



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Deka Immobilien Investment GmbH,
c/o Eamonn Prenter,
3 Molesworth Place,
Dublin 2,
D02 EP97

08/09/2022

**RE: Section 5 Declaration R725/22 Unit 17 & 18 Mahon Point
Shopping Centre, Mahon, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property 7th July 2022 and further information received 30th August 2022, I wish to advise as follows:

Having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the amalgamation of 2 no. retail units into a single retail unit at Unit 17 & 18 Mahon Point Shopping Centre, Mahon, Cork IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

Is mise le meas,

Áine O'Leary
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT

Ref. R 725/22

Cork City Council
Development Management
Community, Culture & Placemaking
Directorate

Application type	SECTION 5 DECLARATION
Question	<i>Whether the amalgamation of 2 no. retail units into a single retail unit constitutes development and, if so, is it exempted development?</i>
Location	Unit 17 & 18 Mahon Point Shopping Centre, Mahon, Cork.
Applicant	Deka Immobilien Investment GmbH
Date	08/09/2022
Recommendation	Is development and is exempted development

This report is to be read in conjunction with previous planning report, dated 28/07/2022, which requested further information.

1. FURTHER INFORMATION ASSESSMENT

Further Information was requested on 28/07/2022. A response to same was received on 30/08/2022. There was 1 (one) No. item of further information requested.

1) The applicant is requested to submit the following:

- a. The correct site boundary for the subject site outlined in red on the site location map.

The applicant has submitted a revised site location map as requested with the correct site outlined in red thereupon. This response is considered acceptable.

2. ADDITIONAL ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

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.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) *authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
- (b) *as respects which an environmental impact assessment or an appropriate assessment is required,*

to be exempted development.

Section 177U(9)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the response to the further information relating to the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that **environmental impact assessment is not required.**

Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the response to the further information relating to the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required.**

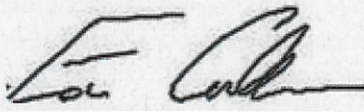
3. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the amalgamation of 2 no. retail units into a single retail unit at Unit 17 & 18 Mahon Point Shopping Centre, Mahon, Cork **IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.**



Eoin Cullinane
A/Senior Executive Planner
07/09/2022

CSR Ref: 96601/EMP/300822

CUNNANE STRATTON REYNOLDS

Planning Department,
Cork City Council,
City Hall,
Anglesea Street,
Cork

30th August 2022

Dear Sir/Madam,

Request for Section 5 Declaration R725/22 on Amalgamation of Units 17 and 18 within Mahon Point Shopping Centre, Cork.

**Application by DIE Ireland ICAV
Section 5 Declaration R725/22**

We refer to the request by the planning authority for a site location map for the subject site of the above Section 5 with the site outlined in red on the site location Map to amalgamate units 17 and 18 (JD Sports and Monsoon) at ground floor at Mahon Shopping Centre.

This cover letter is accompanied by the following documents:

- Revised Site location map;

We trust that you will consider the above in your deliberations on the above and we await acknowledgement of safe receipt.

