997 and the final residential zoned land tax map (the "Final Map") to be prepared pursuant to section 653K of the TCA 1997 (together, the "RZLT Maps").
- 5. Section 653B of the Taxes Consolidation Act 1997, provides that land which is zoned for a mixture of uses, including residential use, does not satisfy the relevant criteria for inclusion in the RZLT map "unless it is reasonable to consider that the land is vacant or idle".
- 6. Section 653A defines "vacant or idle" land as:

"land that, having regard only to authorised development under the Planning and Development Act 2000, is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land".

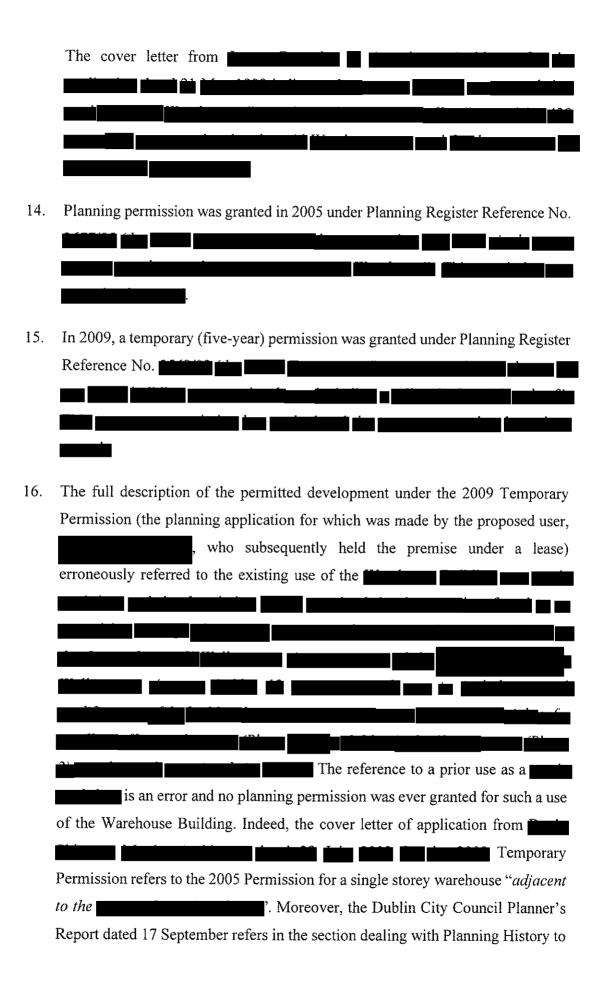
- 7. In effect, the assessment of whether lands are "vacant or idle" for the purposes of section 653B(c)(ii) involves consideration of the following two questions:
 - (i) whether the use of the lands is required for, or integral to, the operation of a trade or profession being carried out on or adjacent to, the land; and
 - (ii) whether that use is an authorised use.
 - 8. These matters will be addressed separately below but it is first necessary to consider the relevant planning history of the Site.

The Planning History

- 9. The following grants of planning permission (the "Permissions") have issued in respect of the Site. The permitted use as a warehouse was established by the first two permissions referred to below granted in 1978 and 1980 respectively. In his report at p. 9 the Board's Inspector states that he carried out an online planning search to ascertain the planning history of the Site. However, his online search could not have revealed and did not in fact reveal the 1978 or 1980 permissions which were not available online, but were archived by the Council.
- Planning permission was initially granted in 1978 under Planning Register Reference No. 0194/78 (the "1978 Permission") to

 The cover letter dated 24 January, 1978, for the planning application, states that

 The Ground and
- Planning permission was granted in 1980 under Planning Register Reference No.
- 12. Planning permission was granted in 1992 under Planning Register Reference No.
- 13. Planning permission was granted in 1999 under Planning Register Reference No.



the 2005 Permission which confirms the existing use as a warehouse and does not make any reference to any use as a

- 17. The 1978 permission for enurse for the benefit of the land pursuant to Section 39(1) of the Planning and Development Act 2000, as amended ('the 2000 Act'). *The Council Decision*
- 18. On 28 June 2024, the Notice Party issued a Notification of Determination (the "Council Decision") which concluded that the Site should be included on the final RZLT map to be published on 31 January 2025. The reasons provided included that the lands "are vacant/idle, as there is no active authorised use on the lands which is required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land."

The Appeal

- 19. McCutcheon Halley, Chartered Planning Consultants, on behalf of the Applicant, appealed the determination of the local authority by submission dated 31 July 2024 (the "McCutcheon Halley Appeal Submission"). The grounds of appeal included that it was not reasonable to consider that the Site is "vacant or idle" for the purposes of section 653B(ii), in circumstances where it is in use for the purposes of a business being carried out on or adjacent to the Site, which is not an unauthorised use.
- 20. An inspector prepared a report on behalf of the Board on 30 September 2024 (the "IR"). The IR (at [7.3]) cites the following extract from page 12 of the RZLT Guidelines:

"In the legislation "vacant or idle land" means land which...is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to the land; the first step is to determine if the development on the land is required for, or integral to a trade or profession being carried out on the land or adjacent to the land".

21. The IR further stated (at [7.3]):

"I consider this land parcel to be vacant or idle as the land is not required for or integral to the operation of a trade or profession being carried out on, or adjacent to the land, with the main McSport premises not located on or adjacent to the land..."

The Impugned Order

23. By the Impugned Order made on 17 October 2024, the Board confirmed the determination of the local authority that the Site be included in the RZLT Maps. The Impugned Order provided the following reasons and considerations for its decision that the land is "vacant or idle":

"The land is vacant or idle as the land is not required for or integral to the operation of a trade or profession being carried out on or adjacent to the land, with the main not located on or adjacent to the land. Furthermore, a material change of use appears to have occurred on the land which would have appeared not to have the benefit of planning permission. As such, the land cannot avail of the exclusion as set out under section 653B(c)(II) of the Taxes Consolidation Act 1997 as amended."

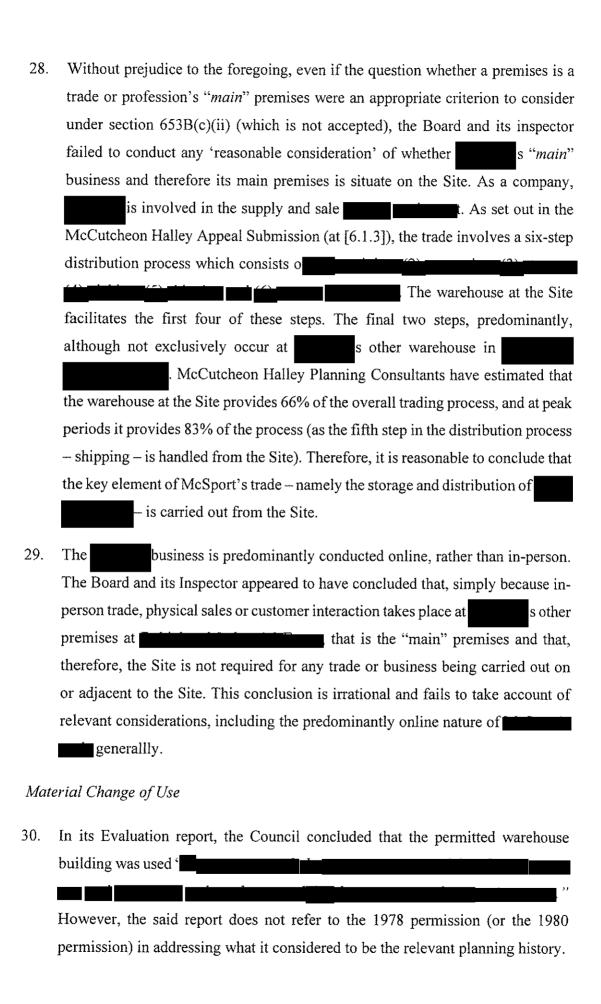
[Emphasis added]

24. In circumstances where the Board is applying the provisions of a taxation statute, there was an obligation on the Board to ensure that there was an objective basis on for it to "reasonably consider" that the criteria to determine whether land is "vacant or idle" apply in any given case. The Board, in making the Impugned Order, erred in law and in fact, and in the absence of any or any reasonably cogent evidence, in concluding that:

- (i) the Site is not required for or integral to the operation of a trade or profession being carried out on or adjacent to the Site; and
- (ii) a material change of use of the Site has occurred, which does not have the benefit of planning permission
- 25. Furthermore, even if a material change of use has occurred (which the Applicant denies), the Board failed to consider whether or not the change of use constituted exempted development.

The "Required for, or Integral to" Issue

- 26. The Impugned Order and the IR adopt an unjustifiably restrictive interpretation of the requirement in section 653A that the subject land be "required for or integral to the operation of a trade or profession being carried out on or adjacent to the land". The interpretation of this provision by the Board and its inspector appears to be that it is only the "main" business premises of a trade or profession that is to be considered when assessing what is "required for or integral to" the operation of that trade or profession ("with the main McSport premises not located on or adjacent to the land"- IR paragraph 7.3). This amounts to a material error of law. The words "required for" simply mean 'necessary'. Further, there was no reasonable basis for the Board or its Inspector to conclude that the Site was "not required for, or integral to" the premises on the Site, or that the buness being carried on by therein did not consitute "a trade or profession being carried out on or adjacent to the land" for the purposes of 653B(c)(ii).
- 27. There is no reasonable basis for holding that a particular trade or profession is only "being carried out on or adjacent to the land" if the "main" premises for the overall . By introducing a new requirement into section 653B(c)(ii), pursuant to which local authorities must assess which element of an overall business carried out at several locations is the "main business" and whether a company's "main" premises is situated on or adjacent to the land, the Board has misinterpreted the section and has taken account of irrelevant considerations.



- Building was for the storage of goods with some ancillary office use, and that it was used in connection with the distribution of specifically premises and/or agents at the time that the permission was granted. As referred to above, the cover letter dated 24 January, 1978, for the planning application, states that "the building is to serve as a central spare parts and accessories building for premises and/or agent's premises over a wide area. The Warehouse Building had an authorised use as a warehouse used for the storage of goods for the purposes of distribution over a wider area. The Ground and First Floor Plans for the 1978 Permission indicate that there were ancillary offices, sales counter and staff facilities provided within the Warehouse Building
- 32. Since the granting of the 1978 Permission (except for during the five-year lifespan of the Temporary 2009 Permission) the primary use of the Warehouse Building has at all material times been for warehousing or the storage of goods for the purposes of distribution.
- 33. The Board erred in law and/or in fact in concluding that "a material change of use appears to have occurred on the lands which would appear not to have the benefit of planning permission."
- 34. The Board reached the conclusion that a material change of use had occurred without establishing what the previous permitted use was and without considering the materiality of any change of use which might have occurred (which is not accepted) as a result of the commencement of the use of the premises by In order to determine whether there was a material change of use, the Board and its Inspector was obliged to consider whether (a) there was a change of use; and (b) if there was a change of use, whether it was material; i.e. whether the change gave rise to any materially different off-site planning impacts or materially different planning considerations. Neither the Board nor its Inspector conducted such an assessment.

- 35. Further, in concluding that a material change of use had occurred without the benefit of permission, the Board and its Inspector also failed to take into account the following material considerations:
 - (i) The fact that the planning permissions to which the Inspector referred and the applications on foot of which they were granted established that the existing use of the premises was for storage purposes in connection with the distribution of the goods stored. The fact that no enforcement steps were ever taken by the Council in relation to the said use for storage purposes.
 - (ii) The fact that the 1978 and 1980 permissions authorised use for the use of the Warehouse Building for the storage of goods for the purposes of distribution. The Board had an obligation to conduct a full planning search of the relevant planning history but it appears that the Inspector only conducted an online planning search (see IR p. 9) which would not have revealed the existence of the 1978 and 1980 permissions.
 - (iii) The fact that the 1978 and 1980 permissions enured for the benefit of the land and could not be abandoned (see 2000 Act, s.39(1), referred to above)...
 - (iv) The fact that the primary use of the Warehouse Building by also for storage purposes in connection with the distribution of the goods stored and could not, therefore give rise to a change of use and/or material change of use.
 - (v) The fact that the planning impacts of the use of the Warehouse Building by

 for the purposes of storing and equipment and
 distribution in relation to same, were no different to that of the use of the
 Warehouse Building for the purposes of storage purposes in connection
 with the distribution of spare parts. Any difference in the nature of the
 goods stored was not material for planning purposes.
 - (vi) The fact that following the expiration of the Temporary Permission, no permission was required for the resumption of the normal use of the

Warehouse Building (see 2000 Act, s.39(3), referred to above). The normal use was for the storage of goods for the purposes of distribution.

- (vii) The fact that "the main premises not located on or adjacent to the land." In so far as the Inspector considered this relevant to the question as to whether there was a material change of use of the Warehouse Building, the Inspector failed to consider the correct planning unit, being the occupational unit, i.e. the Warehouse Building itself. It was not relevant that another premises was located at and/or that there was a connection between this business and the trade or business being conducted in the premises on the Site.
- (viii) If (which is not accepted) there was a material change of use of the Warehouse Building, the Board was obliged to consider whether same was exempted development. Neither the Board not its Inspector considered whether the change of use was exempted development within the scope of Article 10 and Class 5 of the use classes under Part IV of the Second Schedule to the 2001 Regulations.

CORE GROUND 2: The Board in making the Impugned Order erred in law by misinterpreting and/or misapplying the provisions of section 653B(b) of the TCA 1997, in determining that the Site met the criterion that it may have access, or be connected, to public infrastructure and facilities, including in particular foul sewer drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development, and in relation to these matters the Board acted irrationally, failed to take into account relevant considerations and/or took into account irrelevant considerations.

The TCA 1997

36. Section 653B(b) of the TCA 1997 provides that land shall meet the relevant criteria for inclusion in the Draft Map where, *inter alia*, it is land that:

"it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting,

foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development".

The UE Correspondence

37. As part of the planning process for the Neighbouring Development, the Applicant made a pre-connection enquiry to Uisce Éireann ("UE") regarding the connection of the Neighbouring Development to the Irish Water network. By letter dated 11 February 2020 (McCutcheon Halley Appeal Submission, Attachment 6) (the "UE 2020 Letter"), UE informed the Applicant's agents that a new water connection could only be facilitated if upgrade works were undertaken to approximately 10 metres of UE pipe, which are located beneath a roadway at a location approximately 850 metres east of the Site. The letter stated as follows:

"In order to accommodate the proposed connection to Irish Water Network at the premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe as shown on the attached figure (red line). Irish Water currently does not have any plans to extend its network in this area. Should you wish to progress with the connection you will be required to fund this network extension."

38. Subsequently, UE submitted a letter to the local authority on 25 April 2024 (McCutcheon Halley Appeal Submission, Appendix 5) (the "UE 2024 Letter") in respect of the inclusion of the Site on the Draft Map. That report confirmed that the same upgrade works are required in order to service the Site as were identified in UE's letter of 11 February 2020 in respect of the Neighbouring Development. The report stated, *inter alia*, as follows:

"UE can confirm that the subject site is the Site is serviceable. As per the connection enquiry (appended to the appeal) in order to accommodate the proposed connection to Irish Water Network at the premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe. 10m of pipeline is not deemed substantial".

The Council Decision

39. The reasons provided in the Council Decision for including the Site in the Draft Map included that the lands "have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as confirmed by Uisce Éireann in its report dated 25 April 2024, and having regard to the brownfield nature of the lands and their location within the built-up footprint of the city".

The IR

- 40. The IR states (at [7.4]) that "the Site is within the urban area and it is reasonable to consider that the land may have access to or be connected to public infrastructure and facilities...necessary for dwellings to be developed and with sufficient service capacity for such development".
- 41. The IR notes the necessity to upgrade the UE pipe, but states that this does not exclude lands where sufficient service capacity is confirmed to exist.
- 42. The IR notes the observation in the McCutcheon Halley Appeal Submission that a statutory consent in the form of a road opening licence would be required in order to upgrade the pipe, which is situate under a public road. However, the IR states that it is a "common and routine occurrence" to apply for such a statutory consent/licence. The IR notes the following statement in the RZLT Guidelines (at p. 24):
 - "...examples where land would be considered out of scope would include where the works required to connect the land to services involve the crossing of European sites, rivers, streams or rail infrastructure where statutory consents are required".
- 43. The IR notes that the required works do not fall within any of the aforesaid categories.

The Impugned Order

44. By the Impugned Order, the Board confirmed the determination of the local authority that the lands be included in the final RZLT map. The Impugned Order contains, *inter alia*, the following reasons and considerations for that decision:

"The lands are located within an established urban area and have access to, or can be connected to, as required by 653B(b) of the Act, surface water drainage infrastructure, along with water supply and foul sewer drainage for which there is sufficient capacity available as evidenced by Uisce Eireann water supply and wastewater capacity registers which confirm capacity to serve the lands."

- 45. The Board erred in concluding that the Site met the requirement in section 653B(b) that lands "have access, or be connected, to public infrastructure and facilities, including... water supply... necessary for dwellings to be developed and with sufficient service capacity available for such development" (emphasis added). The position of UE, per the UE 2020 and 2024 Letters, is that a water connection for the Site could not be permitted unless an upgrade were undertaken to the UE public network (which network upgrade UE stated that it had no plans to undertake). Therefore, there was not "sufficient service capacity available" in the public water network for a residential development on the Site.
- 46. The phrase "with sufficient service capacity available" in section 653B(b) is in the present tense. This is logical, as the RZLT criteria are designed to assess whether a residential development could be constructed on a particular site at a particular point in time (and affixes the date of accrual of RZLT liability by reference to the date on which the land first satisfied the relevant criteria). Despite this, the UE 2024 Letter opines that the Site is "serviceable", provided however that upgrades to the public pipe network are undertaken, at the Applicant's cost. The term "serviceable" does not appear in the legislation and is not an appropriate criterion by which to assess whether lands are subject to RZLT.
- 47. The IR (at [7.5]) places reliance on the RZLT Guidelines, which provide that "a need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist". This broad claim is not explained or justified in any way in the Guidelines, other than to state, "Further details are

- provided in section 4 Implementation". Section 4 of the Guidelines in fact makes no further reference to upgrades.
- 48. The claim that a need for network upgrades does not exclude lands flies in the face of the present-tense description of public infrastructure in section 653B(b) as that "with sufficient service capacity available". Nor do the Guidelines attempt to constrain the remit of the general claim to particular upgrades, or to upgrades of a limited scale. The Guidelines instead appear to conclude that the words "with sufficient service capacity available" in section 653B(b) of the TCA 1997 in truth mean 'where sufficient service capacity can be made available, regardless of the scale of the network upgrades required to achieve this, or who is required to undertake same'. This is a radical constriction of the scope of section 653B(b), which has no basis in the wording of the legislation. This erroneous interpretation was relied upon and/ or adopted by the Board's Inspector as justifying the inclusion of the Site on the Final Map, as a consequence of which the Board's decision is invalid. It is apparent from the Board Direction dated 15 October, 2024, that the Board "decided to confirm the determination of the local authority, in accordance with the inspector's recommendation and reasons and considerations".
- 49. The Impugned Order appears to conclude that the only relevant considerations in assessing whether lands meet the requirements of section 653B(b) are whether:
 - (i) the lands are situate in an urban area, and
 - (ii) there is sufficient capacity for a residential development on the lands in the UE Water Supply and Wastewater Capacity Registers.
- 50. However, UE water supply and wastewater capacity registers merely state whether there is sufficient water supply and wastewater treatment capacity at Uisce Éireann treatment plants to support future development in the area. The registers do not identify whether there is sufficient *carrying infrastructure* in any particular area to convey water and wastewater from a future development to those treatment plants. This carrying infrastructure is an essential part of the "public infrastructure" described in section 653B(b) of the TCA 1997, in which

sufficient capacity must be available. The Board thus misinterpreted the legislation and failed to take account of the capacity of such carrying infrastructure as a relevant consideration.

51. Although it is unfortunately unclear from the Impugned Order what considerations the Board took into account, it appears that the Board may have influenced by the following extract from the RZLT Guidelines (at p.6; referenced at p.12 of the McCutcheon Halley Appeal Submission):

"All brownfield lands within existing built up town centre, district centre or local centre type mixed use zonings, should generally be considered to be in-scope, unless lack of capacity in water treatment plants servicing the settlement is confirmed by Irish Water."

(Emphasis added)

- 52. Insofar as the aforesaid extract from the Guidelines only refers to the capacity of water treatment plants, this is an error in the interpretation of the legislation, for the reasons set out above. Nonetheless, even taking the above extract from the Guidelines on its merits, the principles it sets out are general ones (as underlined by the phrase "should generally be considered") rather than complete and sufficient criteria for the inclusion of lands in the Draft Map. Where, despite its location within an urban area, it is proven that it is not in fact possible to connect a particular landholding to public services (or it is only possible to do so following upgrade works on public or third-party lands) the landholding cannot be considered in scope under the wording of section 653B(b) as "sufficient service capacity" is not "available for such development"
- 53. The IR (at [7.6]) relies on the following extract from the RZLT Guidelines (at p.24):

"If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered out of scope. Notwithstanding other development or works which may be considered.

<u>examples</u> where land would be considered out of scope would include where the works required to connect the land to services involve the crossing of European Sites, rivers, streams or rail infrastructure <u>where statutory</u> consents are required."

(Emphasis added)

- 54. The IR concludes that the Site is in scope as the "appeal lands do not fall within these aforementioned categories", despite the said categories being used in the RZLT Guidelines as examples only. The construction of a residential development on the Site would require the opening of a busy public road, which would require a road-opening licence pursuant to section 13 of the Roads Act, and there is no reasonable or reasoned basis for distinguishing same from the works required to traverse a "stream" (which the Guidelines state would generally take lands out of scope).
- 55. In any event, the above extract from the RZLT Guidelines refers to works that are required "to connect" the subject lands to public services. (This is in line with the words "have access, or be connected, to" in section 653B(b)). However, the works in the present case are not works "to connect" the Site to public infrastructure, but are works to that public infrastructure itself. This is a crucial distinction. There is no statutory basis (on the wording of section 653B or otherwise) for requiring the Applicant to carry out works to public infrastructure as opposed to works to connect the Site to that public infrastructure in order to avoid liability for RZLT.
- 56. Finally, the interpretation of section 653B for which the Board has adopted apart from being unsupported by the wording of the section –is not consistent with the State's guarantee of the protection of constitutional property rights. For the legislation to require landowners to carry out upgrades to public infrastructure in order to avoid a penal tax liability would constitute an unjust attack on the property rights of those landowners under Articles 40.3 and 43 of the Constitution. Furthermore, in circumstances where the infrastructural upgrade benefits the wider community, as in the present case, the imposition of such a cost burden on a particular (and where that landowner will have no means of

recovering the costs thereof from other landowners), such an interpretation would, addition to being a breach of property rights, would also amount to a breach of the constitutional guarantee of equality under Article 40.1 of the Constitution.

- 57. It is the Applicant's case that no reasonable interpretation of the wording of section 653B renders lands in scope where upgrades to the capacity of public infrastructure (including the capacity of public carrying infrastructure) are required to be undertaken. However, even if such an interpretation were reasonably available, that interpretation is, for the reasons set out above, inconsistent with the protection afforded to property rights under the Constitution. Where two possible interpretations of a legislative provision are available, one of which would render the legislation unconstitutional and one of which would render it Constitutional, the Constitutional interpretation must prevail. The interpretation contended for by the Applicant (under which a lack of capacity in public carrying infrastructure will render lands out of scope) would avoid inequality, and an unjust attack on property rights under the Constitution and must, therefore, prevail
- 58. As for the connection of the Site to wastewater services, it is a condition of the planning permission for the Neighbouring Development (Planning Registry Reference No. 3228/20) that a spur be constructed to facilitate the future connection of the Site to the wastewater drainage system. This will direct wastewater through the Neighbouring Development to the existing combined 9B trunk sewer situate to the north of the Neighbouring Development on the Naas Road. Such a condition was included as it was noted that the Site could not otherwise be serviced with foul sewer drainage, there being insufficient capacity in the sewer on the Longmile Road.
- 59. In the absence of the envisaged spur on the Neighbouring Lands, access to the public wastewater network will not be possible for the Site. It cannot, therefore, be concluded for the purposes of section 653B(b) that "sufficient service capacity" is "available for such development". The use of the word "available" without any conditionality or qualification can only be interpreted as meaning

current availability at the relevant date to be considered rather than availability at some unspecified future date, which is also contingent on works being carried out elsewhere. Moreover, at the time of making the assessment, the Board was not entitled to assume that the Neighbouring Development would be constructed. The Board thus erred in concluding that the Site complied with the criteria under section 653B(b).

CORE GROUND 3: The Board in making the Impugned Order erred in law by misinterpreting and/or misapplying the provisions of section 653B(c)(iii)(III) and (V) of the 2007 Act in determining that the Site was not required for, or integral to, occupation by (1) energy infrastructure and facilities and/or (2) water and wastewater infrastructure and facilities, and in relation to these matters the Board acted irrationally, failed to take into account relevant considerations and/or took into account irrelevant considerations.

60. Section 653B(c)(iii)(III) and (V) of the 2007 Act provides that land does not meet the relevant criteria where it is land:

"that it is reasonable to consider is required for, or is integral to, occupation by—

- ...(III) energy infrastructure and facilities,
- ...(V) water and wastewater infrastructure and facilities."
- 61. The IR interprets the provisions of section 653B(c)(iii)(III) and (V), and in particular the requirement that the lands be "required for" or "integral to" occupation by the aforesaid infrastructure, as involving a consideration whether the Development Plan identifies the lands for the provision of such infrastructure and facilities (IR, at [7.8]). Indeed, the IR appears to treat the designation of the lands in the Development Plan as the sole criterion in assessing whether the lands are required for or integral to occupation by such infrastructure and facilities. In that regard, the IR states as follows (at [7.8]):

"Noting that the Dublin City Development Plan 2022-2028 does not identify the subject lands for the provision of energy and water

infrastructure in accordance with the above, it is reasonable to consider that the land parcel is in scope."

62. In reaching this conclusion, the IR cites the following provision from the Guidelines:

"Where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I) – (VII) above by way of a statement or written objective, but does not specifically identify land within a statutory plan for those uses, the whole of the land area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out."

- 63. As already indicated above, the Board Direction dated 15 October 2024, that the Board "decided to confirm the determination of the local authority, in accordance with the inspector's recommendation and reasons and considerations". The reasons contained in the Impugned Order Impugned Order also include the statement that "The Dublin City Development Plan 2022-2028 has not identified the subject lands for the purposes of energy infrastructure and facilities and water and wastewater facilities" and that, therefore, the Site does not come within section 653B(c)(iii)(III) and (V). It is, therefore, clear that the same rationale appears to have been applied in the Impugned Order and in the IR.
- 64. Despite section 653B(c)(iii) of the TCA 1997 making no mention whatsoever of a local authority's development plan, the Board and its inspector thus concluded that the determining and/or relevant factor in assessing whether lands are "required for" or "integral to" occupation by energy, water or wastewater infrastructure is whether the lands have been designated for such uses in the Development Plan. Had the draughtsman of the relevant provisions of the TCA 1997 intended that the designation of lands in the Development Plan be the yardstick by which a decision-maker is to determine whether the lands are required for or integral to occupation by public infrastructure, it would have been a straightforward matter to expressly so provide. However, he did not do so. The words "required for or integral to" must, therefore, be given their ordinary meaning. In transposing into the statutory wording an alternative meaning

- necessitating regard to be had to the Development Plan, which is not provided for in the legislation, the Board took account of irrelevant considerations.
- 65. The Board further acted irrationally and/or failed to take into account relevant considerations by interpreting and applying the provision that lands be "required for" or "integral to" occupation by public infrastructure in so far as it failed take into account or attach any or any adequate weight to the following relevant considerations:
 - (i) the physical presence of such public infrastructure on those lands;
 - (ii) any legal obligation on the landowner not to interfere with and to retain that infrastructure; and
 - (iii) the stated position of the statutory utility companies (in this case UE and the ESB) that the infrastructure is required to remain in place.
- 66. Where essential public infrastructure traverses lands, and where the landowner is legally prohibited from removing that infrastructure or from building on, over or within a certain number of metres thereof, it is perverse to conclude that the lands are not "required for" occupation by such infrastructure. The position adopted in the Impugned Order and the IR appears to be that, despite the lands in fact being required for or integral to occupation by such infrastructure, they are to be deemed not to be so required in the absence of any designation in the Development Plan confirming this to be the position. The consideration given by the Board to this criterion is unreasonable and its interpretation of section 653B(c)(iii)(III) and (V) is mistaken in law. The site does not meet the criteria for inclusion in the Draft map having regard to the said provisions.
- 67. The interpretation of section 653B(c)(iii) advanced by the Board would constitute an unjustified attack on the constitutional property rights of a landowner. In the present case, a significant part of the Site, comprising approximately 35% of its total area, is sterilised by the relevant UE and ESB infrastructure, yet remains subject to a penal tax. While the compulsory acquisition of wayleaves, and consequent sterilisation of land parcels, by statutory bodies has been held to be a

permissible restriction of constitutional rights, the imposition of a further penal tax liability on landowners, in respect of lands that were compulsorily sterilised and on which no works can be carried out, would be a disproportionate and invalid interference with property rights in the present case This, in effect, would involves the State prohibiting a landowner from building on parts of his land and then imposing a penal tax liability on him for his failure to do so.

- 68. That the tax liability could ultimately arise by virtue of the failure of the local authority in properly designating the lands as being required for such infrastructure in the Development Plan only serves to render the interference with the landowner's property rights more arbitrary and unjust.
- 69. It is the Applicant's case that the meaning of the words "required for or integral to" in section 653B(c)(iii) is clear and unambiguous. It involves a consideration of whether the lands are, in fact, necessary for the various infrastructural uses set out in that section. However, if there is any ambiguity as to the meaning of the section, the interpretation that is constitutionally sound must prevail. The interpretation contended for by the Applicant would avoid the constitutional inconsistency triggered by the approach taken by the Board and so must be preferred.
- 70. Finally, the Board's inspector and consequently the Board took account of irrelevant considerations in concluding that the Site was not required for or integral to the aforesaid infrastructure. The IR (at p. 11) notes that the permission granted for the Neighbouring Development "incorporates the on-site electricity and water infrastructure with open spaces and roads serving the development aligned along the utility routes and wayleaves". The IR, thus, concludes that, "This permission demonstrates that a residential development can be accommodated with the aforementioned infrastructure being in situ". The Board's inspector states that this "reinforces" his view that the Site is not required for, or integral to, occupation by the said infrastructure. In so concluding, the Inspector misinterpreted section 653B(c)(iii) and took into account an irrelevant consideration, namely whether, any development of the Site could be accommodated with the "aforementioned infrastructure being in situ."

CORE GROUND 4: The Board in making the Impugned Order erred in law by failing to consider whether the Site met the criteria for inclusion on the Draft Map on the relevant dates identified in Part 22 of the TCA 1997 and in relation to this matter the Board failed to take into account relevant considerations and/or took into account irrelevant considerations.

- 72. Pursuant to section 653C(1)(a) of the TCA 1997, a local authority must publish a draft map identifying "land that, based on the information available to it, it considers to be land satisfying the relevant criteria one month prior to the date specified in subsection (2)". The date specified in subsection (2) is 1 November 2022. Thus, for the first Draft Map, the date on which the land was to be assessed for satisfaction of the relevant criteria was 1 October 2022 (one month prior to 1 November 2022).
- 73. Pursuant to section 653C(1)(b)(i), in preparing a draft map, the local authority must specify "the date on which, based on the information available to it, it considers that land referred to in paragraph (a) first satisfied the relevant criteria, where that date is after 1 January 2022".
- 74. Thereafter, pursuant to section 653K, having had regard to the submissions received in respect of the draft map and other considerations set out in that section, a local authority is obliged to prepare a final RZLT map.
- 75. Section 653M provides for the annual revision of the final RZLT maps. It provides, in sub-section 1, that a local authority shall, "by 31 January in each year, commencing in 2025, revise the final map previously published by it under this Chapter and publish that final map as so revised". Sub-section 2 and 2(a) provide that the process for determining the final map as set out in, inter alia, sections 653C and 653K is to apply but that, for subsequent years, "references in subsections (2) and (3) of section 653C to 1 November 2022 shall be construed as references to 1 February in the year immediately prior to the year concerned".

- 76. Accordingly, in preparing a draft map and subsequently a final map for any given year, a local authority must assess whether the subject lands met the criteria for inclusion in the RZLT maps on a day one month prior to 1 February in the preceding year (i.e., on 1 January in the preceding year). Thus, in preparing the 2025 Final Map (which is the subject of the within application for review), the relevant date on which the local authority was obliged to assess whether the Site met the relevant criteria was 1 January 2024.
- 77. Additionally, section 653K(II) requires that, in preparing a final map, the local authority specifies "the date on which land identified on the map first satisfied the relevant criteria, where that date is after 1 January 2022".
- 78. The reason that the legislation requires the local authority to identify the date on which the relevant criteria are first satisfied is that, pursuant to section 653Q(1) of the TCA 1997, lands which met the relevant criteria on 1 January 2022 were to be liable to RZLT in 2024 (subsequently deferred until 2025 by section 92(5) of the Finance (No.2) Act 2023). Where lands first met the relevant criteria after 1 January 2022, liability is to commence in the third year following the year in which the land first satisfied the criteria.
- 79. Therefore, in preparing the RZLT Maps for 2024, consideration should have first been given to the following questions:
 - (i) whether the Site met the relevant criteria on 1 January 2024. If not, it should not have been included in the Final Map.
 - (ii) when the Site first satisfied the relevant criteria, if that date was after 1 January 2022. This will determine when liability to RZLT commences.
- 80. In the present case, there is no indication that the Board or the inspector assessed either of those questions. The reasons and considerations given by the Board in the Impugned Order are all in the present tense, indicating that the date of assessment was taken to be the date on which the Impugned Order was made. Similarly, the IR adopts a present tense analysis of when the Site met the relevant criteria, and does not assess whether the Site met the criteria on 1 January 2022,

- 85. Section 653AE of the TCA 1997 allows a person who has appealed or sought judicial review of a determination of a local authority or the Board that their lands be included in the final RZLT map to defer their RZLT liability while the appeal or judicial review proceedings remain to be determined. Pursuant to section 653AE(1) an applicant is only entitled to a deferral where an application for judicial review "has been made but not determined" one month prior to the publication of a final map under section 653K or a revised map under section 653M.
- 86. Therefore, section 653AE only allows a deferral of the taxation consequences of the entry of lands on the Final Map where an application for judicial review "has been made but not determined" by 1 January 2025 (one month prior to the date for publication of the Final Map, which is 31 January 2025).
- 87. The Applicant contends that an application for judicial review is "made but not determined" for the purposes of section 653AE on the filing of proceedings, such that the Applicant will be entitled to a deferral pursuant to that section having filed the within proceedings prior to 1 January 2025. The Applicant is seeking clarification from Revenue that this interpretation is accepted by Revenue, and seeks a stay on the Impugned Order such that no liability to RZLT will arise pursuant to the Impugned Order while the within proceedings remain to be determined.

SECTION (E), PART C: JURISDICTIONAL CRITERIA

88. The Applicant owns the Site which, as a result of the Board Order, has been entered on the final RZLT map and will thus be subject to taxation at 3% of its market value per annum from 31 January 2025. The Applicant, therefore, has sufficient interest in the decision that is challenged.

SECTION (E), PART D: FACTUAL GROUNDS

89. The Site is situate at the junction of Longmile Road and Walkinstown Avenue and measures 0.831 hectares. The Site is zoned Z14 – Strategic Development and

	envisages a mixture of uses, including residential use.
90.	The Site is part of a larger plot known as the ". The Site itself contains a warehouse, office and car showroom building, with ancillary car parking areas. It is currently occupied by trading as which is a trade/ retail business involved in the supply of and commercial use. The warehouse portion of the building is currently being used for the storage of the storag
Planning History	
91.	Planning permission was initially granted in 1978 under Planning Register Reference No. 2007 100 100 100 100 100 100 100 100 100
92.	Planning permission was granted in 1980 under Planning Register Reference No. The stated existing use of the building, and the proposed use of the extension, was cited in the permission as
93.	Planning permission was granted in 1992 under Planning Register Reference No.
94.	Planning permission was granted in 1999 under Planning Register Reference No.
95.	Planning permission was granted in 2005 under Planning Register Reference No.

Regeneration Areas in the Dublin City Development Plan 2022-2028. This

P6. In 2009, a temporary (five-year) permission was granted under Planning Register Reference No. This temporary permission has expired and the temporary use has long-since ceased.

Infrastructure

- 97. Overhead power lines and underground water infrastructure traverse portions of the Site. The electricity infrastructure comprises:
 - (i) the Cookstown-Inchicore 110KV double circuit (D.C.) overhead transmission line and one No. 110KV Lattice Mast; and
 - (ii) the Inchicore-Ballymount 38KV overhead power line and associated poles.
- 98. ESB Networks require (as per their letter dated 17 October 2019 addressed to
 - (iii) a lateral clearance to buildings of 20 meters at each side of the 110KV centre line;
 - (iv) a radio clearance of 23 meters from the centre of each 110KV tower; and
 - (v) suitably-designed crash barriers around new and existing masts.
- 99. There is an existing steel trunk watermain of 762 mm in diameter traversing part of the Site. Uisce Éireann requires (as per their letter dated 11 February 2020 addressed to a 16.75 meter wayleave centered over the watermain.
- 100. The clearance areas around the powerlines and tower, and the wayleave in respect of the watermain, effectively sterilise the parts of the Site that are the subject thereof.

The McCutcheon Halley Submission to the Local Authority

101. McCutcheon Halley, Chartered Planning Consultants, lodged a submission to the local authority following the inclusion of the Site on the draft RZLT map published on 1 February 2024. The submission stated that the Site should be excluded from the final map for the reasons set out therein, which largely mirror the grounds of the within application.

The UE Correspondence

102. By letter dated 11 February 2020 (lodged by McCutcheon Halley in its submission to the local authority), sent by UE to to stated as follows:

"In order to accommodate the proposed connection to Irish Water Network at the premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe as shown on the attached figure (red line). Irish Water currently does not have any plans to extend its network in this area. Should you wish to progress with the connection you will be required to fund this network extension.

The proposed development indicates that an important Irish Water asset is present on the Site. A wayleave in favour of Irish Water will be required to protect the 30" steel trunk main. No structures will be allowed within 8m of main (i.e. 16.75m width centre over main). Detailed proposals, including work method statements, insurance confirmation and details of work completed of a similar nature must be submitted to Irish Water for its consideration before approval will issue to undertaking work in close proximity to Irish Water assets. All such works in the vicinity of watermains or sewers greater than 400mm shall be subject to written agreement with Irish Water before construction commences on site. This agreement shall also include any necessary protection for watermains and sewers. The placing of concrete over or around watermains is expressly forbidden."

103. UE submitted a report to the local authority on 25 April 2024, which stated, *inter alia*, as follows:

"UE can confirm that the subject site is serviceable. As per the connection enquiry (appended to the appeal) in order to accommodate the proposed

connection to Irish Water Network at the premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe. 10m of pipeline is not deemed substantial".

The Local Authority Decision

104. On 28 June 2024, the local authority issued a Notification of Determination, which concluded that the Site should be included on the final RZLT map to be published on 31 January 2025.

The Appeal

- 105. On 31 July 20024, McCutcheon Halley, on behalf of the Applicant, appealed the determination of the local authority. The grounds of appeal were as follows:
 - (1) The Site is not "land which satisfies the relevant criteria" set out in section 653B of the TCA 1997, as it is not reasonable to consider that the Site may have access or be connected to a public water supply necessary for dwellings to be developed with sufficient service capacity available for such development.
 - (2) The Site is not "land which satisfies the relevant criteria" set out in section 653B of the TCA 1997 because it is not reasonable to consider that the Site may have access or be connected to foul sewer drainage necessary for dwellings to be developed and with sufficient service capacity available for such development.
 - (3) The Site is occupied by a business, which comprises an authorised development, and is not vacant and idle.
 - (4) The final RZLT map incorrectly and unlawfully fails to exclude the parts of the Site which it is reasonable to consider are required for or are integral to occupation by energy infrastructure and facilities, and water and wastewater infrastructure and facilities.
- 106. An inspector prepared the IR on behalf of the Board on 30 September 2024.

107. The inspector prepared an addendum report on 14 October 2024, as it had been noted that the report of the planning authority in respect of the Site had not been placed on the file as appropriate. The addendum IR concluded that no changes to the original IR were warranted in light of this.

The Impugned Order

108. By the Impugned Order made on 17 October 2024, the Board confirmed the determination of the local authority that the lands be included in the final RZLT map. It provided the following reasons and considerations for the Board's decision:

"The lands identified as parcel ID DCC000064293 on the RZLT Final Map are considered in scope of s653B(a) of the Taxes Consolidation Act 1997, as amended.

The lands are located within an established urban area and have access to , or can be connected to, as required by 653B(b) of the Act, surface water drainage infrastructure, along with water supply and foul sewer drainage for which there is sufficient capacity available as evidenced by Uisce Eireann water supply and wastewater capacity registers which confirm capacity to serve the lands. The Dublin City Development Plan 2022 - 2028 has not identified the subject lands for the purpose of energy infrastructure and facilities and water and wastewater facilities. It is considered that the land parcel is in scope and does not meet the provisions of s653B(c)(iii)(III) and (V) of the Act for exclusion from the Map. The land is vacant or idle as the land is not required for or integral to the operation of a trade or profession being carried out on or adjacent to the land, with the main not located on or adjacent to the land. Furthermore, a material change of use appears to have occurred on the land which would appear not to have the benefit of planning permission. As such, the land cannot avail of the exclusion as set out under section 653B(c)(II) of the Taxes Consolidation Act 1997 as amended. The land does not fall within the exemptions as set out under section 653B(c)(I) - (V) of the Taxes Consolidation Act 1997, as amended."

(F) NAME AND REGISTERED PLACE OF BUSINESS OF SOLICITORS FOR APPLICANT







ATTACHMENT 4

Grounding Affidavit of

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THE HIGH COURT JUDICIAL REVIEW

Record No. 2024/ 1586 JR

IN THE MATTER OF PART 22A OF THE TAXES CONSOLIDATION ACT 1997 (AS AMENDED)

APPLICANT
AND

AN BORD PLEANÁLA

RESPONDENT
AND

DUBLIN CITY COUNCIL

NOTICE PARTY

AFFIDAVIT OF

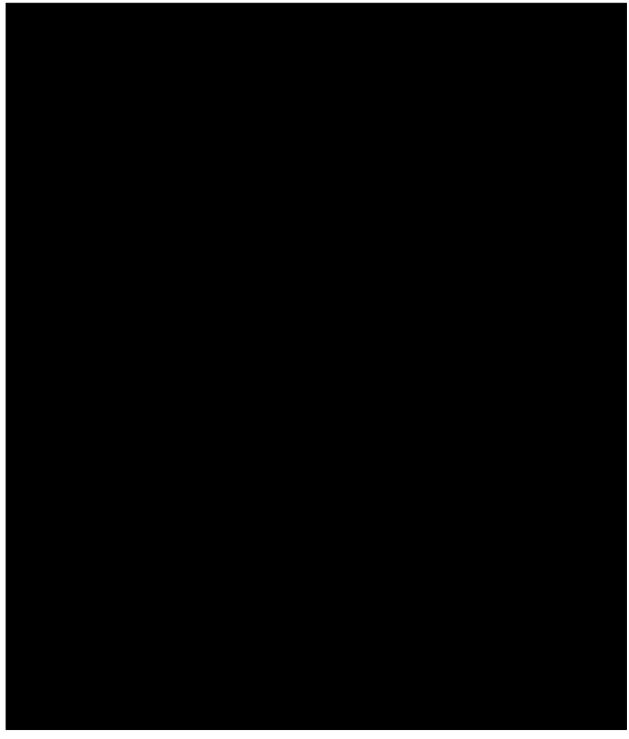
- MAKE OATH AND SAY as follows:
- I am a director of the Applicant in this matter and I make this affidavit on behalf
 of the Applicant and with its authority, from facts within my own knowledge and
 from diligent perusal of the books and records in these proceedings as are in my
 possession, save where otherwise appears, and where so appearing I believe the
 same to be true and accurate.
- 2. I make this affidavit to verify the Applicant's statement required to ground the present application for judicial review, to place before this Honourable Court relevant documentation, and to outline certain key submissions and observations that were made to the planning authority and to the Board on behalf of the

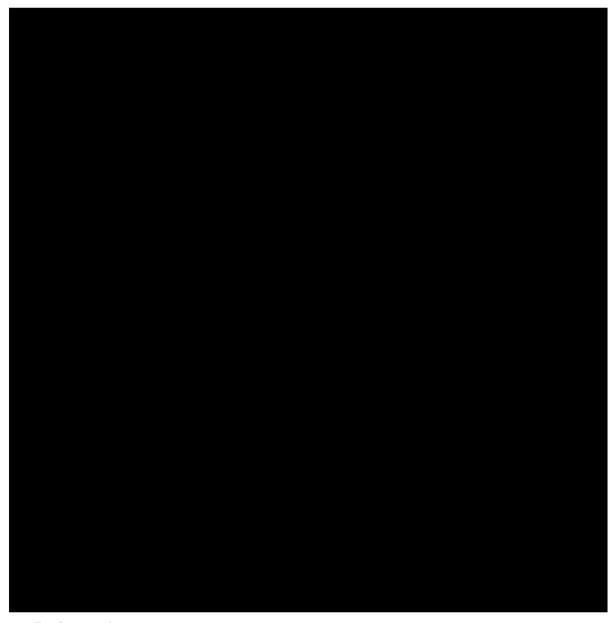


Documents

3. I beg to refer to the documents relating to this matter listed in the schedule to this Affidavit, a true copy of each of which is set out in the book accompanying this affidavit (in three volumes) upon which, marked "MOF1", I have signed my name prior to the swearing hereof (the "Book"). I have set out below the index to the Book.

Section A - Planning Documents





Background

- 4. The Applicant is a property development company involved in commercial and residential property development. The Applicant is the owner of the subject lands which are situate at the junction of Longmile Road and Walkinstown Avenue, Dublin 12 (the "Site"), in an area that is predominantly comprised of industrial development. The Applicant acquired the Site in or about 2004.
- 5. The Applicant engaged McCutcheon Halley Planning Consultants to make submissions and observations on its behalf in respect of the Notice Party's entry of the Site on the draft and final residential zoned land tax maps (the "**Draft Map**" and the "**Final Map**" respectively) prepared by the Notice Party pursuant to sections 653C and 653K of the Taxes Consolidation Act 1997 (the "**TCA 1997**").

McCutcheon Halley was subsequently engaged to prepare and submit an appeal to An Bord Pleanála (the "Board") of the decision of the Notice Party to include the Site on the Final Map.

The McCutcheon Halley Submission to Dublin City Council

- 6. McCutcheon Halley, on behalf of the Applicant, lodged a submission to the Dublin City Council following the inclusion of the Site on the Draft Map published on 1 February 2024. The submission stated that the Site should be excluded from the final map as it did not meet the relevant criteria set out section in 653B of the TCA Act 1997 on the relevant dates in the legislation. The grounds on which McCutcheon Halley submitted that the Site should be excluded from the Final Map included, *inter alia*, that:
 - (i) the Site is occupied by a business, which is liable for commercial rates and was not "vacant or idle" on the relevant dates;
 - (ii) it not reasonable to consider that the Site may have had access, or been connected, to public infrastructure and facilities in the form of foul sewer drainage and water supply with sufficient service capacity available for dwellings to be developed;
 - (iii) it would be a misinterpretation of the legislation to conclude that lands met the relevant criteria on the relevant dates in circumstances where works were required to be undertaken to the public infrastructure, by the landowner, in order to create the necessary service capacity; and
 - (iv) portions of the Site are traversed by underground Uisce Éireann ("UE") pipes and overhead ESB power lines, and building is prohibited on the areas adjoining same, as a result of which portions of the Site are required for, or integral to, occupation by (1) energy infrastructure and facilities and/or (2) water and wastewater infrastructure and facilities.
- 7. The McCutcheon Halley submission was accompanied by, inter alia:
 - (i) a site layout plan prepared by which shows the wayleaves and clearance areas in

the vicinity of the overhead power lines and underground water pipes on the Site; and

which noted the existence of a 30" steel trunk main on the Site, around which a 16.75-metre clearance area is required. The letter further stated as follows in respect of upgrade works that would be required to a UE pipe at another location, in order to facilitate the development of the Site:

"In order to accommodate the proposed connection to Irish Water Network at the premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe as shown on the attached figure (red line). Irish Water currently does not have any plans to extend its network in this area. Should you wish to progress with the connection you will be required to fund this network extension.

8. The aforesaid pipe is situate approximately 850 metres East of the Site, under a public roadway at the junction of the Long Mile Road, Balfe Road, Drimnagh Road and Slievebloom Road. The location of the pipe is shown on Figure 3 (p. 6) of the McCutcheon Halley appeal submission.

The Notice Party's Decision

9. On 28 June 2024, the Notice Party issued a Notification of Determination, which concluded that the Site should be included on the Final Map which was to be published on 31 January 2025. The reasons provided were as follows:

The lands:

- are zoned for a mixture of uses, including residential use,
- have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as confirmed by Uisce Éireann in its report dated 25 April 2024, and having regard to the

brownfield nature of the lands and their location within the built-up footprint of the city,

- are vacant/idle, as there is no active authorised use on the lands which is required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land,
- meet the other qualifying criteria in section 653b of the TC Act, as amended.

