Comhairle Contae Chorcaí Cork County Council

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KW Investment Funds ICAV, C/O Maria Lombard, RPS, Innishmore, Ballincollig, Cork. P31 KR68 County Hall,

Carrigrohane Road, Cork T12 R2NC

Tel: (021) 4276891 Fax: (021) 4276321

1st March, 2023

REF:D/203/23LOCATION:O'Connell Commercial Park, Little Island, Co. Cork.

RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000

Dear Sir/Madam,

On the basis of the information and plans submitted by you on 31st January, 2023 the Planning Authority, having considered whether (i) the amalgamation of existing Unit 8 with Unit 10 and amalgamation of Unit 5 and 6 with Unit 9, (ii) the blocking of existing connection between Units 1 and 2 and the blocking of existing connection between Unit 7 and 8, (iii) the provision of internal office space within existing Units 1, 2, 4, 5, 7 and 8, including the provision of new doors and windows to these units and (iv) the provision of a new fire exit door to Unit 8 at **O'Connell Commercial Park**, **Little Island**, **Co. Cork** is development and is or is not exempted development

AND WHEREAS Cork County Council, in considering this referral had regard particularly to:-

- Sections 2, 3, 4 and 5 of the Planning and Development Acts 2000 (as amended)
- Article 5, 9 and 10 of the Planning and Development Regulations 2001 (as amended) and
- The particulars received by the Planning Authority on 31st January, 2023

AND WHEREAS Cork County Council has concluded that -

The amalgamation of existing units is development and is not exempted development given that the works to amalgamate the units relates to works to multiple structures and Section 4(1)(h) of the Planning and Development Regulations 2001 (as amended) only allows for works to individual "structures".

 The blocking up of existing connections between units is development and is exempted development.

And

The provision of internal office space in existing units is development and is not exempted development as this would contravene Condition 1 of 96/1181 and 21/7380 and would be contrary to the provisions of Article 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended) and it would amount to an extension of a structure which would not come within the scope of Section 4(1)(h) of the Planning and Development Regulations 2001 (as amended)

And

- The provision of a new fire exit door to Unit 8 is development and is exempted development.

And now therefore the Planning Authority hereby decides that a **SPLIT DECISION** arises in the assessment of the subject Section 5 request.

Please note that under Section 5 Subsection 3(a) where a declaration is issued under this section, any person issued with a declaration under subsection 2(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Yours faithfully,

KEVIN O'REGAN, SENIOR EXECUTIVE OFFICER, PLANNING DEPARTMENT

In order to process your query, it may be necessary for Cork County Council to collect Personal information from you. Such information will be processed in line with our privacy statement which is available to view at https://www.corkcoco.ie/privacy-statement-cork-county-council

D/203/23 – Section 5 Declaration

1. Introduction

A Section 5 declaration is sought by KW Investment Funds ICAV (on behalf of its subfund KW Investment Fund XVIII) in respect of:

- i. The amalgamation of existing units:
 - a. Amalgamation of unit 8 with unit 10; and
 - b. Amalgamation of units 5 and 6 (already connected) with unit 9.
- ii. The blocking up of existing connections between units:
 - a. Existing openings between units 1 and 2 to be blocked up; and
 - b. Existing openings between units 7 and 8 to be blocked up.
- iii. The provision of internal office space within existing units 1, 2, 4, 5, 7 and 8 including the provision of new doors and windows to these units.
- iv. The provision of a new fire exit door to unit 8.

at O'Connell Commercial Park, Little Island, Cork.

2. Site Description

The subject site is located within an industrial estate in Little Island. The site is located on the western side of the L-7088. The site comprises two blocks of industrial units located either side of an internal access road.



Figure 1: Subject site general location

3. Question subject of the Section 5

On the basis of the information submitted the question to be addressed under this request is as follows:

"Whether or not

- *i.* The amalgamation of existing units:
 - a. Amalgamation of unit 8 with unit 10; and

- b. Amalgamation of units 5 and 6 (already connected) with unit 9.
- *ii.* The blocking up of existing connections between units:
 - a. Existing openings between units 1 and 2 to be blocked up; and
 - b. Existing openings between units 7 and 8 to be blocked up.
- *iii.* The provision of internal office space within existing units 1, 2, 4, 5, 7 and 8 including the provision of new doors and windows to these units.
- *iv.* The provision of a new fire exit door to unit 8.

is or is not development and is or is not exempted development".

4. Planning History

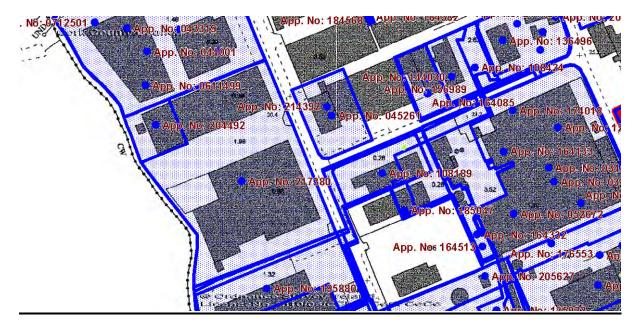
The historic planning history maps have been reviewed. It appears that two planning applications may pertain to this site dating from 1996 and 1999. However, the references numbers for these applications are not fully legible. The applications dating from 2001 appear to relate to a site on the opposite side of the road.



The documents submitted with the Section 5 indicate that permission was granted via 96/1181 for a development comprising 12 no. light industrial / warehouse units with no conditions attached.

Planning application ref. 96/1181 has been reviewed and permission was granted for the construction of 12 no. light industrial / warehouse units subject to 15 no. conditions.

The following recent planning history pertains to the site:



Planning Ref.	Development Description	Decision
21/7380	Retention of works to existing warehouse buildings previously permitted Per. Reg. Ref. S/96/1181 including the construction of extensions and loading bays, Reduction in roof heights and alterations to elevations, internal alterations and provision of internal office space, provision of ESB substation, provision of signage and all associated works.	Conditional
20/4492	Works to existing warehouse building to include the construction of a loading bay extension and ramp alterations to existing elevations and all associated works.	Conditional

5. Relevant Planning Legislation

Planning and Development Act 2000 (as amended) Section 2(1) of the Planning and Development Act 2000 (as amended) states:

In this Act, except where the context otherwise requires –

"alteration" includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

"land" includes any structure and any land covered with water (whether inland or coastal);

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) of the Planning and Development Act 2000 (as amended) states:

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1)(h) of the Planning and Development Act 2000 (as amended) states:

(1) The following shall be exempted development for the purposes of this Act –

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures

Section 4(4) of the Planning and Development Act 2000 (as amended) states:

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

<u>Planning and Development Regulations 2001 (as amended)</u> Article 6(1) of the Planning and Development Regulations 2001 (as amended) states:

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended) states:

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

Article 10 of the Planning and Development Regulations 2001 (as amended) states:

- (1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not
 - (a) involve the carrying out of any works other than works which are exempted development,
 - (b) contravene a condition attached to a permission under the Act,
 - (c) be inconsistent with any use specified or included in such a permission, or
 - (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.
- (2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

6. Relevant Decisions by An Bord Pleanála

Question:

RL2603

(1) Whether the amalgamation of two or more retail units to form a larger unit is or is not development and is or is not exempt development.

(2) Whether the sale of non-bulky goods within a newly constructed retail warehouse park is or is not development and is or is not exempt development.

(3) Whether the addition of a floor within a retail unit is or is not development and is or is not exempt development.

(4) Whether the subdivision of a retail unit is or is not development and is or is not exempt development, all at Butlerstown Retail Park, Butlerstown, Co Waterford.

Decision:

(1) The amalgamation of two or more retail units to form a larger unit is development and is not exempted development, (2) The sale of non-bulky goods within the newly constructed retail warehouse park is development and is not exempted development,

(3) The addition of a floor within a retail unit is development and is not exempted development and

(4) The subdivision of a retail unit is development and is exempted development.