Yours sincerely,

Eamonn Prenter MIPI MRTPI

Director

**CUNNANE STRATTON REYNOLDS
LAND PLANNING & DESIGN**

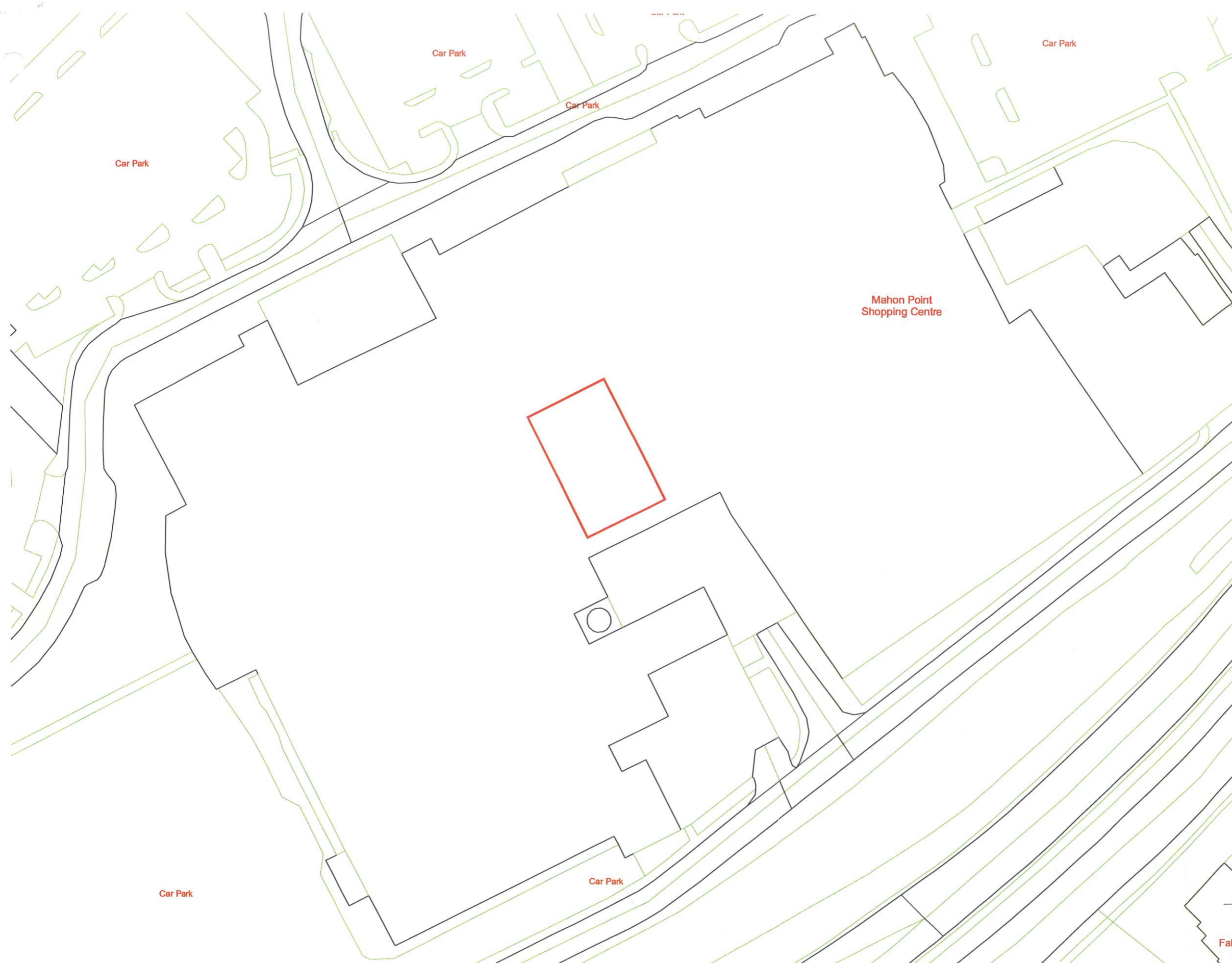
www.csrlandplan.ie

Cork City Council
30 AUG 2022
Community, Culture and Placemaking

DUBLIN OFFICE
3 MOLESWORTH PLACE, DUBLIN 2
TEL: 01 661 0419 FAX: 01 661 0431
EMAIL: info@csrlandplan.ie

OFFICES ALSO AT:
COPLY HALL, COTTERS STREET, CORK
TEL: 021 496 9224 FAX: 021 496 9012
EMAIL: corkinfo@csrlandplan.ie

DIRECTORS
ARDAACONG, BALLYTRASNA, TUAM
CO GALWAY
TEL / FAX: 093 60854
EMAIL: galwayinfo@csrlandplan.ie
WWW.CSRLANDPLAN.IE



Ordnance Survey Ireland (OSi)
 Projection= IRENET95_Irish_Transverse_Mercator
 Centre Point Coordinates:
 X,Y= 572780.6326,570491.389
 Map Series | Map Sheets
 1:1,000 | 6384-21
 1:1,000 | 6384-22

 SITE BOUNDARY

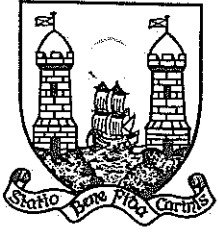
REV	DATE	AMENDMENT

CUNNANE STRATTON REYNOLDS
LAND PLANNING & DESIGN

Fa DUBLIN OFFICE
 3 MOLESWORTH PLACE DUBLIN 2
 TEL 01 661 0419 FAX 01 661 0431
 EMAIL info@csrlandplan.ie