The McCutcheon Halley Appeal Submission

- 10. McCutcheon Halley made submissions to the Board dated 31 July 2024 on the Applicant's appeal of the Notice Party's determination. The grounds of appeal may be summarised as follows:
 - (1) The Site is not "land which satisfies the relevant criteria" set out in section 653B of the TCA 1997, as it is not reasonable to consider that the Site may have access or be connected to a public water supply necessary for dwellings to be developed with sufficient service capacity available for such development.
 - (2) The Site is not "land which satisfies the relevant criteria" set out in section 653B of the TCA 1997 because it is not reasonable to consider that the Site may have access or be connected to foul sewer drainage necessary for dwellings to be developed and with sufficient service capacity available for such development.
 - (3) The Site is occupied by and integral for a business being carried out on the Site, which comprises an authorised development for the purposes of the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001, as amended, and where there has been no material change of use. Therefore, the Site is not vacant or idle.
 - (4) The final RZLT map incorrectly and unlawfully fails to exclude the parts of the Site which it is reasonable to consider are required for or integral to

occupation by energy infrastructure and facilities, and water and wastewater infrastructure and facilities.

- 11. The McCutcheon Halley appeal submission was accompanied by, inter alia:
 - stating that overhead power lines traverse portions of the Site, including the Cookstown-Inchicore 110KV double circuit (D.C.) overhead transmission line and one No. 110KV Lattice Mast, and the Inchicore-Ballymount 38KV overhead power line and associated poles, and that ESB Networks require a lateral clearance of 20 meters at each side of the 110KV centre line:
 - addressed to confirming an existing steel trunk watermain of 762 mm in diameter traversing part of the Site and their requirement for a 16.75 meter wayleave centered over the watermain; and
 - (iii) a report submitted by UE to the Notice Party on 25 April 2024, which confirmed the necessity for the upgrade to the UE pipe at the junction of the Long Mile Road, Balfe Road, Drimnagh Road and Slievebloom Road.

The Applicant's case

12. It is the Applicant's case that the effect of the Board's decision is that the Site has been included in the Final Map, despite the Site not meeting certain of the inclusionary criteria in section 653B (in particular those set out in section 653B(b)), and meeting certain of the exclusionary criteria in section 653B (in particular those set out in section 653B(ii), (iii)(III) and (iii)(V)), as is set out in detail in the Applicant's statement required to ground the present application for judicial review.

Verification

13. I beg to refer to the statement required to ground the present application for judicial review, which I have read. Such of the facts stated therein as are within

my own knowledge are true, and such of the facts stated therein as are not within my own knowledge I believe to be true.

14. In the circumstances, therefore, I pray this Honourable Court to grant the relief sought in the Applicant's Statement of Grounds.





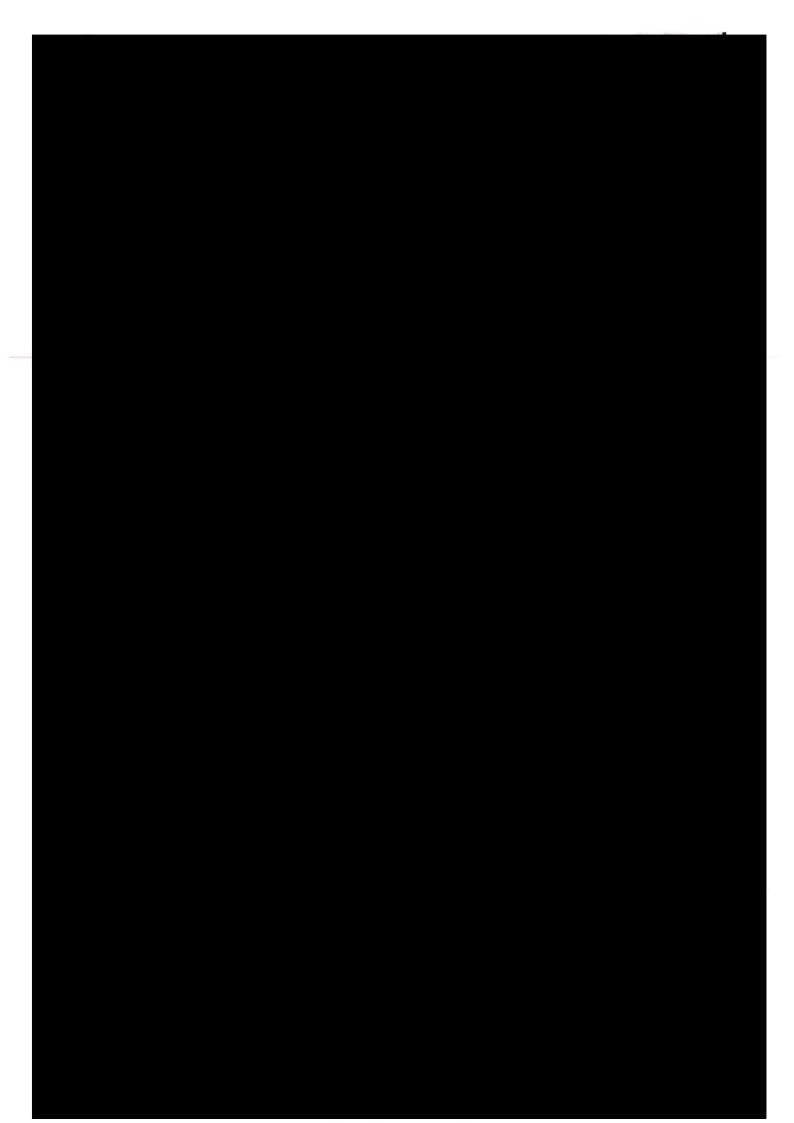
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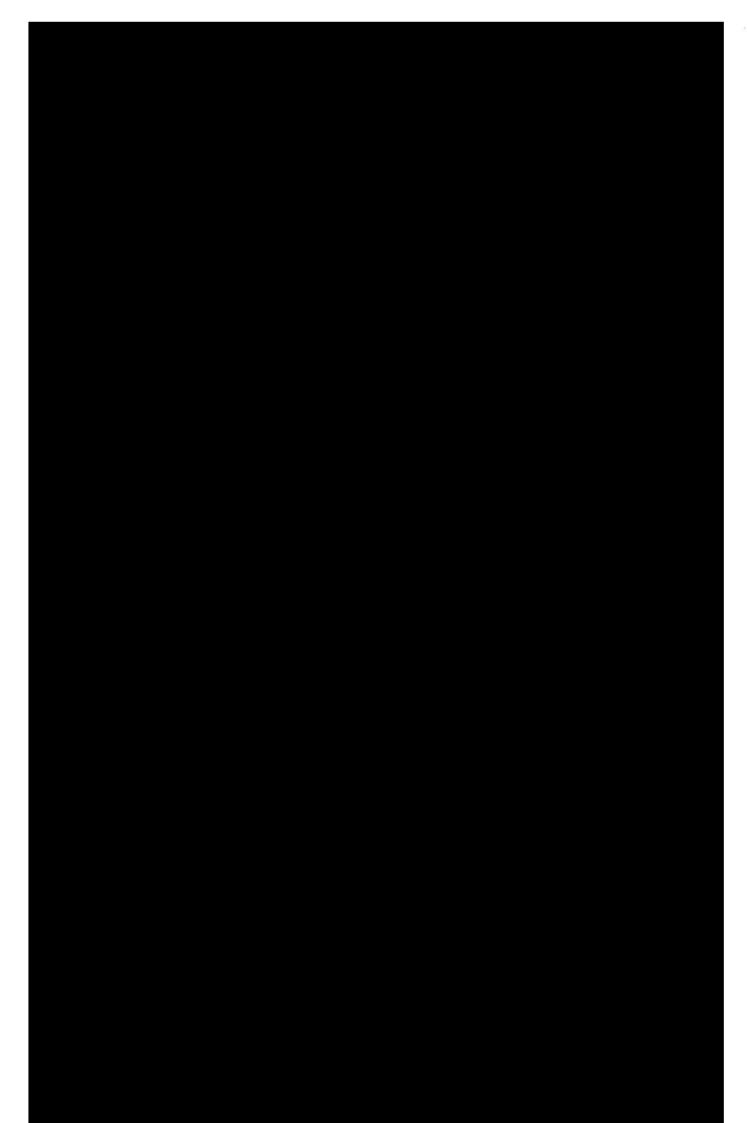
Book of Exhibits











BRIAN O'HALLORAN & ASSOCIATES Architects

23 HERBERT PLACE, DUBLIN 2. TELEPHONES 764017-8-9

January 24th, 1978

Dublin Corporation Planning Department 46/49 Dame Street DUBLIN 2.

FOR THE ATTENTION OF: Mr. J. Carr

Re:

Spare Parts Building

Dear Sir,

nning Permission for Spare Parts Building, , at Walkinstown Avenue and enclose

following documents:

Newspaper notice

Planning Application

Outline Specification, 4 copies

Drawings no. 78/1/1, 2, 3, 4, 5 and 6. (4 copies)

pare parts and The building is to serve . The building accessories building for shown in outline on plans is for a future development.

The spare parts building has been set back to allow for this future development.

The site services, roads, drainage and structure will be designed and supervised by a chartered Structural

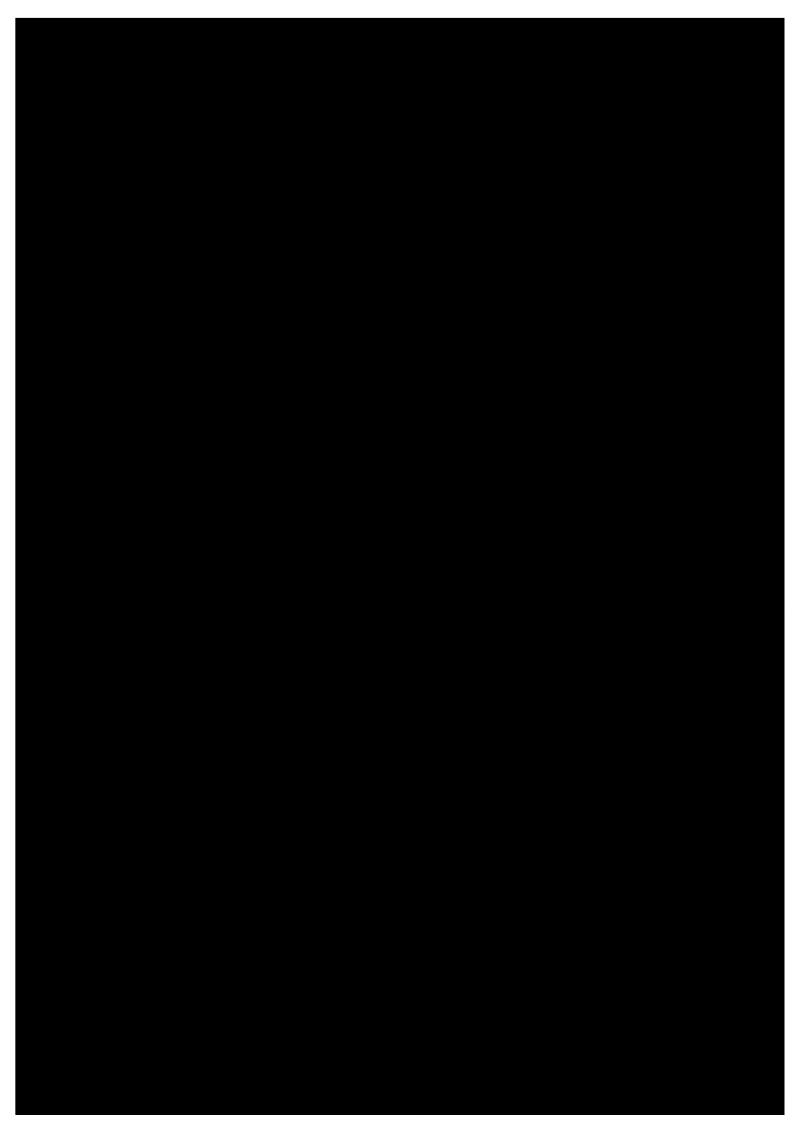
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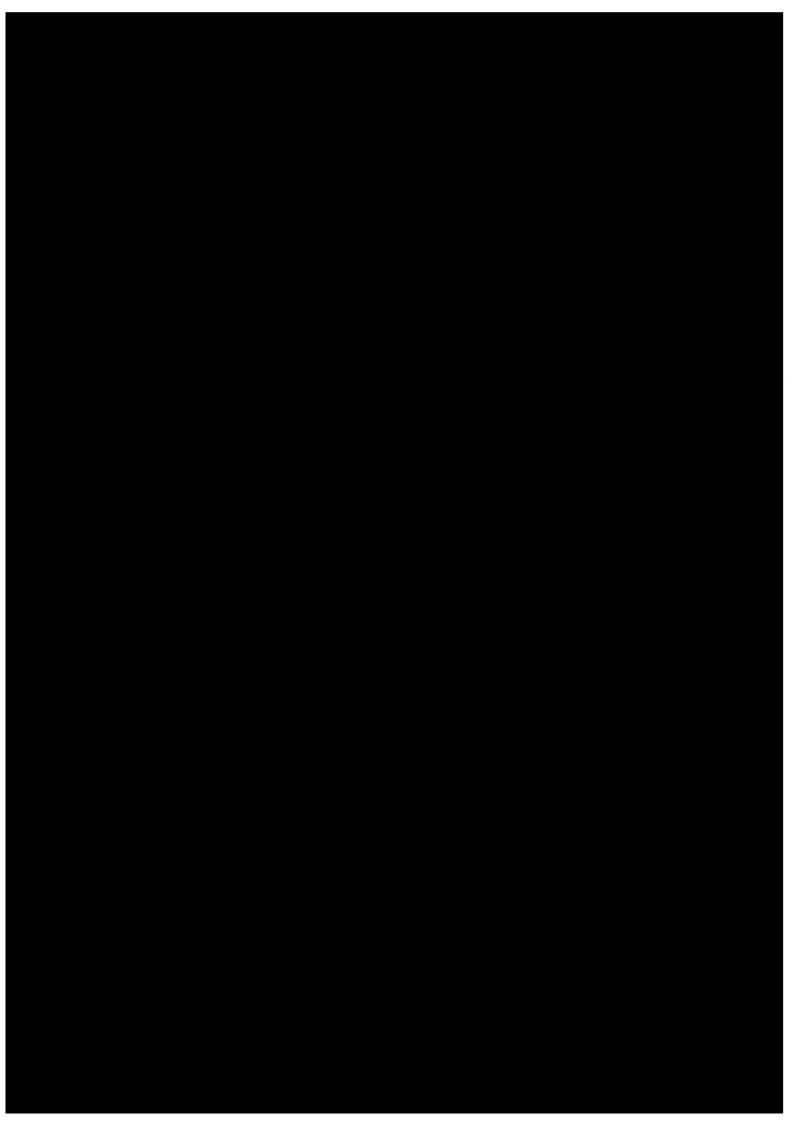
Engineer, Arthus West, B.A.I. and a copy of his Certificate will be forwarded for your information.

Yours faithfully,

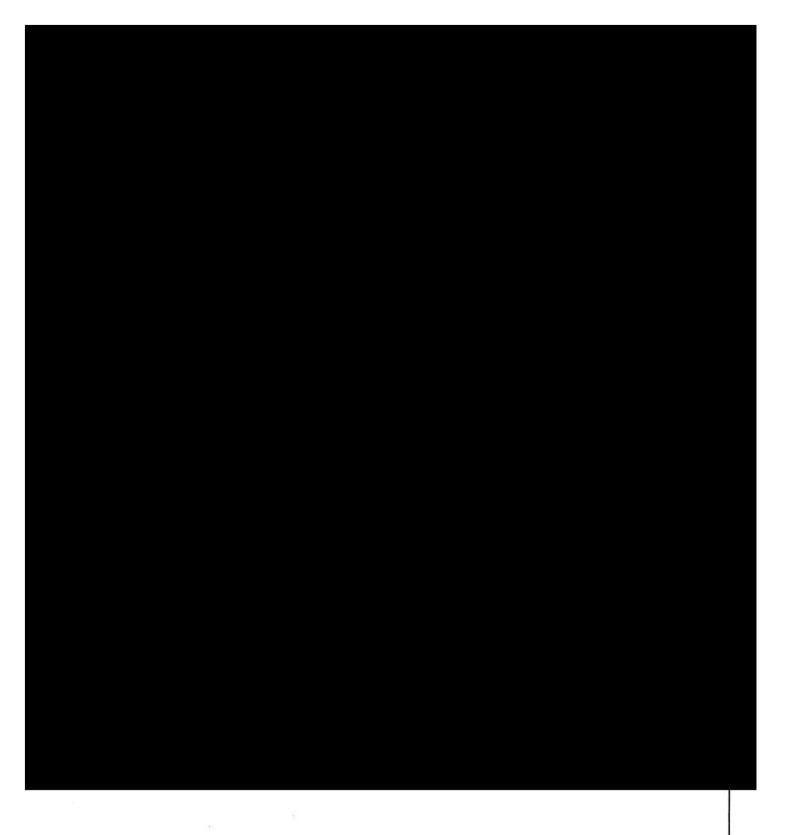
John Graby

BRIAN O' HALLORAN & ASSOCIATES.