RL06F.RL3578 Question:

Whether the amalgamation of 2 no. retail units within the internal layout of the shopping centre is or is not development or is or is not exempted development.

Decision:

Is development and is not exempted development.

PL06S.RL3420 Question:

(a) Whether the sub-division of Unit 16, Cherry Orchard Industrial Estate, Ballyfermot, Dublin 10, into two separate units is or is not development and whether it is or is not exempted development, and (b) whether a material change in use of part of Unit 16 has occurred where it is used by McMahon Builders Providers.

Decision:

a) the subdivision of Unit 16 is development and is exempted development,

(b) the change of use by McMahon Builders Providers of part of Unit 16 that has taken place is development and is not exempted development, and

(c) the use of the yard adjacent to Unit 16 for the display of goods for sale is development and is not exempted development.

ABP-305698-19 Question:

Whether the erection of a concrete block wall in the centre of the building to subdivide the building into two smaller units is or is not development or is or is not exempted development.

Decision:

Is development and is exempted development.

ABP-309107-21 Question:

Whether the (a) subdivision of unit no.12 into three units & development of new doors (b) the subdivision of unit 12 into two units is or is not development or is or is not exempted development.

Decision:

Is development and is exempted development.

7. Consultees

Area Engineer No response received at the time of report writing.

8. Assessment

The referral question is as follows:

"Whether or not:

- *i.* The amalgamation of existing units:
 - a. Amalgamation of unit 8 with unit 10; and
 - b. Amalgamation of units 5 and 6 (already connected) with unit 9.
- *ii.* The blocking up of existing connections between units:
 - a. Existing openings between units 1 and 2 to be blocked up; and
 - b. Existing openings between units 7 and 8 to be blocked up.
- *iii.* The provision of internal office space within existing units 1, 2, 4, 5, 7 and 8 including the provision of new doors and windows to these units.
- iv. The provision of a new fire exit door to unit 8.

is or is not development and is or is not exempted development".

Each element of the referral question will be dealt with separately below.

1. Whether or not the amalgamation of existing units is or is not development and is or is not exempted development? This question relates to the amalgamation of unit 8 with unit 10 and the amalgamation of units 5 and 6 (already connected) with unit 9.

The amalgamation of these units entails:

- 1. The removal of the internal wall which currently subdivides unit 8 from unit 10;
- 2. The removal of the internal wall which currently subdivides unit 6 from unit 9;
- 3. The provision of an opening between unit 5 and 9; and
- 4. The widening of an existing opening between units 5 and 6.

Is it development?

As per Section 2(1) of the Planning and Development Act 2000 (as amended) 'works' includes 'any act or operation of construction...demolition' and as per Section 3(1) of the Planning and Development Act 2000 (as amended) 'development' means 'the carrying out of any works...'. It is, therefore, considered that the 'works' to amalgamate these units, set out at 1-4 above, amount to 'development'.

With regard to 'material change of use' it is noted that the referral submission states that the amalgamation of units will not alter the permitted light industrial use or intensify the use. While there may be no change in the permitted use it is considered that the amalgamation of smaller units to create a larger unit could in fact result in an intensification in use with increased commercial activity and associated noise impacts, traffic impacts etc all of which are material planning considerations. As such an intensification in use which is material may occur as a result of this proposal.

Notwithstanding, by virtue of the works required to amalgamate the units the proposal is considered 'development'.

Is it exempted development?

The referral submission indicates that the amalgamation of the units is exempted development having regard to Section 4(1)(h) of the Planning and Development Regulations 2001 (as amended).

While the works to amalgamate the units involves internal works only the critical issue is whether Section 4(1)(h) applies at all. An Bord Pleanála has considered this matter on a number of occasions, most notably under Referral Case RL2603 and RL3578 where it was held that the amalgamation of units does not come within the scope of Section 4(1)(h) as the works do not relate to a single structure but a series of adjoining structures. In this case the units to be amalgamated are considered individual units by virtue of the parent permission 96/1181 and the retention permission 21/7380 which pertain to this overall site. As such the proposal relates to work to individual adjoining units or "structures" and not to works to a single "structure". On this basis, it is considered that the amalgamation of units is development and is not exempted development.

As outlined above consideration must also be given as to whether the amalgamation of units would result in a material change of use. In this case it appears that there would be no change to the permitted light industry / warehouse use, but the amalgamation would result in the creation of larger units which could result in increased commercial activity and associated noise impacts, traffic impacts etc all of which are material planning considerations. As such it is considered that the referrer has not demonstrated that the proposal would not result in a material change of use.

2. Whether or not the blocking up of connections between units is or is not development and is or is not exempted development? This question relates to the blocking up of connections between units 1 and 2

This question relates to the blocking up of connections between units 1 and 2 and between units 7 and 8.

The connections between these units were shown on the drawings submitted as part of 21/7380 and as such the amalgamation of these units appears to be authorised under that retention application.

Essentially the question now is whether or not the subdivision of units 1 and 2 and units 7 and 8 is or is not development and is or is not exempted development. The subdivision of these units entails the blocking up of the openings in the internal walls which otherwise subdivide these units.

<u>Is it development?</u>

Having regard to Section 2(1) of the Planning and Development Act 2000 (as amended) it is considered that the blocking up of openings between units

constitutes 'works' which is defined as including any act or operation of construction or alteration and the carrying out of said works would therefore comprise 'development' as per Section 3(1) of the Act.

Is it exempted development?

As per Section 4(1)(h) of the Planning and Development Act 2000 (as amended) works for the alteration of a structure which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures are exempted development.

Section 3(1) of the Planning and Development Act 2000 (as amended) also states that 'development' means 'the making of any material change in the use of any structures or other land'. The referral submission states that the blocking up of connections between units will "not alter the permitted use or intensity of the use". On this basis it appears that the subdivision of the units will not result in a material change of use.

Having regard to Sections 2(1), 3(1), 4(1)(h) of the Planning and Development Act 2000 (as amended) the blocking up of connections between units 1 and 2 and units 7 and 8, i.e., the subdivision of these units, is development and is exempted development.

Restrictions on Exemptions

Section 4(4) of the Planning and Development Act 2000 (as amended) states that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. It is considered that an environmental impact assessment or an appropriate assessment is not required in relation to the subdivision of existing units.

3. Whether or not the provision of internal office space within existing units and the provision of new doors and windows to these units is or is not development and is or is not exempted development?

Internal office space is proposed at ground and first floor level in units 1, 2, 4 and 7 and in amalgamated units 5/6/9 and amalgamated units 8/10. New windows and doors are proposed on the front elevation of these units to serve the office space.

The referral submission states that the works for the office space come within the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as they are 'works for the improvement or other alteration' and the external works (i.e., the windows and doors) would not affect the appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. Furthermore, the referral submission states that the office space will be ancillary to the primary light industrial / warehouse uses and as such is exempted having regard to Article 10(1) and Article 10(2) of the Planning and Development Regulations 2001 (as amended).

Is it development?

The provision of office space and in particular the provision of an additional floor level in these units amounts to 'works' as defined by Section 2(1) of the Planning and Development Act 2000 (as amended) and therefore comes within the meaning of 'development' in accordance with Section 3(1) of the Planning and Development Act 2000 (as amended).

Is it exempted development?

A case could be made that the provision of ancillary office accommodation at ground floor level and the provision of associated doors and windows could be exempted development having regard to Article 10(1) and (2) of the Planning and Development Regulations 2001 (as amended) and Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

However, the critical issue in this instance is the provision of additional floor space at first floor level. It is noted that there is no specific exemption set out in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended) whereby such development is exempted development. The provision of first floor levels increases the floor area of the units as authorised under the parent permission (96/1181) and as permitted under the retention application (21/7380). Essentially, this would contravene condition 1 of 96/1181 and 21/7380 and therefore would be deexempted under Article 9(1)(a)(i). Furthermore, the provision of an additional floor would not come within the scope of Section 4(1)(h). This amounts to an extension of the floorspace of the unit and does not involve the 'maintenance, improvement or other alteration' of the structure.