PROJECT: MAHON POINT CORK	DATE: AUG-2022
DRAWING: SITE LOCATION MAP	SCALE: 1:1000 @ A3, 1:2000 @ A4
	DRAWN: CHECKED: PG EP
	DRAWING NO: 22248-01-001



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Deka Immobilien Investment Gmbh,
c/o Eamonn Prenter,
3 Molesworth Place,
Dublin 2,
D02 EP97

03/08/2022

RE: **Section 5 Declaration R725/22 Unit 17 & 18 Mahon Point
Shopping Centre, Mahon, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, I wish to advise under the provisions of section 5(2)(b) of the Planning and Development Act 2000, as amended, that the following further information is required in order to properly assess this application:

1. The applicant is requested to submit the following:
 - a. The correct site boundary for the subject site outlined in red on the site location map.

Is mise le meas,

Kate Wagner
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

Application type	SECTION 5 DECLARATION
Question	<i>Whether the amalgamation of 2 no. retail units into a single retail unit constitutes development and, if so, is it exempted development?</i>
Location	Unit 17 & 18 Mahon Point Shopping Centre, Mahon, Cork.
Applicant	Deka Immobilien Investment Gmbh
Date	03/08/2022
Recommendation	Further Information Required

INTERPRETATION

In this report 'the Act' means the Planning and Development Act, 2000 as amended and 'the Regulations' means the Planning and Development Regulations, 2001 as amended, unless otherwise indicated.

1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the planning authority is framed using the phrasing of section 5. The applicant states in the request, "Whether the amalgamation of the aforementioned 2 no. units into a single unit constitutes development" and "if the proposal constitutes development, whether it can be considered exempted development".

In my opinion the intention of the request is clear, and that it is entirely reasonable to consider the question before the planning authority as being:

Whether the amalgamation of 2 no. retail units into a single retail unit constitutes development and, if so, is it exempted development?

3. SITE DESCRIPTION

The subject property is located within the Mahon Point Shopping Centre in Mahon, Cork.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the amalgamation of 2 no. retail units into a single retail unit within the existing Shopping Centre.

5. RELEVANT PLANNING HISTORY

The shopping centre itself has an extensive planning history however the following are of note:

TP 99/23033 / PL 28.124788, “parent permission” for shopping centre.

TP 16/3714, permission granted for the reconfiguration and amalgamation of units 33-36 including the provision of a mezzanine level, Mahon Point Shopping Centre.

R 414/16, section 5 declaration issued in relation to H&M, Unit 7, Opera Lane, Cork stating inter alia that the amalgamation of units through the removal of internal walls (etc) is exempted development.

R 480/18, section 5 declaration issued in relation to units 33-36 Mahon Point Shopping Centre stating that the subdivision of three units to form five units is exempted development.

The following An Bord Pleanála precedent cases are also noted:

RL.3578

RL.3420

RL.3056

6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

“exempted development” has the meaning specified in section 4.

“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)

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)

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(2)

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or*
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 9 (1)

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

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (a) (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as 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 –

- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned*

(Article 6) Schedule 2, Part 2, Class 1

Classes 1-18 relate to advertisements and Class 1 relates to advertisements “*exhibited on business premises, wholly with reference to the business or other activity carried on or the goods or services provided on those premises*”.

7. ASSESSMENT

7.1 Development

The first issue for consideration is whether or not the matter at hand is ‘*development*’, which is defined in the Act as comprising two chief components: ‘*works*’ and / or ‘*any material change in the use of any structures or other land*’.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘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’. In relation to the proposed amalgamation of 2 no. units into a single unit, the proposed element is for alterations to the existing units which comprises ‘works’. As the proposal comprises ‘works’, it is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION

Is development

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that the proposal comes within subsection (1) of section 4, i.e. the Regulations, and not subsection (2).

Section 4(1)

In my opinion this proposal comes within the scope of section 4(1), particularly subsection (h), as the works relate to internal alterations works. The substantive issues of the case are set out below.

The proposed works comprise the following:

Existing unit 17: Currently in use as a retail unit (JD Sports) with a floor area of 354m².

Existing unit 18: Currently in use as a retail unit (Monsoon) with a floor area of 375m².