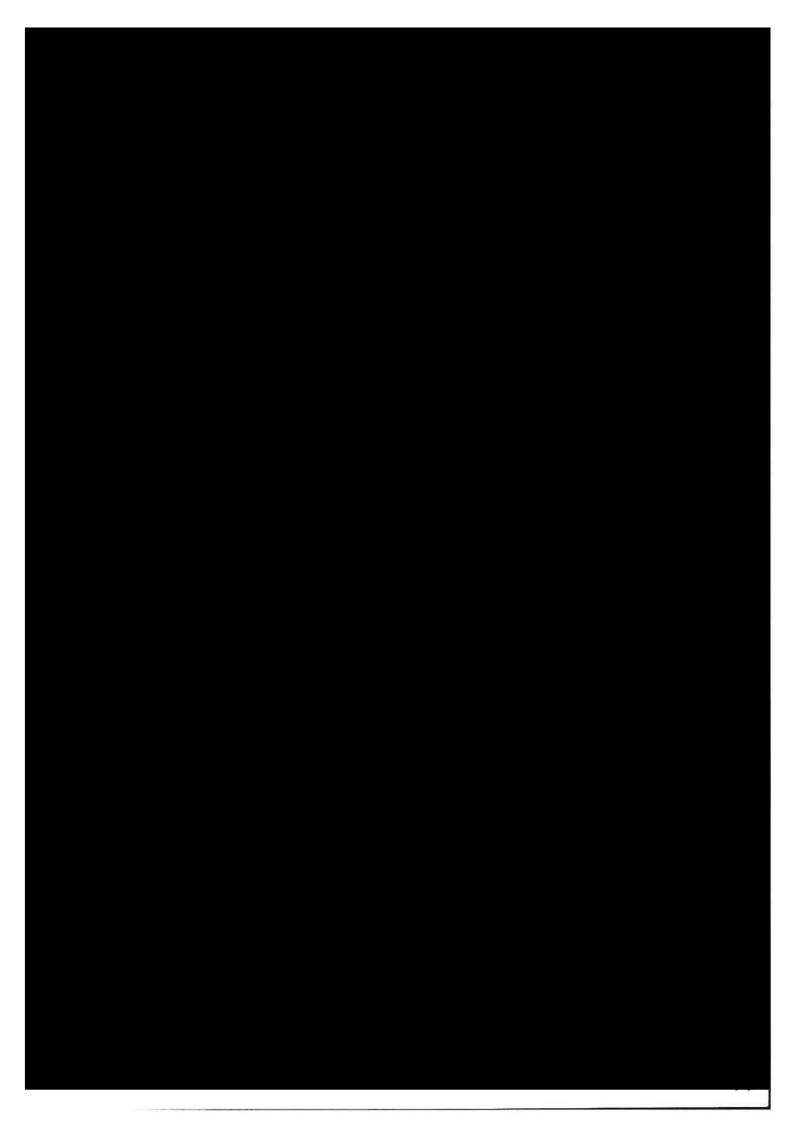


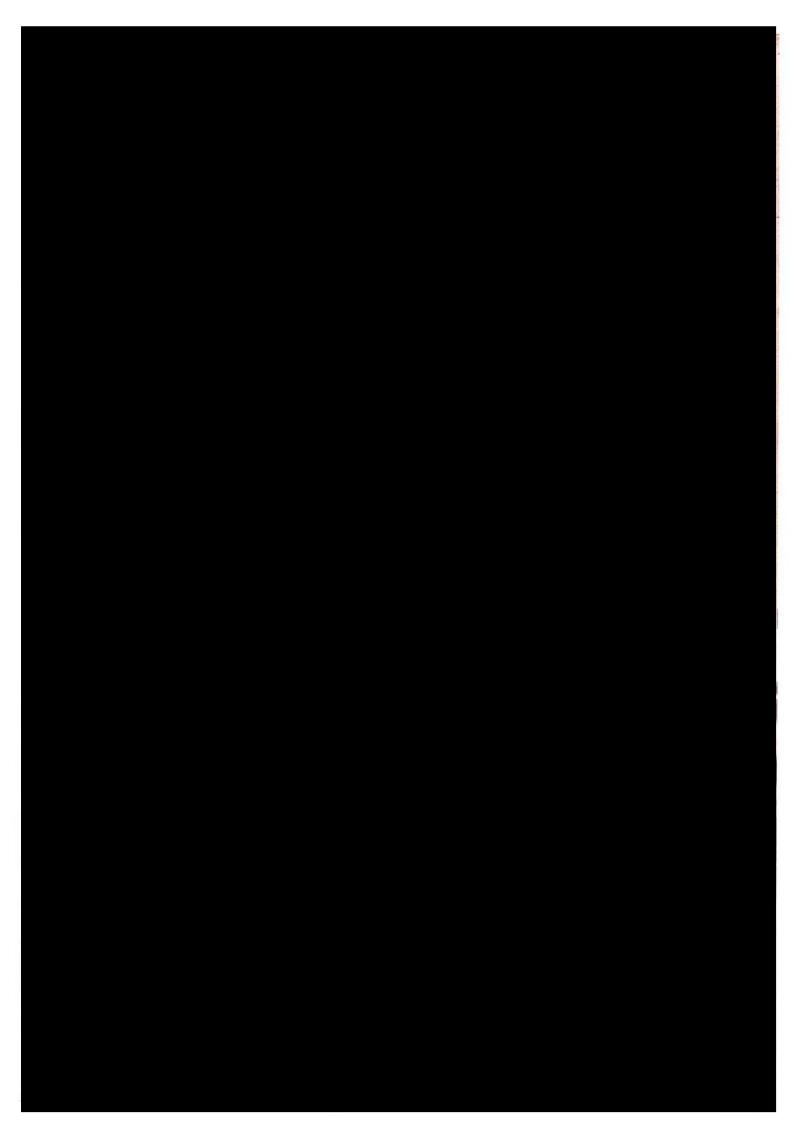


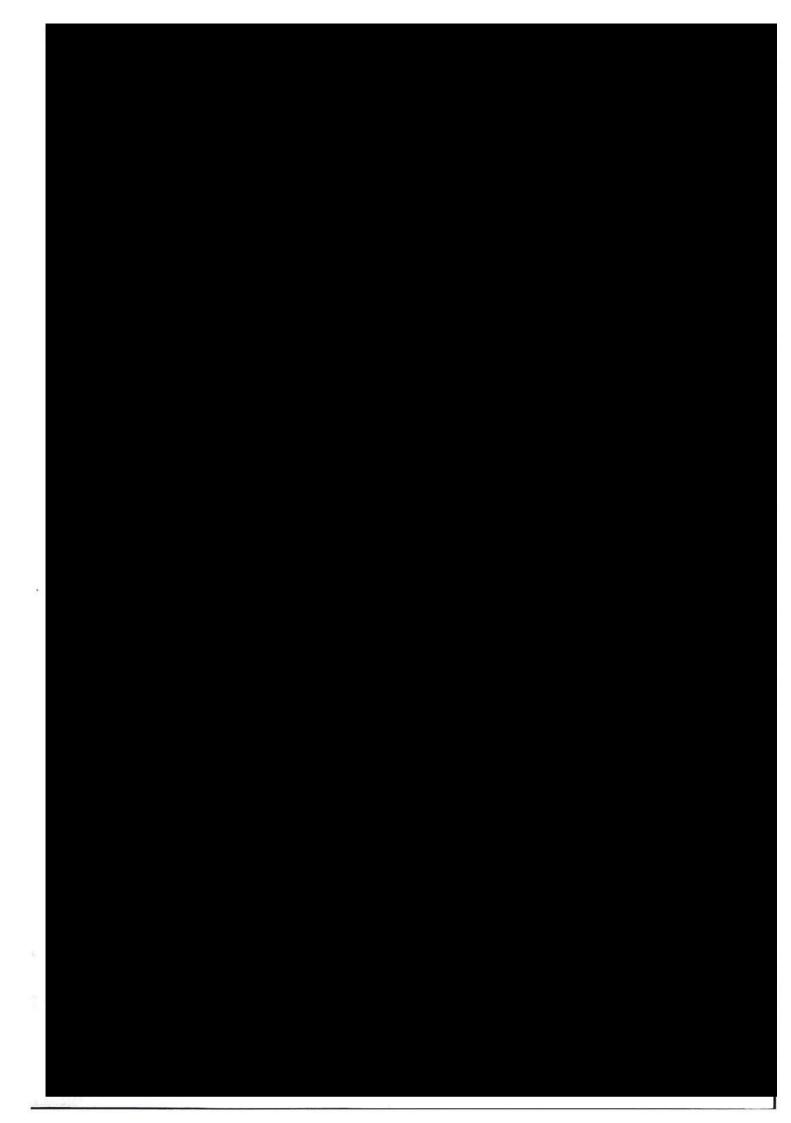




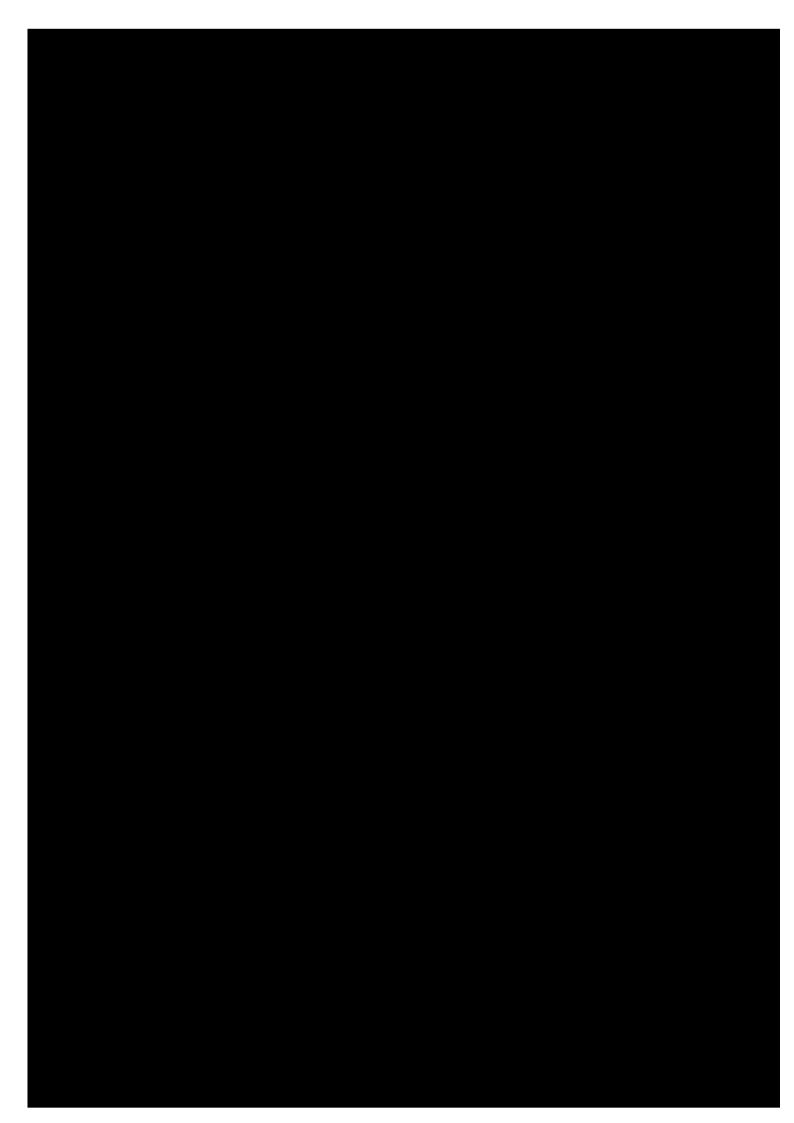


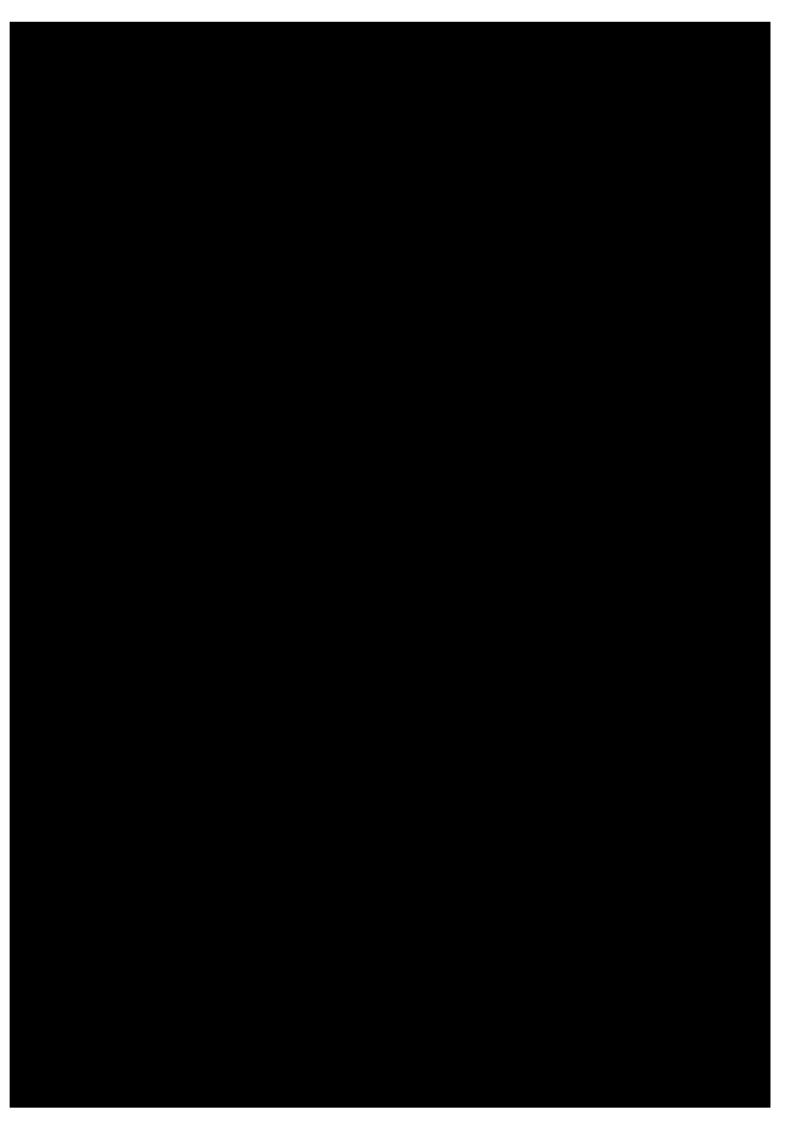


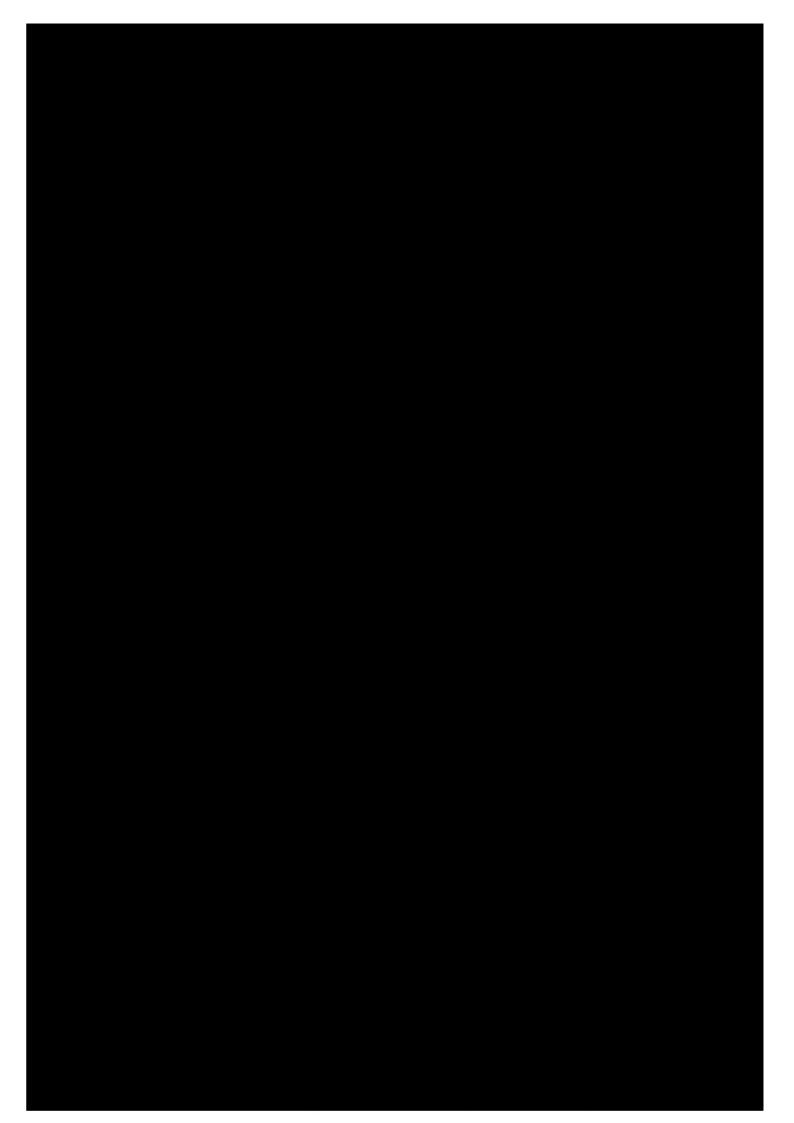


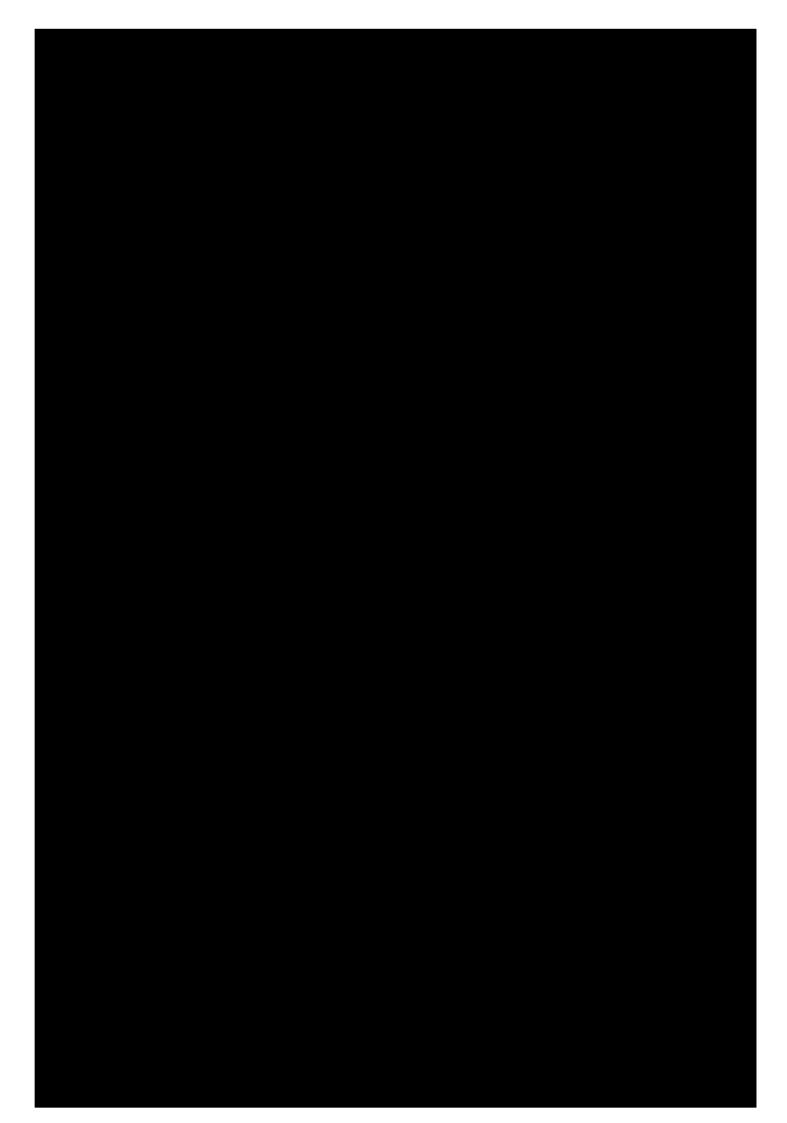


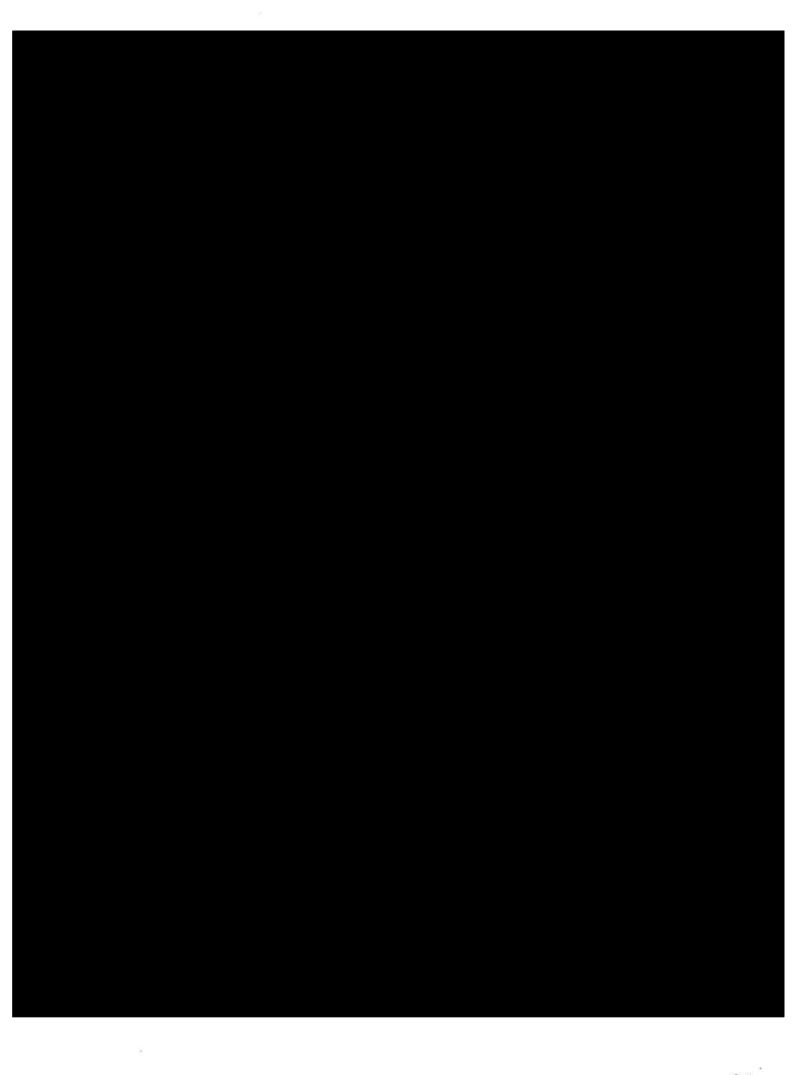


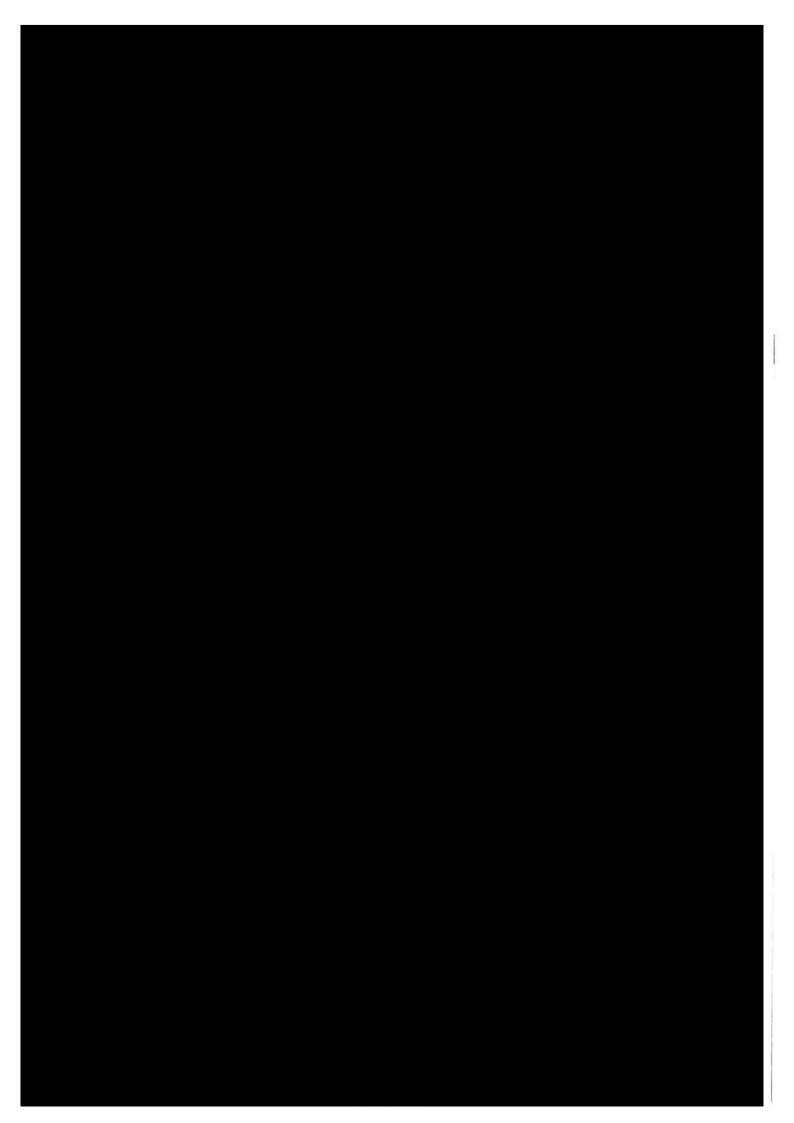




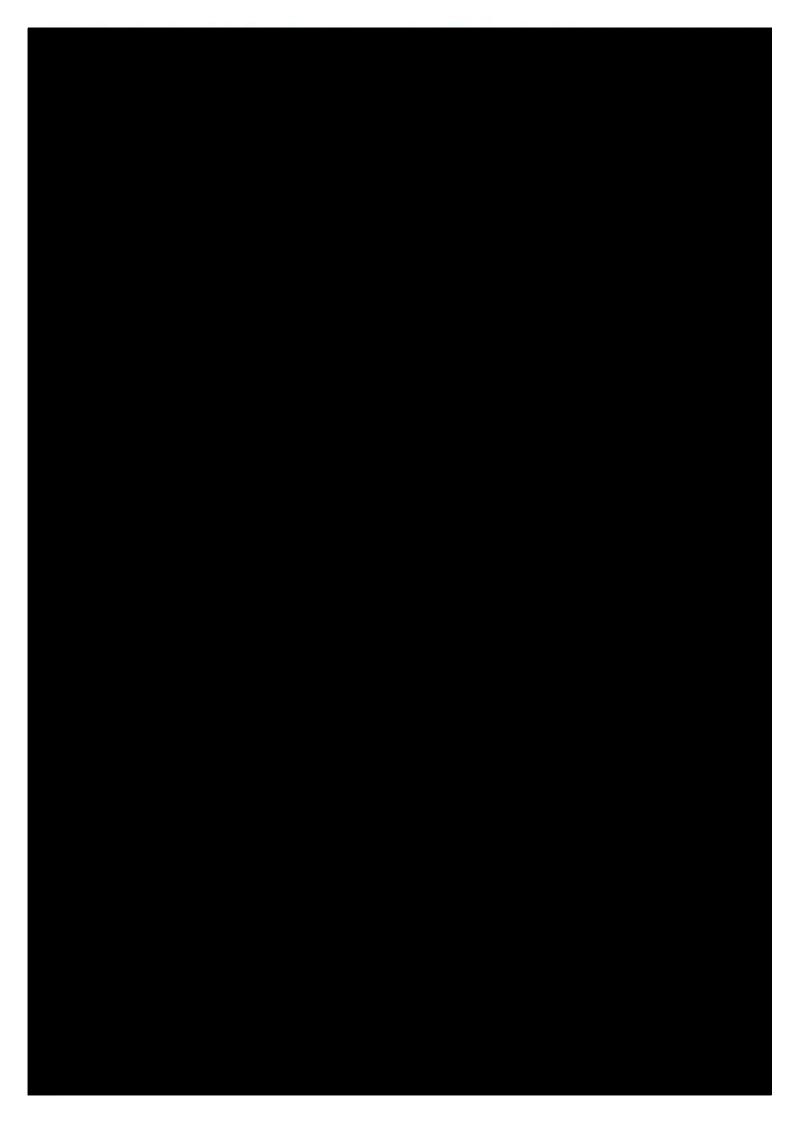


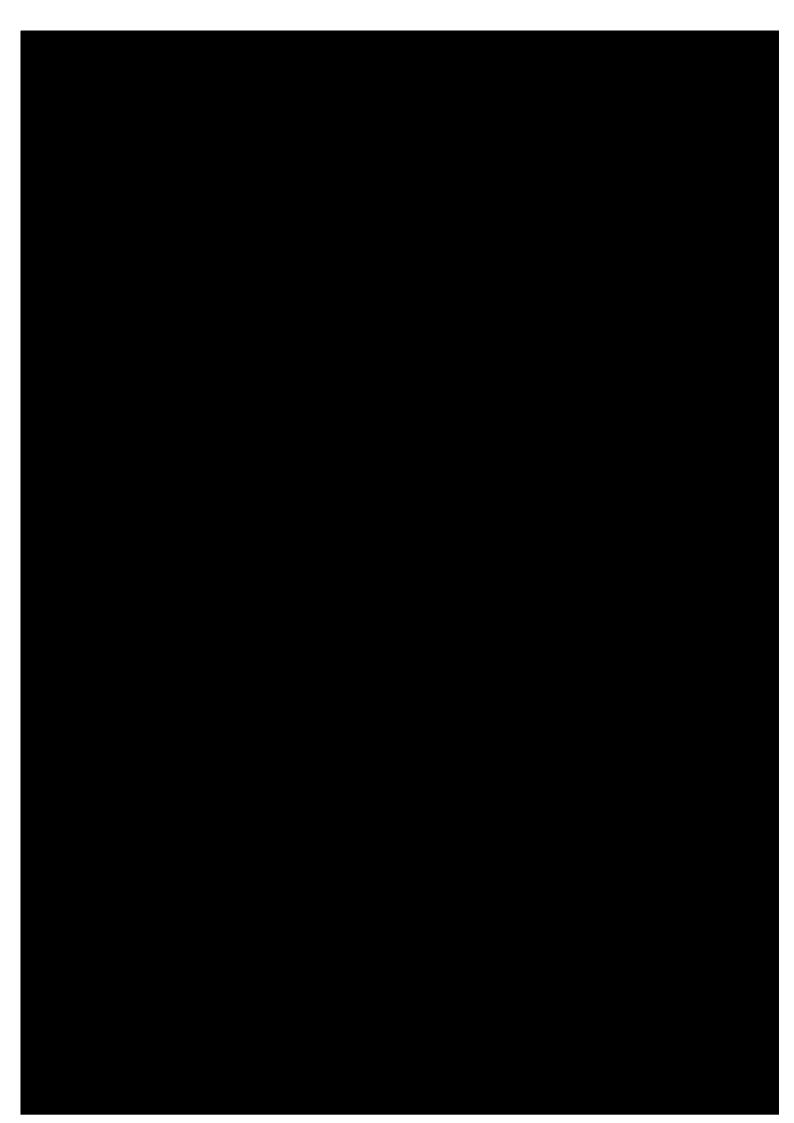


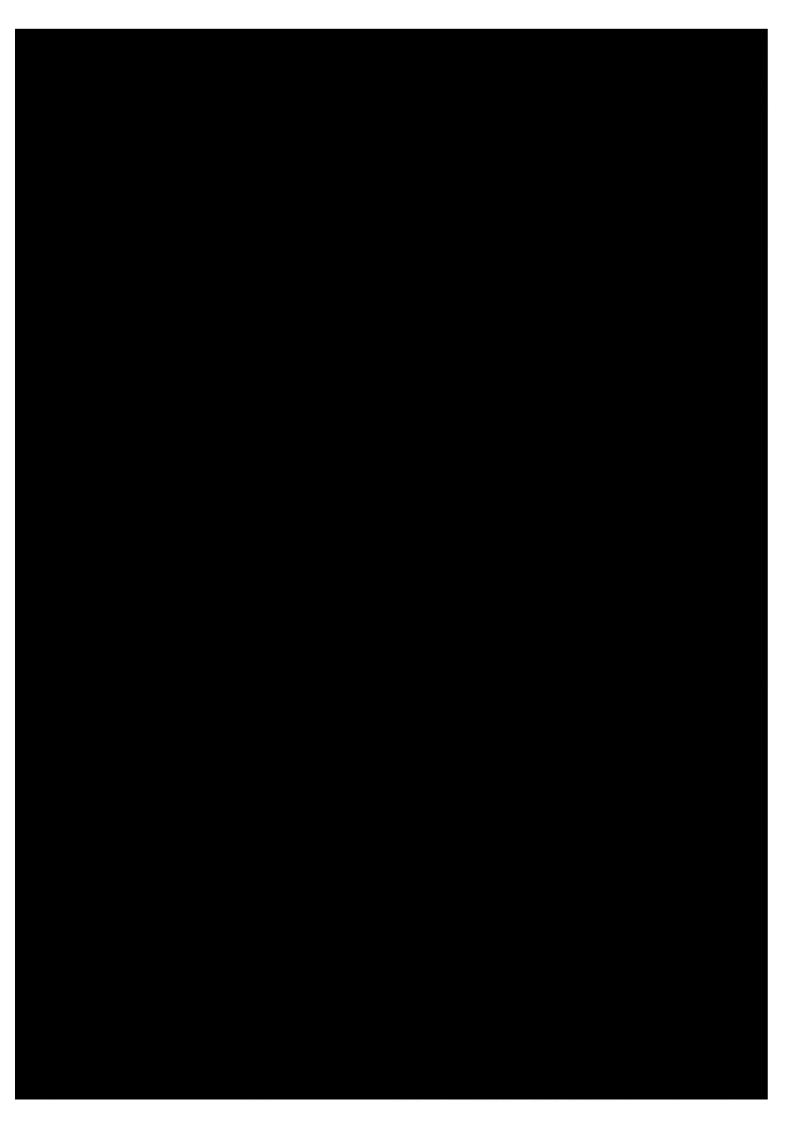




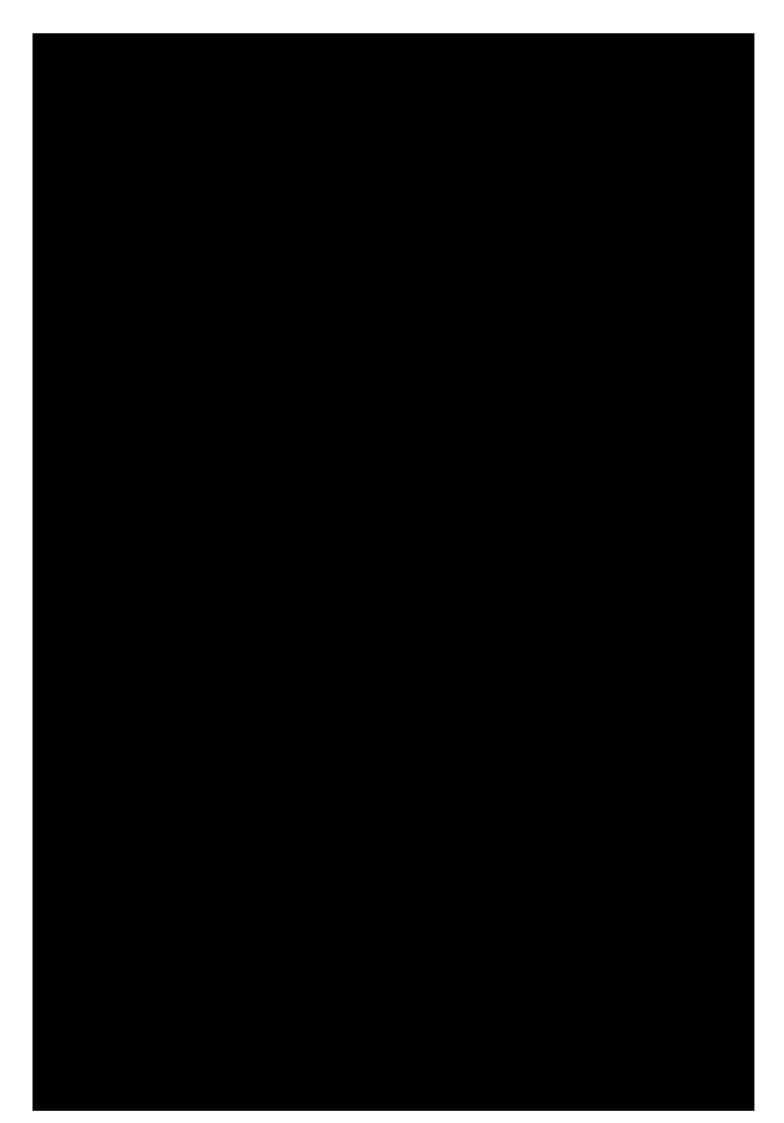


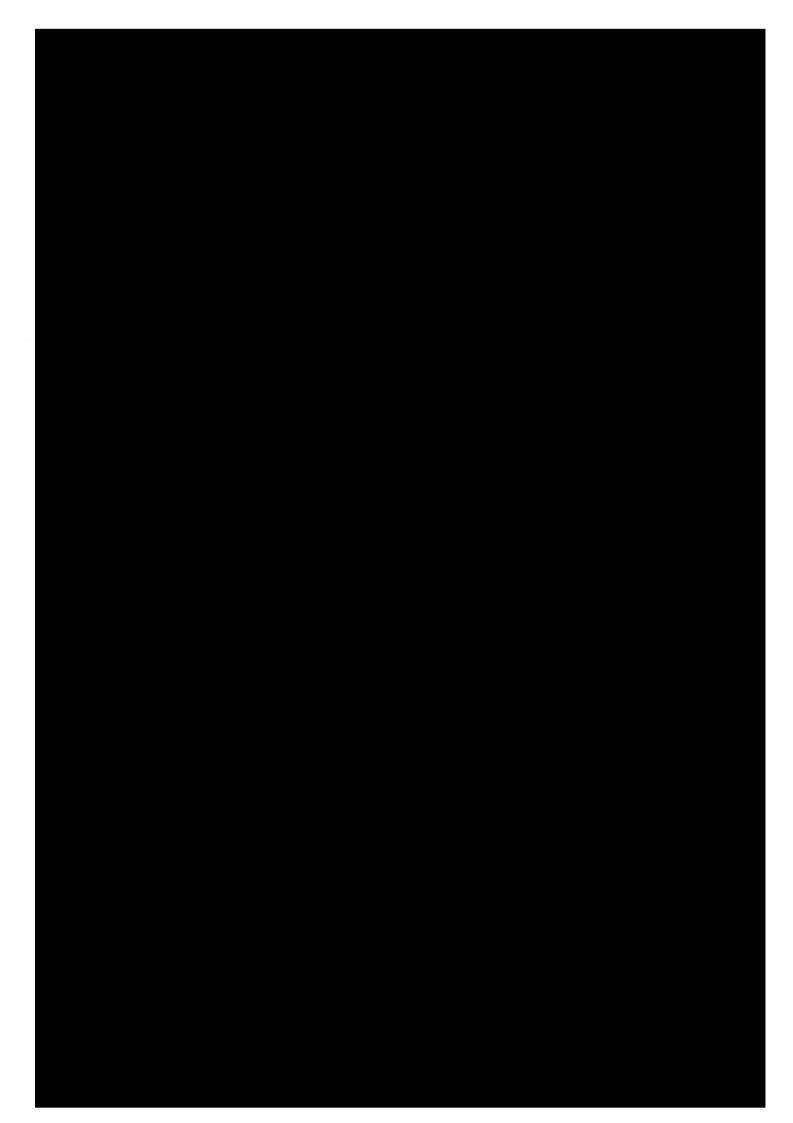


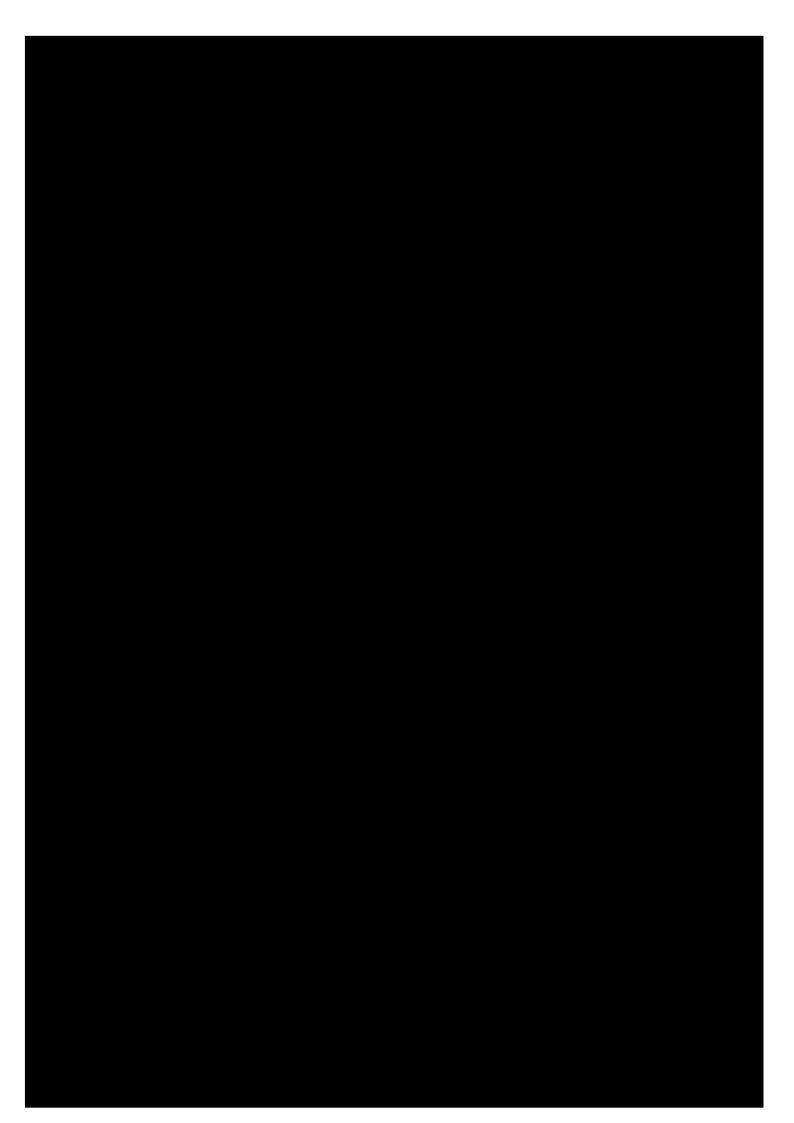


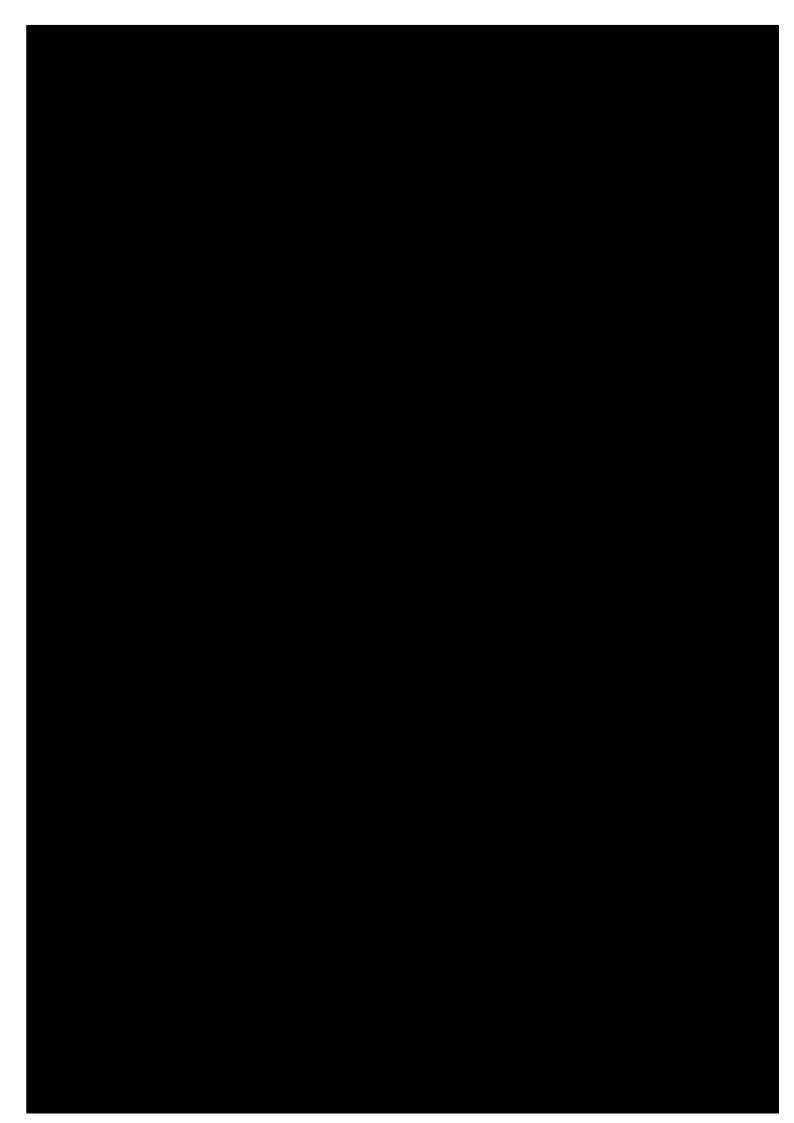






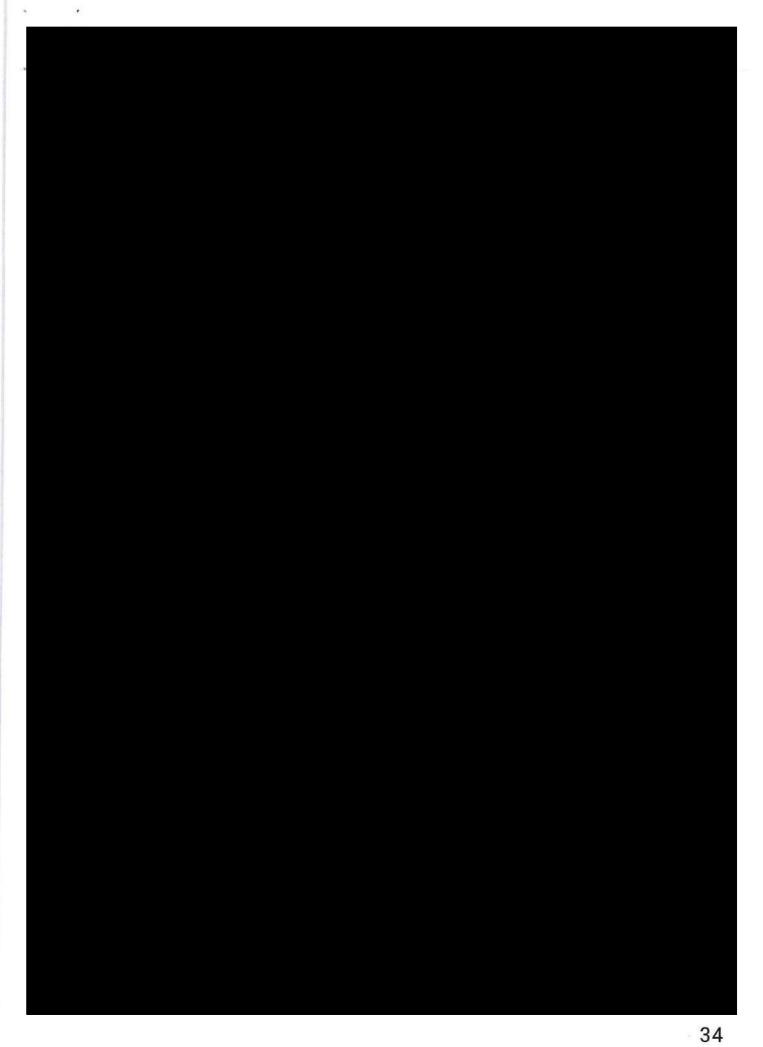


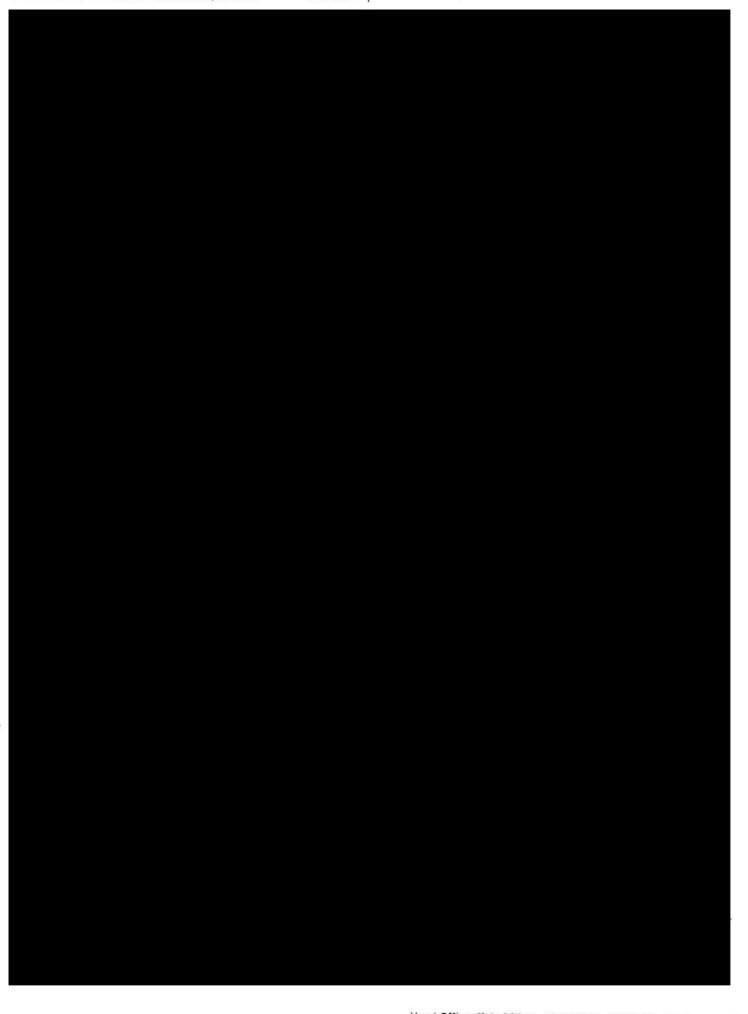


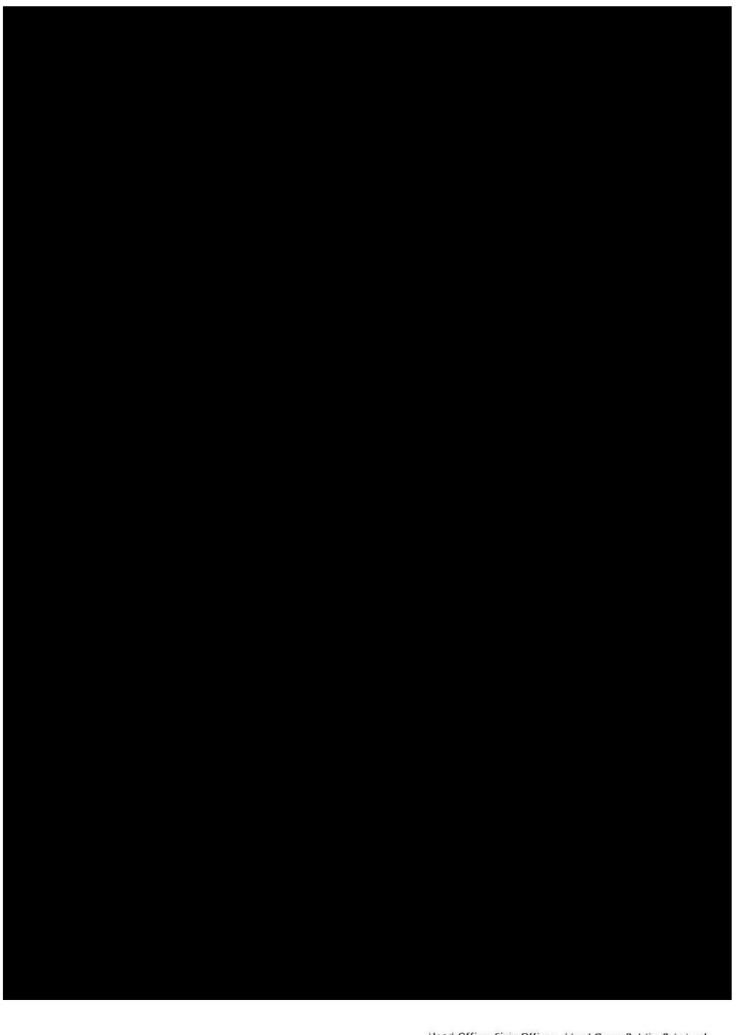


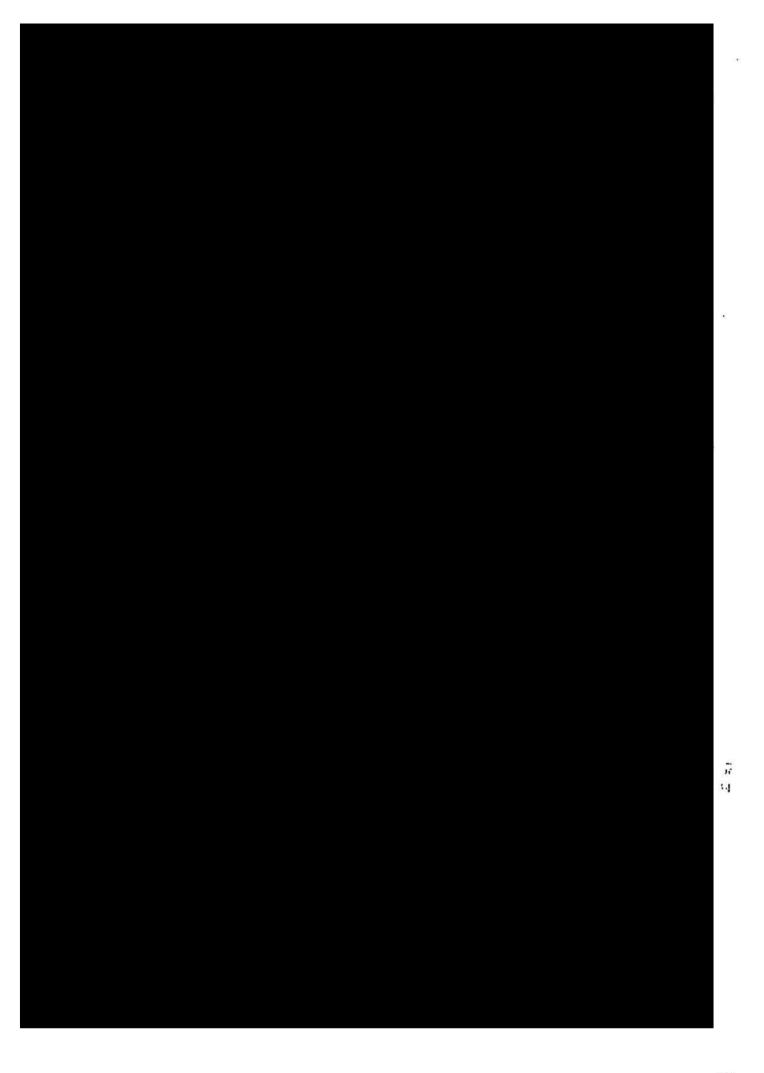




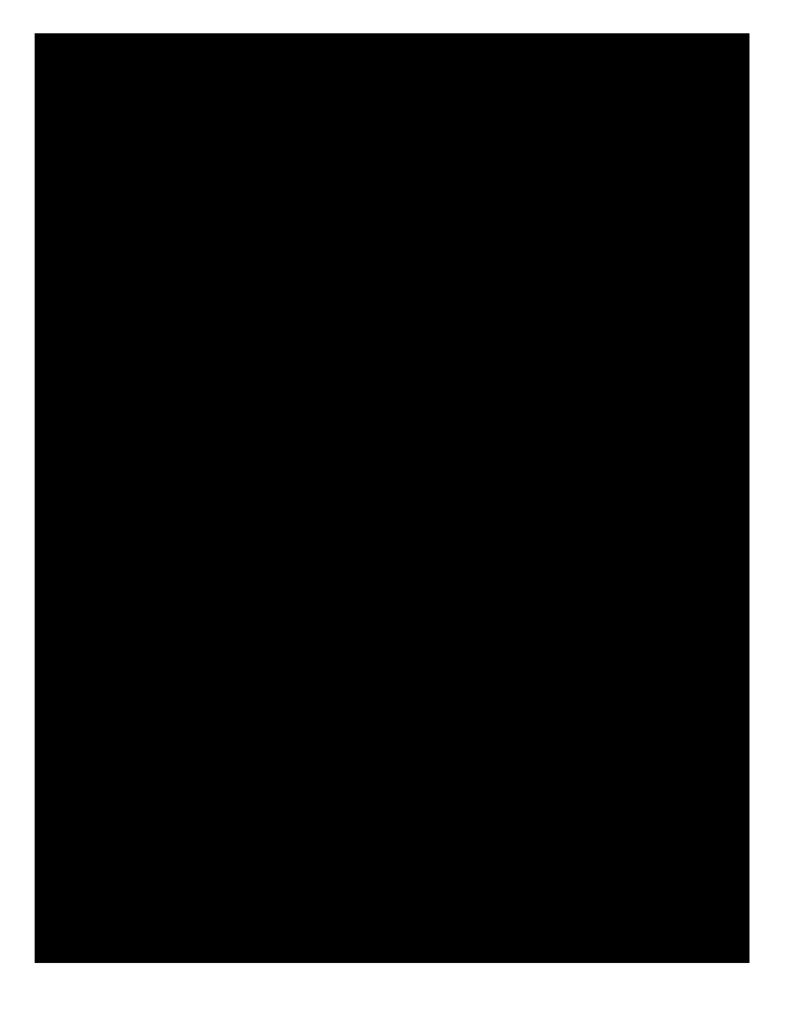


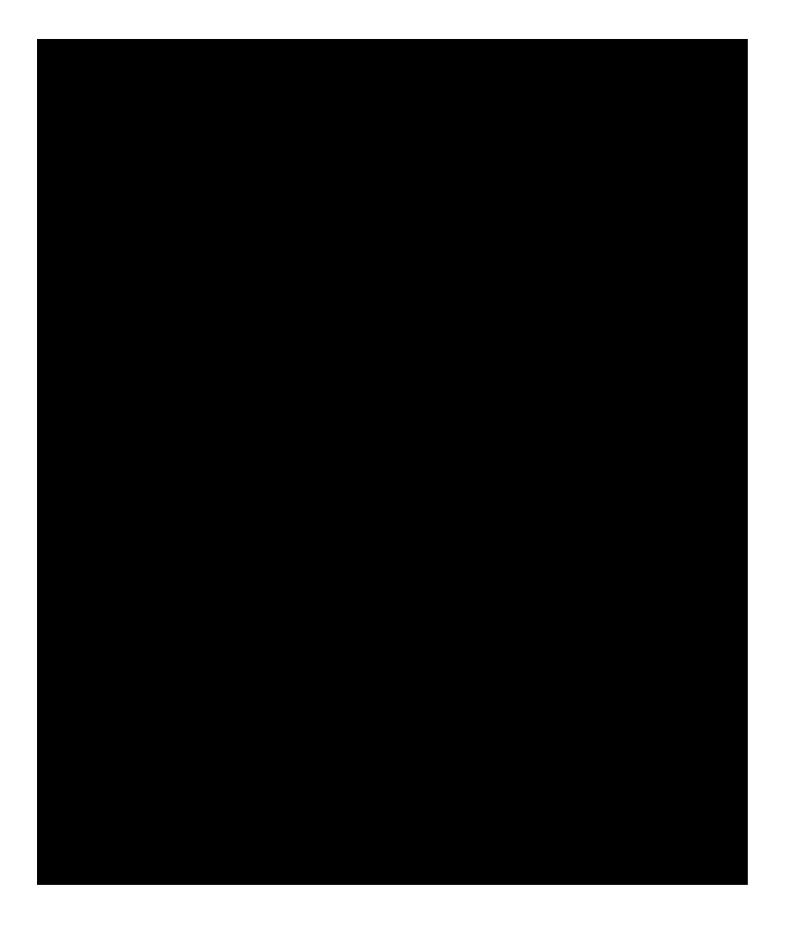


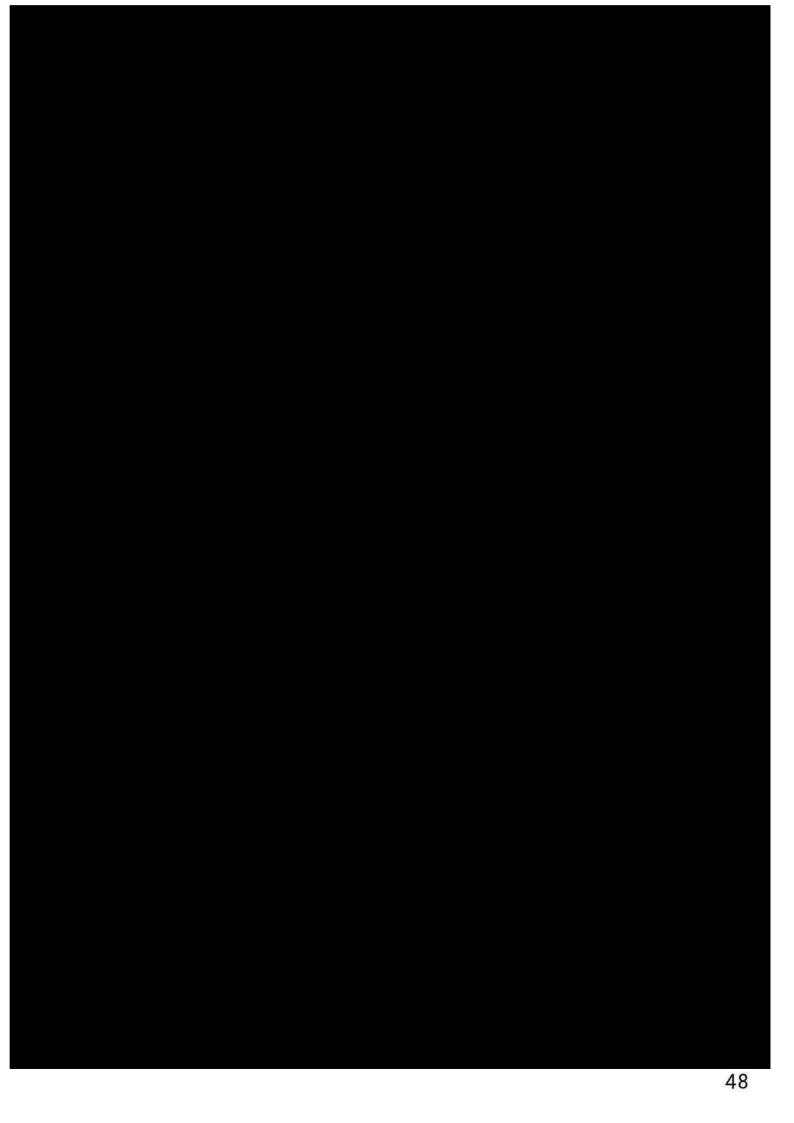


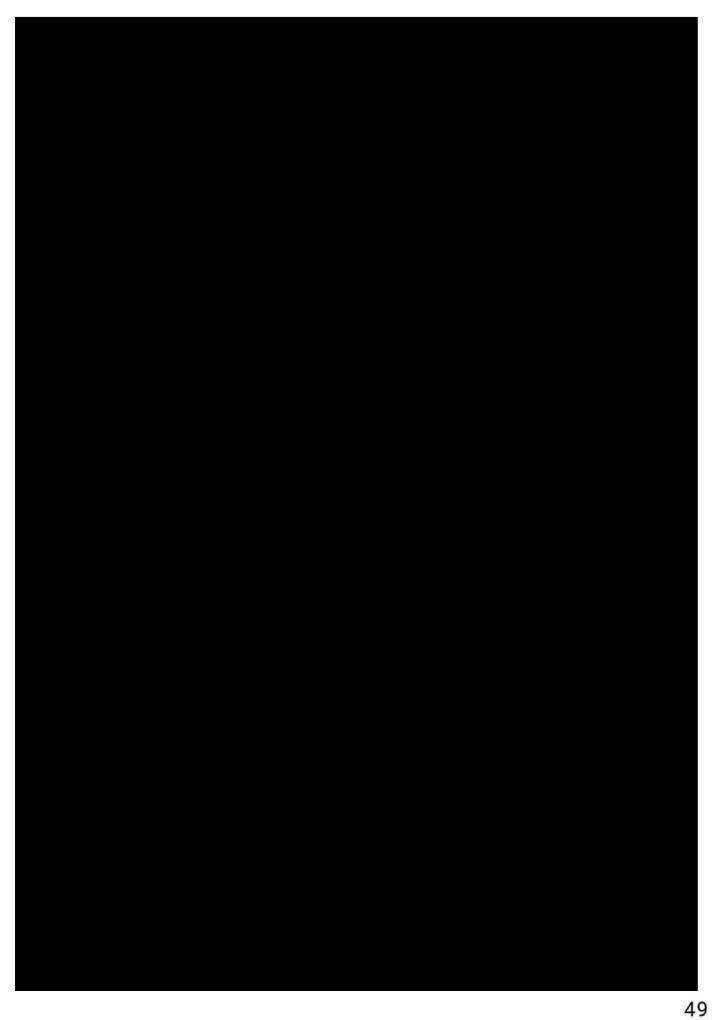


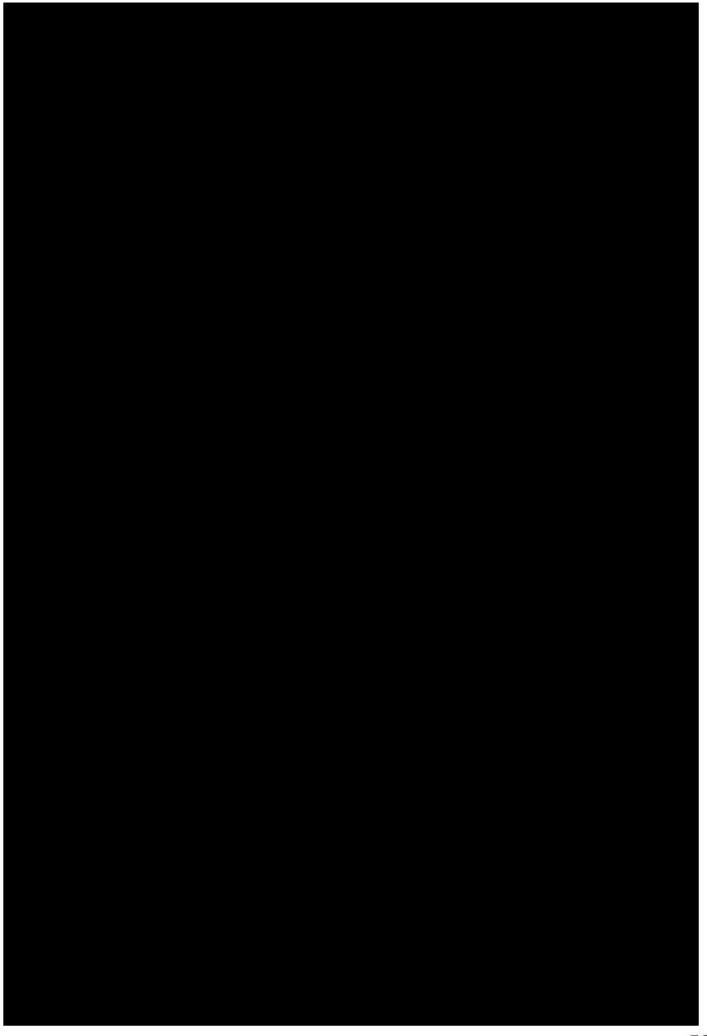












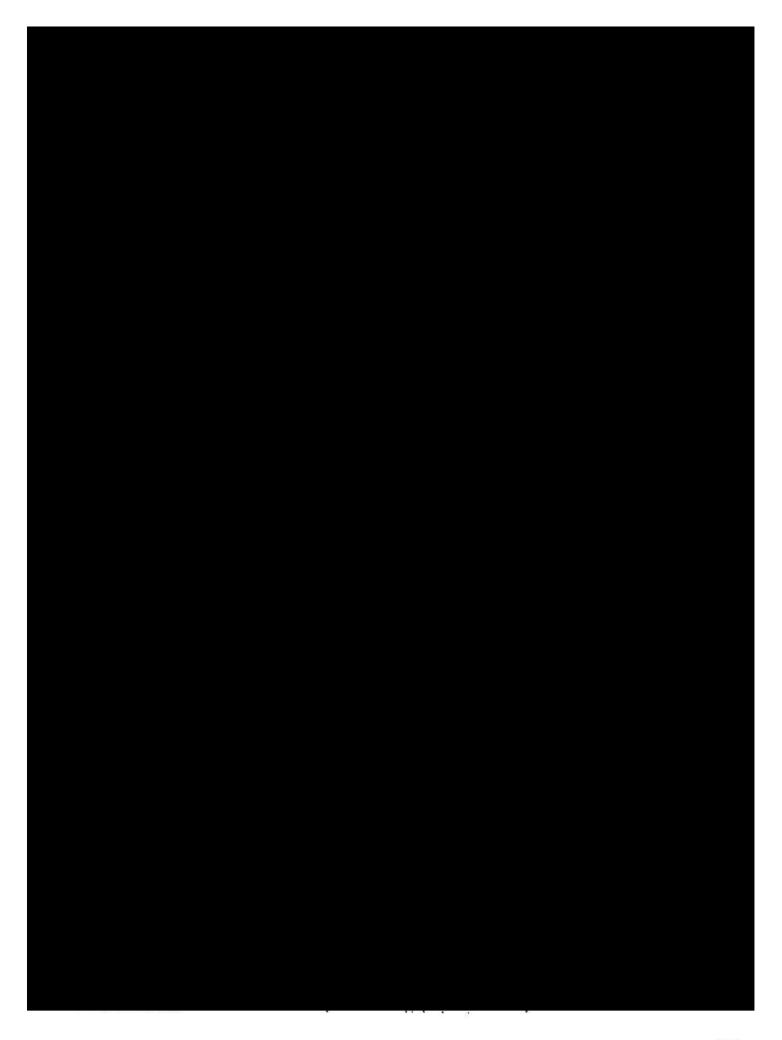


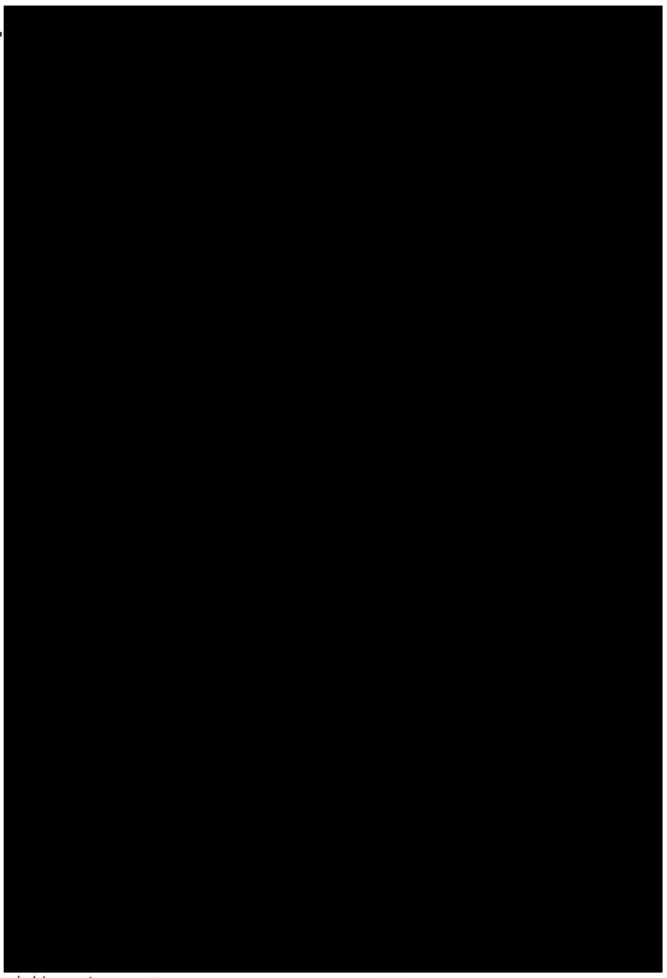
Planning & Property Development Department Dublin City Council, Block 4, Floor 3, Civic Offices, Wood Quay, Dublin 8

An Roinn Pleanála & Forbairt Maoine Bloc 4, Urlár 3, Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8

T: (01) 222 2288 / F: (01) 222 2271

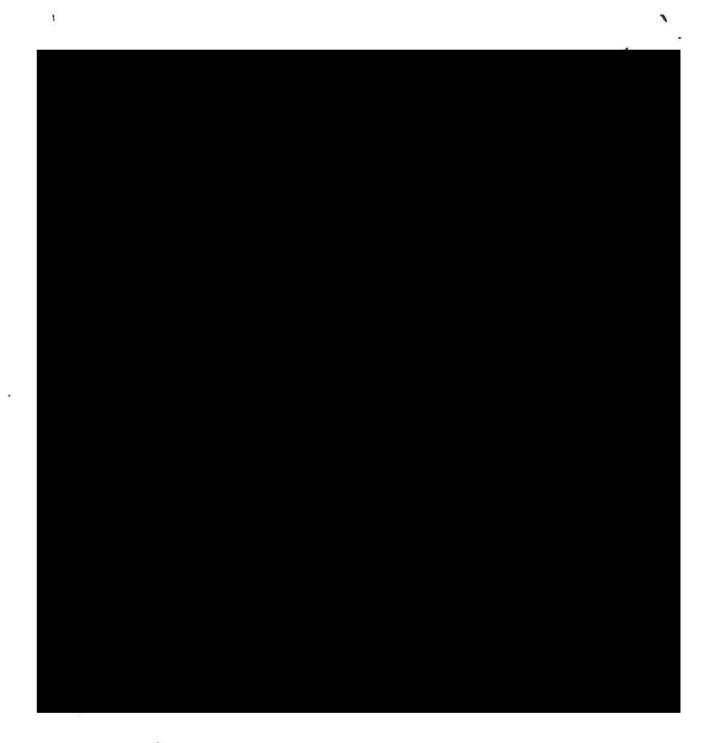
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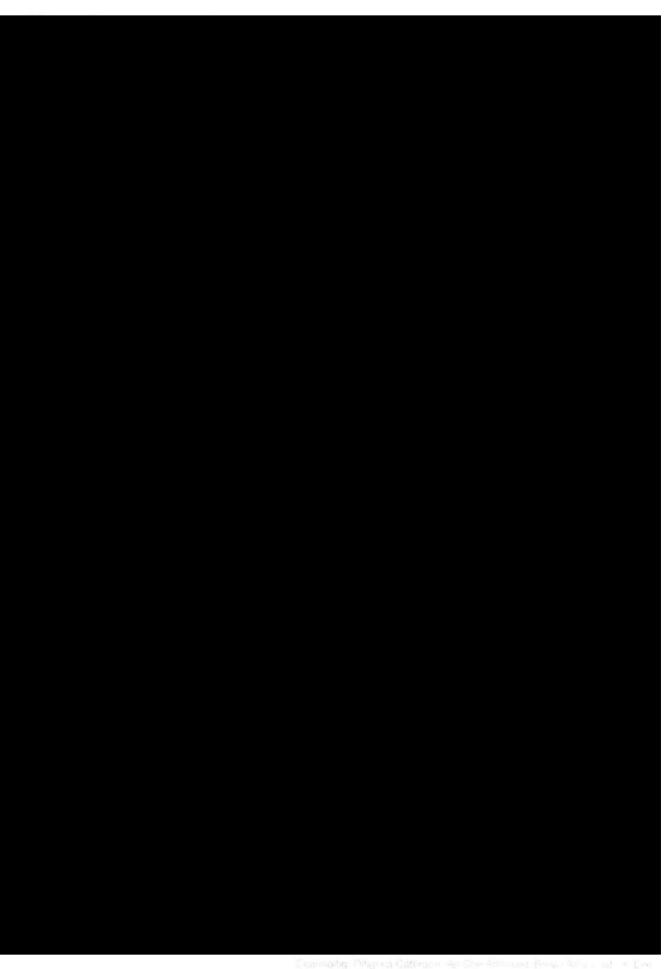
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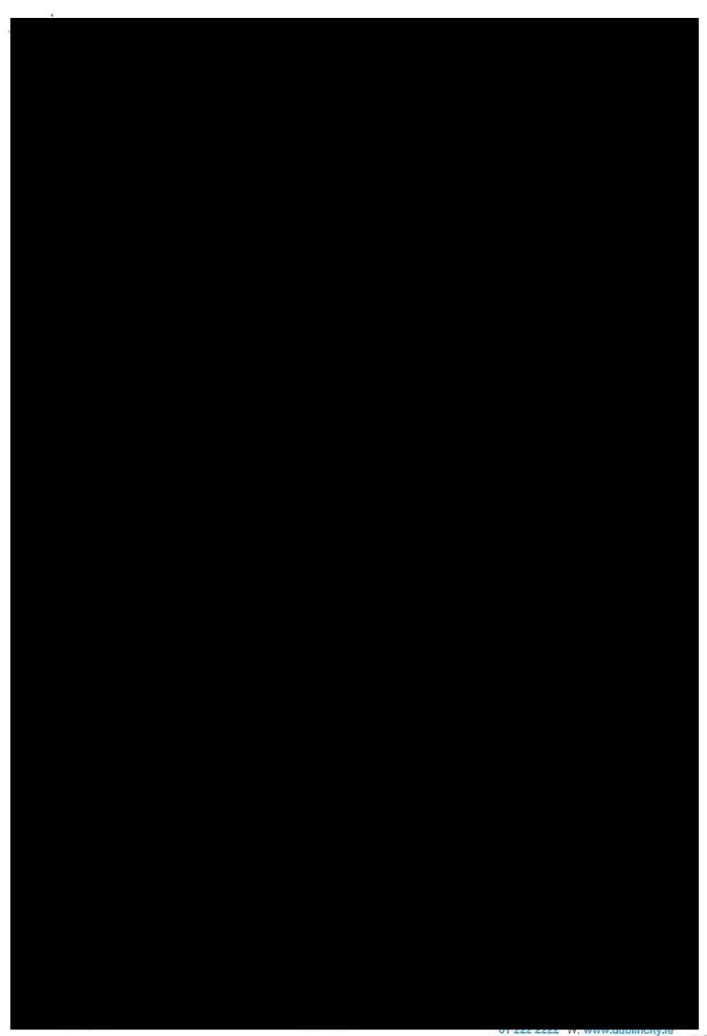
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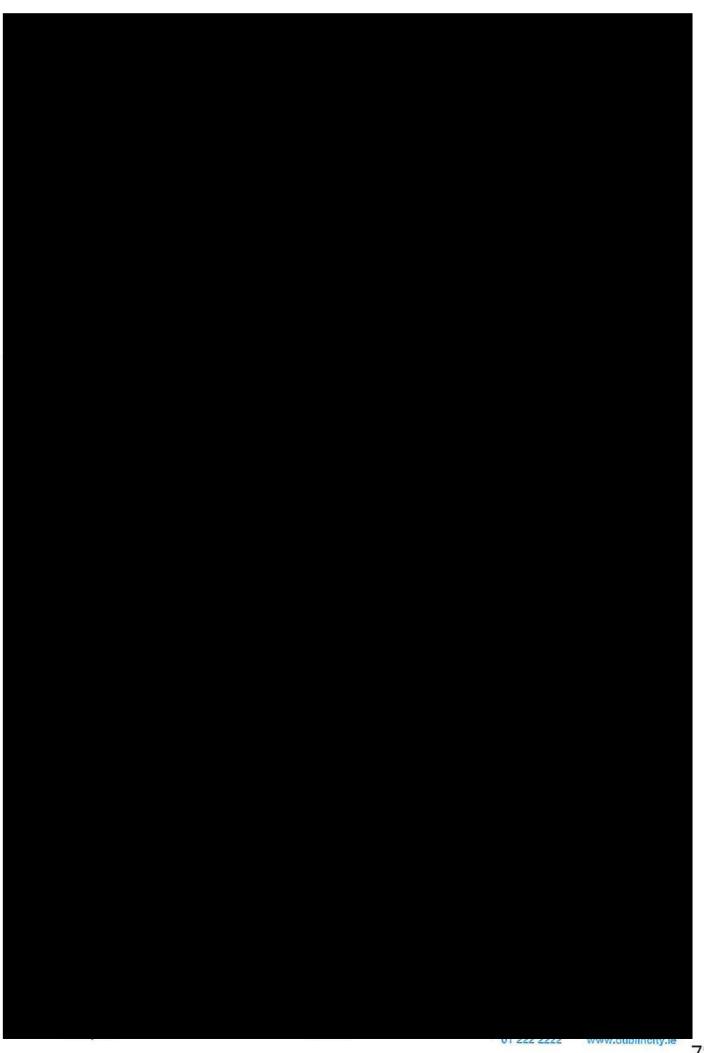