As such the provision of internal office space within existing units and the provision of new doors and windows to these units is development and is not exempted development.

4. Whether or not the provision of a fire exit door to unit 8 is or is not development and is or is not exempted development? *Is it development?*

The insertion of a new fire exit door in the front elevation of unit 8 amounts to 'works' as defined by Section 2(1) of the Planning and Development Act 2000 (as amended) and therefore comes within the meaning of 'development' in accordance with Section 3(1) of the Planning and Development Act 2000 (as amended).

Is it exempted development?

The insertion of a new fire exit door to the front of unit 8 is considered exempted development having regard to the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as it relates to the alteration of a structure which does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Restrictions on Exemptions

Section 4(4) of the Planning and Development Act 2000 (as amended) states that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. It is considered that an environmental impact assessment or an appropriate assessment is not required in relation to the insertion of a door on an existing unit.

9. Recommendation

A question has arisen as to whether:

- i. The amalgamation of existing units;
- ii. The blocking up of existing connections between units;
- iii. The provision of internal office space in existing units; and
- iv. The provision of a new fire exit door to unit 8

at O'Connell Commercial Park, Little Island, Cork is or is not development and is or is not exempted development.

The Planning Authority, in considering this Section 5, had regard to:

- a) The particulars received by the Planning Authority on 31st January 2023;
- b) Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended); and
- c) Article 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended); and

The Planning Authority has concluded that:

- i. The amalgamation of existing units is development and is not exempted development given that the works to amalgamate the units relates to works to multiple structures and Section 4(1)(h) of the Planning and Development Regulations 2001 (as amended) only allows for works to individual 'structures';
- ii. The blocking up of existing connections between units is development and is exempted development;
- iii. The provision of internal office space in existing units is development and is not exempted development as this would contravene condition 1 of 96/1181 and 21/7380 and would be contrary to the provisions of Article 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended) and it would amount to an extension of a structure which would not come within the scope of Section 4(1)(h) of the Planning and Development Regulations 2001 (as amended); and
- iv. The provision of a new fire exit door to unit 8 is development and is exempted development.

Marela

Marie Down Executive Planner 27/02/2023



Our ref: IE000500 - L.CCC - 30.01.23

Innishmore, Ballincollig Co. Cork P31 KR68 T +353 21 466 5900

Date: 30th January 2023

Planning Department, Cork County Council, County Hall, Carrigrohane Road, Cork.

Re: Logistics Project – Warehouse Units at O'Connell Commercial Park, Ballytrasna, Little Island, Co.Cork

Section 5 Declaration Request

Dear Sir / Madam,

RPS is instructed by KW Investment Funds ICAV on behalf of its sub-fund KW Investment Fund XVIII to lodge this request for a declaration of exemption from Cork County Council under section 5 of the Planning and Development Act, 2000 as amended.

This request relates to a multiple warehouse property at O'Connell Commercial Park, Little Island, Co. Cork.

1 Basis of Request for Declaration

The request for a declaration under section 5 relates to proposed works to an existing property comprising of multiple warehouse units at O'Connell Commercial Park, Little Island, Co. Cork. A declaration is sought as to whether these works comprise exempted development. The works proposed are illustrated in an accompanying set of drawings by Aecom, and comprise the following:

- Amalgamation of existing units
 - o amalgamation of units 8 and 10
 - o amalgamation of units 5 and 6 (already connected) with unit 9
- Blocking up of existing connections between units
 - o existing opening between units 1 and 2 to be blocked
 - o existing opening between units 7 and 8 to be blocked
- Provision of internal office space in existing units
 - o new office space within units 1, 2, 4, 5, 7 and 8
 - o doors and windows to proposed office space within units 1, 2, 4, 5, 7 and 8
- Other new pedestrian doorway
 - o new fire exit door to unit 8

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2 Planning History

2.1 Parent Permission – Planning Ref. S/96/1181

Cork County Council granted planning permission to Albert J. Mc Carthy under Reg. Ref. 96/1181 on 23 July 1996 for development comprising 12 No. light industrial / warehouse units at the Sitecast Industrial Estate, Ballytrasna with no conditions attached.

RPS understands that the development was constructed in compliance with the permission, and that any discrepancies were de minimus and did not attract any enforcement proceedings by Cork County Council.

2.2 Subsequent Permission – Planning Ref. 21/7380

In 2021 planning permission was sought by Castle D'if Holdings Ltd. under Planning Ref. 21/7380 to regularise some modest works that had taken place at the property in the intervening years. This application sought permission for:

"Retention of works to existing warehouse buildings previously permitted Per. Reg. Ref. S/96/1181 including the construction of extensions and loading bays, Reduction in roof heights and alterations to elevations, internal alterations and provision of internal office space, provision of ESB substation, provision of signage and all associated works".

Planning permission was granted in March 2022.

3 Relevant Legislation

3.1 General Obligation to Obtain Permission

Section 32 of Planning and Development Act 2000 – 2021 (hereafter referred to as the Planning and Development Act or the Act) sets out a general obligation to obtain planning permission for development unless it is exempted development

"32.—(1) Subject to the other provisions of this Act, permission shall be required under this Part—

(a) in respect of any development of land, not being exempted development, and (b) in the case of development which is unauthorised, for the retention of that unauthorised

development.

(2) A person shall not carry out any development in respect of which permission is required by subsection (1), except under and in accordance with a permission granted under this Part."

3.2 Exempted Development Provisions

Section 4 of the Planning and Development Act sets out certain classes of development that shall be exempted development (which will not be subject to the general requirement to obtain planning permission). It also makes provision for the making of Regulations specifying further classes of development to be exempted development.

Section 4(1)(h) of the Act provides as follows:

"4._(1) The following shall be exempted developments for the purposes of this Act—

(*h*) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;"

Section 4(4) of the Act makes provision for a restriction on exempted development if the development requires environmental impact assessment or appropriate assessment. It states:

"Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required."

As provided for in section 4, regulations specifying further classes of development to be exempted development are set out in the Planning and Development Regulations 2001 – 2022 (hereafter referred to as the Planning and Development Regulations or the Regulations). Article 10 relates to 'change of use' exempted development provisions. In the first instance article 10(a) and Part 2 of Schedule 2 set out 'classes of use' within which change of use will be exempted development. If a proposed change of use crosses the specified 'classes of use' set out in Part 4 of Schedule 2, the change will generally not comprise exempted development and will require permission. However, article 10(2) makes provisions for cases where the change of use is incidental to a primary established use, and that it is not excluded from the use merely by reason of its normally being specified as a separate use in Part 4 of Schedule 2.

Article 10 states as follows:

"10. (1) Development which consists of a change of use within any one of the classes of use specified in Part *4* of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use."

Article 5 of the Regulations provides definitions for different types of uses. It includes a definition for 'light industrial building' as follows:

"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;

An 'industrial building' is defined as:

"industrial building" means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

The regulations do not include a definition for a 'warehouse'.

4 Consideration of Potential Exempted Development Status of Proposed Development

There are number of points to be considered in respect of the proposed development. These are:

- Firstly, does the current structure comprise of authorised development?
- Does the amalgamation of existing units comprise exempted development?
- Does the blocking up of existing connections between units comprise exempted development?
- Does the provision of internal office space in existing units (the use and works) comprise exempted development?

• Does the provision of other new pedestrian doorways / windows to the units comprise exempted development?

4.1 Planning Status of Current Structure

Prior to assessing the potential exempted development status of the proposed development, it is necessary to consider and establish in the first instance if the existing structure and uses are authorised.

In this regard we note that the authorised use of the structures is light industrial / warehouse use as permitted under Planning Ref. 96/1181.