Proposed unit 17/18: Proposed to be used as a single retail unit (JD Sports) with a floor area of 738m².

Essentially this proposal involves the amalgamation of units 17 and 18 into one larger unit. It is noted that the new, larger unit will result in an overall increase in floor area of approximately 9m² within the current envelope of units 17/18 as a result of the removal of the internal wall, however I consider this to be *de minimis*.

I note the relevant An Bord Pleanála precedent cases presented above, including where in the context of the definition of the term “structure” and its use in section 4(1)(h) of the Act the “structure” is considered to be the ‘planning unit’ of an individual shop unit within a shopping centre.

I note that the existing “external” dimensions of the units (i.e. facing the internal circulation mall within the shopping centre) are to remain, with the works being carried out within the envelopes of these dimensions.

I note the existing and proposed uses and I do not consider that any material change of use arises.

I note the nature and scale of the existing units, the proposed units and the overall shopping centre itself, and I do not consider that in this case any material or new planning impacts would arise.

Essentially this issue involves the internal amalgamation of units 17 and 18 into one larger unit. Having regard to the interpretations and decisions, including those of An Bord Pleanála, set out in the precedent cases above, I consider that the proposed works as set out in the question accompanying documentation submitted, is exempted development under section 4(1)(h) of the Act.

It should be noted however that the site location map submitted as part of the documentation outlines the incorrect site on the site location map. In this regard, further information is required to clearly show the correct red-line boundary for the subject site.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is exempted development

8. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

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.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
- (b) as respects which an environmental impact assessment or an appropriate assessment is required,*

to be exempted development.

Section 177U(9)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

8.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that **environmental impact assessment is not required**.

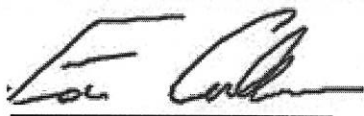
8.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required**.

9. RECOMMENDATION

It is recommended that the following further information be sought:

1. The applicant is requested to submit the following:
 - a. The correct site boundary for the subject site outlined in red on the site location map.



Eoin Cullinane
Assistant Planner
22/07/2022

SECTION 5 DECLARATION APPLICATION FORM

under Section 5 of the Planning & Development Acts 2000 (as amended)

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

Unit 17 & 18, Mahon Point SC, Mahon, Cork

2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: *Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?*

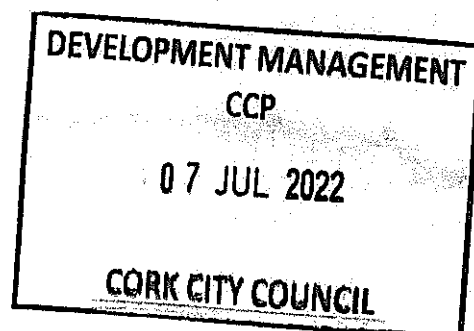
Note: only works listed and described under this section will be assessed under the section 5 declaration.

The first question for which a declaration from Cork City Council is required is as follows:

'Whether the amalgamation of the aforementioned 2 no. units into a single unit constitutes development.'

The second question arising from the first, should the proposal constitute development in the first instance, would be:

'If the proposal constitutes development, whether it can be considered exempted development.'



ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:*(Use additional sheets if required).***Please refer to the cover letter by Cunnane Stratton Reynolds****3. 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 meters (sq. M)*

(a) Floor area of existing/proposed structure/s	Existing 729sqm Proposed 738sqm
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) N/A
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle) N/A	Proposed/existing use (please circle) N/A

4. PPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	Deka Immobilien Investment Gmbh	
Applicants Address	Deka Immobilien Gmbh, Taunusanlage 1, 60329, Frankfurt am Main	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Eamonn Prenter
	Address:	3 Molesworth Place, Dublin 2, D02 EP97

	Telephone:	+353 01 6610419
	Fax:	N/A
	E-mail address:	epreter@csrlandplan.ie
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)		Yes

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner X	B. Other
Where legal interest is 'Other', please state your interest in the land/structure in question	N/A	
If you are not the legal owner, please state the name and address of the owner if available	N/A	

6. I / We confirm that the information contained in the application is true and accurate:

Signature: 

Date: 07/07/2022

ADVISORY NOTES:

<p>The application must be accompanied by the required fee of €80</p> <p>The application should 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.</p> <p>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.</p> <p>The application should be sent to the following address:</p>
--

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.