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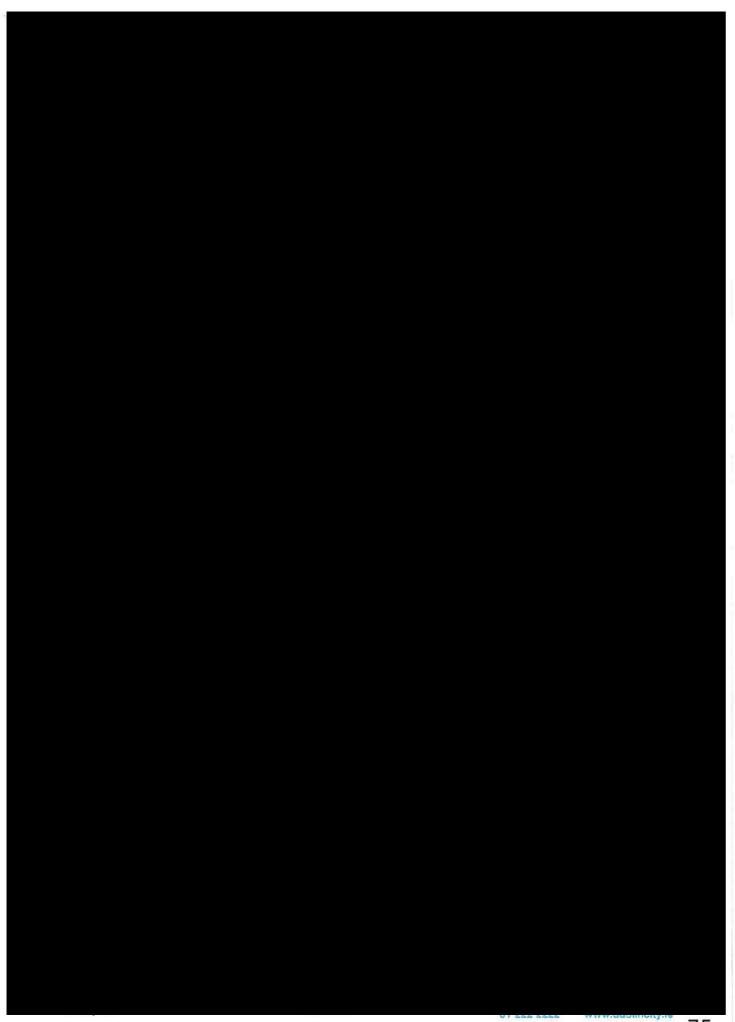
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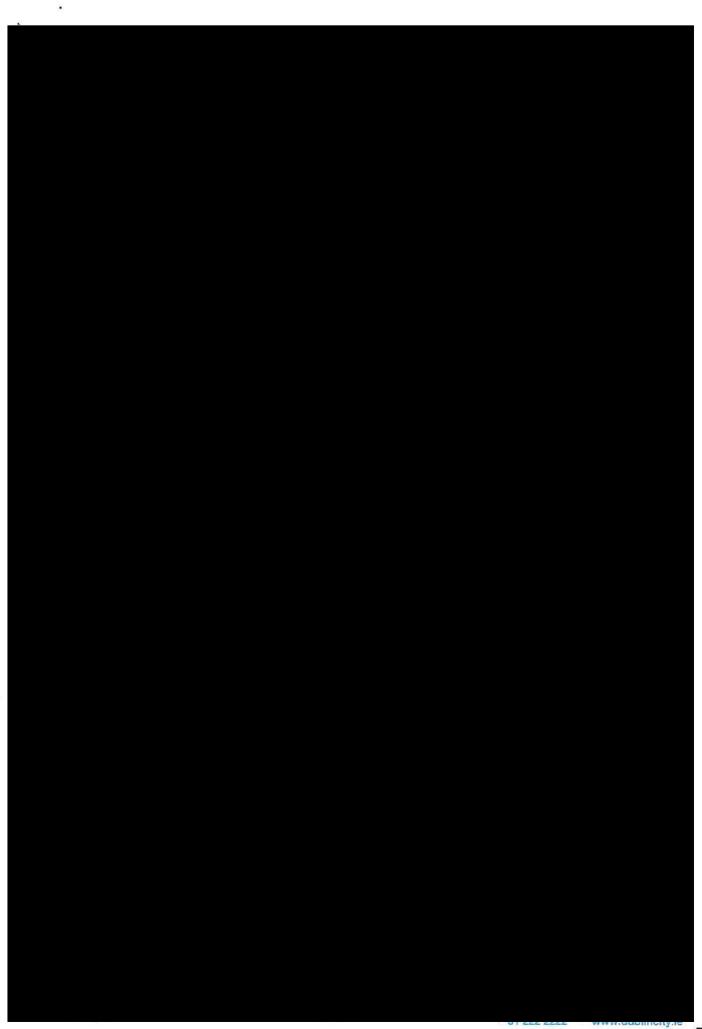
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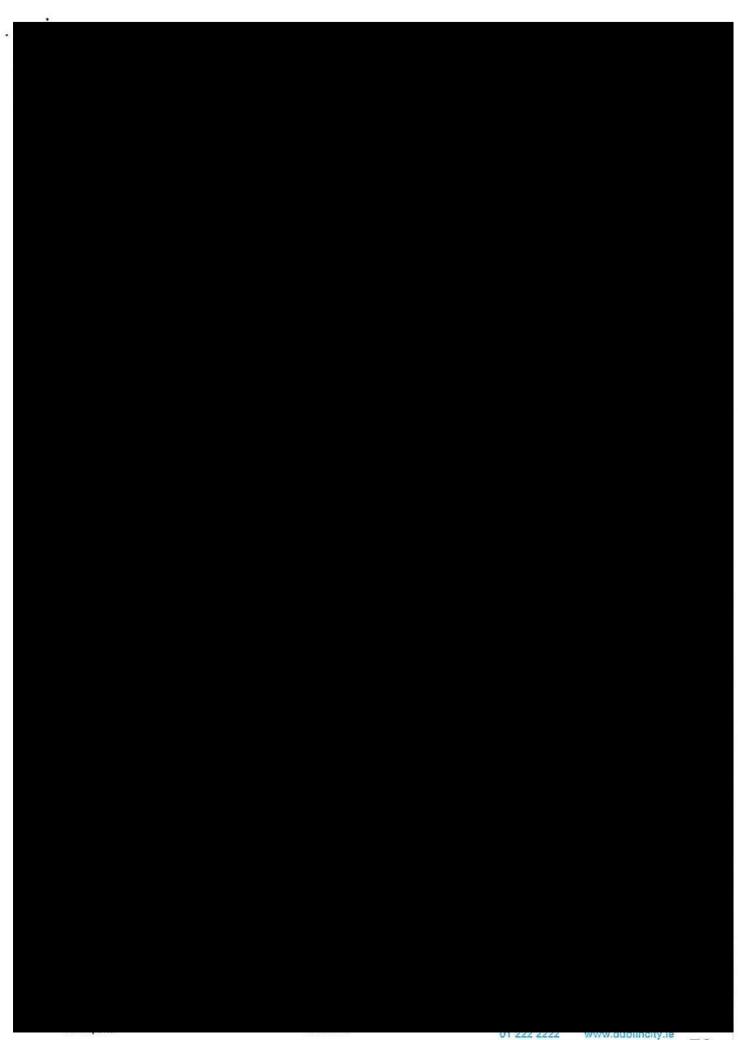


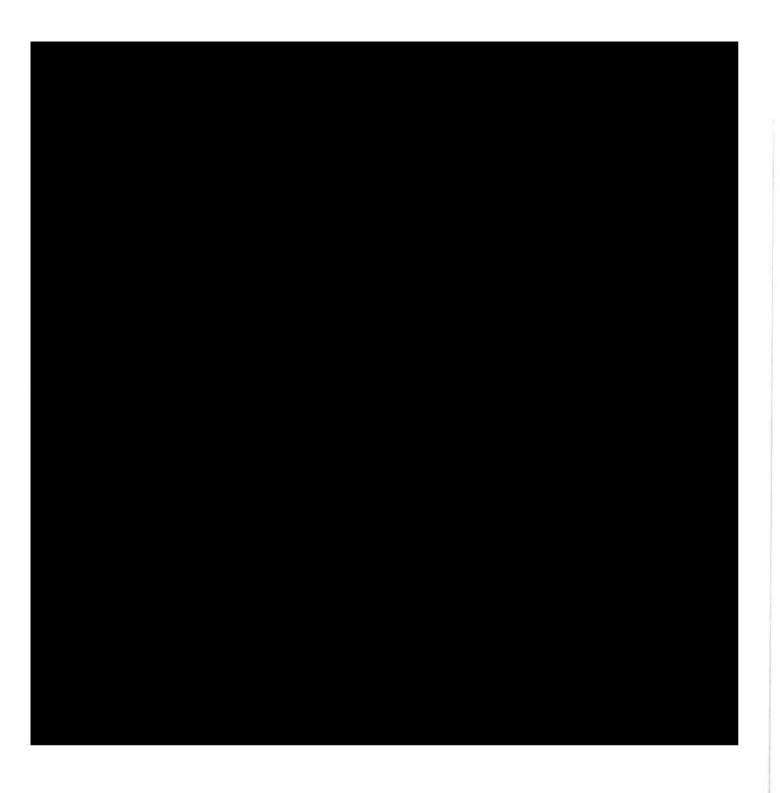


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CODES OF PRACTICE

Schedule A - Drainage Division

Schedule B - Transportation Planning Division

Schedule C - Air Quality Monitoring & Noise Control Unit

SCHEDULE A

Code of Practice - Drainage Division

- 1. Drainage shall be constructed in accordance with: -
- (a) B.S. 8005 Part 0 to Part 4
- (b) Dublin City Council's General Outline of Drainage Division's requirements for Main Drainage Works.
- (c) Specific Drainage conditions applying to the Development.
- 2. The Applicant shall consult with Drainage Division regarding all aspects of design details for the development, which shall be drained on the completely separate system.
- 3. A Building may not be constructed over the line of a Public Sewer, and the Building must be set back the requisite distance from the line of the Sewer.
- 4. Pipelines, which are to be taken in charge, shall be surveyed by CCTV and an "as-constructed" layout must be submitted to the Drainage Division in an approved digitised format.
- 5. Trade effluent to a sewer shall be licensed in accordance with the requirements of the Local Government Water Pollution Acts 1977 and 1990 and any amendments.
- 6. Liquid fuels and chemical storage facilities shall have approved bund structures provided.
- 7. Connections to sewers, which are the property of Dublin City Council, can only be made by the City Council.

Developers are advised that in order to minimise delays and to ensure compliance with the Code of Practice, the Division can be contacted for advice, application forms, etc. at the following address:

Drainage & Wastewater Services Block 1, Floor 4 Civic Offices Christchurch Dublin 8

Telephone: 01 222 2155

SCHEDULE B

Code of Practice - Transportation Planning Division

- 1. Any damage to public footpath/carriageway/laneway resulting from building works shall be repaired by the City Council at the developer's expense.
- 2. Applicant shall request the Dublin City Council Road Maintenance Division to reconstruct the public footpath outside the vehicular entrance, and this work shall be done by Dublin City Council at the developer's expense.
- 3. All precautions shall be taken during the construction works to ensure the stability of the footpath and carriageway as well as the services contained therein.
- 4. The developer shall indemnify the City Council against liability for injury or damage arising out of encroachment onto or over public footpath/carriageway.
- 5. Footpaths, carriageway and lanes shall be kept clean of building debris, mud and soil associated with the construction of and all shall be left clean on completion.
- 6. The roads development shall conform to standards agreed with and constructed under the supervision of the Roads Maintenance Engineer of Dublin City Council whether or not the roads development is to be taken in charge.
- 7. The area between existing boundary and new set back boundary shall be paved in a durable material and shall be to a contour all acceptable to the Roads Maintenance Engineer. The area shall be maintained thereafter by the applicant and legal successor. Alternatively some mutually acceptable arrangement shall be made with the City Council as regards paving and maintenance of the area.
- 8. Pavement lights shall be put into a state of repair entirely to the satisfaction of the Roads Maintenance Engineer and shall be in coincidence with the surrounding footpath surface as well as being free of trips of any kind.
- Basement accesses shall be put into a state of repair entirely to the satisfaction of the Roads Maintenance Engineer and shall be in coincidence with surrounding footpath surface and be free of trips of any kind as well as being free of any tendency to deflect underfoot.
- Discussions and agreement shall be had with the road Maintenance Engineer regarding floor levels of proposed building in advance of construction.
- 11. Gates/doors/ground floor windows shall not open outwards beyond line of boundary. There shall be no encroachment onto public footpath/laneway.
- 12. All precaution shall be taken during construction works to ensure the safety of pedestrians and other road users.
- 13. Driveway gradient shall not exceed 1 in 40 for the first 6.0m inside boundary.
- 14. The longitudinal gradient of the access road shall not be steeper than 1 in 40 nor flatter than 1 in 180.

- 15. Road drainage gullies shall be installed at not more than 37.0m part with extra gullies at road junctions.
- 16. The levels of back gardens or hard standing areas in the proposed development shall not be such that existing boundary walls are used as retaining walls or overlooking of existing properties results.
- 17. All downpipes, gullies, manholes, A.J.'s, F.A.I.'s etc. shall be located within the final boundary of the site.
- 18. All surface water from the new works shall be trapped and discharged to drains within the final boundary of the site.
- 19. Other than direct underground connections to public services all drains and conduits shall be located within the boundary of the site and none shall be permitted to issue onto the public road.
- 20. Adequate provision shall be made for the storage of domestic refuse awaiting collection close to the public road, but in such a position so as not to obstruct or diminish visibility.
- 21. Armoured unbreakable glass shall be used in the construction of bus shelter in the interest of the safety of pedestrians and other road users. Dublin City Council will not entertain claims for malicious damage to the glazed portions of the proposed bus shelter.
- 22. Any new shop front shall be constructed so as to allow the fitting of any future requirements as regards protective shuttering to take place without encroachment onto the public footpath by the shutters, their supports or fittings.
- 23. The car park shall comply with Design Recommendations for Multi-storey and Underground Car Parks by the Institution of Structural Engineers.
- 24. The placing of advertising boards, the storage of goods, and the display of goods on public footpath, carriageway or laneway shall not be permitted.
- 25. The developer shall ensure that the streets number(s) of his premises be displayed in a position easily visible from the public road. The developer shall further ensure that street nameplate(s) be provided as necessary by the City Council at the developer's expense. Prior to commencement of a development, the developer must submit to Dublin City Council (Roads & Streets Department) the place name and numbering scheme to be used on the proposed estate or streets therein. The submission shall be subject to the agreement of the Roads and Streets Department and, the approval of the relevant Area Committee. The Department of the Environment guidelines insist that place names have local historical or cultural significance. Under section 42 of the Dublin Corporation Act 1890, Dublin City Council is the naming and numbering authority and no signage should be erected without Dublin City Council's approval. Please note that Dublin City Council requires a bilingual nameplate to be erected giving both the Irish and English forms of a name. The Irish translation of a name is provided by Dublin City Council and is the only acceptable translation.

SCHEDULE C

Code of Practice - Air Quality Monitoring and Noise Control Unit

Noise Control

- 1. Instruction shall be given to ensure that vehicles and plant arriving and leaving the site comply with the stated hours of work.
- 2. Noisy plant and equipment shall be situated as far as possible from noise sensitive buildings. Barriers to reduce noise reaching noise sensitive buildings shall be employed where practicable.
- 3. Machines in intermittent use shall be shut down or throttled down to a minimum when not in use.
- 4. Plant shall be maintained in good working order so that extraneous noise is kept to a minimum.
- 5. Noise emitting machinery, which is required to run continuously, shall be housed in suitable acoustic lined enclosures where practicable.
- 6. Compressors and generators shall be sited in areas least likely to give rise to nuisance.
- 7. Care shall be taken to reduce noise when loading or unloading vehicles or dismantling scaffolding or moving materials etc.
- 8. The noise sensitivity of the area in the vicinity shall be considered when determining the method of piling for foundations. All pile driving shall be carried out by plant equipped with a recognised noise reducing system.
- 9. Hours of operation for petrol stations shall be limited in residential areas to between 6.00 a.m. and 11.00 p.m. Car-washing and turbo-drying facilities are to be sited so as not to interfere with residential amenities.

26. A list if Units Costs (repairs to footpaths, carriageways, etc.) is available from the Road Maintenance Division.

Developers are advised that in order to minimise delays and to ensure compliance with the Code of Practice, this Division can be contacted for advice, information, etc. at the following address:

Transportation Planning Division Block 2, Floor 4 Civic Offices Christchurch Dublin 8

Telephone: 01 222 2255

Further notes on air pollution control

As the Emissions of Volatile Organic Compounds from Organic Solvents Regulations 2002 (S.I. 543 of 2002) have now come into force in relation to specified industrial activities and installations, any planning application received for such a business shall be flagged and circulated to this Unit for comment. The full list of 20 specified activities are:

- 1. Heat set web offset printing
- 2. Publication Rotogravure
- 3. Other rotogravure, flexography, rotary screen-printing, laminating or varnishing units. Rotary screen printing on textile/cardboard
- 4. Surface cleaning using compounds with risk phrases
- 5. Other surface cleaning
- 6. Vehicle coating and vehicle refinishing
- 7. Coil coating
- 8. Other coating, including metal, plastic, textile, fabric, film and paper coating
- 9. Winding wire coating
- 10. Coating of wooden surfaces
- 11. Dry Cleaning
- 12. Wood impregnation
- 13. Coating of leather
- 14. Footwear manufacture
- 15. Wood and plastic lamination
- 16. Adhesive coating
- 17. Manufacture of coating preparations, varnishes, inks and adhesives
- 18. Rubber conversion
- 19. Vegetable oil and animal fat extraction and vegetable oil refining activities
- 20. Manufacture of pharmaceutical products

Air Quality Monitoring and Noise Control Unit Environment and Engineering Department Block 1, Floor 6 Civic Offices Christchurch Dublin 8

Telephone: 222 3742

Air Pollution Control

- 1. Burning of materials on site is not permitted.
- 2. During demolition works on the site, all necessary steps to contain dust shall be taken so as to prevent or limit dust being carried to occupiers of other buildings in the locality.
- 3. During any construction or commercial site clearance, excavated materials shall be damped down or otherwise suitably treated to prevent the emission of dust from the site. All stockpiles shall be planned and sited to minimise the potential for dust nuisance.
- 4. During the construction phase of the development, best practicable means shall be employed to minimise air blown dust being emitted from the site.
- 5. Watering down of the site shall be carried out where necessary to minimise dust transfer into neighbouring premises.
- 6. Extract fumes, from the proposed development shall be minimised, and if necessary treated, using the best available technology.

In particular:

- a) Extract fumes from the proposed development shall be emitted to the outer air via a stack erected to a minimum height of 1 metre above the eaves of the premises or adjoining premises.
- b) Any stack emitting fumes from the proposed development shall be positioned in an area from which the emissions will cause the minimum nuisance.
- c) No cowl to be placed on top of the stack and if a bend is provided it shall be directed away from neighbouring residences or offices.
- d) The fan installed to propel the extract shall be of sufficient power to ensure high exit velocity of the fumes during all weather conditions.
- e) In the case of domestic premises, if oil-fired central heating is to be employed, the sulphur content of the oil, the capacity of the plant and position and height of the flue must be shown. The flue is to extend to at least 1 metre above the eaves of the premises, and that of adjoining premises. The flue and boiler house to be soundly constructed.

Where a basement car park is proposed, a system of ventilation capable of achieving 6-10 air changes per hour, with extract points capable of eliminating pockets of stale air where dangerous fumes could collect, is required.

The extract from the ventilation system not to be emitted to a courtyard or similarly confined area. Compliance with Clause 3.5.25 of the Building Regulations Technical Guidance Document B (Fire) or a comparable standard is recommended.



INFORMATION for the purposes of Building Control;-

 IMPORTANT NOTE NOW THAT YOU HAVE RECEIVED PLANNING PERMISSION or ARE INTENDING TO CARRY OUT BUILDING WORKS.

BEFORE ANY BUILDING WORKS TAKES PLACE ON YOUR SITE YOU WILL NEED TO CHECK THE FOLLOWING Pre-Development Planning Conditions, Commencement Notice, Construction Products Regulations (CPR) (Regulation (EU) No. 305/2011)).

- IF SOME OR ANY OF THESE ARE OMITTED YOUR BUILDING MAY BE AN UNAUTHORISED BUILDING AND YOU MAY BE GUILTY OF AN OFFENCE AND/OR YOU MAY BE SUBJECT TO PENALTIES.
- YOU SHOULD ALSO BE AWARE THAT IF YOU OMIT TO SUBMIT A VALID COMMENCEMENT NOTICE TO YOUR LOCAL AUTHORITY YOU MAY BE UNABLE TO GET A COMPLETION CERTIFICATE AND THIS MAY HAVE SERIOUS LONG TERM CONSEQUENCES.

(The information is for guidance purposes only and does not purport to be a legal interpretation or constitute legal or professional advice.)

1. Pre-Development Planning Conditions;

 If there are any Pre-Development conditions attached to your planning permission such as a financial contribution or other on the schedule of conditions attached to your planning permission you should give your immediate attention to them prior to the commencement of your development.

Note: All conditions must be complied with in full as failure to do so will render your permission invalid and may result in the initiation of enforcement proceedings for compliance with same

2. Commencement Notice; www.localgov.ie

In accordance with the Building Control Regulations you are obliged to submit a Commencement Notice prior to commencement of the development and it must be received by the BCA <u>not less than 14 days and not more than 28 days before</u> you wish to commence. Copy of commencement notice forms may be downloaded on our website <u>www.dublincity.ie</u>.

IF THE PROPOSED WORKS ARE IN ONE OF THE FOLLOWING CATEGORIES:

- 1) THE DESIGN AND CONSTRUCTION OF A NEW DWELLING
- 2) AN EXTENSION TO A DWELLING INVOLVING A TOTAL FLOOR AREA GREATER THAN 40 SQUARE METERS
- 3) WORKS TO WHICH PART III APPLIES (FIRE SAFETY)

THE FOLLOWING ARRANGEMENTS WILL APPLY TO COMMENCEMENT NOTICE SUBMISSIONS:

- (a) A completed copy of the commencement notice which must be signed by the owner of the works and must (refer to section 9 S.I. No 9 of 2014) be to be accompanied by the following;
 - a. General Arrangement Drawings
 - b. A schedule of design documents as are currently prepared or to be prepared



- An online- assessment via the Building Control Management System of the proposed approach to compliance with the requirements of the Building Regulations 1997 to 2014;
- d. The preliminary inspection plan
- e. A Certificate of Compliance (Design)
- Notices of Assignment in respect of the Builder who will carry out the works and of the Assigned Certifier who will inspect and certify the works, and
- g. Certificates of Compliance signed by the Builder and the Assigned Certifier undertaking to carry-out their roles in accordance with the requirements of the Building Regulations.

With regard to the above, please note that:

- The Designer and the Assigned Certifier must be a <u>Chartered Engineer</u>, or <u>Registered Architect</u> or <u>Registered Surveyor</u>
- 2. A Competent Builder must execute the work
- Your drawings must show details of how your Building will comply with the Building Regulations - drawings submitted for planning permission purposes are not typically building control compliance drawings.
- 4. The commencement notice and accompanying documentation must be filed electronically via the online Building Control Management System. Where notices and documentation are submitted in written format, the building control authority will arrange for scanning and uploading of same for which an administrative charge will apply and statutory deadlines relating to such notices may be delayed by up to seven days.

(Note: Statutory approvals relating to fire safety and disabled access continue to apply where relevant and are not affected by the above changes).

For more information; http://www.environ.ie/en/DevelopmentHousing/BuildingStandards/

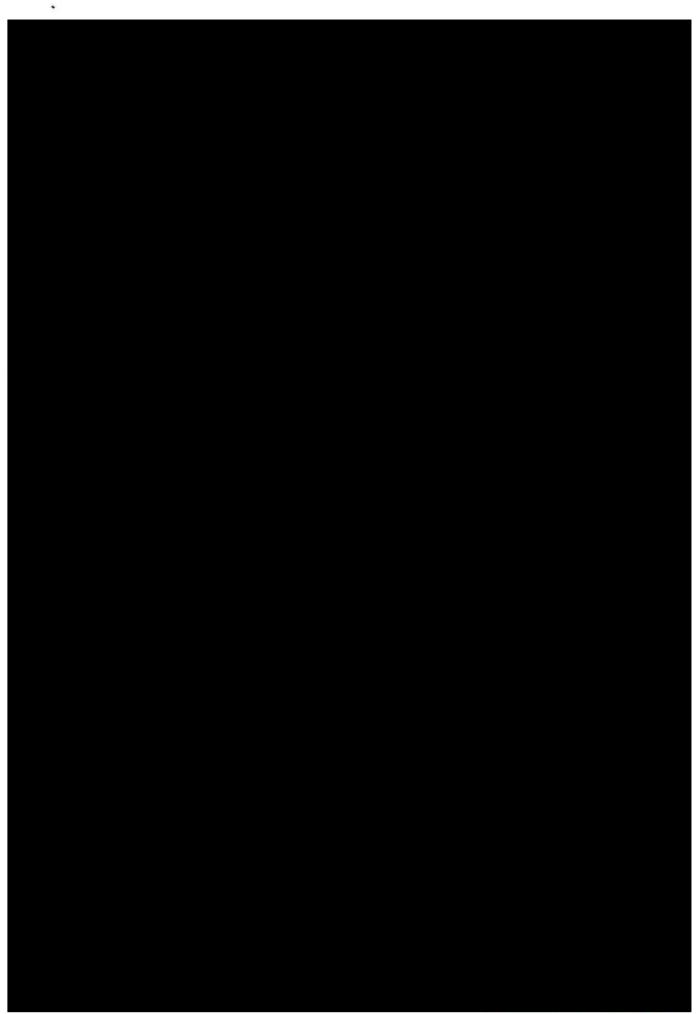
3. Construction Products Regulations (CPR) (Regulation (EU) No. 305/2011) CE MARKING of construction products covered by harmonised European Standards is mandatory, when the construction product is placed on the market.

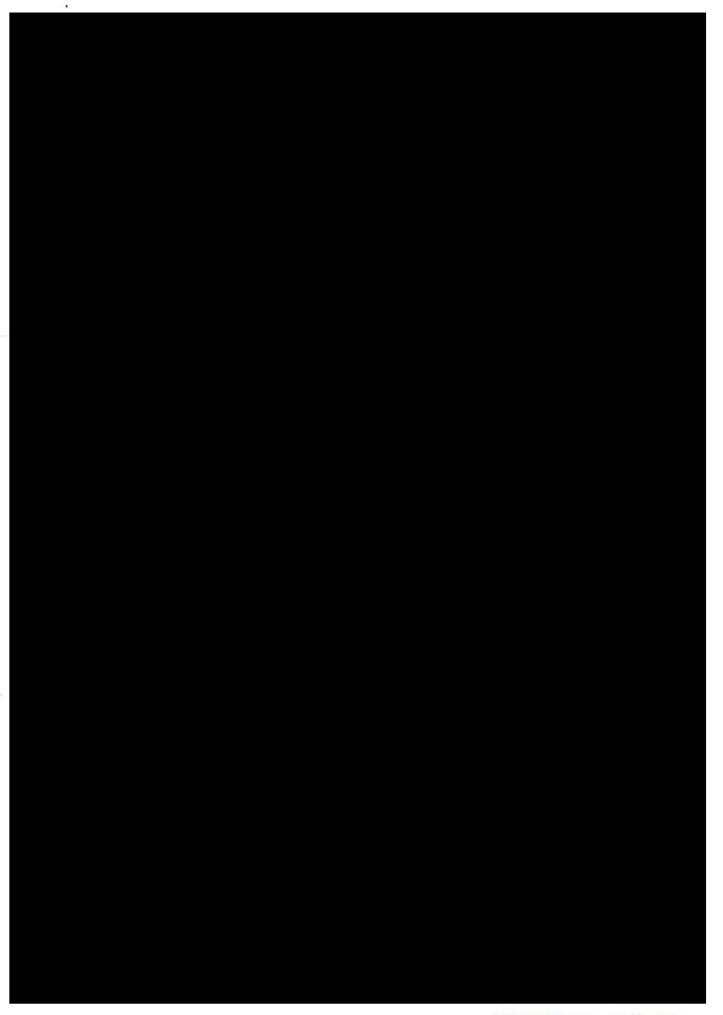
You need to ensure that you appoint competent professionals.

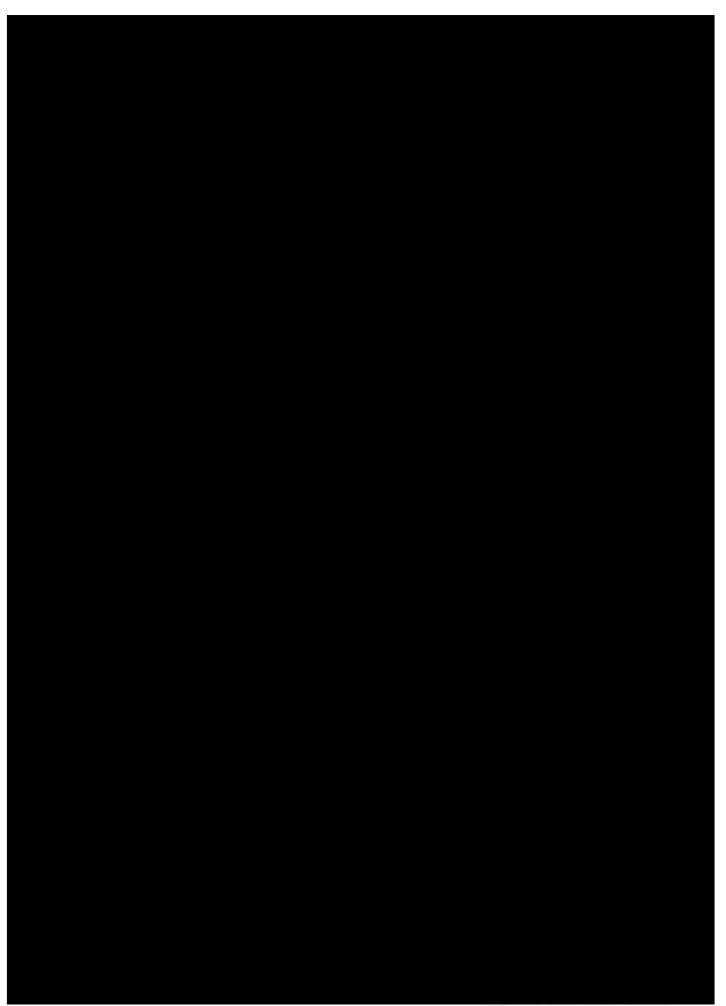
Whilst the CPR concerns itself with the conditions which apply when placing a construction product on the market, clients, specifiers, designers and builders etc. should be aware of the following when incorporating construction products into building works:

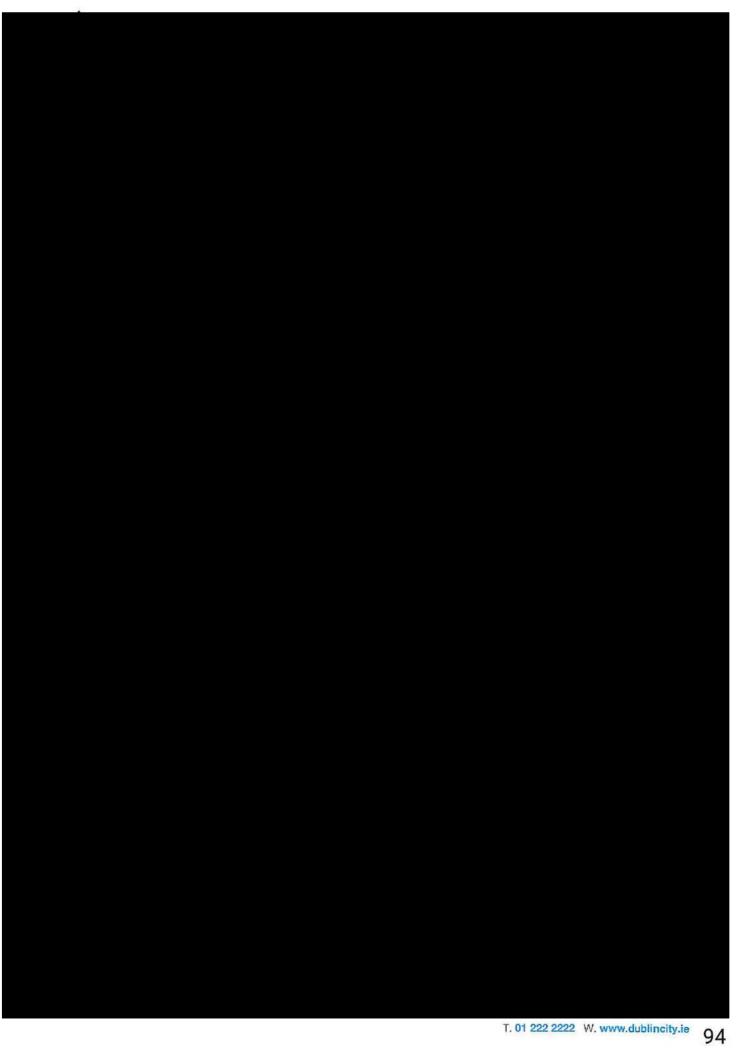
- When drawing up specifications, refer to the harmonized technical specifications and specifically to the performance requirements of individual characteristics when necessary,
- 2. When choosing the products most suitable for their intended use in construction works, review the manufacturer's Declaration of Performance,
- Check National Annexes or Standard Recommendations which give guidance on appropriate minimum performance levels for specific intended uses of the product in Ireland. NSAI host this information at www.nsai.ie, and

NOTE; All works should be carried out using "proper materials...which are fit for the use for which they are intended and for the conditions in which they are to be used" to ensure compliance with the Building Regulations. For further information on the Building Regulations see http://www.environ.ie/en/DevelopmentHousing/BuildingStandards/

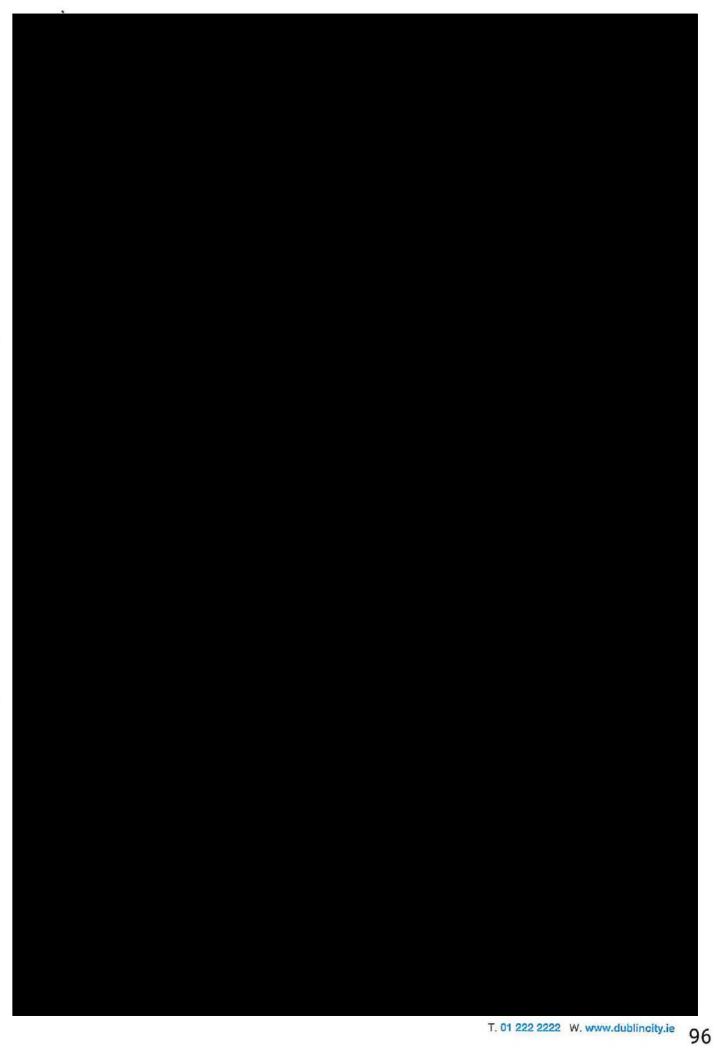


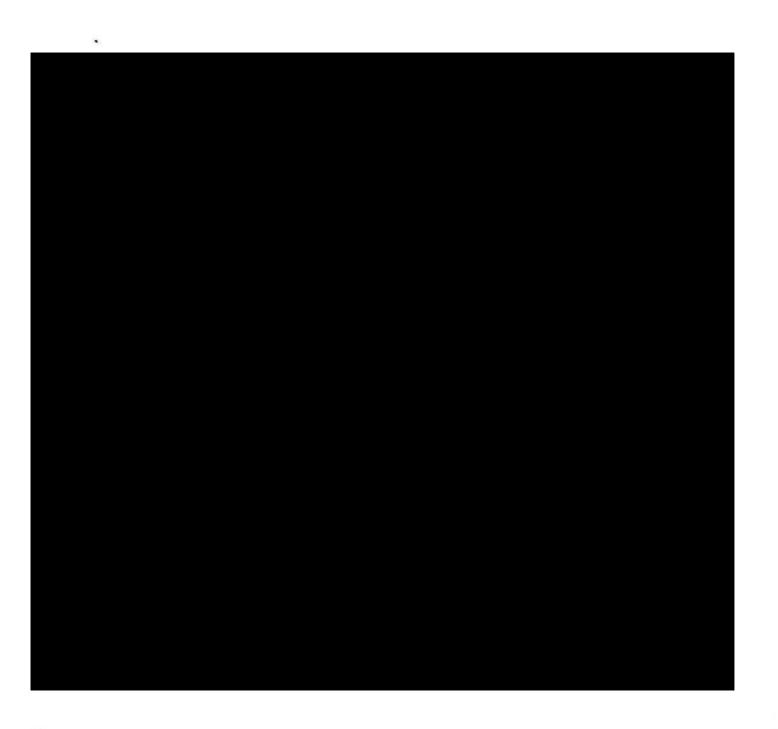












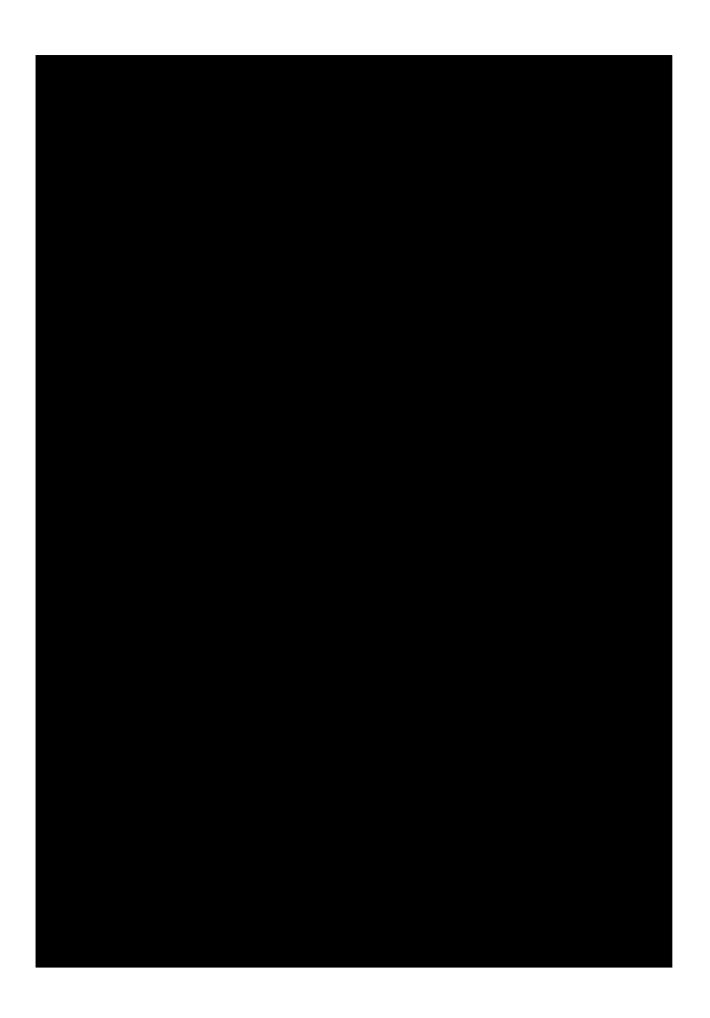


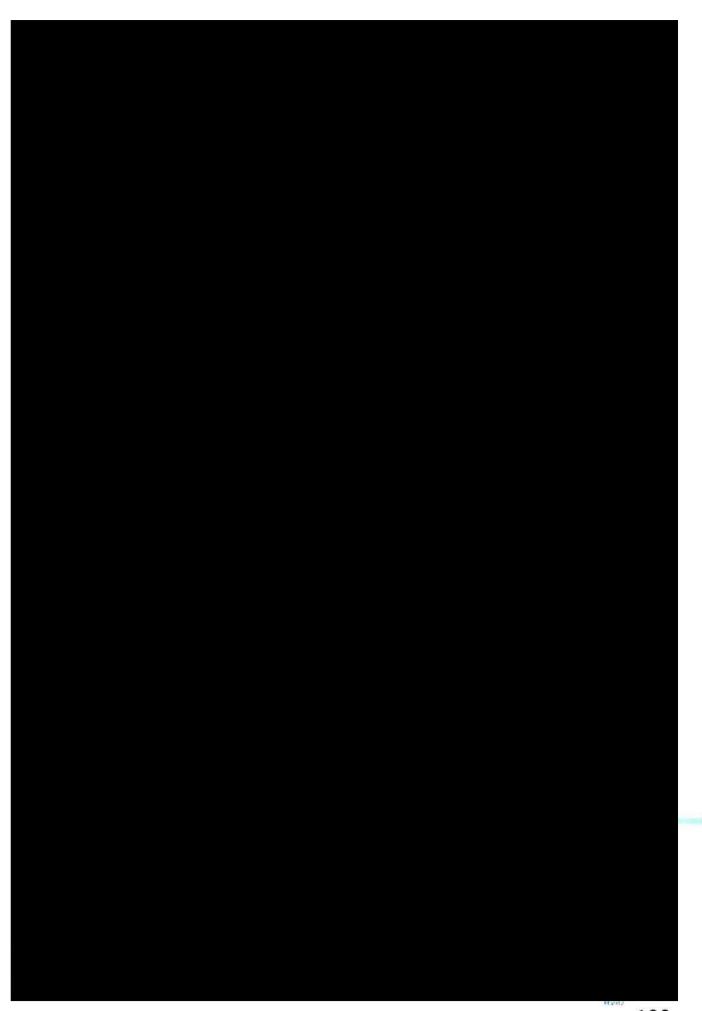
Planning & Property Development Department Dublin City Council, Block 4, Floor 3, Civic Offices, Wood Quay, Dublin 8

An Roinn Pleanála & Forbairt Maoine Bloc 4, Urlár 3, Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8

T: (01) 222 2288

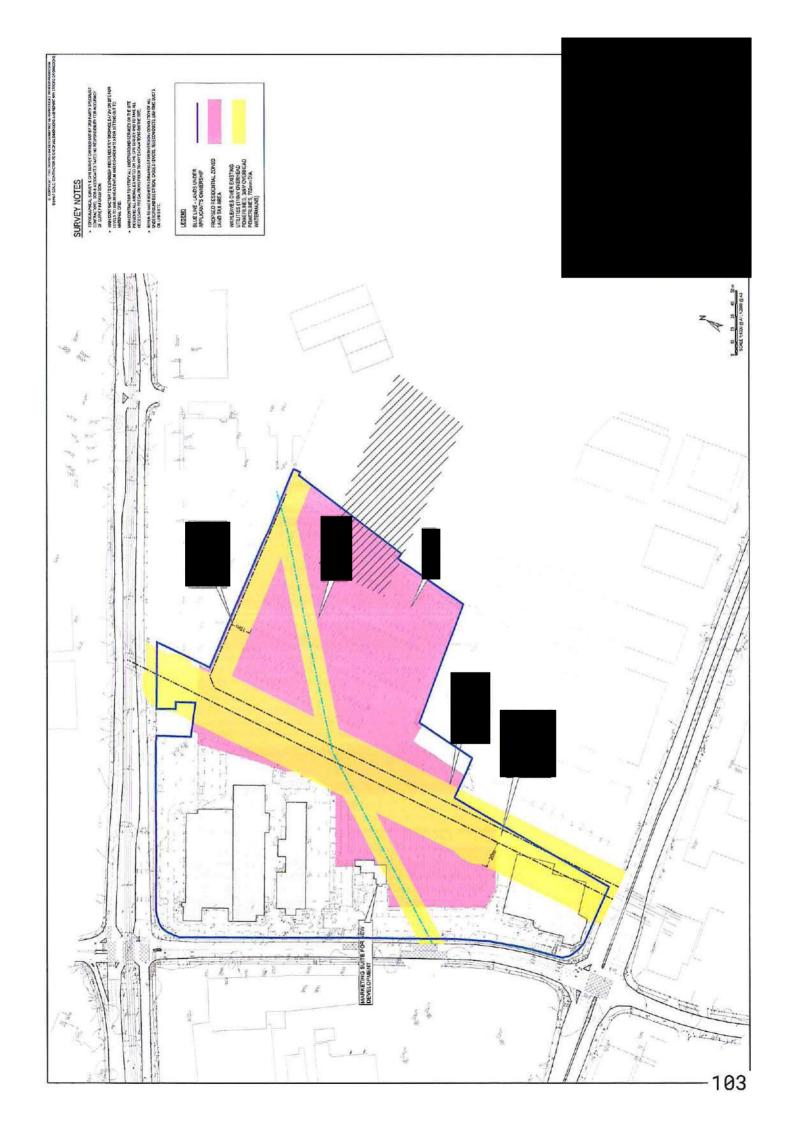
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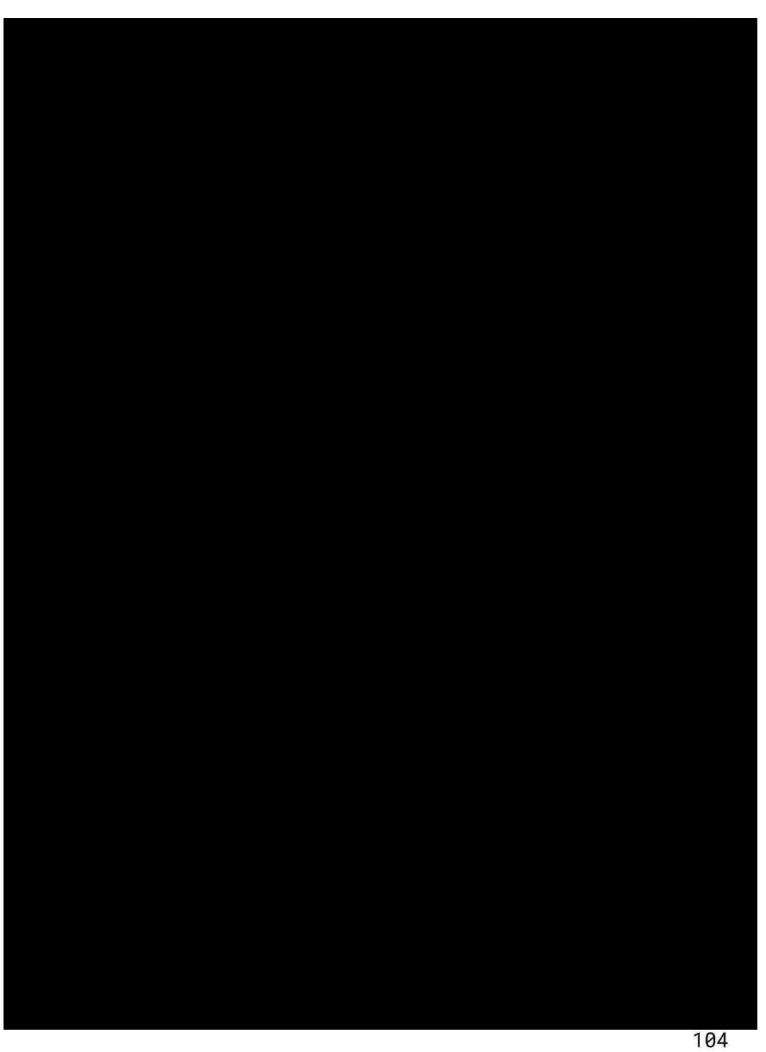


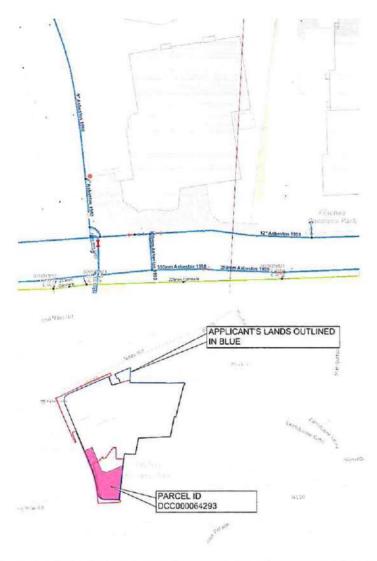












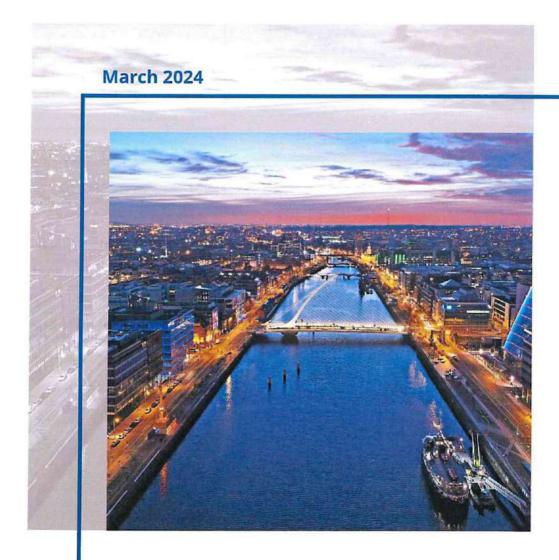
- No part of this drawing may be re produced or transmitted in any form or stored in any retrieval system of any nature without the written permission of Uisce Éireann as copyright hold er except as agreed for use on the project for which the document was originally issued.
- 2. Whilst every care has been taken in its compilation, Uisce Éireann gives this information as to the position of its underground network as a general guide only on the strict understanding that it is based on the best available information provided by each Local Authority in Ireland to Uisce Éireann. Uisce Éireann can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions.
- 3. This information should not be relied up on in the event of excavations or any other works being carried out in the vicinity of the Irish Water underground network. The onus is on the parties carrying out excavations or any other works to ensure the exact location of the Uisce Éireann underground network is identified prior to excavation s or any other works being carried out. Service connection pipes are not generally shown but their presence should be anticipated.