With reference to the structure itself, we are advised that the structures were constructed largely as permitted under the parent permission Ref. 96/1181. Any deviations from the as permitted drawings and a number of subsequent revisions to the structures were granted retention permission under Planning Ref. 21/7380 in 2022.

The physical state of the buildings as now existing on site, are as presented in the drawing package of the retention permission Ref. 21/7380.

4.2 Amalgamation of Units

It is proposed to amalgamate unit 8 and 10 and to amalgamate units 5 and 6 (already connected) with unit 9.

It is considered that the proposed amalgamation of units comprises of alterations to the structures, being works which affect only the interior of the structure. It is considered that these internal alterations would not give rise to any environmental impacts that would require EIA or AA. Furthermore, the amalgamation of the units will not alter the permitted light industrial use or intensify the use.

Accordingly, it is considered that the proposed amalgamation of units could reasonably be deemed to fall within the provisions of section 4(1)(h) of the Planning and Development Act.

4.3 Closing Connections between Units

It is proposed to block up existing internal openings / connections between units 1 and 2, and between units 7 and 8.

Similarly, the closing of existing permitted connection between units would comprise of internal alterations which will not alter the permitted use or intensity of the use. No environmental impacts are identified as a consequence of these works and it is considered they would fall within the provisions of section 4(1)(h) of the Act.

4.4 Provision of Internal Office Space (Including Doors and Windows)

It is proposed to provide internal office space within units 1, 2, 4, 5, 7 and 8. The office areas in each case comprise a very small proportion of each of the overall units.

The provision of the new internal office space must be considered from two aspects. Firstly, the works and secondly the use.

4.4.1 Works for Office Space

With regard to the works, the provision of the new office space will comprise largely of internal works along with associated new external doorways and windows. Having regard to the provisions of section 4(1)(h), these works would comprise of 'works for the improvement or other alteration' of the structures. They would affect both the interior and exterior of the structure. The question to address is whether the external works (the windows and doorways) would *"affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures"*.

The existing warehouse structures all comprise of the same materials and have very similar external appearances. The front elevations mainly contain shuttered entrances and adjacent pedestrian entrances,

loading bay doors and some additional pedestrian doors and windows variously at low level or at higher levels on the facades.

It is considered that the introduction of the proposed new windows and doors to areas of existing blank facades would result in a minor alteration the external appearances of the structures.

The proposed new windows and doors to the proposed office uses would be of a comparable nature to the doors and windows already in place at some of the units and as granted retention permission under Planning Ref. 21/7380. In this regard it is considered that while the proposed office related doors and windows will alter the appearance of the building, that appearance would nevertheless remain consistent with the character of the individual units and of the neighbouring units. It should be further noted that the facades of the warehouses both within the business park, and those in the immediate vicinity do not face directly onto the public road which lessens any potential impact of the works on the receiving environment.

From the above, it is considered that the works to provide the office space could reasonably be deemed to fall within the provisions of section 4(1)(h) of the Act and comprise of exempted development. i.e., the works would mainly affect the interior of the structure and where it would materially alter the exterior of the structures it would not be such as to render the revised appearance inconsistent with the character of the individual units or with the neighbouring units.

4.4.2 Change of Use

The proposed development comprises the use of part of the buildings for office-based activity. These office areas will be used for administrative functions related to the primary light industrial / warehouse uses. The proposed office spaces will also contain a kitchenette and bathrooms. They will not function as stand-alone office development. In this regard the office uses and ancillary staff facilities will be used in connection with the industrial / warehouse uses therefore comprising an incidental use to the primary industrial use.

A light industrial building falls under Class 4 of Part 4 of Schedule 2 of the Planning and Development Regulations. 'Use as an office' falls within Class 3. However, the office use and staff facilities in this instance is clearly ancillary to the authorised industrial / warehouse use of the structures. Accordingly, (and with reference to the provisions of Article 10(2) it is considered reasonable to conclude that the incidental office use proposed remains within Class 4 'use as a light industrial building', and therefore would comprise of exempted development under Article 10(1).

In relying on exemptions under Article 10(1) it is necessary to ensure the exemption is not restricted by any of the following:

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

In response to each of these tests we note as follows:

- (a) the works proposed could be considered to comprise exempted development under section 4(1)(h) (see section 4.4.1 above),
- (b) the proposed office activities would not contravene any conditions of Planning Ref. 96/1181 or of Planning Ref. 21/7380,
- (c) the incidental office use would not be inconsistent with the primary light industrial / warehouse use,
- (d) the existing use light industrial / warehouse use (and which the office activity will form part) is an unauthorised use as permitted under Planning Ref. 96/1181.

On the basis of the foregoing, it is considered that the proposed office use, incidental to the authorised industrial / warehouse use, would comprise of exempted development under Article 10(1) of the Planning and Development Regulations.

4.5 **Provision of Other Pedestrian Doorways**

In addition to the doors and windows proposed to office spaces within units 1, 2, 4, 5, 7 and 8 (discussed in section 4.4.1 above), it is also proposed to provide a new fire exit door to unit 8.

Similar to the provision of windows and doors to the proposed office uses, the provision of other proposed pedestrian doorways would alter the external appearance of the buildings. However, it is considered that such provision would not render the appearance of the affected unit inconsistent with either its own character of that of adjoining units. On this basis it is considered that such proposals would also fall within the exempted development provisions of section 4(1)(h) of the Planning and Development Act.

4.6 Potential Restrictions on Exemption

Section 4 of the Planning and Development Act (as amended) relates to exempted development. Section 4(4) states that *"development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required."*

Regarding the above, the closest Natura 2000 site is the Cork Harbour SPA, which is located approximately 780m south of the subject lands. There is no direct hydrological or other connection between the site and the SPA. The proposed development is minor in nature and does not have potential to impact any habitats for which SACs / SPAs in the wider vicinity are designated. The proposed development therefore does not have a significant impact on the Natura Impact 2000 network including its qualifying features. It is therefore considered that the development will not require an appropriate assessment.

As noted, the works are minor in nature and will not give rise to likely and significant effect on the environment. There is no requirement for EIA in this case.

On the basis of the foregoing, no restrictions on exempted development under section 4(4) apply in this case.

5 Conclusion on Exempted Development Status of Proposed Development

Having regard to all of the foregoing it is considered that the proposed development can reasonably be considered to comprise development that is exempted development under section 4(1)(h) of the Planning and Development Act and article 10(1) of the Planning and Development Regulations.

We trust that the foregoing and the accompanying plans and particulars provide sufficient information to allow the Planning Authority to make an informed assessment of this matter and to issue a declaration in relation to the exempted development status of the various development elements as described in section 1.

We look forward to hearing from you at your earliest convenience.

Yours faithfully, for RPS Group Limited

Males Louised

Maria Lombard Director - Planning & Environment maria.lombard@rpsgroup.com 021-4665900

Encl/. . . .

ENCLOSURES

We enclose 4 no. copies of the following:

- 1. Application Fee of €80 (format)
- 2. Completed Section 5 Declaration of Exemption Application Form
- 3. Drawings as follows:

Drwg No.	Drwg Name	Scale
	Site Location Map	1:2,500 @ A3
	Record Place Map	1:10,560 @A3
OC Park Proposed Site Plan	Proposed Site Layout Plan	1:500 @ A1
OC Park Units 1-4 GF Plan	Proposed Floor Plan	1:200 @ A3
OC Park Units 5-10 GF Plan	Proposed Floor Plan	1:200 @ A3
OC Park Units 1-4 Elevations	Proposed Elevations	1:200 @ A3
OC Park Units 5-10 Elevations	Proposed Elevations	1:200 @ A3



<u>CORK COUNTY COUNCIL APPLICATION</u> FOR SECTION 5 DECLARATION OF EXEMPTION

APPLICANT CHECKLIST

<u>4 No. Copies of Application Form:</u> <u>1 No. Copy of Contact Details:</u> <u>4 No. Copies 6" O.S. Maps:</u> <u>4 No. Copies 25" O.S. Maps:</u> <u>4 No. Copies of Site Layout Plan:</u> <u>4 No. Copies Scaled Drawings of Development:</u> <u>€80 Application Fee:</u> (Please tick $\sqrt{}$)

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FOR OFFICE USE ONLY

Receipt No.	
Cash/Cheque/	
Credit Card	
Date	
Declaration	
Ref. No.	