- 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 is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration 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 was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration 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.

DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution

CSR Ref: 96601/EMP/080622

CUNNANE STRATTON REYNOLDS

Planning Department,
Cork City Council,
City Hall,
Anglesea Street,
Cork

7th July 2022

Dear Sir/Madam,

Request for Section 5 Declaration on Amalgamation of Units 17 and 18 within Mahon Point Shopping Centre, Cork.

Application by DIE Ireland ICAV

We refer to the above and conform that CSR has been appointed to prepare and lodge this application under Section 5(1) of the Planning and Development Act 2000 (as amended) to amalgamate units 17 and 18 (JD Sports and Monsoon) at ground floor at Mahon Shopping Centre.

This Application

This cover letter is accompanied by the following documents:

- Site location plan;
- Existing floor floorplans of the existing units;
- Proposed floorplan units;
- The completed Section 5 form;
- The requisite Section 5 application fee which in this instance is €80.

The Proposed Works

The following works are proposed:

'The amalgamation of units 17 and 18 at ground floor to form a single unit, with no increase in floorspace, the proposal involving the removal of a single internal wall, no alterations to any elevations or the façade and no external works.'

Unit 17 currently occupied by JD Sports measures some 354sqm and unit 18 currently occupied by Monsoon measures some 375sqm. The consolidated unit therefore measures some 729sqm and will be occupied in its entirety by JD Sports. As indicated above there are no other internal or external works proposed.

DUBLIN OFFICE
3 MOLESWORTH PLACE, DUBLIN 2
TEL: 01 661 0419 FAX: 01 661 0431
EMAIL: info@csrlandplan.ie

OFFICES ALSO AT:
COPLY HALL, COTTERS STREET, CORK
TEL: 021 496 9224 FAX: 021 496 9012
EMAIL: corkinfo@csrlandplan.ie

DIRECTORS
Joe Cunnane BA (Hons) Dip TP MRTPI MIPI: Eamonn Prenter BA (Hons) Dip TP MSc MRTPI MIPI:
Declan O'Leary BAg Sc (Land-Hort) Dip LA MILI MLI: Jim Kelly BAg Sc (Landscape-Hort) Dip LA MILI CMLI:
Keith Mitchell MA (Hons) LA Dip EIA Dip Arb MILI CMLI:

ARDA CONG, BALLYTRASNA, TUAM
CO GALWAY
TEL / FAX: 093 60854
EMAIL: galwayinfo@csrlandplan.ie
WWW.CSRLANDPLAN.IE

The Section 5 Questions

The first question for which a declaration from Cork City Council is required is as follows:

'Whether the amalgamation of the aforementioned 2 no. units into a single unit constitutes development.'

The second question arising from the first, should the proposal constitute development in the first instance, would be:

'If the proposal constitutes development, whether it can be considered exempted development.'

To assist the City Council in making their declaration on each of the two questions posed above we would make the following key points.

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

'Development means, except where the context otherwise requires, the carrying out of any works on, in, over or under land and the making of any material change in the use of any structure or other land.'

Works are defined under the Section 2 of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. . .' In this case there is no construction involved, no demolition other than that of an internal wall (see below) no extension, no other alteration other than removal of the aforementioned wall, no repair nor renewal.

Works are proposed in this instance in so far as an internal wall is to be demolished. However, it is our case that such works are exempt under Section 4(1) which states that *'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 the neighbouring structures.'

The single item of work in this instance is clearly internal and no external changes are proposed. The proposal on this instance can in no way be said to 'materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures, We are of the view that the proposal constitutes works, and therefore constitutes development, but should be considered exempt under the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

Exempted development is legislated for under Section 4 of the Planning and Development Act 2000 (as amended) as indicated above and further prescribed under Article 6 and 10, and Schedule 2 of the Planning and Development

Regulations 2001 (as amended). Schedule 2 sets down conditions and limitations on exempted development, whilst Articles 6, 9 and 10 apply restrictions.

Compliance with Schedule 2 of the Planning and Development Regulations

There are four parts to Schedule 2. The first relates to general circumstances, the second to advertisement, the third to rural circumstances, and the fourth relates to changes of use. In this instance there are no advertisements proposed, no rural circumstances and there is no change of use as the two existing units in question are/were in retail use and are sought to be amalgamated and to continue in that use albeit in a singular use – but the same use nonetheless. Part 1 has no provision relevant to this case.