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Submission to Residential Zoned Land Tax Annual Draft Map

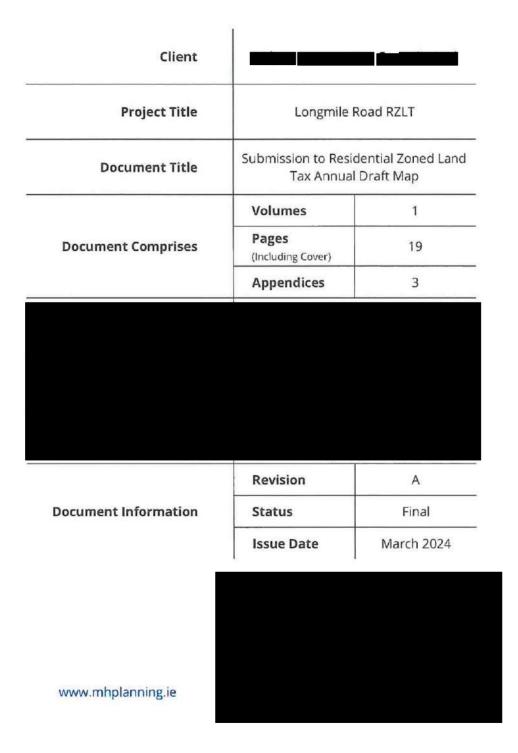
Parcel ID DCC000064293 - Long Mile Road, Dublin 12

on behalf of Co. Unlimited





Document Control Sheet



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1. Introduction

McCutcheon Halley Chartered Planning Consultants have been appointed by

Dublin City Council (DCC) regarding the Annual Residential Zoned Land Tax (RZLT) Map published on the 1st of February 2024.

This submission relates to lands at the junction of Longmile Road and Walkinstown Avenue, Dublin 12, identified on the Draft RZLT Map (Figure 1) as part of **Parcel ID No. DCC000064293**.



Figure 1 RZLT Parcel Location

The lands are comprised in Folio in respect of which our clients are the registered owners. We attach a copy of Folio together with the associated map as evidence of ownership.

1.1 Purpose of Submission

The criteria for including land in the draft RZLT maps are set out in legislation. Guidance has been issued by Department of Housing, Local Government and Heritage for the assistance of local authorities. The relevant legislation and Guidance documents are as follows;

- The Taxes Consolidation Act 1997 (as amended) ("TCA")
- Finance Act 2021
- Finance (No. 2) Act 2023
- Residential Zoned Land Tax Guidelines for Planning Authorities (2022), Department of Housing, Local Government and Heritage. ("the RZLT Guidelines")

The date for the assessment as satisfying the relevant criteria in respect of the current draft map is 1st January 2024 (Section 653B(2) TCA read in conjunction with Section 653M).

.DCC published their Annual Draft RZLT Map, identifying lands considered to be in scope for the RZLT as of January 1st, 2024. The map identifies part of our client's lands as Parcel ID no DCC000064293 and deems them as "land satisfying the relevant criteria on 1st January 2024...

Section 653C(1)(b) states that when preparing the draft map, the local authority must specify;

(i) the date on which, based on the information available to it, it considers that land referred to in paragraph (a) first satisfied the relevant criteria, where that date is after 1 January 2022.

It is noted that, notwithstanding that the draft RZLT map states that Dublin City Council considers that the lands were in scope on 1st January 2022 when the RZLT maps were first published in October 2022, the parcel now identified as Parcel ID no DCC000064293 were not included. It is apparent therefore that either Dublin City Council considers that it erred in excluding the lands in the draft maps published in 2022 or that an error has occurred in including the lands in the current draft maps. Either way, the position now adopted by Dublin City Council in relation to the question of whether the lands met the relevant criteria for inclusion in the maps on 1st January 2022 is inconsistent with the position previously taken. It is not suggested by Dublin City Council that it considers that circumstances have changed in the interim such that it is now entitled to include the lands which did not satisfy the relevant criteria on 1 October 2022.

The purpose of the submission is to propose a correction to the Annual Draft RZLT map, seeking the exclusion of Parcel ID No. DCC000064293 from the map on grounds set out in this submission.

The maps prepared by Dublin City Council will form the basis for eligibility for a very onerous tax. Once the lands are included in the final maps, there is no opportunity to escape liability for the tax unless the land is developed for residential development. As tax is considered to be a penal law, there is a great onus on all local authorities when assessing eligibility to take care to include only lands which meet the strict criteria as set out in the legislation. The strict wording of the legislation must be observed. It is not open to the local authority to read in words that are not included in the legislation or to omit words that are included in the legislation.

In the event of any discrepancy between the wording of the legislation and any guidelines issued in respect of the mapping exercise, the legislation prevails.

This submission therefore outlines why, based on the strict wording of the legislation the Parcel does not now and did not on 1st January 2024 satisfy the relevant criteria as defined in Section 653B of the TCA and therefore it must be excluded.

Without prejudice to the position as outlined above in so far as it refers to the precedence of the legislation over the Guidelines, this submission also outlines why, having regard to the Guidelines, the lands should also be excluded.

As is required this submission includes;

- An Ordnance Survey Site Location Plan at a scale of 1:1000 that clearly identifies the land and its boundaries, see Attachment No. 1.
- ii. Proof of Ownership, see Attachment No. 2.

Parcel Characteristics and Occupancy

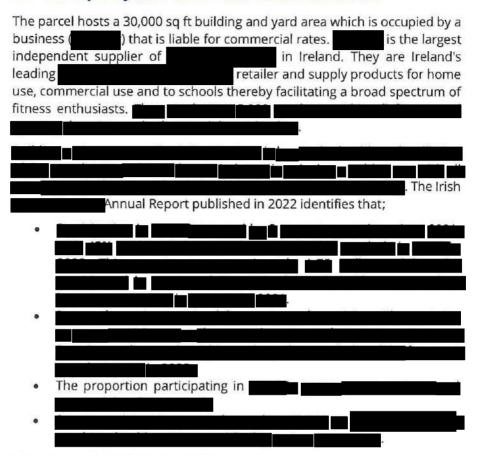
The Parcel (approx. 0.84ha) is part of a larger plot identified as the 'and part of Strategic Development Regeneration Areas (SDRA) 5 in the Dublin City Development Plan 2022-2028. The zoning designation is Z14 with an objective:

"To seek the social, economic and physical development and/or regeneration of an area with mixed-use, of which residential would be the predominant use."



Figure 2 General Location of Subject Parcel within SDRA 5

2.1 Occupancy and-Recreational Infrastructure



2.2 Energy and Water Infrastructure

There are underground and overhead power lines within the Parcel, as illustrated in Figure 3. The infrastructure comprises,

- Cookstown-Inchicore 110kVDouble Circuit (D.C.) overhead (O/H)
 Transmission Line and 1 no. 110kV lattice mast.
- Inchicore-Ballymount 38kV O/H power line and associated poles.

ESB Networks require a lateral clearance to buildings to be 20m each side of the 110kV centreline, a radial clearance of 23m to be maintained from the centre of each 110kV tower and suitably designed crash barriers to be provided around new and existing masts.

There is an existing 762mm diameter steel trunk watermain within the Parcel. Uisce Éireann (UE) requires a 16.75m wide wayleave centred over the watermain.

The ESB and Uisce Éireann clearance requirements have a material impact on the developable area of this Parcel. Figure 3 (and Attachment 1) identifies lands which are effectively sterilised by energy and water infrastructure and development of any kind would not be acceptable within this zone of influence.

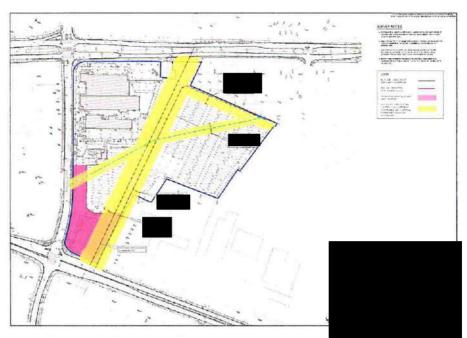


Figure 3 Existing ESB and Uisce Éireann infrastructure.

3. Grounds for Exclusion

3.1 Introduction

The Residential Zoned Land Tax (RZLT) was introduced in Ireland by the Finance Act 2021 as part of the government's initiative called Housing for All - a New Housing Plan for Ireland".

The purpose of the RZLT tax is to incentivize efficient land use by encouraging residential development and to tax landowners who are not providing lands which meet certain criteria for development. The tax and the associated guidelines are part of a suite of integrated measures and policy direction to:

- engage lands in cities and towns.
- create compact and integrated communities.
- · aid brownfield regeneration.
- activate greenfield landbanks for housing.
- · support place making and growth of sustainable communities.

3.2 Assessment against Taxes Consolidation Act Criteria

Section 653B of the TCA sets out:

- Criteria which result in land being considered for inclusion in the RZLT maps ("the Inclusionary Criteria") and
- Criteria which result in land which meet the Inclusionary Criteria nevertheless being excluded from the maps ("the Exclusionary Criteria")

The Inclusionary Criteria

The Inclusionary Criteria are outlined in Section 653B (a-c) TCA. The overarching rationale for inclusion is that the zoning of the land is either solely residential or is for mixed use including residential and that the land has access to public services which have sufficient capacity to support the development of the land.

For reference, the criteria are given in **bold black** text. Our response is given in blue and provides commentary where the criteria is relevant in terms of how it applies or why it does not apply to the subject lands.

Section 653B sets out the meaning of "land which satisfies the relevant criteria" as being a reference to land which;

3.2.1 S653B (a) Residential zoning criterion

- (a) is included in a development plan, in accordance with section 10(2) (a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—
- (i) solely or primarily for residential use, or
- (ii) for a mixture of uses, including residential use.

Response: The Parcel is zoned Z14 – Strategic Development and Regeneration Areas (SDRAs) in the Dublin City Development Plan 2022 – 2028. This mixed-use zoning allows for residential development. The land therefore satisfies the "zoning" Inclusionary Criterion.

Exclusion from the RZLT map is not being sought in response to this criterion.

3.2.2 Part (b) Public infrastructure and facilities criterion

(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.

Response: The inclusion of the subject lands on the Draft Annual RZLT Map is challenged under Section 653B(b) as it is not reasonable to consider that the subject lands has access to a public water supply **with sufficient service capacity available** (emphasis added).

a) Water Supply

The lands form part of the . Although this land (Parcel ID No. DCC000064293) was excluded from the draft RZLT map published in 2022, the remainder of that site (identified as Parcel ID DCC0000064150 (previously in the 2022 map identified as Parcel ID DCC000004727)) was included. Planning permission issued by DCC for development within the Parcel ID DCC0000064150 conditioned such that a new water connection could only be facilitated if upgrade works are undertaken at a location approx. 850m east of the site and within land that is not within the landowner's control, see Figure 4. Uisce Eireann further confirmed that it "currently does not have any plans to extend its network in this area. Should you wis to progress with the connection you will be required to fund this network extension". This direction from UE does not apply to the subject Parcel as it is not part of the extant planning permission. However, it provides evidence that sufficient water supply service capacity is unavailable for the Parcel. See Uisce Eireann correspondence included in Attachment 3.

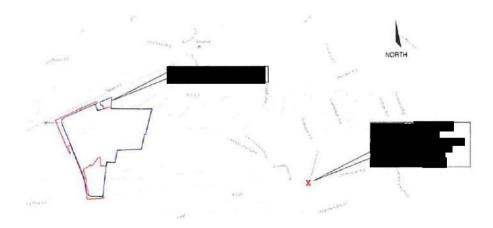


Figure 4 Location of watermain upgrade works.

The above referenced confirmation from Uisce Eireann makes it clear that the lands do not and cannot be deemed to meet the public infrastructure criterion. Section 653B(b) is clear. The assessment must be made on the

basis of the sufficiency in the capacity of the public infrastructure which is available on the relevant date.

The upgrade required to the public water infrastructure some 850 metres from the site will benefit the wider area. It is not work which solely benefits the lands. Nothing in the legislation permits a local authority to require a private landowner to pay for an upgrade to public services and to deem them taxable for RZLT should they fail to do so. Such an interpretation would introduce uncertainty and ambiguity in relation to where the line should be drawn in relation to the level of cost which a private landowner would be obliged to pay for the upgrading of public services to increase their capacity.

The criteria in the Act to include lands for the RZLT, in relation to Services is included in 653(B) b as follows:-

(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.

(Our emphasis added).

Section 653B(b) is clear. The land must have access to public services with sufficient service capacity available. The response of Uisce Eireann in the context of the planning application made relating to Parcel ID DCC0000064150 is equally clear. There is not sufficient service capacity available. The criterion is not satisfied.

The fact that Uisce Eireann may be prepared to allow an upgrade of its utility at a distance of 850 m from the lands at the cost of a land owner is not something which any local authority can take into account when assessing the satisfaction of the criteria in the TCA. It may be possible in theory to create sufficient capacity in the public water service but that required capacity can only be achieved (i) after the relevant date for the assessment for inclusion in the current RZLT map being 1st January 2024 and (ii) if the land owner at their own cost pays to upgrade a public utility.

Accordingly, it is not reasonable to consider that the Parcel meets the public infrastructure and facilities criterion.

Though the legislation takes precedence over the RZLT Guidelines, Section 4.1.1 of the RZLT Guidelines provides further support for the exclusion of the Lands. It offers guidance on 'Services to be considered' when identifying lands to be included in a Draft Map and the assessment of services required to facilitate the development of lands for residential development:

"This requires consideration of the services and infrastructure which are considered essential to the connection and development of residential communities. In assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be 'connected' or 'able to connect' and therefore are in-scope."

(Our emphasis added).

We set out below our response to each of the thresholds. This is limited to water supply infrastructure.

Threshold	Response
Does the water supply infrastructure adjoin the site, intersect the site, exist at a boundary or corner of the	The water supply infrastructure does not adjoin, intersect or sit at the boundary/corner of the Parcel.
landbank?	Developer Services (CDS) response attached to the extant planning permission on adjacent land within the wider developer developer identified that a new water connection is only feasible if upgrade works are undertaken at a location approx. 850m east of the site.
Is the water supply infrastructure in a nearby public road?	It is understood that a critical component of the water supply infrastructure is 850m distant from the Parcel.
Is the water supply infrastructure connected to an existing development adjoining the landbank?	No - the extant permission for the adjoining landbank is not implemented to date.

Where the thresholds above are not met, as is the case with the subject Parcel, the Guidelines are clear that the lands would not be 'connected' or 'able to connect' and therefore the Parcel is out of scope.

The Guidelines provide further guidance to local authorities in circumstances "Where the infrastructure does not meet the threshold above". In each case, the Guidelines refer to works "to connect the landbank" to services. As is apparent from the Uisce Eireann response, the works required in the case of the adjoining Parcel ID DCC000064150 and, presumably for this land, are not works "to connect the landbank" to services. Rather, they are works which will upgrade the public services for the benefit of the wider area. They are not in the nature of works contemplated by the RZLT Guidelines as bringing land within scope.

The Guidelines say that "Where the infrastructure does not meet the threshold above the following needs to be considered:

 Where no planning permission is in place, are the works to connect the landbank to the services on public land under the control of the local authority or land which will be available to the landowner/developer, in which case the land may be in-scope? (emphasis added)

Response:. The works required are not works to "connect the landbank to the services on public land". Rather, they are works which will upgrade the public services for the benefit of the wider area.

 Do the connections to services involve minor works, in which case the land may be in scope? (emphasis added)

Response: The works required are not "connections to services". As set out in the Uisce Eireann response, they are works which are required to upgrade and increase the capacity in the public water service.

Further, the works are not "minor works". UE in their Connection Reference No CDS19004746 pre-connection enquiry dated 11th February 2020 associated with the extant planning permission on the adjacent landholding state,

"In order to accommodate the proposed connection to Irish Water network at the Premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe. Irish Water currently does not have any plans to extend its network in this area. Should you wish to progress with the connection you will be required to fund this network."

These works are at a significant additional cost to the development of our client's lands and cannot reasonably be considered to be 'minor works' having regard to the substantial cost associated with the delivery of this infrastructure. Accordingly, the Parcel is not in scope.

 Do the connections to services require access to 3rd party lands or 3rd party development to take place, in which case the land may be out of scope? (emphasis added)

Response: As outlined above, the required works are <u>not</u> "connections to services". They are works to upgrade a public water service for the benefit of the wider area and for the reasons set out above, this guidance does not bring the land in scope.

It is reasonably assumed that the upgrade to the Uisce Eireann water infrastructure that was deemed necessary in relation to the development of the adjoining Parcel, ID DCC000064150 will also be deemed necessary in relation to the development of this Parcel ID DCC000064923. In the context of Parcel ID DCC000064150, permission to undertake the upgrade was included in the permission granted under reference 3228/20.

Parcel ID DCC000064923 must be considered on its own merits; it is not permissible for DCC to assume that any development, including the upgrading of the water infrastructure, will take place on foot of planning permission reference 3228/20 for this Parcel.

The Guidelines make it clear that lands should not be included where the works required to connect the land to services are materially significant or where statutory consents, including planning permission, are required.

"If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope. Notwithstanding other development or works which may be considered, examples where land would be considered out of scope would include where the works required to connect the land to services involve the crossing of European Sites, rivers, streams, or rail infrastructure where statutory consents are required."

An assessment of the the upgrade works in the context of the above guidance, requires consideration of the necessity for planning permission, which as outlined does not exist for this Parcel.

A review of the Uisce Éireann Capital Investment Plan 2020-2024^[1] confirms that the works required to service the Parcel is not listed. In their response to our client as part of the pre-connection enquiry process associated with extant planning permission for adjoining lands, Uisce Éireann, confirmed that new upgraded infrastructure would be required.

⁽water.ie)

Because local authorities cannot consider that planning permissions granted relating to other land will be implemented, Parcel ID DCC000064923 must be assessed on the basis of whether planning permission exists for the upgrade in the context of this Parcel. Planning permission is required, and planning permission does not exist. The above paragraph, therefore, means that the lands (parcel ID DCC000064923) must be considered out of scope.

Having regard to the evidence presented in this submission, it can be objectively concluded that the subject Parcel does not meet Section 653B (b) of the Finance Act 2021 and accordingly it must be <u>excluded</u> from the RZLT maps.

3.2.3 Part (c) Exclusionary Criteria

(c) it is reasonable to consider is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of known archaeological or historic remains,

but which is not land-

- (i) that is referred to in paragraph (a)(i) and, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is in use as premises, in which a trade or profession is being carried on, that is liable to commercial rates, that it is reasonable to consider is being used to provides services to residents of adjacent residential areas,
- (ii) that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle,
- (iia) the development of which would not conform with—
 - (I) in a case in which the land is zoned in a development plan, the phased basis in accordance with which development of land is to take place under the plan, as detailed in the core strategy included in that plan in accordance with section 10(2A)(d) of the Act of 2000, or
 - (II) in a case in which the land is zoned in a local area plan, the objective, consistent with the objectives and core strategy of the development plan for the area in respect of which the local area plan is prepared, of development of land on a phased basis, included in the local area plan in accordance with section 19(2) of the Act of 2000,

on the date on which satisfaction of the criteria in this section is being assessed

(iii) that it is reasonable to consider is required for, or is integral to, occupation by—

- social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare,
- (II) transport facilities and infrastructure,
- (III) energy infrastructure and facilities,
- (IV) telecommunications infrastructure and facilities,
- (V) water and wastewater infrastructure and facilities,
- (VI) waste management and disposal infrastructure, or
- (VII) recreational infrastructure, including sports facilities and playgrounds,
- (iv) that is subject to a statutory designation that may preclude development, or
- (v) on which the derelict sites levy is payable in accordance with the Derelict Sites Act 1990.

Response:

Exclusionary Criterion (ii) land that is referred to in paragraph (a)(ii) and is not vacant or idle" applies.

Parcel ID DCC00006493 is "land that is referred to in paragraph (a)(ii)" (ie, it is zoned as mixed development including residential). Accordingly, as required by Exclusionary Criterion (ii) above, it **must be excluded** from the RZLT maps "unless it is reasonable to consider that the land is vacant or idle".

As set out in Section 2.1 of this submission, the lands are most certainly not "vacant or idle". Rather, they are occupied by a very significant business which is providing employment in the area, and which is providing a valuable service in the supply and distribution of fitness, health and recreational products.

When establishing RZLT, policy makers and legislators did not intend to penalise and potentially close businesses which are providing employment and contributing to the economy. A specific and deliberate distinction was drawn between lands which are zoned solely for residential development and lands which are zoned for mixed development including residential development. In the case of the former, Exclusionary Criterion (i) requires that the business must be rate paying and servicing the local community. In the case of the latter, Exclusionary Criterion (ii) requires only that the land is not vacant or idle.

Having regard to current occupancy of the lands and the evidence presented in this submission, it is not "reasonable to consider that the lands are vacant or idle".

On this basis S653B (c)(ii) requires the local authority to exclude the lands from the RZLT map.

Exclusionary Criterion (iii)(VII) "recreational infrastructure, including sports facilities and playgrounds" applies.

The recreational infrastructure of the State is comprised of a range of buildings, facilities, as well as sport and recreational organisations and businesses. As specifically set out in paragraph (iii) (VII), it *includes* sports facilities and playgrounds, but it is *not limited* to them.

which occupies the lands is the largest independent supplier of in Ireland, part of the recreational infrastructure which and in the State, and therefore, it comes within the Exclusionary Criterion (iii) (VII).

Exclusionary Criterion (iii) (III) (energy infrastructure) and (iii) (V) (water infrastructure) apply.

Exclusionary Criterion (iii) includes land that it is reasonable to consider is required for, or is integral to, occupation by—

(III) energy infrastructure and facilities,

(IV) water and wastewater infrastructure and facilities,

As outlined in Section 2.2 of this submission, essential energy and water infrastructure traverse the lands.

The part of the lands which is coloured yellow in Figure 3 in Section 2.2 is, impacted by and required for the;

- Cookstown-Inchicore 110kVDouble Circuit (D.C.) overhead (O/H) Transmission Line and 1 no. 110kV lattice mast.
- Inchicore-Ballymount 38kV O/H power line and associated poles.
- 762mm diameter steel trunk watermain

ESB Networks require a lateral clearance to buildings to be 20m each side of the 110kV centreline, a radial clearance of 23m to be maintained from the centre of each 110kV tower and suitably designed crash barriers to be provided around new and existing masts.

There is an existing 762mm diameter steel trunk watermain within the Parcel. Uisce Éireann (UE) requires a 16.75m wide wayleave centred over the watermain.

No development whatever can take place on the lands coloured yellow on Figure 3 because those lands are *required for, and are integral to, occupation* by this essential energy and water infrastructure.

While it is accepted that not all of the lands meet Exclusionary Criterion (iii) (III) and /or (iii) (V), it is indisputable that a significant portion of the lands meet that Exclusionary Criterion. Accordingly, if the lands were not otherwise excluded (which is not accepted), the part of them which meets this criterion must be excluded.

4. Conclusion

As set out in this submission, local authorities, when playing a role in a procedure which determines whether or not a landowner may come within the net of a very significant and penal tax, must pay strict attention to the specific criteria set out in the relevant legislation. They must not read into legislation criteria which are not set out in the legislation to include land in scope, and they must not ignore criteria which the legislation states must exclude land from being in scope.

Parcel ID DCC000064293 does not meet one essential Inclusionary Criterion and does meet three Exclusionary Criteria.

Accordingly, the Parcel is out of scope and is incorrectly included in the draft map.

Where part of any lands being considered meet an Exclusionary Criterion, it is not open to a local authority to include all of the lands, including any part which meets an Exclusionary Criterion.

The inclusion of the lands in the current draft RZLT maps when it was not included in the maps published in 2022 demonstrates an inconsistency in the position adopted in relation to these lands. This is particularly so when the current draft map states that it is considered that the lands came into scope on 1st January 2022. In the event that it is contended by Dublin City Council that the lands were not in scope in 2022 but are now in scope (a) the draft map fails to state this and (b) as a matter of fact, no change has occurred in the intervening period that would justify the making of a different determination in 2024 to the determination that was made in 2022.

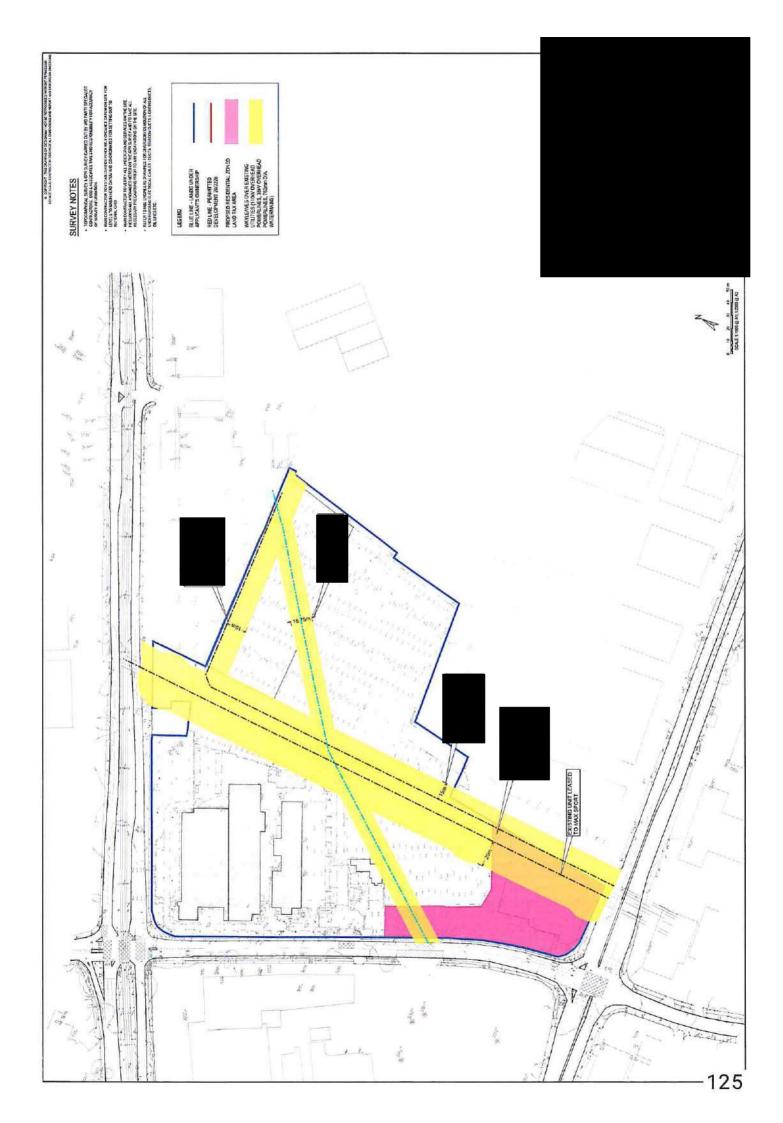
For all of these reasons, Dubin City Council is requested to remove Parcel ID DCC000064293 from the current draft RZLT map.

Attachment No.1 Site Location Plan

Attachment No.2 Proof of Ownership

Attachment No. 3 Irish Water Response

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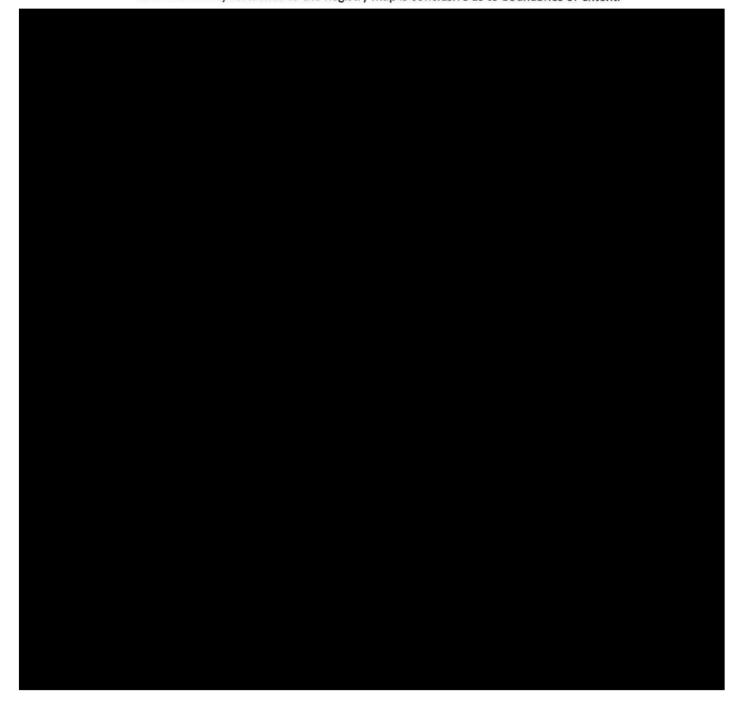


County Dublin Folio 248746F

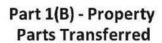
Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent.

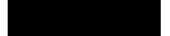


County Dublin

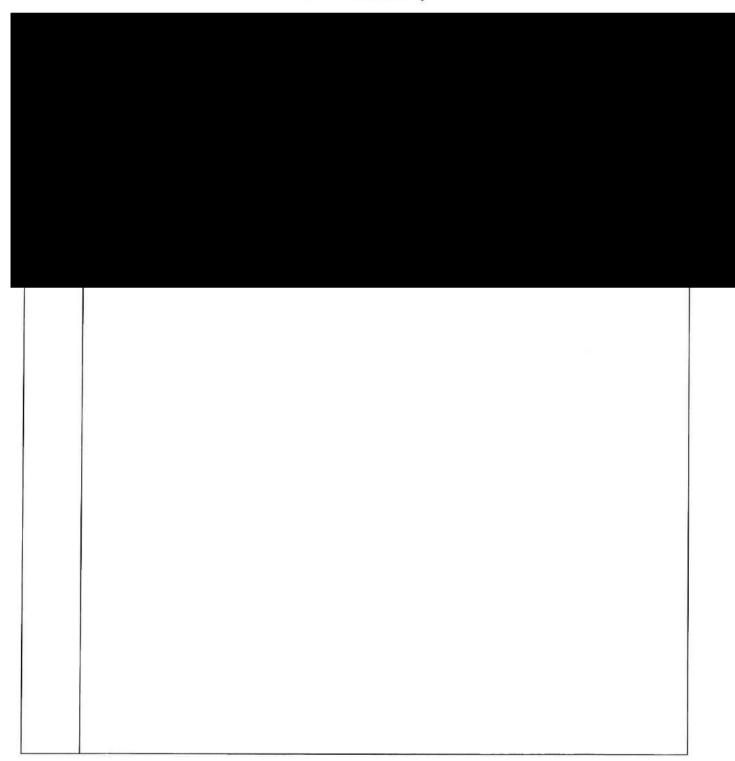


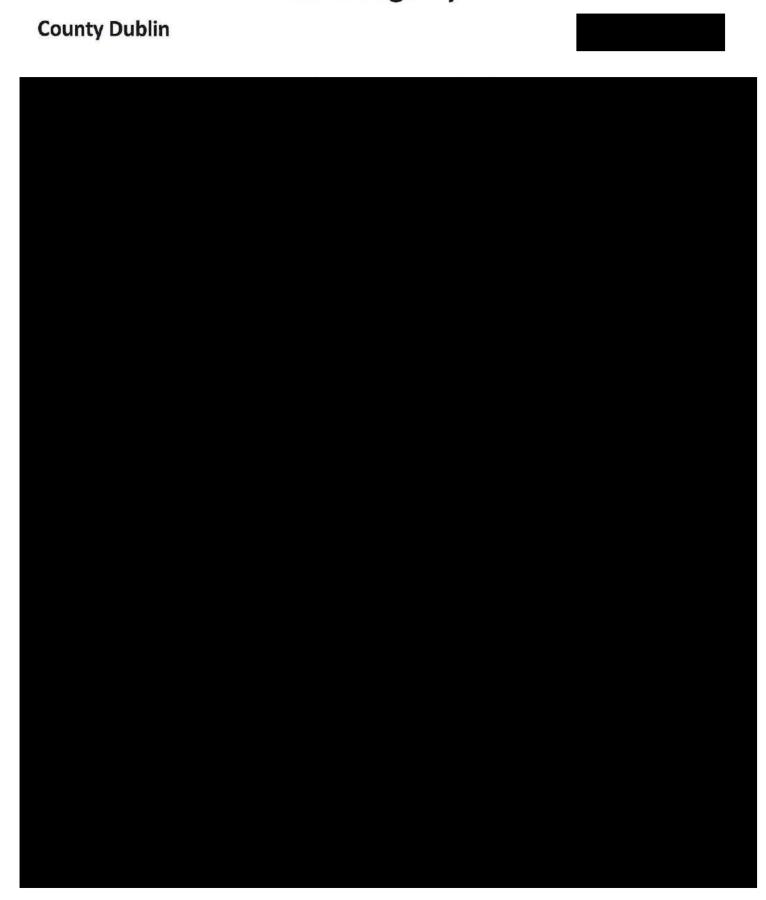
No.	Prop No.	Instrument	Date	Area(Hectares)	Plan	Folio No.

County Dublin



Part 2 - Ownership









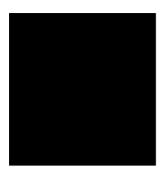


Besva OP 448 Citig Shearnacha na Cathraen Theas Cuthan Chorra

trish Water Pr) Box 448, Posith Pity Del yery Office.

www.water.ie

Corre Fitty



11 February 2020

Re: Connection Reference pre-connection enquiry - Subject to contract | Contract denied

Walkinstown

Avenue, Co.Dublin.

Irish Water has reviewed your pre-connection enquiry in relation to a water connection at Walkinstown Avenue, Co.Dublin.



Based upon the details that you have provided with your pre-connection enquiry and on the capacity currently available in the network(s), as assessed by Irish Water, we wish to advise you that, subject to a valid connection agreement being put in place, your proposed connection to the Irish Water network(s) can be facilitated.

Water:

In order to accommodate the proposed connection to Irish Water network at the Premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe as shown on the attached figure (red line). Irish Water currently does not have any plans to extend its network in this area. Should you wish to progress with the connection you will be required to fund this network extension.

The proposed development indicates that an important Irish Water asset is present on the site. A wayleave in favour of Irish Water will be required to protect the 30" steel trunk main. No structures will be allowed within 8m of main (i.e. 16.75m width centred over main),

For design submissions and queries related to diversion/buildover please contact IW Diversion Team via email address diversions@water.ie

Detailed proposals, including work method statements, insurance confirmation and details of work completed of a similar nature must be submitted to Irish Water for its consideration before approval will issue to undertaking work in close proximity to Irish Water assets. All such works in the vicinity of Water Mains or Sewers greater than 400mm shall be subject to written agreement with Irish Water before construction commences on site. This agreement shall also include any necessary protection for Water Mains and Sewers. The placing of concrete over or around Water Mains is expressly forbidden.

Wastewater:

New connection is feasible without upgrades for the full development directly to the 9B sewer on Naas Road. Storm water is not permitted to the Irish Water network.

Strategic Housing Development

Irish Water notes that the scale of this development dictates that it is subject to the Strategic Housing Development planning process. In advance of submitting your full application to An Bord Pleanala for assessment, you must have reviewed this development with Irish Water and received a Statement of Design Acceptance in relation to the layout of water and wastewater services.

All infrastructure should be designed and installed in accordance with the Irish Water Codes of Practice and Standard Details. A design proposal for the water and/or wastewater infrastructure should be submitted to Irish Water for assessment. Prior to submitting your planning application, you are required to submit these detailed design proposals to Irish Water for review.

You are advised that this correspondence does not constitute an offer in whole or in part to provide a connection to any Irish Water infrastructure and is provided subject to a connection agreement being signed at a later date.

A connection agreement can be applied for by completing the connection application form available at www.water.ie/connections. Irish Water's current charges for water and wastewater connections are set out in the Water Charges Plan as approved by the Commission for Regulation of Utilities.

If you have any further questions, please contact

For further information, visit www.water.ie/connections.



RZLT - Determinations (Landowner) - Mixed Use Lands

RZLT Sub No: RZLT-000236/ ANON -16GE-ZGFQ-B

Longmile Road, Dublin 12, D12 V270

Parcel ID: Comprises Parcel ID DCC000064293

Date Submission 29/03/2024

Received:

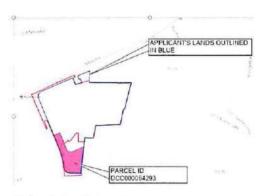
Zoning: Z14 – Strategic Development and Regeneration Areas (SDRA)

Submission Challenging the inclusion of lands on the draft RZLT map on the basis that those lands do not meet the criteria for inclusion on

the map



Extract from RZLT Map (lands outlined in purple)



Submission Extract



Submission extract showing infrastructure routes

Site Description:

The lands are located at the junction of Walkinstown Avenue and Long Mile Road. The lands are accessed off Walkinstown Avenue. There is a single

buildings/land form part of the wider

business / site. The main	building on these lands is	called the
		. The rest of
the building / lands appear	r not in use/out of use, as v	viewed from the Long Mile Road
/ within the site.		

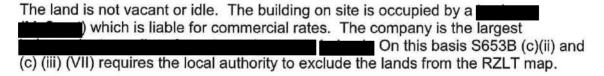
See report for RZLT-000234/ ANON -16GE-ZGFE-Y

Summary of Submission:

The lands are shown on the draft map to have met the criteria for inclusion on 1st January 2022. If this is the case, the lands should have been included on the draft map first published on 1st November 2022. No change has occurred in the intervening period that would justify the making of a different determination in 2024 to the determination that was made in 2022.

Care must be taken to include only lands which meet the strict criteria as set out in the legislation.

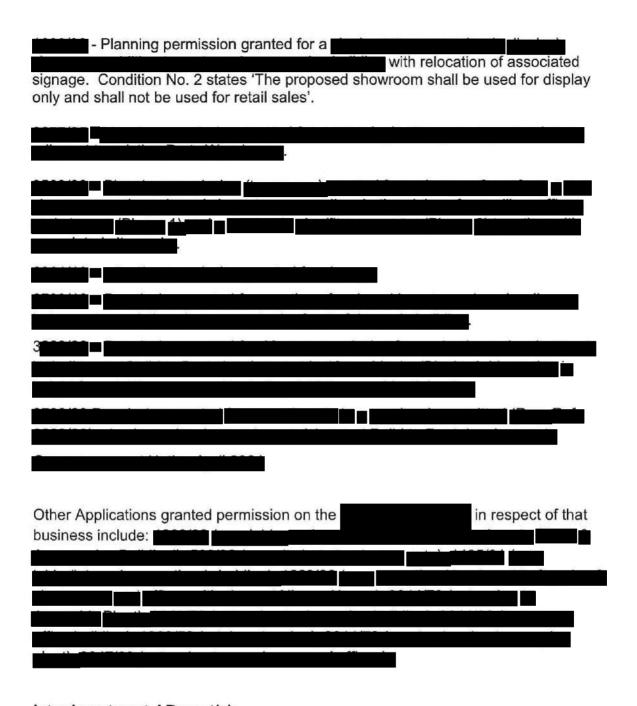
There isn't sufficient service capacity available to serve the lands as water network upgrades are required to serve permitted development on adjacent lands owned by the submitter (as evidenced by a planning permission under reference 3228/20). Planning permission is required for the water network upgrade. The owner of the land should not be required to upgrade public services and deemed taxable for RZLT if they don't. The relevant criterion S.653B (b), is not met and therefore the land should be excluded.



There are underground and overhead power lines within the parcel (110 kV and 38 kV power lines and poles), which require wayleaves/radial clearance/crash barriers etc. In addition, an existing 762mm watermain within the parcel also requires a 16.75m wayleave (map attached to submission highlighting the route of powerlines and the watermain). These identified lands are significant in area and required for, and are integral to, occupation by this essential energy and water infrastructure. The whole land parcel should be removed from the map, but at the very least the part of them that meets this criterion should be removed from the map.

Relevant Planning / History:





Interdepartmental Report(s):

Drainage Section: Report received 30th April 2024

Further Information under S.653E:

Uisce Eireann: Report dated 25th April 2024

EVALUATION UNDER SECTION 653E (1) OF THE TAXES CONSOLIDATION ACT 1997, as amended.

Evaluation to Determine Whether or Not the site constitutes land satisfying the relevant criteria (Section 653B of the Taxes Consolidation Act 1997), as follows:

Land that

- (a) is included in a development plan, in accordance with section 10(2) (a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—
 - (i) solely or primarily for residential use, or
 - (ii) for a mixture of uses, including residential use,

Comment:

The lands are zoned Z14 – Strategic Development and Regeneration Areas (SDRA) ("To seek the social, economic and physical development and/or regeneration of an area with mixed-use, of which residential would be the predominant use) in the 2022 – 2028 Dublin City Development Plan (Map G).

The lands are therefore zoned for a mixture of uses, including residential use.



The lands form part of Strategic Development Regeneration Area (SDRA) No. 5 in the Dublin City Development Plan 2022 – 2028.

(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development,

Comment:

The submitter has indicated that, as demonstrated under Reg. Ref. 3228/20 which pertains to the lands to the north in the same ownership, there isn't sufficient service capacity available to serve the lands as water network upgrades are required.

In response to this Uisce Eireann has indicated categorically that there is water supply and wastewater treatment capacity to serve these lands.

UE indicates that the site is serviceable in terms of wastewater networks. Similarly it indicates that in respect of water networks the site is serviceable.

Addressing the separate issue raised by the submitter that development permitted under Reg. Ref. 3228/20 (adjacent lands) would require water network upgrades UE states that upgrade works are required to upsize approx..10m of existing 250mm PVC pipe with 350mm ID pipe – which is not deemed substantial.

In its consultation response to RZLT-000234 (lands to north of these lands) UE states that there is a substantial 30" strategic watermain traversing the site and a wayleave will need to be maintained if it is not diverted. These comments also pertain to these lands as the watermain traverses these lands.

The Council's Drainage Section has indicated that there are DCC surface water sewers along the roadways adjacent to the site; on Walkinstown Avenue and on Long Mile Road. Connection to either should be possible for development purposes.

Having regard to the above, and having regard to the location of these brownfield lands within the city's built up footprint it is reasonable to consider, therefore that the lands may have access, or be connected, to public infrastructure and facilities with sufficient service capacity available for such development.

and

(c) it is reasonable to consider is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination¹ or the presence of known archaeological or historic remains.

Comment:

The lands are outside the Zone of Archaeological Constraint for the Recorded Monument (RMP) DU018-020 (Historic City), which is subject to statutory protection under Section 12 of the National Monuments (Amendment) Act 1994.

Due to the brownfield nature of the lands it is reasonable to consider that the lands are not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings.

but which is not land-

(i) that is referred to in paragraph (a)(i) and, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development

¹ Contaminated sites on Section 22 Register for the city omitted from the RZLT map.

(within the meaning of the Act of 2000), is in use as premises, in which a trade or profession is being carried on, that is liable to commercial rates, that it is reasonable to consider is being used to provides services to residents of adjacent residential areas,

Comment:

N/A

(ii) that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle,

Comment:

A car preparation and distribution centre to the trade only operated from these lands and from the wider . See report for RZLT-000234/ ANON -16GE-ZGFE-Y.

In the intervening period temporary permission was granted for a these lands. Notwithstanding this, from a review of the planning history of these lands and the wider that these lands/buildings form part of a wider light industrial use (Class 4, Part 4 of the 2001, P&D Regulations). In particular the building on these lands was called the 'Parts and Accessories' building in connection with the car preparation and distribution centre use and it appears to have been used for this purpose and car maintenance.

The landowner has indicated that the building on site is occupied by a business () which is liable for commercial rates. It is stated that the company is the largest independent supplier of sports equipment in Ireland.

From a site visit it was noted that the warehouse part of the building (i.e. not the whole building) is being used for storage purposes by the referred company. It would appear that the building is being used for storage in connection with a retailing company which is located on

Section 653A of the TC Act, 1997 as amended, defines 'vacant or idle land', as follows:

"vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land."

The lands are not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land as the main business is not located on or adjacent the land.

The main use on the site currently is storage in connection with a retailing business. Therefore there has been a material change of use on the lands and this change of use is not exempted development and is therefore unauthorized.

All the relevant lands are therefore considered vacant and idle.

- (iia) the development of which would not conform with—
- (I) in a case in which the land is zoned in a development plan, the phased basis in accordance with which development of land is to take place under the plan, as detailed in the core strategy included in that plan in accordance with section 10(2A)(d) of the Act of 2000, or
- (II) in a case in which the land is zoned in a local area plan, the objective, consistent with the objectives and core strategy of the development plan for the area in respect of which the local area plan is prepared, of development of land on a phased basis, included in the local area plan in accordance with section 19(2) of the Act of 2000,

on the date on which satisfaction of the criteria in this section is being assessed,

Comment:

Lands not subject to phasing in Development Plan core strategy.

- (iii) that it is reasonable to consider is required for, or is integral to, occupation by—
- (I) social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare,
- (II) transport facilities and infrastructure,
- (III) energy infrastructure and facilities,
- (IV) telecommunications infrastructure and facilities,
- (V) water and wastewater infrastructure and facilities,
- (VI) waste management and disposal infrastructure, or
- (VII) recreational infrastructure, including sports facilities and playgrounds,

Comment:

Recreational infrastructure

Part of the building on site is occupied by storage for a sports business (



The lands are identified in the City Development Plan (SDRA No. 5) as a key opportunity site for mixed use development including residential uses.

It is reasonable to consider that the building/land is not required for, or is integral to, occupation by recreational infrastructure, including sports facilities and playgrounds.

Energy and Water infrastructure

The submission on the lands has set out the extent of electricity and water network infrastructure traversing the lands.

In its consultation response to RZLT-000234 (lands to north of these lands) UE states that there is a substantial 30" strategic watermain traversing the site and a wayleave will need to be maintained if it is not diverted. These comments also pertain to these lands as the watermain traverses these lands.

The lands are identified in the City Development Plan 2022 – 2028 under Strategic Development Regeneration Area (SDRA) No. 5, as a key opportunity site for mixed use development which would include residential use.

Guiding principles for the development of the lands, as set out under SDRA No. 5 include the/that:

'undergrounding of the 110 KV and 38KV high voltage overhead cabling traversing the LAP area. The route for undergrounding the cables will be assessed by ESB Networks with the applicants/developers, and in that event the cost of the undergrounding of the lines including associated civil works would be borne by the developers and ESB'.

and

'as part of the redevelopment of this site the 750mm watermain may need to be diverted. Such a diversion would be at the expense of the developer(s)'

Having regard to the Development Plan's vision for these lands it is reasonable to consider the land is required for, or is integral to, occupation by a mixed use development which would include housing.

Under the permission for a mixed use development on the lands to the north of these lands and in the same ownership, which includes for over 1,000 dwelling units (Reg Ref 3228/20), the development layout was configured around the above referred utilities with open space areas / roads to serve the development aligned along the utility routes / wayleaves.

Having regard to the above it is therefore reasonable to consider the land is not required for, or is integral to, occupation by energy infrastructure and facilities.

(iv) that is subject to a statutory designation that may preclude development,

Comment:

N/A

or

(v) on which the derelict sites levy is payable in accordance with the Derelict Sites Act 1990².

Comment:

N/A

Conclusion

The lands are zoned for a mixture of uses including residential purposes, are serviced, and are vacant/idle.

Proposed Determination

For the reasons set out below, I recommend that the following determination be made under Section 653E (1), (ii), (I) of the TAXES CONSOLIDATION ACT 1997, as amended:

Having had regard to the submission made in respect of the lands, and having evaluated the submission against the relevant criteria under Section 653(B) of the Taxes Consolidation Act 1997, as amended, it is determined that the site constitutes land satisfying the relevant criteria and the lands should therefore be **included** on the Final RZLT Map.

Reasons:

The lands:

- Are zoned for a mixture of uses, including residential use,
- Have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as confirmed by Uisce Eireann in its report dated 25th April 2024, and having regard to the brownfield nature of the lands and their location within the built up footprint of the city,
- Are vacant / idle, as there is no active authorized use on the lands which is required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land,
- Meet the other qualifying Criteria Section 653B of the TC Act, as amended.