DATE STAMP HERE

You should make sure that you are satisfied that any information/documentation that you submit is appropriate to be viewed by the public. Please do not submit any information that you do not want 3rd parties to view.

In the case of a Declaration of Exemption for Land Reclamation, the following additional information is required:

- A copy of the details submitted to the Council's Environment Department (Inniscarra) for a Waste Licence Permit
- Correspondence from Teagasc (detailing how the land reclamation would benefit the land in question for agricultural
- purposes)Details of existing and proposed levels
- Details of existing and proposed levels
 Details of fill material and duration of fill.

DATA PROTECTION

The planning process is an open and public one. In that context, all applications for Declarations of Exemption are made available for public inspection.

Personal information collected by Cork County Council is done so in order for us to process your application for a Section 5 Declaration of Exemption. Legally we can process this information as it is necessary for us to comply with our statutory/legal obligations. The protection of our personal data is a key priority for the Council and your data will be processed in line with our Privacy policy which is available at

<u>http://www.corkcoco.ie/Privacy-Policy</u> or hardcopy from our offices at County Hall, Carrigrohane Road, Cork, Ireland. Should you have any questions about our privacy policy or the information we hold about you, please contact us by email to <u>dpo@corkcoco.ie</u> or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

1. NAME OF APPLICANT: (ADDRESS TO BE SUPPLIED AT QUESTION A – CONTACT DETAILS)

KW Investment Funds ICAV (on behalf of its sub-fund KW Investment Fund XVIII)

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION OF EXEMPTION IS SOUGHT:

O'Connell Commercial Park Little Island Cork

3. QUESTION/DECLARATION DETAILS:

Please state the specific question for which a Declaration of Exemption is sought Note: Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption

Does the amalgamation of existing units (units 8 with unit 10; and units 5 and 6 with unit 9) comprise exempted development?

Does the blocking up of existing connections between units (opening between units 1 and 2; and opening between units 7 and 8) comprise exempted development?

Does the provision of internal office space in existing units (units 1, 2, 4, 5, 7 and 8) (the use and works) including the provision of new doors and windows, comprise exempted development?

Does the provision of a new fire exit door to unit 8 comprise exempted development?

4. **APPLICATION DETAILS:**

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square metres (m²)

(a) Floor area of existing/proposed structure(s):	11,381sqm
 (b) If a domestic extension is proposed, have any previous extensions/structures been erected at this location after 1st October, 1964 (including those for which planning permission has been obtained): N/A 	Yes No No If yes, please provide floor areas (m ²) and previous planning reference(s) where applicable:
(c) If a change of use of land and/or building(s) is proposed, please state the following:N/A	
Existing/previous use	Proposed use
(d) Are you aware of any enforcement proceedings connected to this site?	Yes No V If yes, please state relevant reference number(s):

5. LEGAL INTEREST OF APPLICANT IN THE LAND/STRUCTURE:

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner B. Other
Where legal interest is "Other" , please state your interest in the land/structure:	
If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details):	

6. PROTECTED STRUCTURE DETAILS / ARCHITECTURAL CONSERVATION AREA:

Is this a Protected Structure/Proposed Protected Structure or within the curtilage of a Protected
Structure: Yes NO
If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested
or issued for the property by the Planning Authority: Yes No
If yes, please state relevant reference No
Is this site located within an Architectural Conservation Area (ACA), as designated in the County
Development Plan? Yes No

7. APPROPRIATE ASSESSMENT:

Would the proposed development require an appropriate assessment because it woul		
have a significant effect on the integrity of a European site (SAC, SPA etc)? Yes	No	~

8. DATA PROTECTION DECLARATION:

In order for the Planning Authority to process the personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at http://www.corkcoco.ie/privacy-statement-cork-county-council or in hardcopy from any Council office; and to having your information processed for the following purposes:

Processing of your Declaration of Exemption application by the Planning Authority

✓ I give permission for	r my personal information to be processed for the purpose stated above
Signed (By Applicant Only)	D
Date	20/1/23

GDPR Special Categories of data / Sensitive Personal data - Explicit Consent

Where Special Categories of personal data / sensitive personal data are provided as part of / in support of a declaration application, **explicit consent** to the processing of the special categories of data must be given by the person to whom the data refers, namely the Data Subject.

Special Categories of data / Sensitive Personal data include:

- Race
- Ethnic origin
- Political opinions
- Religion
- Philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health data
- Concerning a natural person's sex life
- Sexual orientation

In order for the Planning Authority to process the sensitive personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at https://www.corkcoco.ie/privacy-statement-cork-county-council or in hardcopy from any Council office; and to having your information processed for the following purposes:

Sensitive personal data being submitted in support of Declaration of Exemption Application

 \Box I give permission for my sensitive personal data submitted to the Planning Authority to be processed for the purpose stated above.

Signed	
Date	

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: <u>planninginfo@corkcoco.ie</u> or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: <u>westcorkplanninginfo@corkcoco.ie</u> However if consent to the use of personal data is withdrawn during the declaration of exemption decision-making process this information cannot be considered as part of the decision making process. Once a decision has been made, an applicant is not entitled to withdraw consent, as the right of erasure does not apply to a situation where processing is required for compliance with a legal obligation or for the performance of a task carried out in the public interest.

Please note that all information / supporting documentation submitted will be available publicly to view at the Planning Authority offices.

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application must be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question. The application should be sent to the following address:

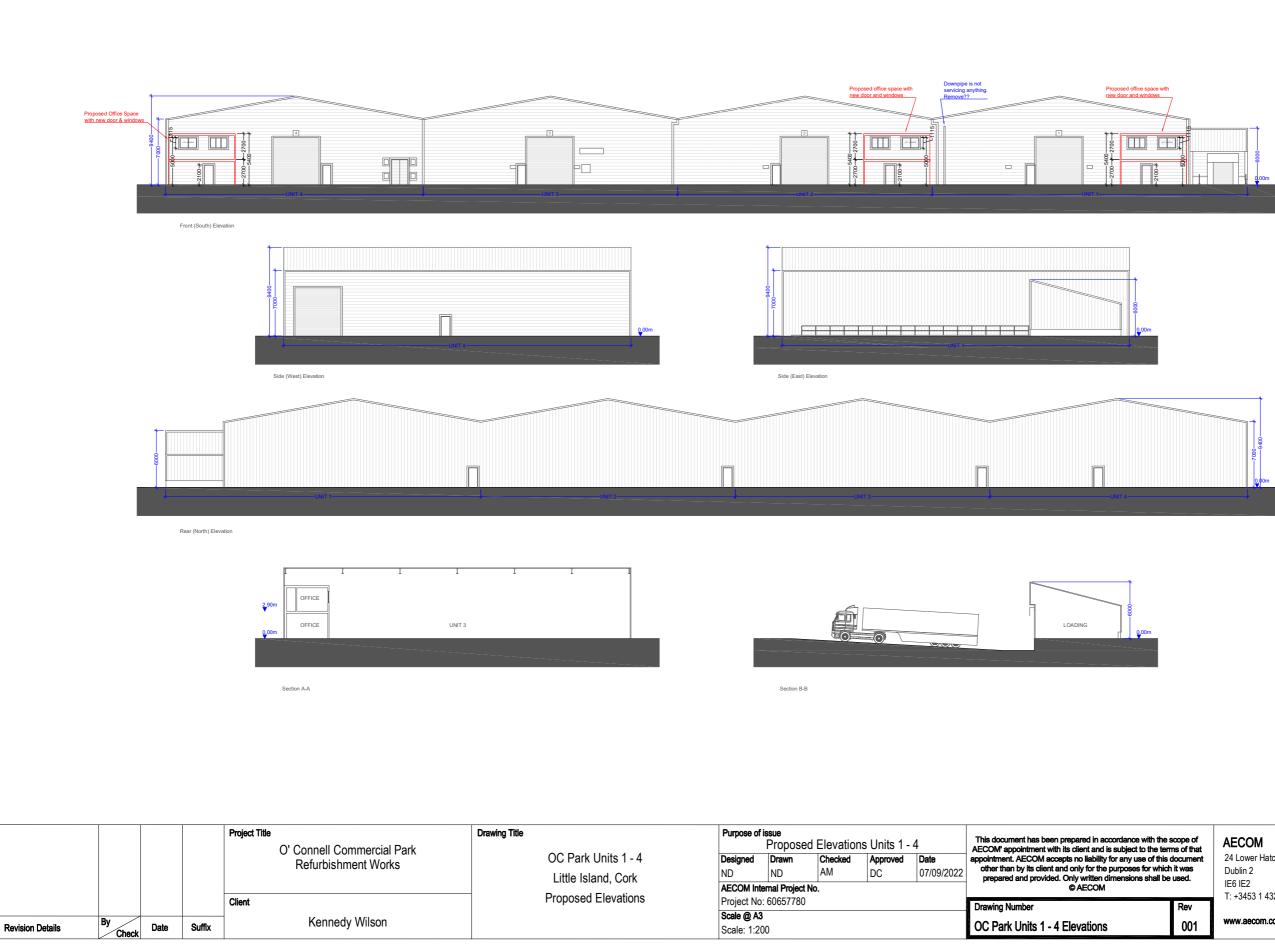
The Planning Department, Cork County Council, Floor 2, Co. Hall, Carrigrohane Road, Cork, T12 R2NC; or for applications related to the Western Division, The Planning Department, Cork County Council, Norton House, Cork Road, Skibbereen, Co. Cork, P81 AT28.

- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question which has arisen and on which the Declaration of Exemption is sought.
- Any person issued with a Declaration of Exemption may on payment to An Bord Pleanála refer a Declaration of Exemption for review by the Board within 4 weeks of the date of the issuing of the Declaration of Exemption decision.
- In the event that no Declaration of Exemption is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a Declaration of Exemption was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations, 2001, as amended.

9. I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct, accurate and fully compliant with the <u>Planning and Development Acts 2000</u>, <u>as amended</u> and the Regulations made thereunder:

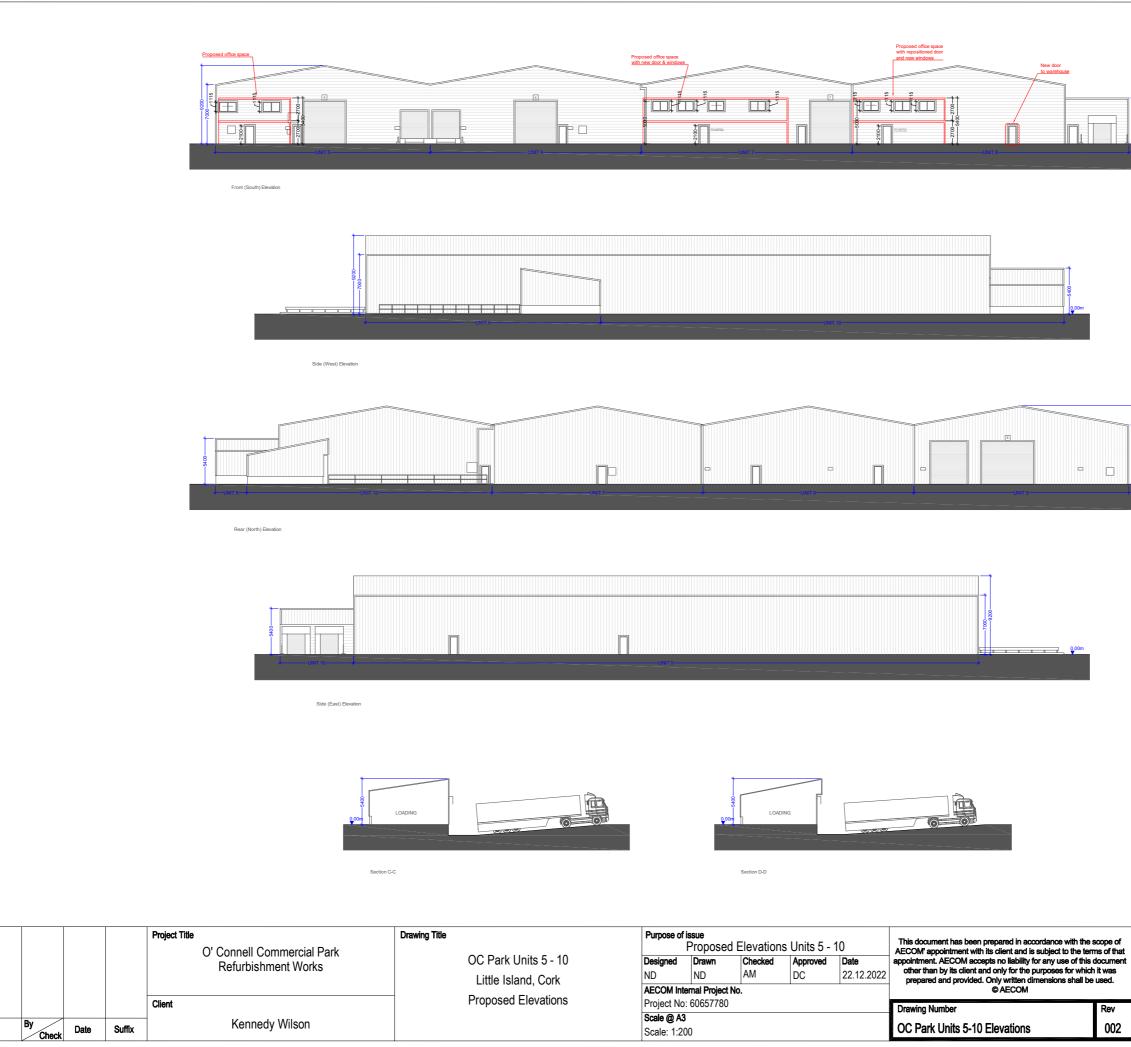
Signed (Applicant or Agent as appropriate)	Maline Louisand
Date	24.01.23



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24 Lower Hatch Street T: +3453 1 432 5162





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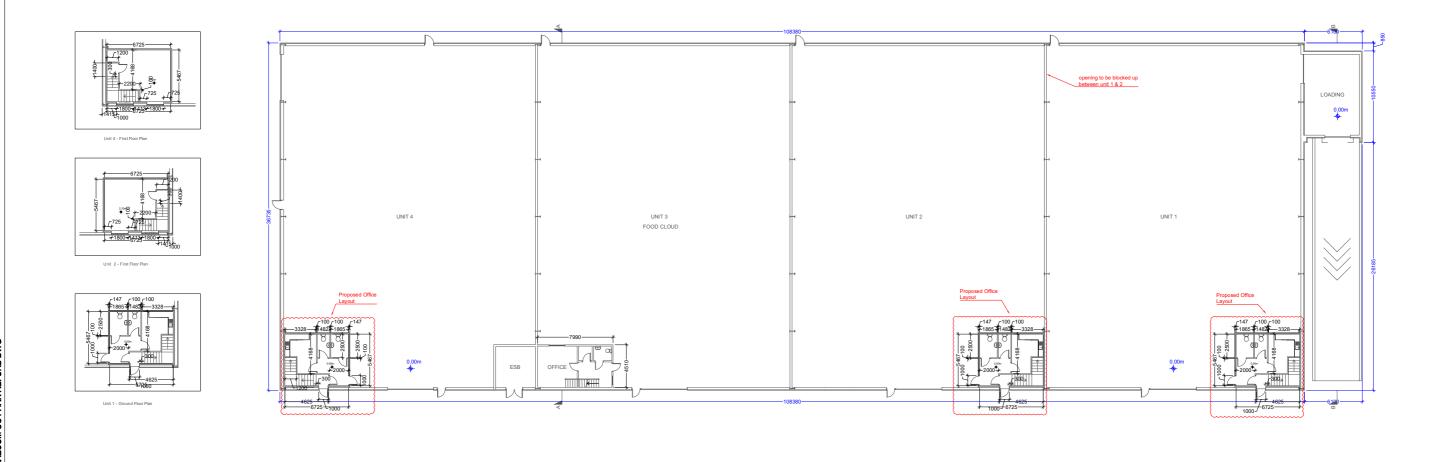
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24 Lower Hatch Street Dublin 2 IE6 IE2 T: +3453 1 432 5162