Article 6 Exempted Development

This Article applies principally to residential development and advertisement and there is no provision within this article relevant to this case,

Article 9 Restrictions on Exemptions

Section (1) (a) states that exemption is withheld if under (i) the exemption would contravene a condition attached to a permission; (ii) involves a means of access; (iii) would endanger public safety by reason of traffic hazard or obstruction of road users; (iv) involves the construction of a building or the building forward of a building line under certain circumstances; (v) involves the provision of services other than those exempted in Schedule 2; (vi) would interfere with the character of a landscape or view or prospect of special amenity value or special interest; (vii) comprise the excavation, alteration or demolition of features of archaeological, geological, historical, scientific or ecological interest; (viiA) involve a Recorded Monument; (viiB) would have a significant effect on the integrity of a European Site; (viiC) would likely have an adverse impact on an area designated as a natural heritage area; (viii) would involve works to an unauthorised structure or the use of a structure which would otherwise be unauthorised; (ix) would preclude the continued use of a structure or building that it is an objective of the local authority to seek to have continued with reference to the statutory development plan for the area; (x) would involve fencing prohibiting access to certain natural features; (xi) would obstruct any right of way; (xii) would involve works to the exterior of a structure located within an architectural conservation area.

None of the above circumstances under Article 9 Section (1) (a) apply in this instance and the City Council's attention is brought to item (i) above as set out below. Items (ii) to (xii) of Section (1) (a) very clearly do not apply in this instance.

Section (1) (b) applies to special amenity orders and clearly does not apply in this instance.

Section (1) (c) does not apply as a Part 10 development is not involved in this case.

Section (1) (d) does not apply as there are no significant repercussions on any major accident hazard.

Section (2) does not apply as there is no overhead line or electricity cable involved in this proposal.

Section (3) does not apply as there is no protected habitat involved under the Habitats Regulations 1997.

In all aspects there is nothing in Article 9 to prevent the subject exemption in our opinion.

Article 10 Change of Use

Restrictions imposed by Article 10 do not apply as there is no change of use involved in this case as there is amalgamation and retention for retail purposes and the same type of retail (fashion/sports fashion).

Site Location and Context

The site is located within Mahon Point Shopping Centre, Mahon, Cork. Mahon is the largest neighbourhood in the southeast suburb of Cork with significant population, employment and economic activity. Mahon Point is a successful district shopping centre that includes a range of uses including convenience and comparison retail units, a food court, a multiplex cinema and farmers market. The shopping centre and nearby Mahon Retail Park serve a wide regional catchment.

There are a number of bus routes serving the Mahon area including the bus routes 202, 215 and 219. Bus route 202 directly serves the shopping centre, The Cork Metropolitan Area Transport Plan (CMATS) proposes a light rail system from Ballincollig to Mahon with the terminus a short distance from the shopping centre. This proposal in CMATS is likely to, in time, bring a significant uplift in homes and jobs in the Mahon area.

It would be remiss of us not to point out that Covid 19 has had a very significant effect on the retail sector including Mahon Point. The shopping centre closed for several extended periods. It is important that measures are taken to combat vacancy within the shopping centre and proposals that seek to support the viability and vitality of the centre should be supported and welcomed by the planning authority, particularly in difficult current operating circumstances. It is expected that recent trends such as 'click and collect', which became very popular during the Covid19 pandemic, will have lasting impact on the retail sector.

Amalgamating the two existing units enables the centre to respond to market demand but will not have any impact on the planning status of the centre, there is no increase in retail floorspace, and the amalgamated unit will remain in retail use.

The Need for Flexibility to Adapt to Structural Shifts in the Retail Sector

The following should be considered by the City Council:

- Various units within the shopping centre have been extended, reconfigured, amalgamated and subdivided in recent years in response to changing trends in the retail sector. The retail sector is a very dynamic and everchanging economic sector.
- Mahon Point has been very pragmatic in ensuring the occupation of units within the centre remains high. The centre works with existing tenants to ensure that the shopping experience for customers is constantly improved
- Significant investment as been made in the centre including the provision of a bus gate and bus stop within the centre adjacent to the entrance which caters for circa. 75 buses per day increasing accessibility and encouraging sustainable travel patterns and with the recent provision of 10,000sq.ft. of PV Solar Panels.
- Proposals for subdivision and amalgamation are made to combat the potential of long-term vacancy.