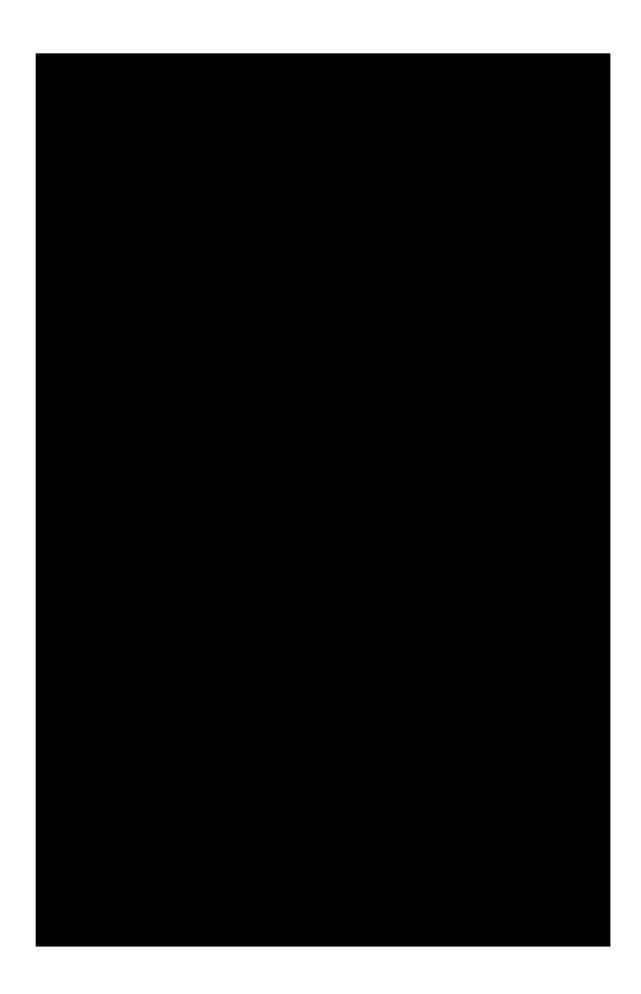
² Derelict sites as per Derelict Sites Register omitted from the RZLT map

Outcome: Include lands on Final RZLT Map













An Roinn Phleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8, D08 RF3F

> Planning & Property Development Department, Block 4, Floor 3, Civic Offices Wood Quay, Dublin 8, D08 RF3F

> > Tel: (01) 2223838 Email: relt@dublincity.le

28-Jun-2024



Mo	Cuto Re	chec	n Halley ved
Date:	-1	JUL	2024
Project:	36	03	
Action:	5(100	/

Notification of Determination Residential Zoned Land Tax Part 22A of the Taxes Consolidation Act 1997

Submission RZLT Number:	ANON-16GE-ZGFQ-B
DCC RZLT Number:	RZLT-000236
Site Owner:	Unlimited Company
Submission Address:	Longmile Road, Dublin 12, D12 V270

The Residential Zoned Land Tax is provided for in Part 22A of the Taxes Consolidation Act 1997. Section 653E(1) of the Act states that the Local Authority shall evaluate submissions received to determine whether or not the site constitutes land satisfying the relevant criteria for inclusion on the RZLT map.

Determination

Dublin City Council has evaluated the submission received in relation to the above site and has determined to **include** the site on the final map on the basis that the site constitutes land satisfying the relevant criteria as set out in Section 653B of the Act.

Reasons

The lands:

- Are zoned for a mixture of uses, including residential use.
- Have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as confirmed by Uisce Eireann in its report dated 25th April 2024, and having regard to the brownfield nature of the lands and their location within the built up footprint of the city,
- Are vacant / idle, as there is no active authorized use on the lands which is required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land,
- · Meet the other qualifying Criteria Section 653B of the TC Act, as amended

The final map showing land that is liable for RZLT will be published by 31st January 2025 and this will reflect all Determinations made.

The evaluation report is available upon request by e-mail to rzlt@dublincity.ie or in writing to Residential Zoned Land Tax, Active Land Management Unit, Planning and Property Development Department, Block 4, Floor 3, Civic Offices, Wood Quay, Dublin 8.

Appeal 653J

Section 653J(1) states that an owner who is aggrieved with the determination of a local authority under section 653E has until 1st August 2024 to appeal that determination, by notice in writing specifying the grounds for the appeal to An Bord Pleanála.

All correspondence and clarifications in relation to appeals should be addressed to; The Secretary, An Bord Pleanála, 64 Marlborough Street, Dublin 1. Tel 8588100





The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

31st July 2024

Re: First Party Appeal against Dublin County Council's Determination to include Parcel ID DCC000064293 on the final RZLT map.

RZLT Sub No: RZLT-000236/ANON-16GE-ZGFQ-B

A Chara,

We, McCutcheon Halley of Kreston House, Arran Court, Arran Quay, Dublin 7, act on behalf of our client,

of

in this appear against Dublin City Council's (DCCs) Notification of Determination (see copy included in Attachment 3), dated 28th June 2024, that concludes Parcel ID DCC000064293 should be included on the final RZLT liability map to be published on the 31st January 2025.

Parcel ID DCC000064293 is part of the 'map identifies that it covers an area of approximately 0.84 hectares. It is noted that our calculation of the area identifies the Parcel as encompassing 0.823 hectares.

The Grounds for this Appeal are in the report attached to this cover letter. In summary, our client seeks the exclusion of their land from the RZLT map for the following reasons:

- The Parcel is not "land which satisfies the relevant criteria" as defined in Section 653B of the Taxes Consolidation Act 1997 as amended ("the TCA), because it is not reasonable to consider that the Parcel may have access or be connected to a <u>public water supply</u> necessary for dwellings to be developed and with sufficient service capacity available for such development.
- 2. The Parcel is not "land which satisfies the relevant criteria" as defined in Section 653B TCA because it is not reasonable to consider that the Parcel may have access or be connected to <u>foul sewer drainage</u> necessary for dwellings to be developed and with sufficient service capacity available for such development.
- 3. Dublin City Council erred in concluding that unauthorised. The Parcel is occupied by a business or trade being carried out

- on the Parcel and is not "land which satisfies the relevant criteria" as defined in Section 653B of the Act because the vacant/Idle reason does not comply with the requirement of section 653(B)(i) and (ii) of the Taxes Consolidation Act
- 4. The RZLT map incorrectly and unlawfully fails to exclude the parts of the Parcel which it is reasonable to consider are required for or are integral to occupation by energy infrastructure and facilities and water and wastewater infrastructure and facilities.

On this basis, we request that An Bord Pleanála overturn the decision taken by Dublin City Council and issue an Order that the lands that constitute Parcel ID DCC000064293 be removed from the Draft RZLT maps.

Should the Board decide to invite DCC or Uisce Éireann or any third party to comment on our client's appeal, then in accordance with the rules of natural justice, our client must be invited to comment on any submission or response of DCC or Uisce Éireann or other third party before the Board determines the appeal.

Please do not hesitate to contact the undersigned should further information be required.



McCutcheon Halley Chartered Planning Consultants

Attachments:

- 1. Grounds of Appeal
- 2. Site Location Plan
- 3. DCC Notification (28th June 2024)
- 4. DCC RZLT Evaluation Report
- 5. Uisce Éireann submission to DCC (25th April 2024)
- 6. Submission to DCC re the Draft Residential Zoned Land Tax Map (McCutcheon Halley Planning, March 2024) including evidence of ownership and Irish Water's Connections and Developer Services Response, appended to same.
- 7. ESB Letter (dated 17th October 2019)



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Attachment 1: Grounds of Appeal

1.1 Introduction

Dublin City Council (DCC) issued a Notification of Determination, dated 28th June 2024 which concludes Parcel ID DCC000064293 owned by our client ("**the Parcel**) should be included on the final RZLT liability map to be published on the 31st January 2025. DCC's Determination sets out the reasons for including the Parcel on the final map as follows.

"The lands:

- Are zoned for a mixture of uses, including residential use,
- Have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as confirmed by Uisce Eireann in its report dated 25th April 2024, and having regard to the brownfield nature of the lands and their location within the built up footprint of the city.
- Are vacant/idle, as there is no active authorized use on the lands which is required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land
- Meet the other qualifying Criteria Section 653B of the TC Act, as amended"

Section 653J of the Taxes Consolidation Act 1997 as inserted by the Finance Act 2021 and amended by the Finance (No. 2) Act 2023 ("TCA") provides that an owner aggrieved by a local authority's determination may appeal that determination by written notice specifying the grounds for the appeal to An Bord Pleanála ("the Board").

This appeal considers the specific words used in Section 653B TCA and the proper interpretation of those words. It also examines the Department of Housing, Local Government and Heritage's Residential Zoned Land Tax - Guidelines for Planning Authorities June 2022 ("the RZLT Guidelines") and demonstrates why, on the proper interpretation of Section 653B, the Parcel must be excluded from the revised final RZLT map to be published on 31 January 2025.

1.2 Context

The criteria for including land in the draft RZLT maps are set out in legislation. Guidance has been issued by the Department of Housing, Local Government and Heritage for the assistance of local authorities. The relevant legislation and Guidance documents are as follows;

- Part 22A TCA
- the RZLT Guidelines

DCC published its first revision of the Final 2023 RZLT Map, identifying lands considered in scope for the RZLT as of January 1st, 2024. The map identified the Parcel and deemed to be land satisfying the relevant criteria on January 1st, 2024 with the date of first satisfying the relevant criteria being stated as 1 January 2022.



It is noted that, notwithstanding that the draft RZLT map states that Dublin City Council considers that the Parcel was in scope on 1st January 2022 the Parcel was deemed not to be in scope in the Final Map published in 2023. The current mapping process is being conducted under Section 653M of the TCA. The purpose of the annual revision is, not to permit planning authorities to change their minds in relation to the question of when land fist met the relevant criteria to be included in the RZLT maps but, rather, the purpose is to allow planning authorities to consider what has changed between the final date for consideration of lands relevant to the last annual map and the final date for consideration of lands relevant to the current annual mapping exercise.

Section 92 of the Finance (No. 2) Act 2023 amended Part 22A TCA. One key amendment was the change in the first liability date for the payment of RZLT from 2024 to 2025 (Section 92(5)). The final date to be considered in the current process is 1 January 2024 (Section 653C read in conjunction with Section 653M). Under the 2023 Map process, the final date for consideration is 1 October 2022. However, Section 653C requires that every year, the planning authority must state when the land first satisfied the "relevant criteria" where that date is after 1 January 2022.

As DCC has determined that the Parcel was in scope on 1 January 2022, if they are correct, they ought to have included the Parcel in the 2023 Map. They did not. Accordingly, DCC has already as part of the 2023 process, concluded that the Parcel was <u>not</u> in scope on 1 January 2022 and, indeed, up to 1 October 2022. Yet as part of the current process, it has determined that the Parcel satisfied the criteria on 1 January 2022 and **is** in scope.

It is apparent, therefore, that either Dublin City Council considers that it erred in excluding the Parcel in the draft maps published in 2022 or that an error has occurred in including the Parcel in the current draft maps.

Either way, the position now adopted by Dublin City Council in relation to the question of whether the lands met the relevant criteria for inclusion in the maps on 1st January 2022 is inconsistent with the position previously taken. Dublin City Council has not offered any explanation for this inconsistency.

The final RZLT map will form the basis for eligibility for a very onerous tax. If Parcel ID no. DCC000064150 is included in the final map, there is no opportunity for our client to escape liability for the tax unless the land is developed for residential development. As tax is a penal law, there is a great onus on all public authorities when assessing eligibility to include only lands that meet the strict criteria set out in the legislation. The strict wording of the legislation must be observed. It is not open to any public authority to read-in words that are not included in the legislation or to omit words that are included in the legislation. If there is any discrepancy between the wording of the legislation and any guidelines issued regarding the mapping exercise, the legislation prevails.

It is submitted that, when determining the previous appeal under Ref; **Board**, the Board failed to have proper regard to the strict requirements and true meaning of the criterion set out at section 653B (b).



This appeal requests the Board to overturn DCCs Notification of Determination made on dated 28th June 2024 so that Parcel ID No. DCC000064293 is not included in the final RZLT map to be published on the 31st of January 2025. We set out hereunder why, based on a correct interpretation of the strict wording of the legislation, the Parcel does not now and did not satisfy the relevant criteria as defined in Section 653B of the TCA on either of the relevant dates being;

- 1 January 2024 (the last date for consideration of whether the Parcel meets the relevant criteria for inclusion in the RZLT map) and
- 1 January 2022 (the date which triggers a liability to RZLT in 2025)

and, therefore, the Parcel must be excluded.

Although the RZLT Guidelines have been issued for the assistance of planning authorities, they cannot extend the scope of the legislation. In so far as there is any conflict between the wording of the legislation and that of the RZLT Guidelines the legislation takes precedence over the RZLT Guidelines. Without prejudice to this, this appeal also outlines why, having regard to the RZLT Guidelines, the lands should be excluded. This appeal includes a copy of the Submission made to DCC which, in turn, includes Proof of Ownership (see Attachment 6).

1.3 Parcel Characteristics & Occupancy

This appeal includes a site location plan that clearly identifies the Parcel and its boundaries (see Attachment 2).

The Parcel is part of our clients' landholding, known as the 'purple on the extract below. The stated area of the parcel in the draft map is 0.831372 hectares. Our measurement of the mapped boundary identifies the area as 0.823 hectares.



Figure 1 RZLT Parcel Location



The Dublin City Development Plan 2022-2028 includes this site as part of Strategic Development Regeneration Area (SDRA) 5. The assigned land use zoning objective is Z14: "To seek the social, economic and physical development and/or regeneration of an area with mixed use, of which residential would be the predominant use."

1.3.2 Occupancy Details

The parcel hosts a 30,000 sq ft warehouse building and yard area which is occupied by), a trade business, that is liable for and pays commercial rates for the whole building. is the largest independent supplier of in Ireland. The vast majority of their sales are from online sales, not from their showroom. The storage of goods is therefore integral to the operation of the trade. Storage of the is one of the three main processes in logistics chain, along with conveying and handling. Goods are safely stored, and transported, from the building at this site and it therefore plays a central role in ability to trade effectively and efficiently, facilitating the flow of goods in the distribution logistics. Once an online order is placed for the it is moved to another , Robinhood Road Dublin 22, 800 metres from the warehouse at subject site, from where it is dispatched.

The following images (taken June accurately reflect the general storage and confirm that the whole building is used for storage.









Plate 1 Goods being stored in the existing warehouse.

It is noted that intentionally keep openings frosted to ensure the safe storage of the goods within the building.

1.3.3 Energy and Water Infrastructure

The Parcel has underground and overhead power lines, as illustrated in Figure 2. The infrastructure comprises,

- Cookstown-Inchicore 110kVDouble Circuit (D.C.) overhead (O/H) Transmission Line and 1 no. 110kV lattice mast.
- Inchicore-Ballymount 38kV O/H power line and associated poles.



ESB Networks require a lateral clearance to buildings to be 20m on each side of the 110kV centreline, a radial clearance of 23m to be maintained from the centre of each 110kV tower, and suitably designed crash barriers to be provided around new and existing masts. A letter from ESB dated 17 October 2019 confirming this is attached as Appendix 7.

There is an existing 762mm diameter steel trunk water main within the Parcel. Uisce Éireann (UE) requires a 16.75m wide wayleave centred over the water main. This is confirmed in a letter dated 11 February 2020 from UÉ, see Appendix 6.

The ESB and Uisce Éireann clearance requirements have a material impact on the developable area of this Parcel. Figure 2 identifies lands which are effectively sterilised by energy and water infrastructure and development of any kind would not be acceptable within this zone of influence. The aggregate area impacted is 0.286 hectares and this represents 35% of the total area (0.823 ha) of the Parcel.

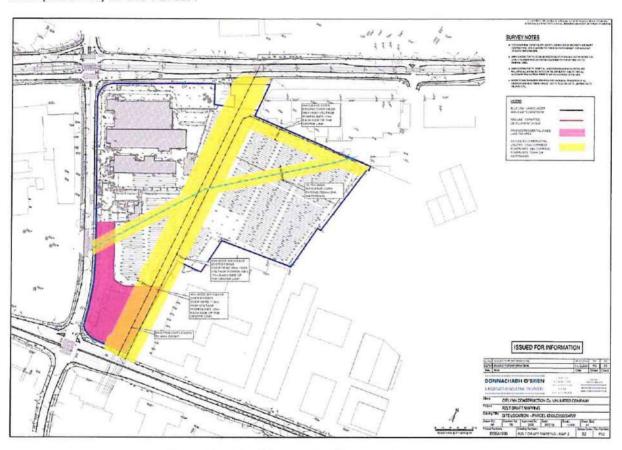


Figure 2 Existing ESB and Uisce Éireann infrastructure.

Dublin City Council granted planning permission under reference 3228/20 for development within Parcel ID DCC000064150, which directly abuts this subject Parcel, and which is also owned by our Client. Correspondence engaged in with UÉ in relation to that planning application confirms that a new water connection could only be facilitated if upgrade works are undertaken at a location approximately 850m east of the site and within land that is not within the landowner's control.



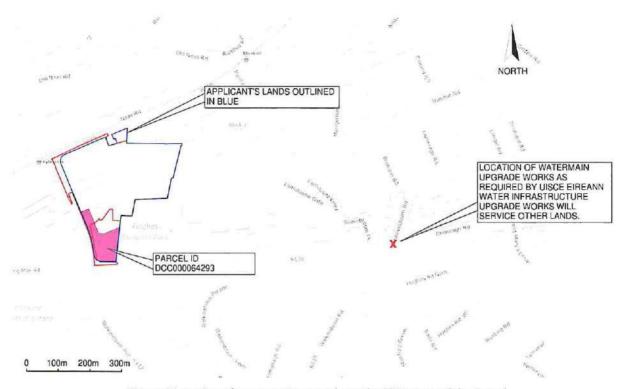


Figure 3 Location of water main upgrade works 850m east of the Parcel

The necessity for these upgrade works was confirmed by Uisce Éireann (UÉ - then Irish Water) in their *Connection & Developer Services* (CDS) Response (Irish Water Connection Reference No CDS19004746) issued to our client before the application for permission on the adjoining Parcel ID DCC000064150 was lodged. The response from Irish Water stated, *inter alia*, that a new water connection was only feasible if upgrade works were undertaken to upsize approximately 10m of an existing 250mm PVC pipe with a 350mm ID pipe at the Junction of the Long Mile Road, Balfe Road, Drimnagh Road and Slievebloom Road approximately 850m East of the proposed development. UÉ stated that it "currently does not have any plans to extend its network in this area. Should you wish to progress with the connection you will be required to fund this network extension".

The Uisce Éireann (UÉ) report dated 25 April 2024 submitted to DCC and attached to this appeal (the "**UÉ 2024 Response**") as Appendix 5 confirms that the same upgrade works need to be undertaken before this Parcel could be connected to the public water main. The UÉ 2024 Response states that with respect to Water Networks,

UÉ can confirm that the subject site is the site is serviceable. As per the Connection enquiry (appended to the appeal) In order to accommodate the proposed connection to Irish Water network at the Premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe. 10m of pipeline is not deemed substantial.



The response is addressed later in this appeal. In brief, the term "serviceable" is not the appropriate criterion by which the Parcel must be assed.

A condition of the mixed-use planning permission (Ref. 3228/20) requires that the new wastewater drainage system that will service the permitted development on land to the north of this Parcel include a spur to facilitate a future connection to this Parcel. This condition was included as it was acknowledged that Parcel ID DCC00064293 could not be serviced with foul sewer drainage as there is insufficient capacity in the sewer on the Long Mile Road.

This new spur would discharge into the Irish Water combined 9B trunk sewer located to the north of the landholding adjacent to the R810 Naas Road, see Figure 3. In the absence of this wastewater infrastructure, access to the Irish Water public wastewater network will not be possible for this Parcel. In determining lands for inclusion, it cannot be assumed that the permitted mixed-use development will be implemented and there can be no reliance on ownership in the process. In the absence of this connection, the Parcel does not have access to public infrastructure with sufficient service capacity available.

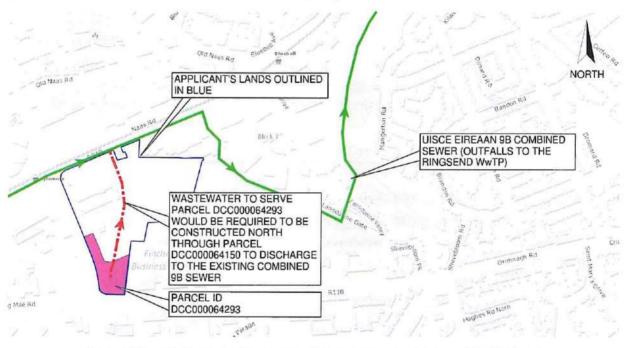


Figure 4 General alignment of wastewater infrastructure needed to service this Parcel



1.4 Grounds of Appeal

1.4.1 Ground No. 1: The Parcel is not "land which satisfies the relevant criteria" as defined in Section 653B TCA because it is not reasonable to consider that the Parcel may have access or be connected to a <u>public water supply</u> necessary for dwellings to be developed and with sufficient service capacity available for such development.

The Relevant Criteria

Before any land may be included in an RZLT map it must be determined that it meets "relevant criteria" set out in Section 653B TCA.

Section 653B TCA states that, in Part 22A TCA, land which satisfies the "relevant criteria" is land which meets all three of the specific criteria set out at sub-paragraphs (a), (b) and (c) and is not excluded by any one of other specific criteria set out at sub-paragraphs (i) to (v).

It is accepted by our client that the Parcel meets the criterion in sub-paragraph (a) on the basis that the zoning of the Parcel is for a mixture of uses including residential use.

It is also accepted that the Parcel meets the criterion in sub-paragraph (c).

Our client, however, disputes that the Parcel meets the criterion in sub-paragraph (b) which is;

"it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development,"

As such, the Parcel should be excluded from the revised map to be published on 1 January 2025 as it was when DCC considered the same criteria in 2023.

DCC's Determination and UÉ Response

The Planning Authority's Notification of Determination, referring to the UÉ 2024 Responses, identifies that a reason for the decision to include the Parcel is that it has "access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as confirmed by Uisce Eireann in its report dated 25th April 2024, and having regard to the brownfield nature of the lands and their location within the built up footprint of the city."

It would appear that UÉ was invited to comment on our client's submission made to DCC following the publication of the draft map in January 2024. Unfortunately, and contrary to the rules of natural justice, our client was not furnished with a copy of the UÉ response nor was our client provided with any opportunity to comment on the response prior to the issue of the determination by DCC.

In so far as the UÉ 2024 Response purports to assess if the Parcel meets the criterion in subparagraph (b) of Section 653B;

- a. UÉ is not the party who must make that assessment and
- b. It is notable that UÉ made the same error as DCC, in particular, the failure to assess the Parcel in accordance with the strict language used in Section 653B.



In this regard, UÉ states that its capacity registers currently show that there is capacity available, and they claim that the Parcel is "serviceable". This is despite acknowledging that "As per the Connection enquiry (appended to the appeal) In order to accommodate the proposed connection to Irish Water network at the Premises, **upgrade woks are required** to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe. 10m of pipeline is not deemed substantial" (emphasis added)

It is notable that UÉ confirmed that its response is "as per the Connection enquiry" (meaning the UÉ 2020 Response in relation to pre-planning enquiries relating to the adjoining lands) "appended to the appeal" (meaning our client's submission to DCC dated March 2024). In that UÉ 2020 Response, UÉ stated that it "currently does not have any plans to extend its network in this area. Should you wish to progress with the connection you will be required to fund this network extension". No change from that position is indicated in the UÉ 2024 Response. Accordingly, as of 25 April 2024, the position of UÉ was that a water connection for the Parcel would not be permitted unless there is an upgrade undertaken to the UÉ public network and that UÉ has no plans to undertake that upgrade.

Requirements to come within Section 653B(b)

Having regard to the potential penal outcome for land owner's whose lands are included in the RZLT map, in assessing any land parcel, there is an onus on the planning authority and on the Board to ensure that any land which it is proposed to include in the map meets <u>every part of every relevant criteria</u> in Section 653B (a), (b) and (c). If it does not, it <u>must</u> be excluded. There is no right on the part of DCC or the Board to exercise any discretion or to bend or extend the actual words used in the legislation.

Section 653B (b) requires that before land may be included, in relation to that land it must be;

"it is reasonable to consider may have access, or be connected, to **public infrastructure and facilities**, **including** roads and footpaths, public lighting, foul sewer drainage, surface water drainage and **water supply**, necessary for dwellings to be developed **and with sufficient service capacity available for such development**,"

The Act uses the term "public infrastructure and facilities" and requires that they must be "with sufficient service capacity available for such development".

"with sufficient service capacity available"

The term "serviceable" used in the UÉ 2024 Response does not appear anywhere in Section 653B TCA. It is not a permissible criterion by which any land may be assessed. Only land which has access to public infrastructure and facilities with **available service capacity** is within scope. The issue to be determined when considering any land parcel for inclusion in an RZLT map is **whether the service capacity** is actually available on the relevant date, not whether it is possible to make that capacity available at a future date at the cost of any individual land owner.

Section 653B(b) uses the word "available" in the present tense. It cannot be assumed that the legislators intended it to mean anything other than the present. This makes sense. The history of the delivery of public services to zoned land in Ireland is not good. It is recognised that there are significant tracts of zoned lands which do not have access to services with sufficient capacity. Very often development plans include objectives in relation to the servicing of the



lands but the follow through does not occur resulting in the zoned land not being capable of being developed. The legislators clearly did not intend that those land owners should be taxed.

UÉs asserts in their correspondence to DCC that "10m of pipeline is not deemed substantial." No basis/evidence has been provided for this conclusion. Further, the statement applies a very narrow lens to the works required, only referencing 10m of pipeline. No acknowledgement is given in relation to the fact that the infrastructure on which UÉ requires our client to fund services the wider area. The broader scope of works to deliver this pipeline within a public road do not appear to have been given consideration.

Our client's preliminary estimation of the cost of the works would exceed Further, the works involve the opening of a busy public road which requires a road opening licence, a statutory consent pursuant to Section 13 of the Roads Act, as well as a traffic management plan and health and safety and insurance cost considerations.

It is unclear on what basis UÉ deem the upgrade required not to be "substantial". In the case of this Parcel, before there is sufficient service capacity available for the Parcel, the necessary upgrade comprises the upsizing of approx. 10 metres of pipeline at a distance of some 850m from the Parcel. UÉ is the beneficiary of the upgrade it is requesting our client to fund. It would be entirely inappropriate were UÉ to be able to influence the mapping process to exert pressure on land owners to bear the cost of upgrading generally available public infrastructure. For example, what if UÉ required our client to pay for 100m of pipeline upgrade? Or what if the works were required several kilometres from the Parcel? UÉ should have no role in the RZLT mapping process other than to clarify whether, at the relevant date, there was existing capacity without any upgrade or not.

The delivery of public utilities is the responsibility of public utility companies. Nothing in the TCA passes that responsibility to any land owner. A public utility company cannot deem a service to be "available" if it does not exist at a particular date and may only come into existence if a private development proceeds and the developer is required to pay for a necessary upgrade. Often very significant works may be required to create sufficient capacity to facilitate a development. Section 653B does not permit the public utility company or the planning authority to consider the level of the cost of a necessary upgrade in determining whether the upgrade is actually in existence so that there is available service capacity on a relevant date. Either the upgrade has been done or it has not. If it has not, then it cannot be stated that there is "sufficient service capacity available".

It is clear that, when issuing the UÉ 2024 Response, UÉ used the term "serviceable" to mean, capable of having sufficient service capacity available at a future date, subject to an upgrade being undertaken. This is not a lawful criterion by which a land parcel may be assessed pursuant to Section 653B. DCC erred in law and in fact in relying on this inappropriate assessment by UÉ, and failed to discharge its statutory obligation under the TCA to objectively consider whether or not, on a specified relevant date (1 January 2024) there was, in fact, and without the necessity of any upgrade, sufficient service capacity actually available.



Elements of public infrastructure and facilities

To supply water to a premises, the public infrastructure and facilities required include;

- (a) The water plant which must have sufficient capacity available
- (b) The carrying infrastructure which must also have sufficient capacity available and
- (c) An ability to access or connect the premises to the carrying infrastructure.

To date, DCC and UÉ in the UÉ 2024 Response have looked only at (a) (being the capacity available in the water plant) and (c) (the fact that there is carrying infrastructure near the Parcel to which, in theory, it could connect if there was sufficient capacity available in that carrying infrastructure).

However, (b) (the network or carrying infrastructure) is part of the *public infrastructure and facilities* which must be assessed and it is incumbent on DCC and the Board to consider the existing <u>available</u> (present tense) capacity of that infrastructure at the last relevant date (1 January 2024).

It is clear from the UÉ 2020 Response, confirmed by the UÉ 2024 Response that the capacity is <u>not</u> "available" in the "carrying infrastructure" element of the water "public infrastructure and facilities" and was not available either on 1 January 2024 or on 1 January 2022.

<u>Distinction between works to connect to public infrastructure with available capacity and works to create capacity in the public infrastructure.</u>

The point at which the Parcel might connect to the public water main has not yet been determined. However, the upgrade which UÉ confirms is required before the Parcel may connect to the watermain is confirmed in the UÉ 2020 Response and again in the UÉ 2024 Response and is to be carried out at a distance of some 850M from the Parcel, at the junction of the Slievebloom Road and the Drimnagh Road. Figure 5 shows the location of the upgrade works to the UÉ infrastructure.

There is no relationship between the connection works which will benefit only the Parcel and the upgrade works which benefit the wider area and which are the responsibility of UÉ. They are entirely separate works.



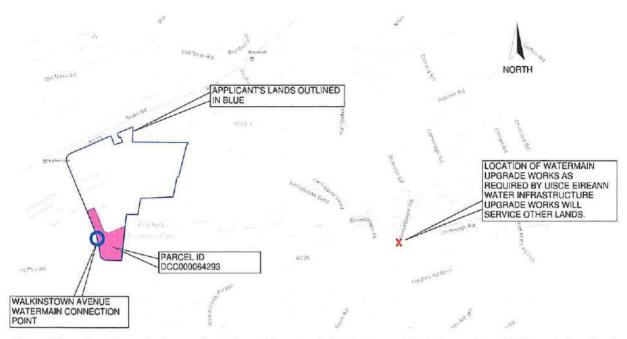


Figure 5 Location of required upgrade to the public water infrastructure at the intersection of Drimnagh Road and Slievebloom Road

RZLT Guidelines

In its evaluation relating to its determination, DCC refers to the UÉ 2024 Response and consultation with the Council's drainage section in relation to storm water and says;

"Having regard to the above and, having regard to the location of these brownfield lands within the city's built up footprint, it is reasonable to consider therefore that the lands may have access, or be connected, to public infrastructure and facilities with sufficient service capacity available for such development."

It would appear that DCC has misunderstood two significant aspects of the relevant criteria.

- (i) The requirement to assess the existing available capacity at the relevant date set out in Section 653C being 1 January 2024 and
- (ii) The fact that, just because a site is in a brownfield area, does not bring it into scope.

It is noted that the RZLT Guidelines state:

"All brownfield lands within existing built up regeneration, town centre, district centre or local centre type mixed use zonings, should generally be considered to be in-scope, unless lack of capacity in waste-water treatment plants servicing the settlement is confirmed by Irish Water. Greenfield land within such zonings will require further assessment and information to confirm connection to or ability to be connected to services."



The following points are of note in relation to the above extract;

Firstly, the guidance in relation to brownfield sites is general only. Each case must be considered on its own merits.

Secondly, the RZLT Guidelines refer only to the capacity of the waste water treatment plants. It is clearly an omission or a gross error not to consider the capacity of the carrying infrastructure or network. It is patently clear that the "carrying infrastructure" is an essential part of the public infrastructure. If it were not there, land could not be serviced. Any deficiency in it, including any requirement for an upgrade cannot be ignored in assessing the availability of sufficient service capacity in public infrastructure.

Though not referred to in DCC's assessment of this Parcel, it is noted that the RZLT Guidelines at page 8 say;

A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist. Further details are provided in Section 4 Implementation"

In fact, nothing in Section 4 makes any further reference to upgrades. The purpose of RZLT Guidelines is to provide assistance to planning authorities. They cannot extend what is provided in the legislation. Anything in them which purports to do so would be unlawful. To the extent that this one line appears in the RZLT Guidelines comprising 72 pages, it is neither explained nor reasoned. It is possible that it was intended to refer to circumstances in which an upgrade is required in the network generally but not so as to prevent connection to a parcel being assessed. This would constitute a lawful interpretation of Section 653B(b). However, that is not the case in relation to this Parcel.

It must be assumed that, in issuing the RZLT Guidelines, the Minister cannot have intended to suggest that a tax designed to encourage land which is capable of being developed would be used to compel land owners to pay for the upgrade of public services or face a penal tax instead. Neither can the RZLT Guidelines be interpretated to mean the opposite of what the legislation states. If there is a need for an upgrade to the UÉ carrying infrastructure/ network before a connection may be made or as a condition of making a connection, then the relevant infrastructure cannot be stated to have sufficient service capacity "available". Any interpretation which would suggest otherwise would be unconstitutional and unlawful. Significantly, it is not permissible under the strict wording of Section 653B(b).

To the extent that there is anything further in Section 4 of the RZLT Guidelines which is of assistance, it may be on page 23 under the heading "Services to be considered"

"iii) Services to be considered

It is acknowledged that the NPF provides a definition of Tier 1 (serviced) and Tier 2 (serviceable within the period of the development plan) lands. Under Section 653B of the provisions, the definition of land in-scope for RZLT identifies lands which are connected to, or able to be connected to services as being in scope.

This requires consideration of the services and infrastructure which are considered essential to the connection and development of residential communities. In assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining,



intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be 'connected' or 'able to connect' and therefore are in-scope". (Emphasis added)

Comment; UÉ in its responses has confirmed that an upgrade to the water carrying public infrastructure at a distance of some 850M from the Parcel is <u>essential to the connection</u> and development of the Parcel. DCC and, previously in its determination under Ref; the Board, both failed to give proper consideration and relevance to the requirement of the upgrade to the "carrying infrastructure"/ network which is deemed by UÉ to be <u>essential to the connection</u> and development of the Parcel.

On page 24, the RZLT Guidelines continue as follows;

"Where the infrastructure does not meet the threshold above, the following needs to be considered:

• Where no planning permission is in place, are <u>the works to connect</u> the landbank

to

be

the services on public land under the control of the local authority or land which will

available to the landowner/developer, in which case the land may be in-scope?

- Do <u>the connections to services involve minor works</u>, in which case the land may be in scope?
- Do <u>the connections to services</u> require access to 3rd party lands or 3rd party development to take place, in which case the land may be out of scope?

Where land has permission, the same considerations should apply. If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope. Notwithstanding other development or works which may be considered, examples where land would be considered out of scope would include where the works required to connect the land to services involve the crossing of European Sites, rivers, streams or rail infrastructure where statutory consents are required.

As is apparent from the above, in so far as the materiality or significance of works is to be considered pursuant to the RZLT Guidelines, it relates only works to connect the relevant lands to the existing public infrastructure with available service capacity. As demonstrated above at Figure 3 and the commentary about it, the works to upgrade the UÉ water main and the works to connect the parcel to the water main are entirely separate works at different locations.

Significantly, the RZLT Guidelines confirm that, where **statutory consents** are required, land is to be considered out of scope. As set out above, the upgrade which UÉ suggests our client must



fund will require a road opening licence. Such a licence is governed by Section 13(6) of the Roads Act 1993 which provides;

- (6) (a) A person or group of persons may, with the consent of a road authority, carry out maintenance works on a local road.
- (b) A consent under paragraph (a) may be given by the road authority subject to such conditions, restrictions and requirements as it thinks fit.
- (c) Where a road authority gives its consent under paragraph (a) and the works have been carried out in a bona fide manner and in accordance with every condition, restriction or requirement specified under paragraph (b)—

Any consent or licence required under consent is a "statutory consent". As it is apparent that a statutory consent is required before the upgrade works may be permitted, then, pursuant to the RZLT Guidelines, the Parcel is out of scope.

Infrastructure Capacity Assessment

The RZLT Guidelines under section 4.1.1 (iv) direct the planning authority to review information from Uisce Éireann and Settlement Capacity Audits undertaken as part of the development plan review process to inform the mapping process. There is no evidence that the planning authority engaged with the Infrastructure Capacity Assessment (Appendix 10 of the Dublin City Development Plan 2022-2028) in their evaluation and determination.

Table 4 (reproduced below) of the Infrastructure Capacity Assessment confirms that water network upgrades are required locally in the medium (2026-2031) to long term (2031-2040) to enable development at Naas Road. Therefore, the site cannot be considered to have sufficient service capacity available.

Table 4:	MASP Strategic Development Areas (Residential) - Relevant to Dublin City
	Council functional area

Corridor	Residential Areas	Phasing/Enabling Infrastructure
Multi-	Docklands / North East Inner City lands	Short to Medium term: Dodder bridge, LUAS extension to Poolbeg, local and wider area water upgrades, waste water upgrades and district heating.
Modal Location - City Centre within	City Centre / Parkwest – Cherry Orchard / St. James – Heuston Lands / Ashtown-Pelletstown / Ballymun	Short to Medium term: Waste water upgrades, social infrastructure. Long term: Long term capacity supported by DART underground.
the M50	Naas Road/ Ballymount	Medium to Long term: Multi-modal public transport, new Luas stop, site assembly, waste water upgrades and local area water network upgrades.
DART Corridor (North South)	North Fringe (Clongriffin / Belmayne)	Short to Medium term: Access to rail station, bus upgrades, new road connections, drainage, parks and social infrastructure.



Planning Permission/ Reliance on other permitted development to deliver infrastructure

Uisce Eireann confirm in their correspondence 25th April 2024 that the upgrades to the water infrastructure that was deemed necessary in relation to the development of the adjoining Parcel, ID DCC000064150 will also be deemed necessary in relation to the development of this Parcel ID DCC000064923. In the context of Parcel ID DCC000064150, permission to undertake the upgrade was included in the planning permission granted under reference

Parcel ID DCC000064923 must be considered on its own merits; it is not permissible for DCC to assume that any development, including the upgrading of the water infrastructure, will take place on foot of planning permission reference for this Parcel.

The fact that our client is the owner of this parcel as well as the parcel for which planning permission was granted under reference is not something which may be considered when assessing this parcel. The RZLT Guidelines say;

Issues relating to land ownership or the market value of the land are not required to form part of consideration in undertaking the draft, supplemental or final map review as these matters are dealt with by the Revenue Commissioners once the maps have been finalised.

The RZLT Guidelines make it clear that lands should not be included where the works required to connect the land to services are materially significant or where statutory consents, including planning permission, are required.

"If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope. Notwithstanding other development or works which may be considered, examples where land would be considered out of scope would include where the works required to connect the land to services involve the crossing of European Sites, rivers, streams, or rail infrastructure where statutory consents are required."

An assessment of the upgrade works in the context of the above guidance, requires consideration of the necessity for planning permission, which as outlined does not exist for this Parcel.

A review of the Uisce Éireann Capital Investment Plan 2020-2024^[1] confirms that the works required to service the Parcel are not listed.

Because local authorities cannot consider that planning permissions granted relating to other land will be implemented, Parcel ID DCC000064923 must be assessed based on whether planning permission exists for the upgrade in the context of this Parcel. Planning permission



is required, and planning permission does not exist. The above paragraph, therefore, means that the lands (parcel ID DCC000064923) must be considered <u>out of scope</u>.

Having regard to the evidence presented in this submission, it can be objectively concluded that the subject Parcel does not meet Section 653B (b) of the Finance Act 2021 and accordingly it must be **excluded** from the RZLT maps.

In summary;

- The capacity to be considered is that of the entire public infrastructure and facilities, not
 just of the water supply plant. The existing capacity of the carrying infrastructure/
 network at the relevant date must be considered and where that capacity does not exist
 or is deficient at the relevant date, the Parcel must be excluded.
- The cost of upgrade works to public infrastructure that service the wider area as well as the relevant land cannot be levied on a land owner to bring the relevant land within scope.
- 3. The materiality of costs required to <u>connect</u> the relevant land to public infrastructure with sufficient capacity available can be assessed in considering if it is reasonable to consider that the lands may be connected to the public infrastructure. The materiality of costs required to upgrade the public infrastructure may not. Either the public infrastructure has sufficient service capacity available at the relevant date or it does not.
- 4. Where a statutory consent, including planning permission or a road opening licence, is required for any works, they must be deemed to be out of scope and excluded. Both planning permission and a road opening licence would be required before the UÉ upgrade works could be carried out in relation to this Parcel.

For the reasons set out above, and in accordance with the RZLT Guidelines as well as in accordance with Section 653B, the Parcel is clearly "out of scope" and must be excluded from the RZLT map.

1.4.2 Ground No. 2: The Parcel is not "land which satisfies the relevant criteria" as defined in Section 653B TCA because it is not reasonable to consider that the Parcel may have access or be connected to <u>foul sewer drainage</u> necessary for dwellings to be developed and with sufficient service capacity available for such development.

A condition of the mixed-use planning permission attached to Parcel ID 000064150 to the north of this Parcel is that the new wastewater drainage system that will service the permitted development include a spur to facilitate a future connection to allow development within this Parcel. This condition was included as it was acknowledged that Parcel ID DCC00064293 could not be serviced with foul sewer drainage as there is insufficient capacity in the sewer on the Long Mile Road.



This new spur would discharge into the Irish Water combined 9B trunk sewer located to the north of Parcel ID 000064150adjacent to the R810 Naas Road, see Figure 6. In the absence of this wastewater infrastructure, access to the Irish Water public wastewater network will not be possible for this part of the lands (indicatively identified within the circle on the plan below). In determining lands for inclusion, it cannot be assumed that the permitted mixed-use development will be implemented. In its absence, this portion of the Parcel would not have access to public infrastructure with sufficient service capacity available.

The wastewater infrastructure necessary to allow development at this portion of the Parcel is not located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, and it is not connected to an existing development adjoining the landbank. Therefore, the lands are out of scope.

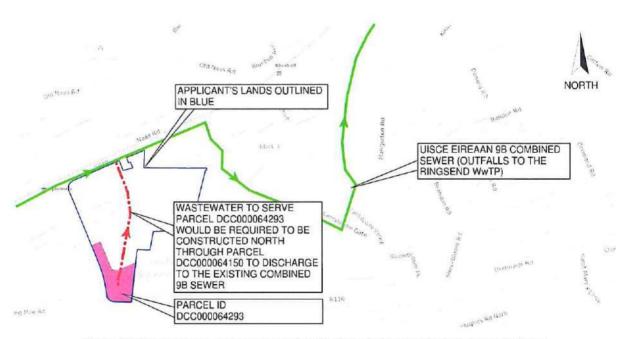


Figure 6 Infrastructure necessary to service this Parcel with a public foul sewer drainage

The above demonstrates that this Parcel does not meet the required inclusion criteria under Section 653B(b) due to the fact that at the relevant dates to be considered (1 January 2022 and 1 January 2024), there was not sufficient service capacity available in the public wastewater infrastructure.

1.4.3 Ground No. 3: Vacant/Idle reason does not comply with the requirement of section 653(B)(i) and (ii) of the Taxes Consolidation Act

Without prejudice to the fact that the entire Parcel is out of scope under Ground 1 above, the Parcel is occupied by a business which comprises an authorised development and, as such the Parcel must be excluded under the terms of Section 653B (ii).



Dublin City Council erred in concluding that existing use of the Parcel is unauthorised. The planning history confirms that the use is authorised and required for the operation of a trade carried out on the land.

Evaluation

Section 653B first sets out the Criteria for inclusion in the map but then expressly provides circumstances under which zoned land should be excluded.

Section 653B of the Taxes Consolidation Act 1997), requires that land to be included in the RZLT map is land that

- (a) is included in a development plan, in accordance with section 10(2)(a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned— [...]
 - (ii) for a mixture of uses, including residential use,

....but which is not land....

(ii) that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle.

The starting point therefore for land which is zoned for a mixture of uses including residential, is that the land should be excluded. It is only if the land is vacant or idle that it may then be included.

'Vacant or idle land' is defined in the Act as,

"land that, having regard only to authorised development under the Planning and Development Act 2000, is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land."

Our client's submission to DCC identified that a portion of the Parcel, that area occupied by the warehouse building is not "vacant or idle". As set out in section 1.3.2, it provides storage for retailer, that supply over 5,000 products for home use, commercial use and to schools.

Dublin City Council's Assessment

In their Evaluation, DCC states,

"A car preparation and distribution centre to the trade only operated from these lands and from the wider former site. See report for RZLT-000234/ ANON -16GE-ZGFE-Y.

In the intervening period temporary permission was granted for a roller disco on these lands. Notwithstanding this, from a review of the planning history of these lands and the wider it is concluded that these lands/buildings form part of a wider light industrial use (Class 4, Part 4 of the 2001, P&D Regulations). In particular the building on these lands was called the 'Parts and Accessories' building in connection with the car preparation and distribution centre use and it appears to have been used for this purpose and car maintenance.



The landowner has indicated that the building on site is occupied by a business (which is liable for commercial rates. It is stated that the company is the largest independent supplier of in Ireland.

From a site visit it was noted that the part of the building (i.e. not the whole building) is being used for by the referred company. It would appear that the building is being used for in connection with a retailing company which is located on Robinhood Road (west of Walkinstown Park).

Section 653A of the TC Act, 1997 as amended, defines 'vacant or idle land', as follows:

"vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land."

The lands are not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land as the main business is not located on or adjacent the land.

The main use on the site currently is storage in connection with a retailing business. Therefore there has been a material change of use on the lands and this change of use is not exempted development and is therefore unauthorized."

This conclusion is then carried through into the Notice of Determination as a Reason to include the Parcel in the RZLT map:

"The lands are vacant/idle as there is no active authorised use on the lands which is required for, or integral to, the operation of a trade or profession, being carried out on, or adjacent to, the land."

Response to DCCs Assessment

Existing Use is Authorised

Schedule 2, Part 4 of the Planning and Development Regulations (PDRs) 2001, as amended, identifies

Exempted Development - Classes of Use.

The Council's decision rests on its interpretation of the entire exclusively within Class 4 (Light Industrial), and this is premised on the site having previously acted solely as a car preparation and distribution centre. In their Evaluation Report, DCC set out that the current use (stated to be "storage in connection with a retailing business") is, therefore, an unauthorised change of use.



To inform this appeal, we have undertaken an online search of the planning history for the , and the results. set out in a Table at the end of this section. confirm that the uses permitted on the as follows:

- i) Class 3 Office headquarters,
- ii) Class 4, Light Industrial The import of motor and light industrial vehicles for distribution.
- iii) Class 4, Light Industrial Modifying said motor and light industrial vehicles.
- iv) Class 5, Wholesale Warehouse or Repository The importation and storage of motor vehicle parts and accessories for distribution.

The sale or leasing of motor vehicles or display for sale or leasing, which is specifically stated to not fall under any classes of use set out in Schedule 2 Part 4 of the Planning Regulations, was also a permitted use on the

We draw the Board's attention to relevant precedent with respect to our conclusion that the site supports a Class 5 use. In referral case PL06S.RL2525, the Board determined that the use of a portion of a building for "wine importation, storage and distribution" fell under Use Class 5 ("use as a wholesale warehouse or as a repository"). Part 2, Article 5(1) of the Planning Regulations sets out the definitions of both "wholesale warehouse" and "repository" with respect to exempted development:

"wholesale warehouse" means a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business.

"repository" means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;

It is important to note that under drawings submitted to DCC as part of Reg. Ref. 3569/09, the existing use of the Parts and Accessories Building in question in this case was misidentified as a "car repair workshop".

While modifications to motor vehicles took pl	ace elsewhere on the wider
this was not a significant former use on the la	ands. Indeed, the planning statement submitted
to DCC as part of Reg. Ref. 3677/05 identifies	that of the total floor area of 2,864.00 sqm, that
2,232.00 sqm of the	was used for storage, with the remaining
	. The purpose of this warehousing is for the
import and distribution of	The Planner's Report associated with Reg. Ref.
3569/09 prepared by DCCs Planning Authority	y confirms that the existing uses on the client's
lands are	•

With reference to referral case PL06S.RL2525, set out above, the existing use of the subject lands for the importation and storage of motor vehicle parts and accessories for distribution is a Class 5 use.

¹ In accordance with the PDRs "light industrial building" means: "an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit."



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Once again applying the principle of ABP referral distribution of falls under Use Class 5. As established above, this does not constitute a change of use, as Class 5 was a previously established use within the
As such, there is an active authorised use on the lands required for, or integral to, the operation of a trade or profession being carried out on or adjacent to the land. Therefore, it is not reasonable to consider the land "vacant or idle." It is occupied by a distribution centre that provides employment in the area and provides a valuable service in the supply and sale of
As such, the land does not meet the relevant criteria under Section 653(B) of the Taxe Consolidation Act 1997, as amended – specifically, Section 653B(ii) and should, therefore, be excluded on the Final RZLT Map.
Notwithstanding the <u>actual</u> current use of the lands (discussed further below), <u>as identified by DCC</u> – "storage in connection with a retailing business" – is a clear example of a Class 5 use. Give the above, this would <u>not constitute a change of use</u> , as Class 5 was a previously established use.
Existing Authorised Use is required for the operation of a trade being carried out on the land
It is important to properly define the current use of the client's lands by Evaluation Report, DCC state:
"From a site visit it was noted that the part of the building (i.e. not the whole building) is being used for storage in connection with a retailing company which is located on Robinhood Road (west of Walkinstown Park)."
As a result, DCC conclude that:
"The lands are not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land as the main business is not located on adjacent the land."
We submit that this does not accurately reflect the nature of the business operated at this site
The pandemic has accelerated the rise of online shopping, and the no exception. The majority of trade is derived from online sales. sells gyr equipment, and the operation of this trade entails a 6-step distribution process: receiving conveying, storage, picking, shipping and returns. The warehouse at this site facilitates four of these steps, with the final two steps predominantly but not exclusively occurring at other warehouse in . Essentially, the warehouse at this sit consistently provides approx. 66% of the overall trading process, and at peak periods it provides 83% of the process as the shipping step is handled from this location. Therefore, it is entired reasonable to conclude that trade (storage and distribution) is carried out from the Parcel.

It is noted that the DCC Evaluation report includes one image of the inside of the building and several of the outside. The Evaluation Report states that only part of the building is being used for storage purposes, and it is concluded that the low level of stock in the internal image and



the external condition of the building confirms its disuse. It is submitted that all of the images included in the Evaluation Report, together with the captions assigned to them, are misleading.