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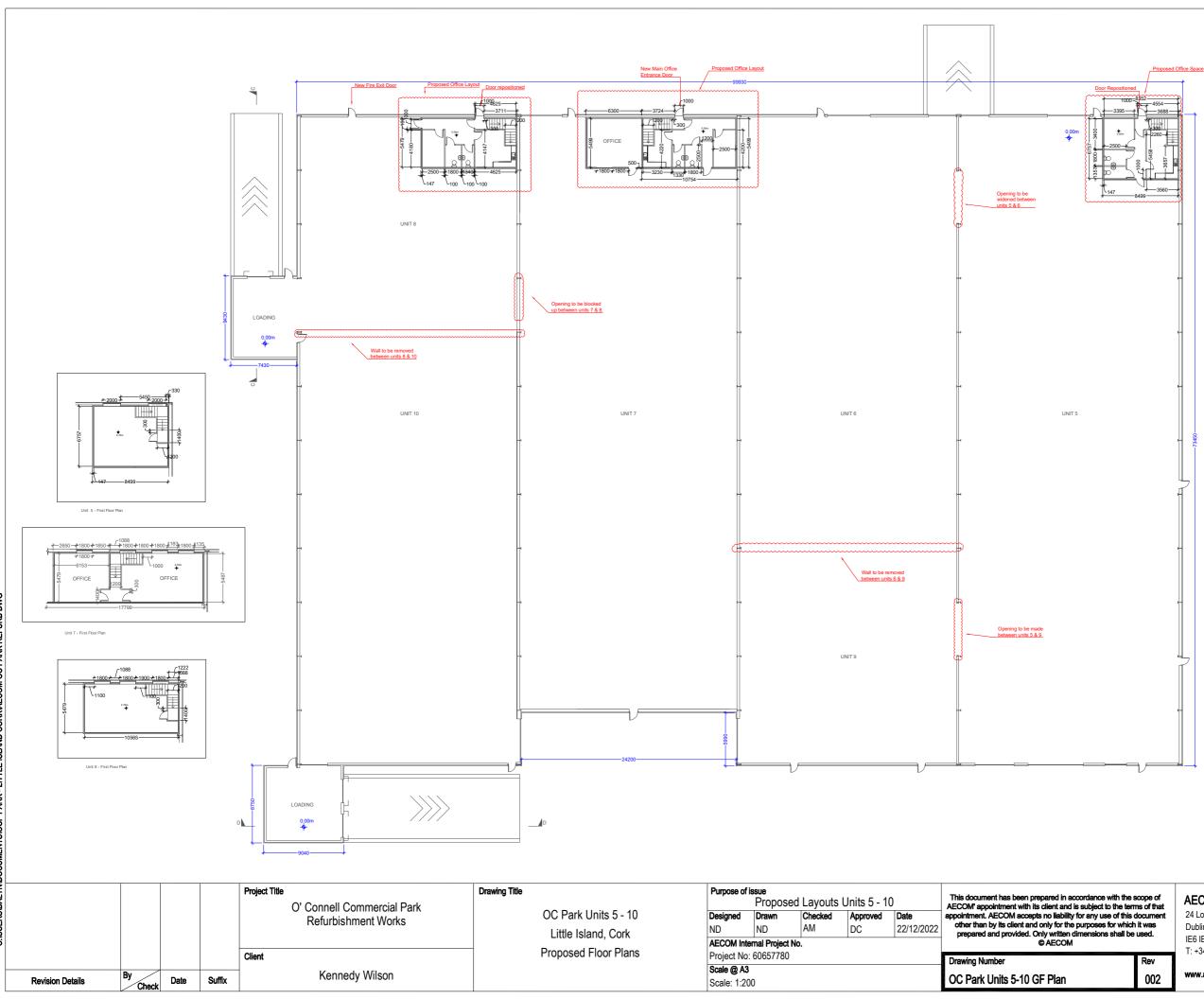


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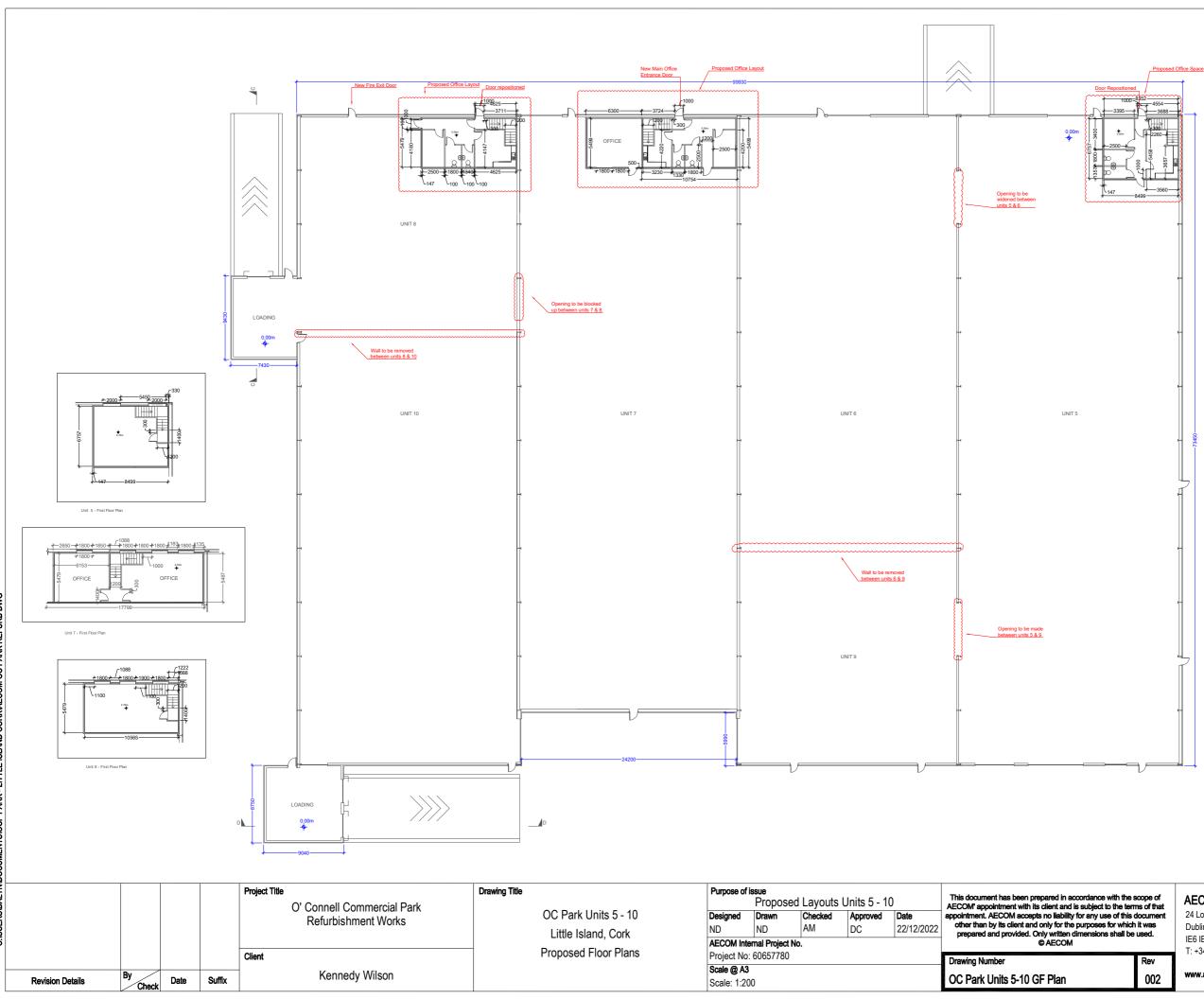