The entirety of the building is used for storage, as evidenced in Plate 1 in section 1.3.2 of this report. There is a myriad of reasons why stock fluctuates, including

- **New Year and Post Summer Upsurge**: The 'health kick' in January and September is well ingrained, and people traditionally spend into it.
- **Seasonality**: few sports are played year-round. Most are played during specific seasons, during which sales of equipment are naturally higher than the off- season.
- Economic factors: Economic factors such as inflation, as has been the case in Ireland, affect customers' purchasing power.
- Hosting or participating in major sporting events significantly impacts stock levels. These events can generate a surge in demand for specific and accordingly, the warehouse would stock up on these products in advance.

So, while the image presented in the Evaluation Report shows low stock, this is simply due to seasonal fluctuations.

When establishing RZLT, policy makers and legislators did not intend to penalise and potentially close down businesses which are providing employment and contributing to the economy. A specific and deliberate distinction was drawn between lands which are zoned solely for residential development and lands which are zoned for mixed use development including residential development. In the case of the former, Exclusionary Criterion (i) requires that the business must be rate paying and servicing the local community. In the case of the latter, Exclusionary Criterion (ii) requires only that the land is not vacant or idle.

The lands occupied by	is "required for and int	egral to	the operation	on of the tr	ade being
carried out on the lands". The I	ands, being part of the		and	d formerly	in use for
the importation and				for distrib	oution, is
authorised for Use Class 5	0	as a	repository).	As such,	it is not
"reasonable to consider" the lar	nds used by , a rat	e-payir	ig authorised	business	operating
from said lands, to be "vacant	or idle".				

Without prejudice to all other submissions made relating to the exclusion of the entire of the lands, on this basis, S653B (c)(ii) the lands identified in Figure 2 must be removed from the RZLT map.



Applicant Amendment Permission Amendment Permission (Change of Use) Permission Permission Permission Retention Type Mixed-use Application Other Applications Ref.

Table 1 Planning History



Permission	Permission	Permission	Permission	Permission (Includes new use)



Permission (New building)	Permission	Permission	Amendment Permission



1.4.4 Ground 4: The RZLT map incorrectly and unlawfully fails to exclude the parts of the Parcel which it is reasonable to consider are required for or are integral to occupation by energy infrastructure and facilities and water and wastewater infrastructure and facilities.

Section 653B(c)(iii) also specifically excludes land;

"that it is reasonable to consider is required for or is integral to, occupation by;

...(III) energy infrastructure and facilities,

...(V) water and waste water infrastructure and facilities.

Energy infrastructure and facilities

There are underground and overhead power lines within the Parcel, as illustrated in Figure 2. The infrastructure comprises,

- Cookstown-Inchicore 110kVDouble Circuit (D.C.) overhead (O/H) Transmission Line and 1 no. 110kV lattice mast.
- Inchicore-Ballymount 38kV O/H power line along, and associated poles.

ESB Networks require a lateral clearance to buildings to be 20m each side of the 110kV centreline, a radial clearance of 23m to be maintained from the centre of each 110kV tower and suitably designed crash barriers to be provided around new and existing masts.

Water and waste water infrastructure and facilities

There is an existing 762mm diameter steel trunk watermain within the Parcel. Uisce Éireann (UÉ) requires a 16.75m wide wayleave centred over the watermain as is confirmed in the UÉ 2020 Response. The UÉ 2024 response describes it as a "substantial 30" strategic watermain traversing the site".

DCC's determination dated 19 June 2024

DCC's determination dated 19 June 2024 notes the above and further that UÉ has confirmed that the watermian wayleave will need to be maintained if it is not diverted.

DCC's Determination also notes that "the Council's Draingage Division has indicated that a DCC (public) surface water sewer traverses the Parcel along the western boundary, connecting to the DCC surface water sewer on Naas Road. The Drainage Division seeks a wayleave along the route of this sewer. (Note this surface water sewer is to be decommissioned under Reg ref. 3228/20)".

The Determination refers to the Guiding Principles in the City Development Plan 2022-2028 under Strategic Development Regeneration Area (SDRA) No. 5 as a key opportunity for mixed use development which would include residential development.



It states;

"Guiding principles for the development of the lands, as set out under SDRA No. 5 include the/that:

'undergrounding of the 110 KV and 38KV high voltage overhead cabling traversing the LAP area. The route for undergrounding the cables will be assessed by ESB Networks with the applicants/developers, and in that event the cost of the undergrounding of the lines including associated civil works would be borne by the developers and ESB'.

and

'as part of the redevelopment of this site the 750mm watermain may need to be diverted. Such a diversion would be at the expense of the developer(s)'

The Determination fails to assess or record that;

- following engagement and the envisaged joint assessment between the ESB and our client, it was decided that the 110kV overhead line would not be undergrounded as the cost was prohibitive. The 110kV line will therefore not be undergrounded and will remain in place into the future. The wayleave of 20m on either side of the 110kV line will also continue to affect the Parcel as does the 38kV infrastructure;
- following engagement with UÉ, the 750mm watermain was not diverted. The 16.75m wayleave relating to this also continues to affect the Parcel .

Inexplicably, DCC's determination states;

"Having regard to the Development Plan's vision for these lands it is reasonable to consider the land is required for, or is integral to, occupation by a mixed use development which would include housing."

If the legislators had intended that the assessment as to whether it was reasonable to consider that land is "required for, or is integral to, occupation by" energy, water or waste water infrastructure, based only upon a Development Plan's vision, the TCA would have had to state this. Such an interpretation, however, is a nonsense as it would inevitably infringe constitutional rights.

It is quite conceivable and, indeed not at all uncommon, that a Development Plan may have an objective that a large piece of public infrastructure or facilities would be moved or undergrounded. However, that is a matter between the relevant utility company and the planning authority. It is not open to a land owner to undertake such moving or undergrounding. Any such works must be undertaken by the relevant utility provider who may or may not have a budget available for the work. The land owner is legally bound by the terms of the wayleave impacting his or her land which is not capable of being developed unless and until the public infrastructure is moved. It may take many years to move it, or it may never be moved.

Unless and until it is ever actually moved, the land through which is runs must be considered to be land which is *required for, or is integral to, occupation by*" the relevant infrastructure.



The interpretation taken by DCC would require one to believe that the legislators intended to impose a tax on land owners to incentivise (by way of penalty) the development of land which is not capable of development.

RZLT Guidelines.

At page 11 of the RZLT Guidelines, it is stated;

Where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I) – (VII) above by way of a statement or written objective, but does not specifically identify land within a statutory plan for those uses, the whole of the land area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out.

In the case of the Parcel, the location and scale of the excluded use is clearly set out on maps and confirmed in correspondence by the relevant utility provider. The area impacted is 0.286 hectares or 35% of the total area.

Circular Letter NRUP 02/2023 dated 27 October 2023

Circular Letter NRUP 02/2023 issued by the Department of Housing, Local Government and Heritage on 27 October 2023, referring to the opportunity to review before the publication of the final maps says;

"This provision facilitates the removal of land from the draft and supplemental maps which was mapped in error, such as roads, open spaces, overlapping polygons; land which may now be on the Derelict Sites Register, zonings which are not liable, or land which on further inspection may meet the criteria for exclusion as set out under Section 653B (c) (iii) (I – VII).

Appendix 1 of <u>Circular Letter NRUP 02/2023 refers to a Final Map Publication Checklist and directs that planning authorities;</u>

Remove

- Land in relation to which landowner submissions challenging the local authority decision that the land satisfied the relevant criteria were successful, including nearby sites with the same characteristics.
- Land subject to local authority determinations that were appealed and where the determination of the local authority was not upheld by An Bord Pleanála.
- Land subject to mapping errors such as incorrect zoning, open space, roads, mapped infrastructure as set out in S.653B of the TCA or other identified mapping errors contained in submissions which were inadvertently included in the draft or supplemental maps.
- Land subject to any changes to zoning which have occurred since 1 October 2022 as a consequence of the adoption of new development plans or variations, or where a local area plan forms the basis for land use zonings, the adoption or amendment of an LAP, such that the land no longer meets the criteria for inclusion.



• Land within settlements where the Uisce Éireann capacity registers published in June 2023 have identified a change in status since 2022 from green or amber to red for wastewater or water supply treatment such that the settlements or lands would no longer meet the criteria.

The fact that open space, roads and mapped infrastructure is to be omitted is clear from the words used in Section 653B(c)(iii) and is reiterated in the RZLT Guidelines and NRUP 02/2023.

Notwithstanding this, DCC concluded;

Under the permission for a mixed use development on the lands which includes for over 1,000 dwelling units (Reg Ref 3228/20), the development layout was configured around the above referred utilities with open space areas / roads to serve the development aligned along the utility routes / wayleaves.

Having regard to the above it is therefore reasonable to consider the land is not required for, or is integral to, occupation by energy infrastructure and facilities.

The above determination is internally contradictory and does not make any sense, even at a basic level. It acknowledges that the development permitted under Ref 3228/20 had to be configured around the parts of the Parcel in which the public infrastructure was located but yet concludes that the very land which had to be avoided because of the critical nature of the public infrastructure is not required for, or is integral to, occupation by energy infrastructure and facilities.

The fact that it might have been used as open space or roads to serve the development is not relevant. NRUP 02/2023 supports the wording of the legislation that open spaces and roads too are to be excluded.

Section 653B specifically requires that the RZLT map exclude any parts of any parcels of land which come within the exclusionary provisions of Section 653B. It is not permissible to include the entire Parcel in the RZLT map when large sections of the Parcel are required under Section 653B to be excluded. DCC failed to understand this and took the approach of mapping the entire Parcel. However, this would result on land owners paying tax based on the value of land which is used for public infrastructure and is clearly not permissible. Where the infrastructure, open spaces or roads are mapped, they must be excluded. The infrastructure impacting the Parcel is clearly mapped and the required wayleaves are confirmed by ESB and UÉ and those areas must be excluded from the final map.

Therefore, by including the lands coloured yellow on Figure 2 in the draft revised RZLT map, DCC acted ultra vires.

Without prejudice to Ground 1 and 2 which would exclude the entirety of the Parcel, the Board is asked to confirm that the lands coloured yellow on Figure 2 must be excluded from the Final Map.



1.5 Conclusion

DCC, in preparing the first RZLT map in 2023/2023, correctly omitted the Parcel having determined that it did not satisfy the relevant criteria up to 1 October 2022. Nothing has changed since then that would justify a change of position and the inclusion of the Parcel in the revised draft map published on 1 February 2024. Remarkably, DCC made no attempt to explain the reason to exclude the Parcel from the 2023 Map and include it in the draft 2025 Map.

Section 653B TCA stipulates the "relevant criteria" which must be met before any land may be included in map prepared pursuant to Section 653C and revised pursuant to Section 653M TCA ("inclusionary criteria"). It also stipulates circumstances in which land which would otherwise meet the inclusionary criteria set out in Section 653B (a), (b) and (c) must be excluded under Section 653B (i) to (v) ("exclusionary criteria").

In assessing the Parcel, DCC erred in relation to the proper interpretation of and application of the "inclusionary criteria" and also in relation to the proper interpretation of and application of the "exclusionary criteria" under Section 653B.

The analysis conducted in this appeal demonstrates that the Parcel does not meet the required inclusion criteria under Section 653B(b) due to the fact that at the relevant dates to be considered (1 January 2022 and 1 January 2024), there was not sufficient service capacity available in the public water infrastructure. It highlights the need to distinguish between;

- on the one hand, works to connect a parcel to infrastructure with sufficient available service capacity and, on the other hand, works to upgrade public infrastructure and facilities to create sufficient service capacity; and
- on the one hand, capacity of a water plant to output a sufficient supply of water and on the other hand, capacity of the public infrastructure and facilities to carry that water as far as the Parcel.
- on the one hand, the capacity of a wastewater plant to process effluent and, on the other hand, the capacity of the public infrastructure and facilities to carry that wastewater away from the Parcel.

While it may be reasonable to consider that land may connect to *public infrastructure with* sufficient service capacity available if the cost to connect to that infrastructure is not material, it is not reasonable to consider that land may connect to *public infrastructure with sufficient* capacity available when the relevant utility provider has confirmed that before that capacity can be made available an **upgrade is required before the connection can be made or as a condition of making the connection.** To determine otherwise is to ignore the specific requirement of Section 653B.

When determining the capacity of public infrastructure and facilities, a planning authority and the Board, cannot consider only the output capacity of the water plant and wastewater treatment plant. They must also consider if, **on the relevant date**, the public infrastructure has available capacity to carry that water from the water plant to the Parcel and wastewater away from the Parcel to the treatment plant. By the use of the word "available" section 653B specifically precludes looking at any works that may occur after the relevant date, in this case 1 January 2024.

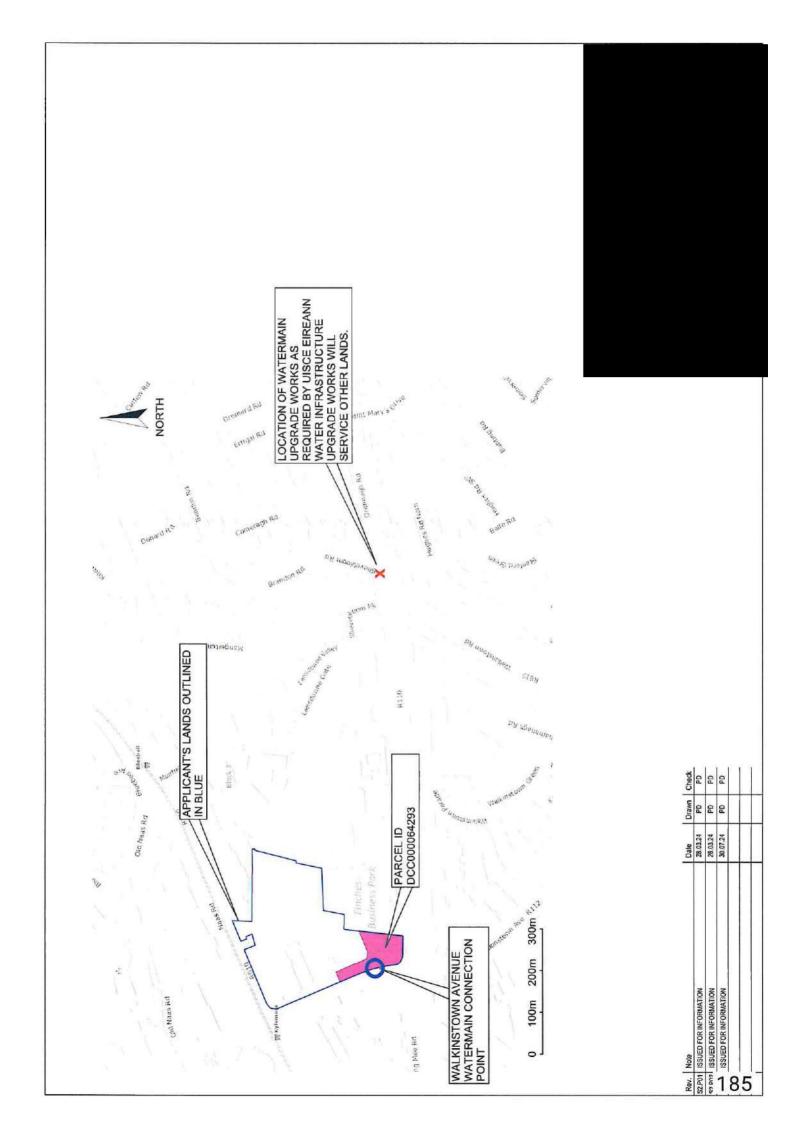


Finally, this appeal demonstrates that DCC erred in failing to exclude large tracts of the Parcel comprising in aggregate 0.286 hectares or 35% of the total Parcel area which are clearly incapable of being developed by virtue of the existence therein of significant energy, water and waste water infrastructure. This failure flies in the face of the clear wording of Section 653B as well as the very clear guidance on this issue in Circular NRUP 02/23.

It is submitted that, in the light of the foregoing analysis, the Board must now make an order determining that the Parcel should be excluded from the revised final map to be published on 31 January 2025.



Attachment 2: Site Location Plan



Attachment 3: DCC Notification (28th June 2024)



An Roinn Phleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8, DOS RF3F

> Planning & Property Development Department, Block 4, Floor 3, Civic Offices Wood Quay, Dublin 8, D08 RF3F

> > Tel: (01) 2223838 Email: rzit@dublincity.ie

28-Jun-2024



Mo	Cutcheon Halley Received
Date:	-1 JUL 2024
Project: Action:	3903

Notification of Determination Residential Zoned Land Tax Part 22A of the Taxes Consolidation Act 1997

Submission RZLT Number:	ANON-16GE-ZGFQ-B
DCC RZLT Number:	RZLT-000236
Site Owner:	Unlimited Company
Submission Address:	, Longmile Road, Dublin 12, D12 V270

The Residential Zoned Land Tax is provided for in Part 22A of the Taxes Consolidation Act 1997. Section 653E(1) of the Act states that the Local Authority shall evaluate submissions received to determine whether or not the site constitutes land satisfying the relevant criteria for inclusion on the RZLT map.

Determination

Dublin City Council has evaluated the submission received in relation to the above site and has determined to **include** the site on the final map on the basis that the site constitutes land satisfying the relevant criteria as set out in Section 653B of the Act.

Reasons

The lands:

- Are zoned for a mixture of uses, including residential use,
- Have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as confirmed by Uisce Eireann in its report dated 25th April 2024, and having regard to the brownfield nature of the lands and their location within the built up footprint of the city,
- Are vacant / idle, as there is no active authorized use on the lands which is required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land,
- Meet the other qualifying Criteria Section 653B of the TC Act, as amended

The final map showing land that is liable for RZLT will be published by 31st January 2025 and this will reflect all Determinations made.

The evaluation report is available upon request by e-mail to rzlt@dublincity.ie or in writing to Residential Zoned Land Tax, Active Land Management Unit, Planning and Property Development Department, Block 4, Floor 3, Civic Offices, Wood Quay, Dublin 8.

Appeal 653J

Section 653J(1) states that an owner who is aggrieved with the determination of a local authority under section 653E has until 1st August 2024 to appeal that determination, by notice in writing specifying the grounds for the appeal to An Bord Pleanála.

All correspondence and clarifications in relation to appeals should be addressed to; The Secretary, An Bord Pleanála, 64 Marlborough Street, Dublin 1. Tel 8588100



Attachment 4: DCC RZLT Evaluation Report

RZLT - Determinations (Landowner) - Mixed Use Lands

RZLT Sub No: RZLT-000236/ ANON -16GE-ZGFQ-B

Location: Longmile Road, Dublin 12, D12 V270

Parcel ID: Comprises Parcel ID DCC000064293

Date Submission 29/03/2024

Received:

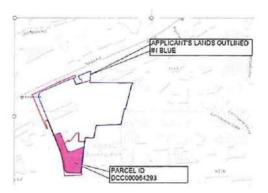
Zoning: Z14 – Strategic Development and Regeneration Areas (SDRA)

Submission Challenging the inclusion of lands on the draft RZLT map on the basis that those lands do not meet the criteria for inclusion on

the map



Extract from RZLT Map (lands outlined in purple)



Submission Extract



Submission extract showing infrastructure routes

Site Description:

The lands are located at the junction of Walkinstown Avenue and Long Mile Road. The lands are accessed off Walkinstown Avenue. There is a single storey/warehouse building on site (offices / showroom / warehouse). The buildings/land form part of the wider former car preparation and distribution

business / site. The main building on these lands is called the 'Parts and Accessories' building, a use connected with the former business.

The rest of

the building / lands appear not in use/out of use, as viewed from the Long Mile Road / within the site.

See report for RZLT-000234/ ANON -16GE-ZGFE-Y

Summary of Submission:

The lands are shown on the draft map to have met the criteria for inclusion on 1st January 2022. If this is the case, the lands should have been included on the draft map first published on 1st November 2022. No change has occurred in the intervening period that would justify the making of a different determination in 2024 to the determination that was made in 2022.

Care must be taken to include only lands which meet the strict criteria as set out in the legislation.

There isn't sufficient service capacity available to serve the lands as water network upgrades are required to serve permitted development on adjacent lands owned by the submitter (as evidenced by a planning permission under reference Planning permission is required for the water network upgrade. The owner of the land should not be required to upgrade public services and deemed taxable for RZLT if they don't. The relevant criterion S.653B (b), is not met and therefore the land should be excluded.

The land is not vacant or idle. The building on site is occupied by a business (which is liable for commercial rates. The company is the largest independent supplier of the lands in Ireland. On this basis S653B (c)(ii) and (c) (iii) (VII) requires the local authority to exclude the lands from the RZLT map.

There are underground and overhead power lines within the parcel (110 kV and 38 kV power lines and poles), which require wayleaves/radial clearance/crash barriers etc. In addition, an existing 762mm watermain within the parcel also requires a 16.75m wayleave (map attached to submission highlighting the route of powerlines and the watermain). These identified lands are significant in area and required for, and are integral to, occupation by this essential energy and water infrastructure. The whole land parcel should be removed from the map, but at the very least the part of them that meets this criterion should be removed from the map.

Relevant Planning / History:

0221/98: Permission granted for erection of a single storey distribution office to replace existing temporary distribution office building.



Commencement Notice April 2024



Interdepartmental Report(s):

Drainage Section: Report received 30th April 2024

Further Information under S.653E:

Uisce Eireann: Report dated 25th April 2024

EVALUATION UNDER SECTION 653E (1) OF THE TAXES CONSOLIDATION ACT 1997, as amended.

Evaluation to Determine Whether or Not the site constitutes land satisfying the relevant criteria (Section 653B of the Taxes Consolidation Act 1997), as follows:

Land that

- (a) is included in a development plan, in accordance with section 10(2) (a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—
 - (i) solely or primarily for residential use, or
 - (ii) for a mixture of uses, including residential use,

Comment:

The lands are zoned Z14 – Strategic Development and Regeneration Areas (SDRA) ("To seek the social, economic and physical development and/or regeneration of an area with mixed-use, of which residential would be the predominant use) in the 2022 – 2028 Dublin City Development Plan (Map G).

The lands are therefore zoned for a mixture of uses, including residential use.



The lands form part of Strategic Development Regeneration Area (SDRA) No. 5 in the Dublin City Development Plan 2022 – 2028.

(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development,

Comment:

The submitter has indicated that, as demonstrated under Reg. Ref. which pertains to the lands to the north in the same ownership, there isn't sufficient service capacity available to serve the lands as water network upgrades are required.

In response to this Uisce Eireann has indicated categorically that there is water supply and wastewater treatment capacity to serve these lands.

UE indicates that the site is serviceable in terms of wastewater networks. Similarly it indicates that in respect of water networks the site is serviceable.

Addressing the separate issue raised by the submitter that development permitted under Reg. Ref. (adjacent lands) would require water network upgrades UE states that upgrade works are required to upsize approx..10m of existing 250mm PVC pipe with 350mm ID pipe – which is not deemed substantial.

In its consultation response to RZLT-000234 (lands to north of these lands) UE states that there is a substantial 30" strategic watermain traversing the site and a wayleave will need to be maintained if it is not diverted. These comments also pertain to these lands as the watermain traverses these lands.

The Council's Drainage Section has indicated that there are DCC surface water sewers along the roadways adjacent to the site; on Walkinstown Avenue and on Long Mile Road. Connection to either should be possible for development purposes.

Having regard to the above, and having regard to the location of these brownfield lands within the city's built up footprint it is reasonable to consider, therefore that the lands may have access, or be connected, to public infrastructure and facilities with sufficient service capacity available for such development.

and

(c) it is reasonable to consider is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination¹ or the presence of known archaeological or historic remains,

Comment:

The lands are outside the Zone of Archaeological Constraint for the Recorded Monument (RMP) DU018-020 (Historic City), which is subject to statutory protection under Section 12 of the National Monuments (Amendment) Act 1994.

Due to the brownfield nature of the lands it is reasonable to consider that the lands are not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings.

but which is not land-

(i) that is referred to in paragraph (a)(i) and, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development

¹ Contaminated sites on Section 22 Register for the city omitted from the RZLT map.

(within the meaning of the Act of 2000), is in use as premises, in which a trade or profession is being carried on, that is liable to commercial rates, that it is reasonable to consider is being used to provides services to residents of adjacent residential areas. Comment: N/A (ii) that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle. Comment: A car preparation and distribution centre to the trade only operated from these lands . See report for RZLT-000234/ ANON -16GEand from the wider ZGFE-Y. In the intervening period temporary permission was granted for a roller disco on these lands. Notwithstanding this, from a review of the planning history of these , it is concluded that these lands/buildings lands and the wider form part of a wider light industrial use (Class 4, Part 4 of the 2001, P&D Regulations). In particular the building on these lands was called the 'Parts and Accessories' building in connection with the car preparation and distribution centre use and it appears to have been used for this purpose and car maintenance. The landowner has indicated that the building on site is occupied by a business) which is liable for commercial rates. It is stated that the company is the largest independent supplier of in Ireland. From a site visit it was noted that the part of the building (i.e. not the by the referred company. It whole building) is being used for would appear that the building is being used for in connection with a Section 653A of the TC Act, 1997 as amended, defines 'vacant or idle land', as follows: "'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land." The lands are not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land as the main business is not located on or adjacent the land. The main use on the site currently is in connection with a retailing business. Therefore there has been a material change of use on the lands and this change of

use is not exempted development and is therefore unauthorized.

All the relevant lands are therefore considered vacant and idle.

- (iia) the development of which would not conform with—
- (I) in a case in which the land is zoned in a development plan, the phased basis in accordance with which development of land is to take place under the plan, as detailed in the core strategy included in that plan in accordance with section 10(2A)(d) of the Act of 2000, or
- (II) in a case in which the land is zoned in a local area plan, the objective, consistent with the objectives and core strategy of the development plan for the area in respect of which the local area plan is prepared, of development of land on a phased basis, included in the local area plan in accordance with section 19(2) of the Act of 2000,

on the date on which satisfaction of the criteria in this section is being assessed,

Comment:

Lands not subject to phasing in Development Plan core strategy.

- (iii) that it is reasonable to consider is required for, or is integral to, occupation by—
- (I) social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare,
- (II) transport facilities and infrastructure,
- (III) energy infrastructure and facilities,
- (IV) telecommunications infrastructure and facilities,
- (V) water and wastewater infrastructure and facilities,
- (VI) waste management and disposal infrastructure, or
- (VII) recreational infrastructure, including sports facilities and playgrounds,

Comment:

Recreational infrastructure

Part of the building on site is occupied by storage for a sports business (



The lands are identified in the City Development Plan (SDRA No. 5) as a key opportunity site for mixed use development including residential uses.

It is reasonable to consider that the building/land is not required for, or is integral to, occupation by recreational infrastructure,

Energy and Water infrastructure

The submission on the lands has set out the extent of electricity and water network infrastructure traversing the lands.

In its consultation response to RZLT-000234 (lands to north of these lands) UE states that there is a substantial 30" strategic watermain traversing the site and a wayleave will need to be maintained if it is not diverted. These comments also pertain to these lands as the watermain traverses these lands.

The lands are identified in the City Development Plan 2022 – 2028 under Strategic Development Regeneration Area (SDRA) No. 5, as a key opportunity site for mixed use development which would include residential use.

Guiding principles for the development of the lands, as set out under SDRA No. 5 include the/that:

'undergrounding of the 110 KV and 38KV high voltage overhead cabling traversing the LAP area. The route for undergrounding the cables will be assessed by ESB Networks with the applicants/developers, and in that event the cost of the undergrounding of the lines including associated civil works would be borne by the developers and ESB'.

and

'as part of the redevelopment of this site the 750mm watermain may need to be diverted. Such a diversion would be at the expense of the developer(s)'

Having regard to the Development Plan's vision for these lands it is reasonable to consider the land is required for, or is integral to, occupation by a mixed use development which would include housing.

Under the permission for a mixed use development on the lands to the north of these lands and in the same ownership, which includes for over 1,000 dwelling units (Reg Ref 3228/20), the development layout was configured around the above referred utilities with open space areas / roads to serve the development aligned along the utility routes / wayleaves.

Having regard to the above it is therefore reasonable to consider the land is not required for, or is integral to, occupation by energy infrastructure and facilities.

(iv) that is subject to a statutory designation that may preclude development,

Comment:

N/A

or

(v) on which the derelict sites levy is payable in accordance with the Derelict Sites Act 1990².

Comment:

N/A

Conclusion

The lands are zoned for a mixture of uses including residential purposes, are serviced, and are vacant/idle.

Proposed Determination

For the reasons set out below, I recommend that the following determination be made under Section 653E (1), (ii), (I) of the TAXES CONSOLIDATION ACT 1997, as amended:

Having had regard to the submission made in respect of the lands, and having evaluated the submission against the relevant criteria under Section 653(B) of the Taxes Consolidation Act 1997, as amended, it is determined that the site constitutes land satisfying the relevant criteria and the lands should therefore be **included** on the Final RZLT Map.

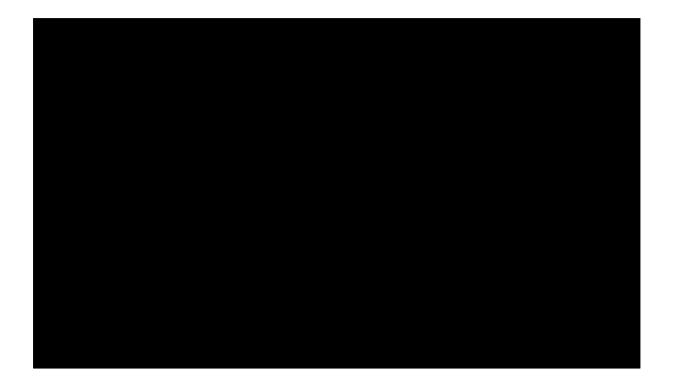
Reasons:

The lands:

- Are zoned for a mixture of uses, including residential use,
- Have access, or can be connected, to public infrastructure and facilities, with sufficient service capacity, as confirmed by Uisce Eireann in its report dated 25th April 2024, and having regard to the brownfield nature of the lands and their location within the built up footprint of the city,
- Are vacant / idle, as there is no active authorized use on the lands which is required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land,
- Meet the other qualifying Criteria Section 653B of the TC Act, as amended.

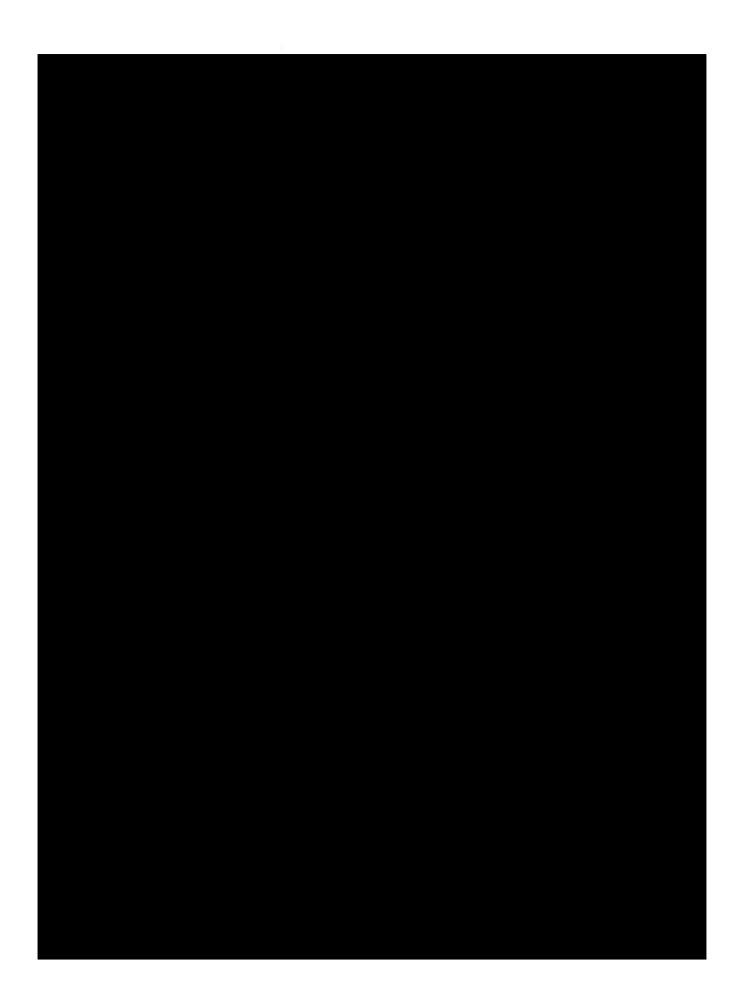
² Derelict sites as per Derelict Sites Register omitted from the RZLT map

Outcome: Include lands on Final RZLT Map











Attachment 5: Uisce Éireann submission to DCC (25th April 2024)



Uisce Éireann Response to RZLT Query

Site Address:

D12 Naas Rd (B) (

LA Ref No: RZLT-000236

UÉ Ref No: IW RZLT ID587

Date: 25th April 2024

Dear Sir/Madam,

We are in receipt of the above query and have completed a desktop assessment as follows, based on our available information:

We note that the claimant's submission refers to communications with UE that refer to other land parcels (owned by the application) but outside of that indicated on the map that forms part of this specific query. Those communications would refer to the development of an overall larger development area of circa.1,258 units.

Water Supply and Wastewater Treatment Capacity

Our capacity registers are now published annually on our website. They currently show that there is capacity available.

Capacity Registers | Connections | Uisce Éireann

Wastewater Networks

From our available GIS records, the site is serviceable. If taken in isolation form the applicant's other lands, connection would be to the 225mm diameter sewer in the Long Mile Road.

Water Networks

UÉ can confirm that the subject site is the site is serviceable. As per the Connection enquiry (appended to the appeal) In order to accommodate the proposed connection to Irish Water network at the Premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe. 10m of pipeline is not deemed substantial.

Kind Regards,

RZLT Team

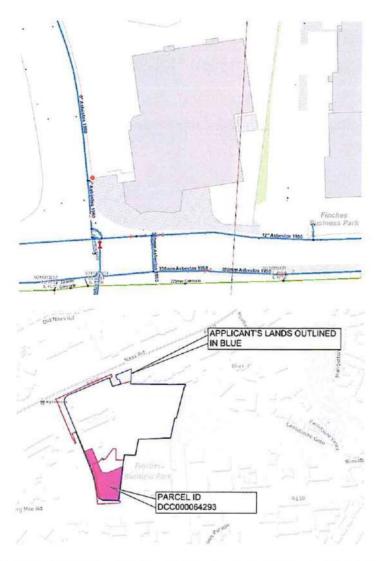
Asset Strategy - Forward Planning

Uisce Éireann Teach Colvill 24-26 Sráid Thalbóid Baile Átha Cliath 1 DO1 NP86 Éire

Uisce Éireann

Colvill House 24-26 Talbot Street Dublin 1 D01 NP86 Ireland

T: +353 1 89 25000 F: +353 1 89 25001 www.water.ie



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- 2. Whilst every care has been taken in its compilation, Uisce Éireann gives this information as to the position of its underground network as a general guide only on the strict understanding that it is based on the best available information provided by each Local Authority in Ireland to Uisce Éireann. Uisce Éireann can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions.
- 3. This information should not be relied up on in the event of excavations or any other works being carried out in the vicinity of the Irish Water underground network. The onus is on the parties carrying out excavations or any other works to ensure the exact location of the Uisce Éireann underground network is identified prior to excavation s or any other works being carried out. Service connection pipes are not generally shown but their presence should be anticipated.

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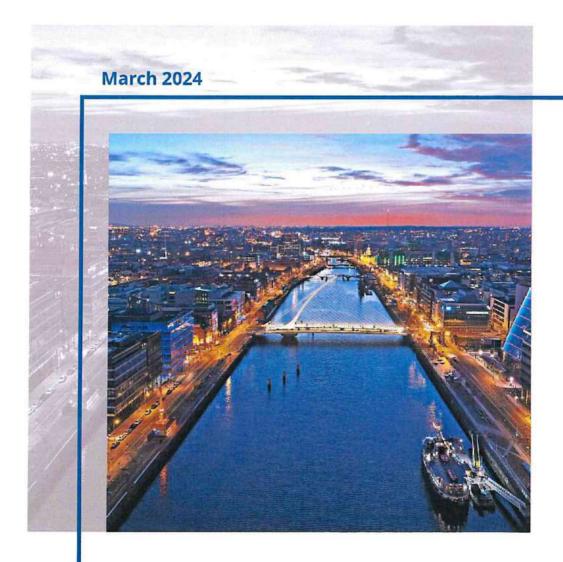
Attachment 6: Submission to DCC re the Draft Residential Zoned Land Tax Map (McCutcheon Halley Planning, March 2024)

including evidence of ownership and Irish Water's Connections and Developer Services Response, appended to same.

Submission to Residential Zoned Land Tax Annual Draft Map

Parcel ID DCC000064293 - Long Mile Road, Dublin 12

on behalf of Co. Unlimited





Document Control Sheet

Client		Co. Unlimited
Project Title	Longmile Road RZLT	
Document Title	Submission to Residential Zoned Land Tax Annual Draft Map	
	Volumes	1
Document Comprises	Pages (Including Cover)	19
	Appendices	3
Checked by Office of Issue		-
	Revision	Α
Document Information	Status	Final
	Issue Date	March 2024
www.mhplanning.ie		

Contents

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2.	Parcel Characteristics and Occupancy 6		
3.	Grounds for Exclusion		
4.	Conclusion	1	18
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Attac	hment No. 3	Irish Water Response	19

1. Introduction

McCutcheon Halley Chartered Planning Consultants have been appointed by

to make the following submission to Dublin City Council (DCC) regarding the Annual Residential Zoned Land Tax (RZLT) Map published on the 1st of February 2024.

This submission relates to lands at the junction of Longmile Road and Walkinstown Avenue, Dublin 12, identified on the Draft RZLT Map (Figure 1) as part of **Parcel ID No. DCC000064293**.



Figure 1 RZLT Parcel Location

The lands are comprised in Folio DN248746F in respect of which our clients are the registered owners. We attach a copy of Folio DN248746F together with the associated map as evidence of ownership.

1.1 Purpose of Submission

The criteria for including land in the draft RZLT maps are set out in legislation. Guidance has been issued by Department of Housing, Local Government and Heritage for the assistance of local authorities. The relevant legislation and Guidance documents are as follows;

- The Taxes Consolidation Act 1997 (as amended) ("TCA")
- Finance Act 2021
- Finance (No. 2) Act 2023
- Residential Zoned Land Tax Guidelines for Planning Authorities (2022), Department of Housing, Local Government and Heritage. ("the RZLT Guidelines")

The date for the assessment as satisfying the relevant criteria in respect of the current draft map is 1st January 2024 (Section 653B(2) TCA read in conjunction with Section 653M).

.DCC published their Annual Draft RZLT Map, identifying lands considered to be in scope for the RZLT as of January 1st, 2024. The map identifies part of our client's lands as Parcel ID no DCC000064293 and deems them as "land satisfying the relevant criteria on 1st January 2024...

Section 653C(1)(b) states that when preparing the draft map, the local authority must specify;

(i) the date on which, based on the information available to it, it considers that land referred to in paragraph (a) first satisfied the relevant criteria, where that date is after 1 January 2022.

It is noted that, notwithstanding that the draft RZLT map states that Dublin City Council considers that the lands were in scope on 1st January 2022 when the RZLT maps were first published in October 2022, the parcel now identified as Parcel ID no DCC000064293 were not included. It is apparent therefore that either Dublin City Council considers that it erred in excluding the lands in the draft maps published in 2022 or that an error has occurred in including the lands in the current draft maps. Either way, the position now adopted by Dublin City Council in relation to the question of whether the lands met the relevant criteria for inclusion in the maps on 1st January 2022 is inconsistent with the position previously taken. It is not suggested by Dublin City Council that it considers that circumstances have changed in the interim such that it is now entitled to include the lands which did not satisfy the relevant criteria on 1 October 2022.

The purpose of the submission is to propose a correction to the Annual Draft RZLT map, seeking the exclusion of Parcel ID No. DCC000064293 from the map on grounds set out in this submission.

The maps prepared by Dublin City Council will form the basis for eligibility for a very onerous tax. Once the lands are included in the final maps, there is no opportunity to escape liability for the tax unless the land is developed for residential development. As tax is considered to be a penal law, there is a great onus on all local authorities when assessing eligibility to take care to include only lands which meet the strict criteria as set out in the legislation. The strict wording of the legislation must be observed. It is not open to the local authority to read in words that are not included in the legislation or to omit words that are included in the legislation.

In the event of any discrepancy between the wording of the legislation and any guidelines issued in respect of the mapping exercise, the legislation prevails.

This submission therefore outlines why, based on the strict wording of the legislation the Parcel does not now and did not on 1st January 2024 satisfy the relevant criteria as defined in Section 653B of the TCA and therefore it must be excluded.

Without prejudice to the position as outlined above in so far as it refers to the precedence of the legislation over the Guidelines, this submission also outlines why, having regard to the Guidelines, the lands should also be excluded.

As is required this submission includes;

- An Ordnance Survey Site Location Plan at a scale of 1:1000 that clearly identifies the land and its boundaries, see Attachment No. 1.
- ii. Proof of Ownership, see Attachment No. 2.

Parcel Characteristics and Occupancy

The Parcel (approx. 0.84ha) is part of a larger plot identified as the 'and part of Strategic Development Regeneration Areas (SDRA) 5 in the Dublin City Development Plan 2022-2028. The zoning designation is Z14 with an objective:

"To seek the social, economic and physical development and/or regeneration of an area with mixed-use, of which residential would be the predominant use."



Figure 2 General Location of Subject Parcel within SDRA 5

2.1 Occupancy and-Recreational Infrastructure

The parcel hosts a 30,000 sq ft building and yard area which is occupied by a business () that is liable for commercial rates. It is the largest independent supplier of the parcel in Ireland. They are Ireland's leading the products for home use, commercial use and to schools thereby facilitating a broad spectrum of fitness enthusiasts. They stock over 5,000 products within all fitness and sporting domains, and sales are delivered online.

Building a strong recreation infrastructure is key to the health and wellbeing of the population. Ireland's fitness industry is enjoying a golden age with all ages increasingly engaged with their physical health and well-being. The Irish Sports Monitor Annual Report published in 2022 identifies that;

- Participation in sport increased by 3 percentage points since 2021, with 43% of the adult population participating regularly in sport in 2022. This equates to approximately 1.75 million adults who participated in sport and 170,000 adults who either resumed or begun participating in sport since 2021.
- Personal exercise remained the most popular activity, with over twice as many participants as the second most popular activity, swimming. Running, cycling, and weights made up the remainder of the five most popular sports in 2022.
- The proportion participating in sport in gyms, sports centres, and sports clubs all increased.
- Sports participants reported spending €1,144 on coaching, health services and facility access per annum.

2.2 Energy and Water Infrastructure

There are underground and overhead power lines within the Parcel, as illustrated in Figure 3. The infrastructure comprises,

- Cookstown-Inchicore 110kVDouble Circuit (D.C.) overhead (O/H)
 Transmission Line and 1 no. 110kV lattice mast.
- Inchicore-Ballymount 38kV O/H power line and associated poles.

ESB Networks require a lateral clearance to buildings to be 20m each side of the 110kV centreline, a radial clearance of 23m to be maintained from the centre of each 110kV tower and suitably designed crash barriers to be provided around new and existing masts.

There is an existing 762mm diameter steel trunk watermain within the Parcel. Uisce Éireann (UE) requires a 16.75m wide wayleave centred over the watermain.

The ESB and Uisce Éireann clearance requirements have a material impact on the developable area of this Parcel. Figure 3 (and Attachment 1) identifies lands which are effectively sterilised by energy and water infrastructure and development of any kind would not be acceptable within this zone of influence.



Figure 3 Existing ESB and Uisce Éireann infrastructure.

3. Grounds for Exclusion

3.1 Introduction

The Residential Zoned Land Tax (RZLT) was introduced in Ireland by the Finance Act 2021 as part of the government's initiative called Housing for All - a New Housing Plan for Ireland".

The purpose of the RZLT tax is to incentivize efficient land use by encouraging residential development and to tax landowners who are not providing lands which meet certain criteria for development. The tax and the associated guidelines are part of a suite of integrated measures and policy direction to:

- engage lands in cities and towns.
- create compact and integrated communities.
- aid brownfield regeneration.
- · activate greenfield landbanks for housing.
- · support place making and growth of sustainable communities.

3.2 Assessment against Taxes Consolidation Act Criteria

Section 653B of the TCA sets out:

- Criteria which result in land being considered for inclusion in the RZLT maps ("the Inclusionary Criteria") and
- Criteria which result in land which meet the Inclusionary Criteria nevertheless being excluded from the maps ("the Exclusionary Criteria")

The Inclusionary Criteria

The Inclusionary Criteria are outlined in Section 653B (a-c) TCA. The overarching rationale for inclusion is that the zoning of the land is either solely residential or is for mixed use including residential and that the land has access to public services which have sufficient capacity to support the development of the land.

For reference, the criteria are given in **bold black** text. Our response is given in blue and provides commentary where the criteria is relevant in terms of how it applies or why it does not apply to the subject lands.

Section 653B sets out the meaning of "land which satisfies the relevant criteria" as being a reference to land which;

3.2.1 S653B (a) Residential zoning criterion

- (a) is included in a development plan, in accordance with section 10(2) (a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—
- (i) solely or primarily for residential use, or
- (ii) for a mixture of uses, including residential use.

Response: The Parcel is zoned Z14 – Strategic Development and Regeneration Areas (SDRAs) in the Dublin City Development Plan 2022 – 2028. This mixed-use zoning allows for residential development. The land therefore satisfies the "zoning" Inclusionary Criterion.

Exclusion from the RZLT map is not being sought in response to this criterion.

3.2.2 Part (b) Public infrastructure and facilities criterion

(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.

Response: The inclusion of the subject lands on the Draft Annual RZLT Map is challenged under Section 653B(b) as it is not reasonable to consider that the subject lands has access to a public water supply **with sufficient service capacity available** (emphasis added).

a) Water Supply

The lands form part of the Former Site. Although this land (Parcel ID No. DCC000064293) was excluded from the draft RZLT map published in 2022, the remainder of that site (identified as Parcel ID DCC0000064150 (previously in the 2022 map identified as Parcel ID DCC000004727)) was included. Planning permission issued by DCC for development within the Parcel ID DCC0000064150 conditioned such that a new water connection could only be facilitated if upgrade works are undertaken at a location approx. 850m east of the site and within land that is not within the landowner's control, see Figure 4. Uisce Eireann further confirmed that it "currently does not have any plans to extend its network in this area. Should you wis to progress with the connection you will be required to fund this network extension". This direction from UE does not apply to the subject Parcel as it is not part of the extant planning permission. However, it provides evidence that sufficient water supply service capacity is unavailable for the Parcel. See Uisce Eireann correspondence included in Attachment 3.

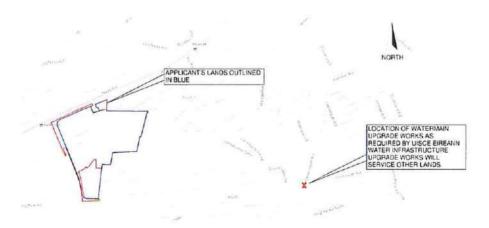


Figure 4 Location of watermain upgrade works.

The above referenced confirmation from Uisce Eireann makes it clear that the lands do not and cannot be deemed to meet the public infrastructure criterion. Section 653B(b) is clear. The assessment must be made on the

basis of the sufficiency in the capacity of the public infrastructure which is available on the relevant date.

The upgrade required to the public water infrastructure some 850 metres from the site will benefit the wider area. It is not work which solely benefits the lands. Nothing in the legislation permits a local authority to require a private landowner to pay for an upgrade to public services and to deem them taxable for RZLT should they fail to do so. Such an interpretation would introduce uncertainty and ambiguity in relation to where the line should be drawn in relation to the level of cost which a private landowner would be obliged to pay for the upgrading of public services to increase their capacity.

The criteria in the Act to include lands for the RZLT, in relation to Services is included in 653(B) b as follows:-

(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.

(Our emphasis added).

Section 653B(b) is clear. The land must have access to public services with sufficient service capacity available. The response of Uisce Eireann in the context of the planning application made relating to Parcel ID DCC0000064150 is equally clear. There is not sufficient service capacity available. The criterion is not satisfied.

The fact that Uisce Eireann may be prepared to allow an upgrade of its utility at a distance of 850 m from the lands at the cost of a land owner is not something which any local authority can take into account when assessing the satisfaction of the criteria in the TCA. It may be possible in theory to create sufficient capacity in the public water service but that required capacity can only be achieved (i) after the relevant date for the assessment for inclusion in the current RZLT map being 1st January 2024 and (ii) if the land owner at their own cost pays to upgrade a public utility.

Accordingly, it is not reasonable to consider that the Parcel meets the public infrastructure and facilities criterion.

Though the legislation takes precedence over the RZLT Guidelines, Section 4.1.1 of the RZLT Guidelines provides further support for the exclusion of the Lands. It offers guidance on 'Services to be considered' when identifying lands to be included in a Draft Map and the assessment of services required to facilitate the development of lands for residential development:

"This requires consideration of the services and infrastructure which are considered essential to the connection and development of residential communities. In assessing whether land or landbanks are able to connect to services, Planning Authorities should take into account the following:- In the first instance, where the infrastructure is located adjoining, intersecting, at a boundary or corner of a landbank, in a nearby public road, or is connected to an existing development adjoining the landbank, the lands should be considered to be 'connected' or 'able to connect' and therefore are in-scope."

(Our emphasis added).

We set out below our response to each of the thresholds. This is limited to water supply infrastructure.

Threshold	Response
Does the water supply infrastructure adjoin the site, intersect the site, exist at a boundary or corner of the	The water supply infrastructure does not adjoin, intersect or sit at the boundary/corner of the Parcel.
landbank?	Developer Services (CDS) response attached to the extant planning permission on adjacent land within the wider identified that a new water connection is only feasible if upgrade works are undertaken at a location approx. 850m east of the site.
Is the water supply infrastructure in a nearby public road?	It is understood that a critical component of the water supply infrastructure is 850m distant from the Parcel.
Is the water supply infrastructure connected to an existing development adjoining the landbank?	No - the extant permission for the adjoining landbank is not implemented to date.

Where the thresholds above are not met, as is the case with the subject Parcel, the Guidelines are clear that the lands would not be 'connected' or 'able to connect' and therefore the Parcel is out of scope.

The Guidelines provide further guidance to local authorities in circumstances "Where the infrastructure does not meet the threshold above". In each case, the Guidelines refer to works "to connect the landbank" to services. As is apparent from the Uisce Eireann response, the works required in the case of the adjoining Parcel ID DCC000064150 and, presumably for this land, are not works "to connect the landbank" to services. Rather, they are works which will upgrade the public services for the benefit of the wider area. They are not in the nature of works contemplated by the RZLT Guidelines as bringing land within scope.

The Guidelines say that "Where the infrastructure does not meet the threshold above the following needs to be considered:

 Where no planning permission is in place, are the works to connect the landbank to the services on public land under the control of the local authority or land which will be available to the landowner/developer, in which case the land may be in-scope? (emphasis added)

Response:. The works required are not works to "connect the landbank to the services on public land". Rather, they are works which will upgrade the public services for the benefit of the wider area.

 Do the connections to services involve minor works, in which case the land may be in scope? (emphasis added)

Response: The works required are not "connections to services". As set out in the Uisce Eireann response, they are works which are required to upgrade and increase the capacity in the public water service.

Further, the works are not "minor works". UE in their Connection Reference No CDS19004746 pre-connection enquiry dated 11th February 2020 associated with the extant planning permission on the adjacent landholding state,

"In order to accommodate the proposed connection to Irish Water network at the Premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe. Irish Water currently does not have any plans to extend its network in this area. Should you wish to progress with the connection you will be required to fund this network."

These works are at a significant additional cost to the development of our client's lands and cannot reasonably be considered to be 'minor works' having regard to the substantial cost associated with the delivery of this infrastructure. Accordingly, the Parcel is not in scope.

 Do the connections to services require access to 3rd party lands or 3rd party development to take place, in which case the land may be out of scope? (emphasis added)

Response: As outlined above, the required works are <u>not</u> "connections to services". They are works to upgrade a public water service for the benefit of the wider area and for the reasons set out above, this guidance does not bring the land in scope.

It is reasonably assumed that the upgrade to the Uisce Eireann water infrastructure that was deemed necessary in relation to the development of the adjoining Parcel, ID DCC000064150 will also be deemed necessary in relation to the development of this Parcel ID DCC000064923. In the context of Parcel ID DCC000064150, permission to undertake the upgrade was included in the permission granted under reference.

Parcel ID DCC000064923 must be considered on its own merits; it is not permissible for DCC to assume that any development, including the upgrading of the water infrastructure, will take place on foot of planning permission reference 3228/20 for this Parcel.

The Guidelines make it clear that lands should not be included where the works required to connect the land to services are materially significant or where statutory consents, including planning permission, are required.

"If the works required to connect the land to services are materially significant, for example require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves, then the land should be considered to be out of scope. Notwithstanding other development or works which may be considered, examples where land would be considered out of scope would include where the works required to connect the land to services involve the crossing of European Sites, rivers, streams, or rail infrastructure where statutory consents are required."

An assessment of the the upgrade works in the context of the above guidance, requires consideration of the necessity for planning permission, which as outlined does not exist for this Parcel.

A review of the Uisce Éireann Capital Investment Plan 2020-2024^[1] confirms that the works required to service the Parcel is not listed. In their response to our client as part of the pre-connection enquiry process associated with extant planning permission for adjoining lands, Uisce Éireann, confirmed that new upgraded infrastructure would be required.

Capital-Investment-Plan-2020-2024-Explanatory-Booklet.pdf (water.ie)

Because local authorities cannot consider that planning permissions granted relating to other land will be implemented, Parcel ID DCC000064923 must be assessed on the basis of whether planning permission exists for the upgrade in the context of this Parcel. Planning permission is required, and planning permission does not exist. The above paragraph, therefore, means that the lands (parcel ID DCC000064923) must be considered out of scope.

Having regard to the evidence presented in this submission, it can be objectively concluded that the subject Parcel does not meet Section 653B (b) of the Finance Act 2021 and accordingly it must be **excluded** from the RZLT maps.

3.2.3 Part (c) Exclusionary Criteria

(c) it is reasonable to consider is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of known archaeological or historic remains,

but which is not land-

- (i) that is referred to in paragraph (a)(i) and, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is in use as premises, in which a trade or profession is being carried on, that is liable to commercial rates, that it is reasonable to consider is being used to provides services to residents of adjacent residential areas,
- (ii) that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle,
- (iia) the development of which would not conform with-
 - (I) in a case in which the land is zoned in a development plan, the phased basis in accordance with which development of land is to take place under the plan, as detailed in the core strategy included in that plan in accordance with section 10(2A)(d) of the Act of 2000, or
 - (II) in a case in which the land is zoned in a local area plan, the objective, consistent with the objectives and core strategy of the development plan for the area in respect of which the local area plan is prepared, of development of land on a phased basis, included in the local area plan in accordance with section 19(2) of the Act of 2000,

on the date on which satisfaction of the criteria in this section is being assessed

(iii) that it is reasonable to consider is required for, or is integral to, occupation by—

- social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare,
- (II) transport facilities and infrastructure,
- (III) energy infrastructure and facilities,
- (IV) telecommunications infrastructure and facilities,
- (V) water and wastewater infrastructure and facilities,
- (VI) waste management and disposal infrastructure, or
- (VII) recreational infrastructure, including sports facilities and playgrounds,
- (iv) that is subject to a statutory designation that may preclude development, or
- on which the derelict sites levy is payable in accordance with the Derelict Sites Act 1990.

Response:

Exclusionary Criterion (ii) land that is referred to in paragraph (a)(ii) and is not vacant or idle" applies.

Parcel ID DCC00006493 is "land that is referred to in paragraph (a)(ii)" (ie, it is zoned as mixed development including residential). Accordingly, as required by Exclusionary Criterion (ii) above, it **must be excluded** from the RZLT maps "unless it is reasonable to consider that the land is vacant or idle".

As set out in Section 2.1 of this submission, the lands are most certainly not "vacant or idle". Rather, they are occupied by a very significant business which is providing employment in the area, and which is providing a valuable service in the supply and distribution of fitness, health and recreational products.

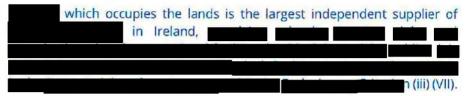
When establishing RZLT, policy makers and legislators did not intend to penalise and potentially close businesses which are providing employment and contributing to the economy. A specific and deliberate distinction was drawn between lands which are zoned solely for residential development and lands which are zoned for mixed development including residential development. In the case of the former, Exclusionary Criterion (i) requires that the business must be rate paying and servicing the local community. In the case of the latter, Exclusionary Criterion (ii) requires only that the land is not vacant or idle.

Having regard to current occupancy of the lands and the evidence presented in this submission, it is not "reasonable to consider that the lands are vacant or idle".

On this basis S653B (c)(ii) requires the local authority to exclude the lands from the RZLT map.

Exclusionary Criterion (iii)(VII) "recreational infrastructure, including sports facilities and playgrounds" applies.

The recreational infrastructure of the State is comprised of a range of buildings, facilities, as well as sport and recreational organisations and businesses. As specifically set out in paragraph (iii) (VII), it *includes* sports facilities and playgrounds, but it is *not limited* to them.



Exclusionary Criterion (iii) (III) (energy infrastructure) and (iii) (V) (water infrastructure) apply.

Exclusionary Criterion (iii) includes land that it is reasonable to consider is required for, or is integral to, occupation by—

(III) energy infrastructure and facilities,

(IV) water and wastewater infrastructure and facilities,

As outlined in Section 2.2 of this submission, essential energy and water infrastructure traverse the lands.

The part of the lands which is coloured yellow in Figure 3 in Section 2.2 is, impacted by and required for the;

- Cookstown-Inchicore 110kVDouble Circuit (D.C.) overhead (O/H)
 Transmission Line and 1 no. 110kV lattice mast.
- Inchicore-Ballymount 38kV O/H power line and associated poles.
- 762mm diameter steel trunk watermain

ESB Networks require a lateral clearance to buildings to be 20m each side of the 110kV centreline, a radial clearance of 23m to be maintained from the centre of each 110kV tower and suitably designed crash barriers to be provided around new and existing masts.

There is an existing 762mm diameter steel trunk watermain within the Parcel. Uisce Éireann (UE) requires a 16.75m wide wayleave centred over the watermain.

No development whatever can take place on the lands coloured yellow on Figure 3 because those lands are *required for, and are integral to, occupation* by this essential energy and water infrastructure.

While it is accepted that not all of the lands meet Exclusionary Criterion (iii) (III) and /or (iii) (V), it is indisputable that a significant portion of the lands meet that Exclusionary Criterion. Accordingly, if the lands were not otherwise excluded (which is not accepted), the part of them which meets this criterion must be excluded.

4. Conclusion

As set out in this submission, local authorities, when playing a role in a procedure which determines whether or not a landowner may come within the net of a very significant and penal tax, must pay strict attention to the specific criteria set out in the relevant legislation. They must not read into legislation criteria which are not set out in the legislation to include land in scope, and they must not ignore criteria which the legislation states must exclude land from being in scope.

Parcel ID DCC000064293 does not meet one essential Inclusionary Criterion and does meet three Exclusionary Criteria.

Accordingly, the Parcel is out of scope and is incorrectly included in the draft map.

Where part of any lands being considered meet an Exclusionary Criterion, it is not open to a local authority to include all of the lands, including any part which meets an Exclusionary Criterion.

The inclusion of the lands in the current draft RZLT maps when it was not included in the maps published in 2022 demonstrates an inconsistency in the position adopted in relation to these lands. This is particularly so when the current draft map states that it is considered that the lands came into scope on 1st January 2022. In the event that it is contended by Dublin City Council that the lands were not in scope in 2022 but are now in scope (a) the draft map fails to state this and (b) as a matter of fact, no change has occurred in the intervening period that would justify the making of a different determination in 2024 to the determination that was made in 2022.

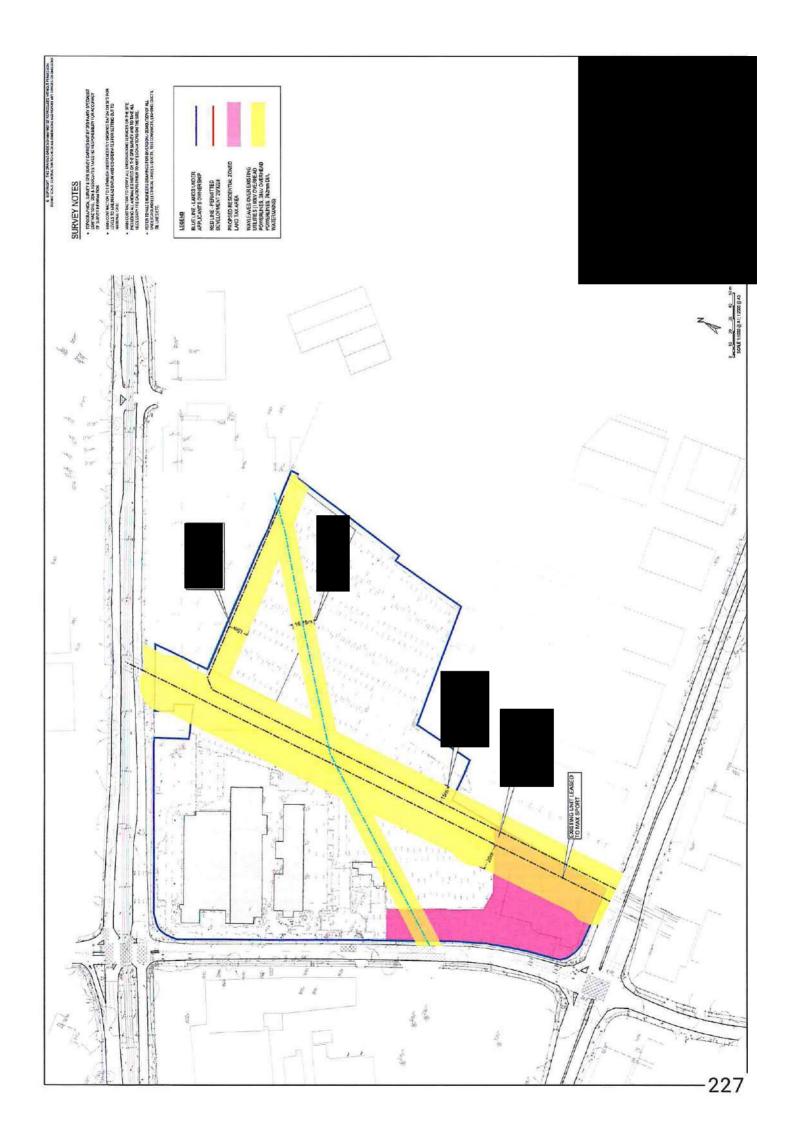
For all of these reasons, Dubin City Council is requested to remove Parcel ID DCC000064293 from the current draft RZLT map.

Attachment No.1 Site Location Plan

Attachment No.2 Proof of Ownership

Attachment No. 3 Irish Water Response

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County Dublin



Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent.

For parts transferred see Part 1(B)

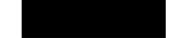
County Dublin



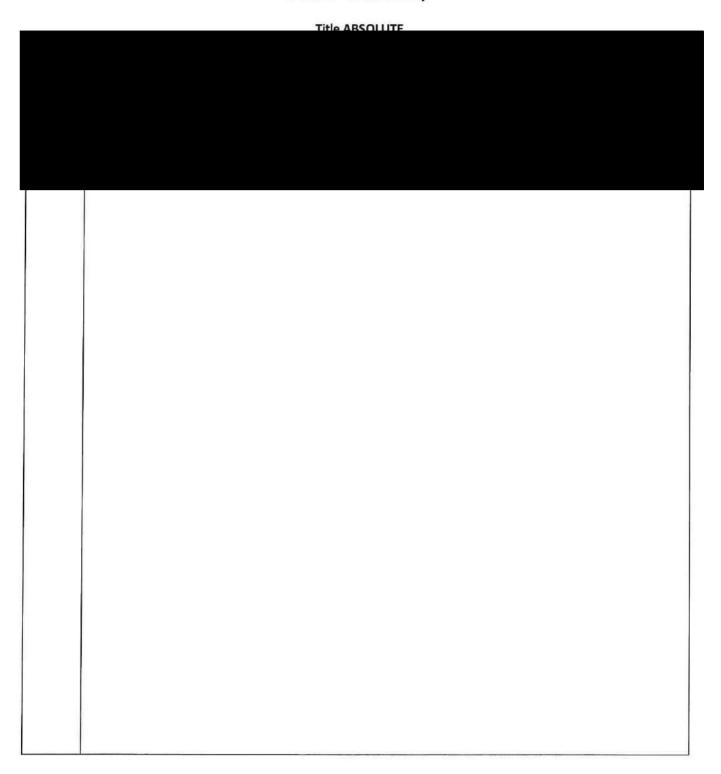
Part 1(B) - Property Parts Transferred

No.	Prop No.	Instrument	Date	Area(Hectares)	Plan	Folio No.
		ii)				
						N.

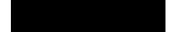
County Dublin



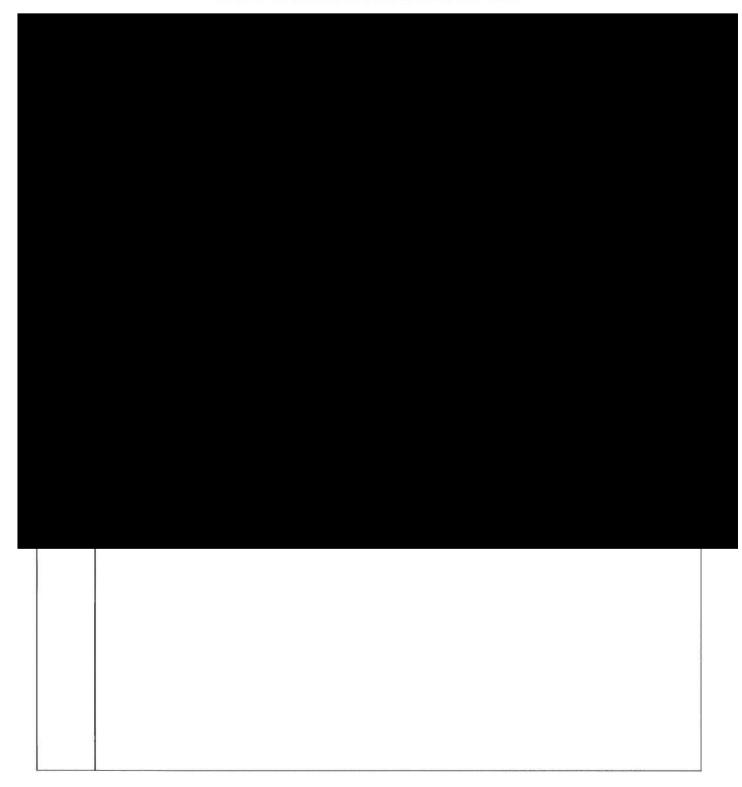
Part 2 - Ownership

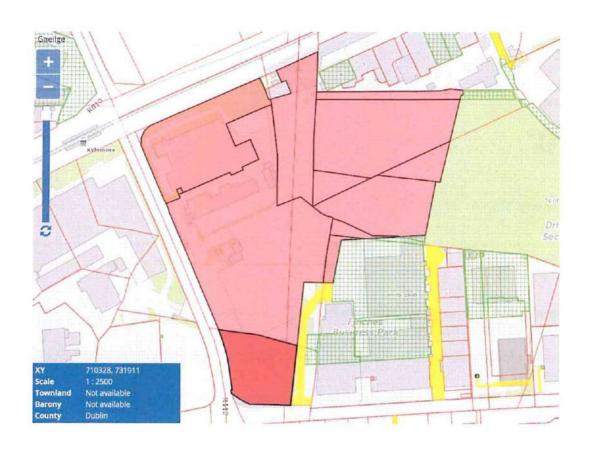


County Dublin



Part 3 - Burdens and Notices of Burdens









11 February 2020

Dear

Ulsce Éireann Besca OP 448 ridig Sheadhadtamá Cathlach Theas cuthar Chorra

Irish Water PD Box 448, South City Delivery Office, Cots City

www.water.ie

Re: Connection Reference No pre-connection enquiry - Subject to contract | Contract denied

Connection for Multi/Mixed Use Development of 1,266 unit(s) at Site, Walkinstown Avenue, Co.Dublin.

Irish Water has reviewed your pre-connection enquiry in relation to a water connection at Walkinstown Avenue, Co.Dublin.

Based upon the details that you have provided with your pre-connection enquiry and on the capacity currently available in the network(s), as assessed by Irish Water, we wish to advise you that, subject to a valid connection agreement being put in place, your proposed connection to the Irish Water network(s) can be facilitated.

Water:

In order to accommodate the proposed connection to Irish Water network at the Premises, upgrade works are required to upsize approx. 10m of existing 250mm PVC pipe with 350mm ID pipe as shown on the attached figure (red line). Irish Water currently does not have any plans to extend its network in this area. Should you wish to progress with the connection you will be required to fund this network extension.

The proposed development indicates that an important Irish Water asset is present on the site. A wayleave in favour of Irish Water will be required to protect the 30" steel trunk main. No structures will be allowed within 8m of main (i.e. 16.75m width centred over main),

For design submissions and queries related to diversion/buildover please contact IW Diversion Team via email address diversions@water.ie

Detailed proposals, including work method statements, insurance confirmation and details of work completed of a similar nature must be submitted to Irish Water for its consideration before approval will issue to undertaking work in close proximity to Irish Water assets. All such works in the vicinity of Water Mains or Sewers greater than 400mm shall be subject to written agreement with Irish Water before construction commences on site. This agreement shall also include any necessary protection for Water Mains and Sewers. The placing of concrete over or around Water Mains is expressly forbidden.

Wastewater:

New connection is feasible without upgrades for the full development directly to the 9B sewer on Naas Road. Storm water is not permitted to the Irish Water network.

Strategic Housing Development

Irish Water notes that the scale of this development dictates that it is subject to the Strategic Housing Development planning process. In advance of submitting your full application to An Bord Pleanala for assessment, you must have reviewed this development with Irish Water and received a Statement of Design Acceptance in relation to the layout of water and wastewater services.

All infrastructure should be designed and installed in accordance with the Irish Water Codes of Practice and Standard Details. A design proposal for the water and/or wastewater infrastructure should be submitted to Irish Water for assessment. Prior to submitting your planning application, you are required to submit these detailed design proposals to Irish Water for review.

You are advised that this correspondence does not constitute an offer in whole or in part to provide a connection to any Irish Water infrastructure and is provided subject to a connection agreement being signed at a later date.

A connection agreement can be applied for by completing the connection application form available at **www.water.ie/connections**. Irish Water's current charges for water and wastewater connections are set out in the Water Charges Plan as approved by the Commission for Regulation of Utilities.

If you have any further questions, please contact Marko Komso from the design team on (022) 54611 or email mkomso@water.ie. For further information, visit www.water.ie/connections.

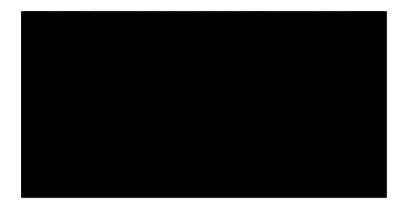


Attachment 7: ESB Letter (dated 17th October 2019)



esb.je

Tionscadail Innealtóireachta agus Mórthionscadail, Aon Lárcheantar Aerfort Bhaile Átha Cliath, Clochrán, Co. Bhaile Átha Cliath, K67 XF72, Éire Fón +353 1 703 8000 Engineering and Major Projects.
One Dublin Airport Central, Dublin Airport,
Cloghran, Co. Dublin, K67 XF72, Ireland
Phone +353 1 703 8000



17th October 2019

Re: Proposed Development at Naas Road, Co. Dublin within Span 38-40 of the Citywest-Inchicore and Span 16-18 of the Cookstown-Inchicore 110 kV D.C. Transmission Line.

Dear Sir,

Further to your enquiry to ESB Networks and subsequent site meeting 22/08/2019 and correspondences with this Office in relation to a proposed development in the above 110 kV Double Circuit (D.C.) Transmission Line Spans, please refer below:

Tower No. 39 / 17 is located within the center of your client's site with Tower No.40 / 18 located adjacent to the Luas Line to the North your client's site (Folio DN176264F refers).

I have based the Electrical Safety clearances on the drawing "NRM-DOB-XX-SI-SK-C-00_ESB.dwg"received via email 14/10/2019 and clarifications received 11/10/2019 on Building usage (Mixed Use and Residential) and Single Level Basements etc..

The Proposed Maximum Road level within Span 16/38-18/40 is 42.5m as confirmed 09/10/2019.

The above drawing details the plan layout of buildings which are located outside of 20m perpendicularly from the 110 kV C.L., a corridor of 40m centered on the 110 kV C.L.

The above clearance is site and location in span specific and should not be applied within other Transmission Line Spans or Sites.

Please ensure that any revisions or alterations to the planned works in the vicinity of the D.C. 110 kV Transmission Line (i.e. Building Heights and locations relative to the 110 kV Transmission Line, finished ground/road levels, and land use etc.) are re-issued to ESB





Networks/ this Office for review prior to any construction work commencing on site to ensure all of the above electrical clearances have been adhered to.

Based on the above drawings and information provided ESB would have no objection to the Proposed Development on the condition that ESB Networks / this Office is contacted prior to construction works and demolition works commencing on site.

As outlined during our site meeting due to the proximity of the live line to the proposed works it is essential that contact is made with this Office / ESB Networks well in advance of construction works commencing to agree safe working procedures in the vicinity of the 110 kV Transmission Line.

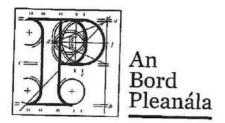
Please ensure that during the construction works that maintenance access is maintained to the OHL Infrastructure which traverses the site.

A hard copy of the ESB Networks, HSA booklet "Code of Practice for Avoiding Danger from Overhead Electricity Lines" is enclosed with this letter, particular attention should be made to sections 7 & 8.

Thank you for consulting with ESB regarding the proposed development

Should you need any further information or clarifications please do not hesitate to contact me on





Inspector's Report ABP-320434-24

Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map

Location

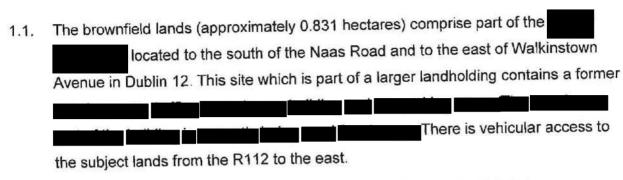
Planning Authority

Dublin City Council

RZLT-000236

Appellant(s)

1.0 Site Location and Description



- The lands comprise Land Parcel ID DCC000064293 on the final RZLT map.
- There is a concurrent RZLT appeal (An Bord Pleanála Reference ABP-320436-24)
 on adjoining lands to the north and east.

2.0 Zoning and Other Provisions

- 2.1. The subject lands are within Zone Z14 'Strategic Development and Regeneration Areas' (SDRA) in the Dublin City Development Plan 2022-2028 (Zoning map G refers). This zoning objective seeks 'To seek the social, economic and physical development and/or regeneration of an area with mixed-use, of which residential would be the predominant use.' The lands are zoned for a mixture of uses including residential use.
- 2.2. The lands form part of SDRA 5 Naas Road in the Dublin City Development Plan 2022-2028 (Section 13.7 of the City Development Plan refers). The subject lands are identified therein as a Key Opportunity Site for mixed use development.

3.0 Planning History

RZLT Appeal on adjoining site to the north and east

An Bord Pleanála Ref. ABP-316	975-23 / Planning Authority Ref. RZLT000055 refers
to an August 2023 decision to co	onfirm the determination of the local authority to
include lands at the	, Naas Road, Dublin on the RZLT MAP. This
decision was the subject of Judi	cial Review proceedings which were struck out by

the High Court on the basis that, inter alia, a deferral in the liability to tax for a one year period rendered the proceedings moot.

Other

The overall landholding has an extensive planning history. Relevant applications are as follows:

Planning Authority Ref. 3228/20 refers to an April 2021 decision to grant a 10-year permission for a mixed-use development including part Build to Rent scheme in 13 no. blocks (Blocks A-L) ranging in height from 4 - 15 storeys over 3 no. basements with a cumulative gross floor area of 168,184.13 sqm. The application area includes part of the Site' (6.429 hectares) and 0.492 hectares to accommodate works to facilitate connections to municipal services and works proposed to public roads.

Planning Authority Ref. 3060/23 refers to a February 2021 decision to grant permission for modifications to the previous application under 3228/20.

Planning Authority Ref. 2799/12 refers to an August 2012 decision to grant permission to erect a glazed lean-to walkway between two existing showrooms.

Planning Authority Ref. 3569/09 refers to a September 2009 decision to grant permission for change of use of vacant showroom and workshops to recreation use, modifications to building incorporating new roller skating rink, café, offices, children's fitness centre.

Planning Authority Ref. 3677/05 refers to an August 2005 decision to grant permission for a single storey warehouse adjacent to the parts warehouse.

Planning Authority Ref. 1626/99 refers to a July 1999 decision to grant permission for a motor (trade display) showroom, addition to parts and accessories building.

Planning Authority Ref. 0221/98 refers to a March 1998 decision to grant permission for erection of a single storey distribution office to replace temporary distribution office building.

4.0 Submission to the Local Authority

- 4.1. The appellant made a submission to the Local Authority which raised the following matters:
 - The land parcel accommodates underground and overhead powerlines and a
 substation which requires wayleaves / radial clearance / crash barriers etc.
 There is also an existing watermain on the lands requiring a 16.75 m
 wayleave. The lands are significant in area and are required for, and are
 integral to, occupation by this essential energy and water infrastructure. As
 such the entire land parcel should be removed from the map. At the very least
 the part of the land parcel affected should be removed from the map.
 - Insufficient water supply capacity to serve the lands. Planning permission is
 required for the water network upgrade. Under Reg. Ref. 3228/20 Uisce
 Éireann (UÉ) conditioned that a water connection can be facilitated if upgrade
 works are undertaken 850 m east of the lands, which comprise lands not in
 the landowner's control. Water infrastructure does not adjoin the site; works
 are required to upgrade the network and they are not minor works; as such
 the lands are out of scope for the tax.
 - The lands are not vacant or idle. They are occupied by a significant business,
 McSport, an independent supplier of in Ireland. It is
 considered that this use is part of the recreational infrastructure which
 facilitates sports and recreation across the State and it therefore falls within
 the exclusionary criteria (iii)(VII) 'recreational infrastructure, including sports
 facilities and playgrounds.'

5.0 Determination by the Local Authority

- 5.1 The Local Authority determined that the lands satisfy the relevant criteria as set out in section 653B on the basis that they:
 - Are zoned for a mixture of uses, including residential use
 - Have access or can be connected to public infrastructure and facilities, with sufficient service capacity, as confirmed by Uisce Éireann in its report dated 25th

April 2024 and having regard to the brownfield nature of the lands and their location within the built up footprint of the city

- Are vacant / idle as there is no active authorised use on the lands which is required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land
- Meet the other qualifying criteria of section 653B of the Taxes Consolidation Act, as amended.

6.0 The Appeal

6.1 Grounds of Appeal

The following points are made in support of the appeal:

Public water supply

- It is not accepted that the parcel meets the requirements of Section 653B(b) in terms of water supply. The existence of planning permission is not a criteria which should be considered.
- The position of UÉ remains that a water connection to the parcel would not be permitted unless there is an upgrade to the UÉ public network and that UÉ has no plans to undertake the upgrade. It is unclear on what basis UÉ deems the upgrade not to be substantial.
- The capacity to be considered is that of the entire public infrastructure and facilities, not just of the water supply plant. Where the capacity does not exist or is deficient at the relevant date the parcel should be excluded from the map.
- The cost of upgrade works to public infrastructure that service the wider area as well as the relevant land cannot be levied on a landowner to bring the relevant land within scope.
- Where a statutory consent, including a road opening licence is required for any works (as it would be in this case), the lands must be deemed to be out of scope and excluded.

Foul sewer drainage

A condition of planning application 3228/20 relating to the adjoining parcel to the
north is that the new wastewater drainage system includes a spur to facilitate a
future connection to allow development within this area of the parcel. In the
absence of this wastewater infrastructure, access to the public wastewater
network would not be possible for this part of the lands.

Business operating on part of the parcel

- The land parcel accommodates a warehouse building and yard trading as
 a trade business, that is liable for and pays commercial rates.
- The portion of the parcel occupied by the warehouse building is not vacant or idle
 as it provides storage for the parcel, a sports and fitness retailer that supply
 products for home and commercial use. Sales are predominantly online based.
- It is considered that the existing use of the subject lands for the importation and storage of motor vehicle parts and accessories is a Class 5 use and it is also considered that the storage for onward distribution of falls under Class 5 use. Given that Class 5 was a previously established use, the existing use of the warehouse would not constitute a change of use.
- It is not reasonable to consider the land used by authorised business, is 'vacant or idle.'

Energy infrastructure and Water infrastructure

- There are underground and overhead power lines within the parcel. ESB
 Networks require a lateral clearance to be 20 m on each side of the 110Kv
 centreline, a radial clearance of 23 m to be maintained from the centre of each
 110Kv tower and crash barriers to be provided around new and existing masts.
- In terms of water infrastructure there is a steel trunk watermain within the parcel.
 UÉ requires a 16.75 m wide wayleave centred over the watermain.
- ESB and UÉ clearance requirements have a material impact on the developable area of this parcel, with lands effectively sterilised by energy and water infrastructure. The aggregate area impacted is 0.286 ha representing 35% of the total area of this parcel.

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- The Local Authority's determination fails to record that following engagement and the envisaged joint assessment between the ESB and the landowner it was decided that the 110kv line would not be undergrounded due to costs. As such the wayleave of 20 m on either side of the 110 kv line will continue to affect the parcel. Furthermore, following engagement with UÉ the watermain was not diverted and the 16.75 m wayleave relating to this infrastructure continues to affect the land parcel.
- While it is not uncommon that a Development Plan may have an objective that a large piece of public infrastructure would be moved or undergrounded this is a matter between the relevant utility company and the planning authority; it is not open to the landowner to undertake such works. Unless or until it is ever actually moved the land through which it runs must be considered to be land which is 'required for, or is integral to occupation by' the relevant infrastructure.
- The area impacted by the infrastructure is 1.827 hectares or 42% of the parcel.
- The infrastructure impacting the parcel is mapped and the required wayleaves are confirmed by ESB and UÉ and those areas must be excluded from the final map.

Attachments received with the appeal are as follows:

- Site Location Plan
- Local Authority Notification
- Local Authority Evaluation Report
- UE submission
- Submission (and attachments) made to Local Authority

7.0 Assessment

7.1 The grounds of appeal have been fully considered. Under section 653J of the Taxes Consolidation Act 1997 as amended, the Board's role in the current appeal is to review the determination of the local authority under section 653E which is based on the application of the relevant criteria set out in section 653B of the Act for inclusion on the RZLT map. This position is consistent with the Residential Zoned Land Tax-Guidelines for Planning Authorities June 2022 which clearly sets out in section 3.3.2 that:

"in considering appeals, An Bord Pleanála is restricted to considering the grounds of appeal, the determination of the local authority on the submission made during public display period, and any additional information on the servicing or use of the land which the Board may seek from the landowner, Local Authority or stakeholders identified in article 28 of the 2001 regulations. In assessing any appeal, the Board is restricted to considering whether the lands meet the qualifying criteria set out in section 653B only"

- 7.2 Section 653B of the Taxes Consolidation Act 1997 as amended, sets out the criteria for inclusion on the map, and states that the first consideration for inclusion is land which in subsection (a) 'is included in a development plan' or 'local area plan' zoned solely or primarily for residential use, or for a mixture of uses including residential. The subject lands are zoned Z14 'Strategic Development and Regeneration Areas' (SDRA) and are considered within the scope of section 653B(a)(ii).
- 7.3 Section 653B(c)(ii) provides for exclusion of lands zoned for a mixture of uses including residential use from the RZLT map unless it is reasonable to consider that the land is vacant or idle. Page 12 of the RZLT Guidelines set out that 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land. In terms of determining whether lands are vacant or idle the Guidelines state the following:

Setting out the text in the legislation 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or

adjacent to, the land; the first step is to determine if the development on the land is required for or integral to a trade or profession being carried out on the land or adjacent to the land.

The appellant contends that the lands accommodating the warehouse is not vacant or idle on the basis that it is used for storage of by a trade retail business which supply products for home and commercial use. Following an online planning search, this use does not appear to have the benefit of a grant of planning permission; I consider this activity would constitute a material change of use on the subject lands. I note the Local Authority advise that part of the warehouse on the land is used for storage in connection with a retailing company based in nearby Robinhood Road.

Having regard to the foregoing and also in relation to section 653b(c)(ii), I consider this land parcel to be vacant or idle as the land is not required for or integral to the operation of a trade or profession being carried out on or adjacent to the land, with the main premises not located on or adjacent to the land and also that there appears to be a material change of use on the lands which would appear not to have the benefit of planning permission. As such, I consider that the land cannot avail of the exclusion as set out under section 653B (c)(ii) of the Taxes Consolidation Act 1997 as amended.

- 7.4 In terms of section 653(B)(b) the site is within the urban area and it is reasonable to consider that the land may have access to or be connected to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply necessary for dwellings to be developed and with sufficient service capacity for such development.
- 7.5 Notwithstanding, the appellant considers that the land parcel does not meet the requirements of section 653B(b) in terms of water supply. In this regard UÉ has advised that there is water supply capacity to serve the lands and that works would be required to upgrade the water network involving the upsizing of approximately 10 m of PVC piping. Having reviewed and confirmed the 10-year Water Supply Capacity Register for Dublin City and Suburbs as published by UÉ in June 2023 I note there is capacity available to meet 2032 population targets. In terms of the requirement to upgrade the water supply network as described above, I refer to the Residential Zoned

Land Tax - Guidelines for Planning Authorities, 2022, 'Serviced Land Definition', which states the following: "Information from stakeholders such as Irish Water will play a key role in identifying these lands and providing confirmation of existing capacity in wastewater treatment plants and water treatment plants along with data informing the date of connection or ability to connect to services, where this date was after 1 January 2022. A need for network upgrades is not considered to exclude lands, where sufficient treatment capacity is confirmed to exist.' Therefore, I conclude that upgrades to an existing system is not considered criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.

- 7.6 I do not concur with the appellant's assertion that the lands should be considered out of scope on the basis that the upgrade may require provision of a statutory consent in the forms of a road opening licence. It is a common and routine occurrence to apply for a road opening licence should works be required to a public road. The RZLT Guidelines at page 24 state that 'examples where land would be considered out of scope would include where the works required to connect the land to services involve the crossing of European Sites, rivers, streams or rail infrastructure where statutory consents are required.' The appeal lands do not fall within these aforementioned categories.
- 7.7 The appellant refers to a previous planning application for a mixed-use development on adjoining lands to the north (Planning Authority Ref. 3228/20 refers) which conditioned that a spur would be required to facilitate a future wastewater connection to allow development at the southern portion of the overall landholding. While noting that this part of the landholding does not adjoin a public road, it adjoins lands within the appellant's control which can connect to the nearest sewer which is located, according to UÉ, 35 m north of the land parcel, along the Naas Road. As such I conclude that this part of the landholding does not meet the criteria for exclusion under Section 653B (b) of the Taxes Consolidation Act 1997, as amended.
- 7.8 Referring to Section 653B(c)(iii) (III) and (V) of the Taxes Consolidation Act 1997 as amended the appellant considers that the parts of the land parcel affected by energy infrastructure comprising, inter alia, overhead and underground powerlines and also by water infrastructure, namely an existing steel trunk watermain, should be excluded from the scope of the RZLT.

Section 3.1.2 of the Guidelines, 'Exclusions from the Map' state that exclusions of particular lands as set out in the legislation and as clarified in the guidelines should be taken into account. With specific reference to Land Required for Infrastructure and Community Services the guidelines state: "As set out within the legislation, it is reasonable to exclude land required for the provision of community services and infrastructure which will sustain existing and future residential communities.'

The Guidelines note a number of uses which may be required or are provided on either residential or mixed-use lands which permit housing are to be excluded from the map. These are set out in section 653B(c)(iii)(I) – (VII) and include (III) energy infrastructure and facilities and (V) water and wastewater facilities.

Regarding the energy infrastructure and water infrastructure on the land parcel, I note the lands are not specifically identified for the provision of such infrastructure in the Dublin City Development Plan 2022-2028. The Guidelines state that where a zoning facilitates residential development, but also makes provision for other uses including the uses identified in (I) – (VII) above by way of a statement or written objective, but does not specifically identify land within a statutory plan for those uses, the whole of the land area should be considered to be in scope unless the location and scale of the excluded uses is clearly set out. Noting that that the Dublin City Development Plan 2022-2028 does not identify the subject lands for the provision of energy and water infrastructure in accordance with the above, it is reasonable to consider that the land parcel is in scope.

UÉ has confirmed to the Local Authority that the substantial 30" strategic watermain traverses the lands and indicates a wayleave will need to be maintained if the watermain is not to be diverted. I note the appellant's comments that following engagement with the ESB a decision was made that the 110 kv line would not be undergrounded due to costs and that the wayleave would continue to affect the parcel. In this context it is legitimate to refer to the permitted development on adjoining lands comprising in excess of a thousand residential units (Reg. Ref. 3228/20 refers), which incorporates the aforementioned on-site electricity infrastructure and water infrastructure with open spaces and roads serving the development aligned along the utility routes and wayleaves. This permission demonstrates that a residential development can be accommodated with the aforementioned infrastructure being in situ. This reinforces my view that the subject

lands are not required for, or integral to, occupation by either energy infrastructure and facilities and water infrastructure and facilities. As referred to in section 7.2 above, all of the subject lands which are zoned for a mixture of uses, including residential use, are in scope having regard to section 653B(ii).

7.9 An Bord Pleanála is restricted in the appeals process to considering whether the land meets the qualifying criteria set out in section 653B only. The grounds of appeal relating to the potential costs of upgrade works to public infrastructure and how these costs would be levied fall outside the qualifying criteria included in section 653B and cannot be considered in the appeal process.

8.0 Recommendation

Having regard to the foregoing, I consider that the lands identified as Parcel ID DCC000064293 meet the qualifying criteria set out in section 653B of the Taxes Consolidation Act 1997, as amended. There are no matters arising that warrant exclusion of the subject lands from the final map and therefore I recommend that the Local Authority determination be confirmed, and the lands are retained on the map.

9.0 Reasons and Considerations

In the assessment of this appeal, regard was had to the content of the Residential Zoned Land Tax – Guidelines for Planning Authorities (June 2022) which are considered to be a helpful complement to understanding the spirit and intent of the primary legislation. However, the recommendation is made within the clear parameters of the applicable legislation.

The lands identified as Parcel ID DCC000064293 on the RZLT Final Map are considered in scope of section 653B(a). The lands are located within an established urban area and have access to, or can be connected to, as required by 653B(b), surface water drainage infrastructure, along with water supply and foul sewer drainage for which there is sufficient capacity available as evidenced by Uisce Éireann Water Supply and Wastewater Capacity Registers which confirm capacity to serve the lands. The Dublin City Development Plan 2022-2028 has not identified the subject lands for the purposes of energy infrastructure and facilities and water and wastewater facilities. It is considered that the land parcel is in scope and does not meet the provisions of section 653B(c)(iii)(III) and (V) for exclusion from the map. The land is vacant or idle

as the land is not required for or integral to the operation of a trade or profession being carried out on or adjacent to the land, with the main premises not located on or adjacent to the land. Furthermore, a material change of use appears to have occurred on the lands which would appear not to have the benefit of planning permission. As such, the land cannot avail of the exclusion as set out under section 653B (c)(ii) of the Taxes Consolidation Act 1997 as amended. The land does not fall within the exemptions as set out under section 653B (c) (i) – (v) of the Taxes Consolidation Act 1997, as amended.

10.0 Recommended Draft Board Order

Taxes Consolidation Act 1997 as amended

Planning Authority: Dublin City Council

Local Authority Reference Number: RZLT-000236

Appeal by

Co. Unlimited Company in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, against the inclusion of the land on the Residential Zoned Land Tax Map by Dublin City Council on the 27th day of June 2024 in respect of the site described below.

Lands at: , Naas Road, Dublin 12

Decision

The Board in accordance with section 653J of the Taxes Consolidation Act 1997 as amended, and based on the reasons and considerations set out below, hereby decided to:

The Board confirm the determination of the local authority and direct the local authority to retain the lands identified as Parcel ID DCC000064293 on the final map.

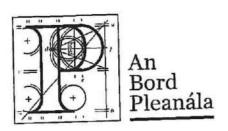
Reasons and Considerations

The lands identified as Parcel ID DCC000064293 on the RZLT Final Map are considered in scope of section 653B(a). The lands are located within an established urban area and have access to, or can be connected to, as required by 653B(b), surface water drainage infrastructure, along with water supply and foul sewer drainage for which there is sufficient capacity available as evidenced by Uisce Éireann Water

Supply and Wastewater Capacity Registers which confirm capacity to serve the lands. The Dublin City Development Plan 2022-2028 has not identified the subject lands for the purposes of energy infrastructure and facilities and water and wastewater facilities. It is considered that the land parcel is in scope and does not meet the provisions of section 653B(c)(iii)(III) and (V) for exclusion from the map. The land is vacant or idle as the land is not required for or integral to the operation of a trade or profession being carried out on or adjacent to the land, with the main premises not located on or adjacent to the land. Furthermore, a material change of use appears to have occurred on the lands which would appear not to have the benefit of planning permission. As such, the land cannot avail of the exclusion as set out under section 653B (c)(ii) of the Taxes Consolidation Act 1997 as amended. The land does not fall within the exemptions as set out under section 653B (c) (i) – (v) of the Taxes Consolidation Act 1997, as amended.

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





Inspector's Addendum Report ABP-320434A-24

Type of Appeal

Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map

Location

Local Authority

Dublin 12

Dublin City Council

RZLT-000236

Appellant(s)

Inspector

1.0 Background

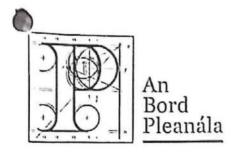
- 1.1. The Board Direction dated 8th October 2024 noted that the report of the Planning Authority contained on the file may not relate to Parcel ID DCC000064293, which is the subject of this particular appeal. Out of an abundance of caution, the Board requested that a copy of the report of the Planning Authority for Parcel ID DCC000064293 be secured and placed on the file as appropriate. Thereafter, the Board requested that the file be sent to Inspectorate for an Addendum Report, outlining changes, if any, to the original Inspector's Report and recommendation. The Board requested that the Addendum Report be provided to it for its further consideration.
- 1.2. A copy of the report of the Planning Authority for Parcel ID DCC000064293 was sought and has been placed on the file. Furthermore, a copy of the Uisce Éireann (UÉ) report for Parcel ID DCC000064293 was sought and has been placed on the file.

2.0 Assessment

- 2.1 As set out in the original Inspector's Report relating to this appeal, the appellant included a number of attachments to the appeal submission including a copy of the Planning Authority's report relating to Parcel ID DCC000064293 and a copy of the UÉ report relating to Parcel ID DCC000064293.
- 2.2 The original Inspector's Report and recommendation had full regard to and consideration of the Planning Authority's report and to the UÉ report relating to Parcel ID DCC000064293, which is the subject of this particular appeal. Therefore, it is considered that no changes to the original Inspector's Report and recommendation are required.

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





Board Direction BD-017798-24 ABP-320434-24

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/10/2024.

The Board decided to defer this case for consideration as it was noted that the report of the Planning Authority (marked with the red tab) contained on the file may not relate to Parcel ID DCC000064293 which is the subject of this particular appeal.

Out of an abundance of caution, the Board requests Processing to secure a copy of the report of the Planning Authority for Parcel ID DCC000064293 and place it on the file as appropriate.

Thereafter, the Board requests that the file be sent back to Inspectorate for an Addendum Report outlining changes, if any, to the original Inspector's Report and recommendation.

The Addendum Report is requested to be provided to the Board for its further consideration.

Board Member: Date: 08/10/2024

ABP-320434-24 Board Direction Page 1 of 1

Our Case Number: ABP-320434-24

Planning Authority Reference Number: RZLT-000236

Your Reference:



McCutcheon Halley Kreston House Arran Court Arran Quay Dublin 7 D07 K271



Date: 17 00T 2024

Re: Inclusion of the land on the residential zoned land tax Final map 2024

Longmile Road, Dublin 12.

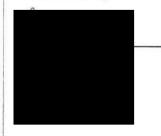
Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned matter in accordance with section 653J of the Taxes Consolidation Act, 1997, as amended. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made. The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

The validity of a decision of An Bord Pleanála may be challenged by way of judicial review.

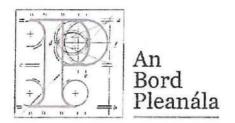
Yours faithfully,



Teil Glao Áitiúil Facs Láithreán Gréasáin Ríomhphost Tel LoCall Fax Website Email

(01) 858 8100 1800 275 175 (01) 872 2684 www.pleanala.ie bord@pleanala.ie

64 Sráid Maoilbhríde Baile Átha Cliath 1 D01 V902 64 Marlborough Street Dublin 1 D01 V902



Board Order ABP-320434-24

Taxes Consolidation Act 1997, as amended

Planning Authority: Dublin City Council

Planning Authority Reference Number: RZLT-236

Appeal by

Care of McCutcheon

Halley Chartered Planning Consultants of Kreston House, Arran Court, Arran

Quay, Dublin in accordance with section 653J of the Taxes Consolidation Act

1997, as amended, against the inclusion of land on the map of the Residential

Zoned Land Tax by Dublin City Council on the 27th day of June 2024 in

respect of the site described below.

Lands at: , Longmile Road, Dublin.

Decision

The Board in accordance with section 653J of the Taxes Consolidation Act 1997, as amended, and based on the reasons and considerations set out below, hereby decides to confirm the determination of the local authority.

EJK

Reasons and Considerations

The lands identified as Parcel ID DCC000064293 on the RZLT Final Map are considered in scope of section 653B(a) of the Taxes Consolidation Act 1997. as amended. The lands are located within an established urban area and have access to, or can be connected to, as required by 653B(b) of the Act, surface water drainage infrastructure, along with water supply and foul sewer drainage for which there is sufficient capacity available as evidenced by Uisce Éireann Water Supply and Wastewater Capacity Registers which confirm capacity to serve the lands. The Dublin City Development Plan 2022-2028 has not identified the subject lands for the purposes of energy infrastructure and facilities and water and wastewater facilities. It is considered that the land parcel is in scope and does not meet the provisions of section 653B(c)(iii)(III) and (V) of the Act for exclusion from the map. The land is vacant or idle as the land is not required for or integral to the operation of a trade or profession being carried out on or adjacent to the land, with the main not located on or adjacent to the land. Furthermore, a material change of use appears to have occurred on the lands which would appear not to have the benefit of planning permission. As such, the land cannot avail of the exclusion as set out under section 653B (c)(ii) of the Taxes Consolidation Act 1997 as amended. The land does not fall within the exemptions as set out under section 653B (c) (i) - (v) of the Taxes Consolidation Act 1997, as amended.



Dated this 17th day of October, 2024