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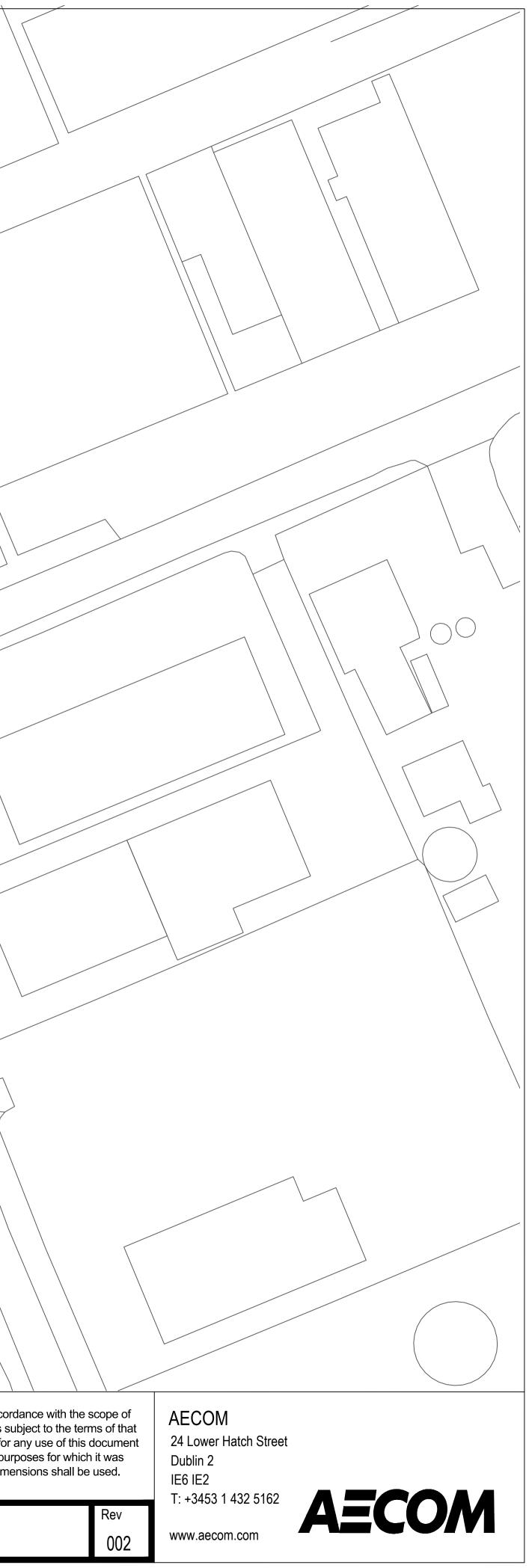
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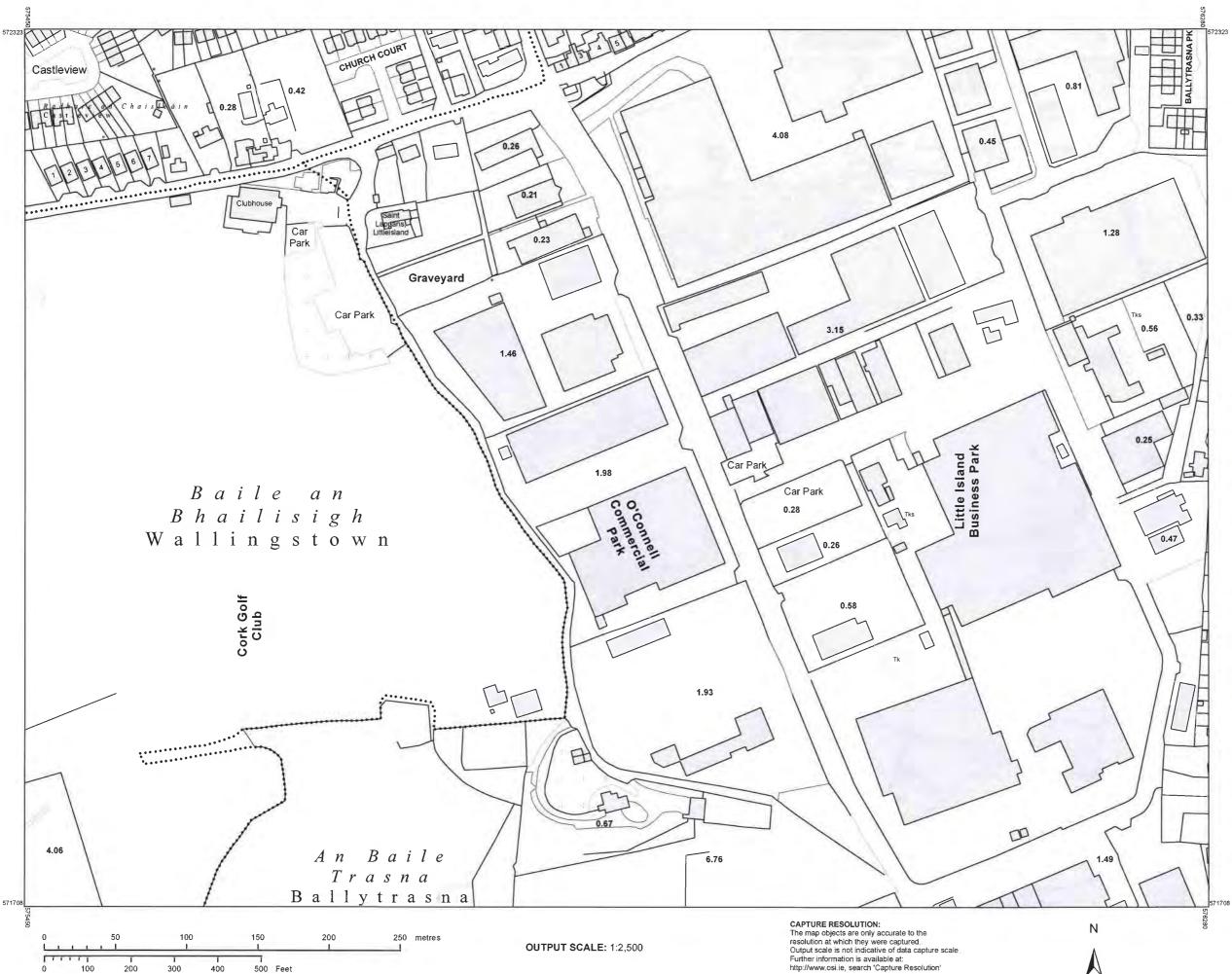




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O'Connell Commercial Park Little Island, Cork		Date 22/12/2022	appointment. AECOM accepts no liability for other than by its client and only for the pur prepared and provided. Only written dime © AECOM
Proposed Site Layout Plan	Project No: 60657780 Scale @ A1		Drawing Number
	Scale: 1:500		OC Park Proposed Site Plan



Planning Pack Map





National Mapping Agency

CENTRE COORDINATES: ITM 575865,572016

PUBLISHED: 08/08/2022

MAP SERIES: 1:2,500 1:2,500 ORDER NO.: 50284398_1

MAP SHEETS: 6384-B 6385-A

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LEGEND:

http://www.osi.ie, search 'Large Scale Legend' **Site Location Map**