- The retail sector needs to adjust and be flexible to emerging trends and the shopping centre needs to cater for changes in the operational requirements of retailers such as providing for larger units.

Planning History

Planning permission was granted under Cork City Council Reg. ref. 99/23033 and An Bord Pleanála ref. PL28.124788.

The principal limits imposed in the grant of planning permission included a cap on the total gross retail area (convenience and comparison goods) shall not exceed 22,119sqm; total gross retail area (comparison goods) shall not exceed 16,922 sqm; limitations were imposed in Anchor Store no. 1; Anchor Store no. 2 was to be subdivided into smaller units; the total gross floor area of the foodstore was not to exceed 5,197 sqm with a net retail area of 2,786 sqm; the gross floor area of the foodcourt was not to exceed 2,482sqm; and the gross floor area of the banking area was not to exceed 732 sqm.

There is no planning condition within the parent consent that prevents amalgamation other than for units involving anchor stores 1 and 2, the foodstore and the foodcourt as indicated above. The subject units are separate and independent to those spatially limited components of the above permission. As pointed out above there is no increase in floorspace and the amount of comparison not convenience is neither increased or the other reduced - the balance of comparison and convenience within the centre is retained therefore and the original consent unaffected.

We would refer the City Council to planning application which involved not just an amalgamation but reconfiguration of units 33-36 under their reg. ref. 16/37147 but also, we hasten to add, included the provision of a mezzanine level, which certainly on its own would have precipitated the requirement for a planning application. In that instance the planning officer stated:

'The land-use zoning objective which is to provide for and/or improve district centres as mixed use centres, within a primary retail function which also acts as a focus for a range of services. In my view, the 'improvement' of the centre can reasonably include the appropriate reconfiguration of units in order to adapt to changing retailing needs, provided that such reconfiguration does not have a detrimental impact on the viability and vitality of the centre.' (underlining is our emphasis)

The City Council has acknowledged when considering 16/37147 that minor increases in retail floorspace have occurred and that as long as they are not contrary to policy should be considered on their merits. There is no increase in floorspace in this instance but an appropriate reconfiguration of units and no contravention to any planning permission or policy.

Planning Policy

The adopted City Development Plan 2015-2021 remains the statutory development plan for this site until such time as the emerging Plan is adopted which is expected to be imminently.

The Adopted City Development Plan 2015

Mahon Point Shopping Centre is zoned as part of the Mahon District Centre. Objective Z08 of the Development Plan relates to District Centres. This objective seeks:

'To provide for and/or improve district centres as mixed-use centres, with a primary retail function which also act as a focus for a range of services.'

Objective 14.7 of the City Development Plan seeks *'to ensure Mahon District Centre is developed as a high-quality shopping, leisure, working, residential and urban environment in accordance with the local area plan and the retail strategy.'*

Objective 4.1 sets out the strategic retail objectives for the city as follows:

- a. To maintain and strengthen the role of Cork City Centre as the primary retail centre in the South-West region;*
- b. To create vibrant mixed-use district centres within the suburbs;*
- c. To provide good quality and accessible convenience goods shopping to all residents of the city.*

District centres including Mahon are at level 2 of the city retail hierarchy. With regard to vacant retail floorspace, section 4.49 of the City Development Plan states *'Cork City Council will support the reconfiguration of existing vacant uses at appropriate locations to meet market demands for appropriate retail developments, including sub-division and/or merging of existing units and the change of use of retail units to either retail services or non-retail uses.'*

Section 4.49 of the adopted City Plan is clear – the City Council will support the reconfiguration of existing vacant units to meet market demands. The adjacent unit is set to become vacant in the near future.

The Emerging Cork City Development Plan 2022-2028

It is expected that the emerging City Development Plan will be adopted in the next few months and therefore is at a relatively advanced stage of adoption.

The shopping centre remains a Level 2 District Centre under Zoning Objective ZO 08 which seeks *'To provide for the development and enhancement of district centres as mixed-use centres and as primary locations for retail, economic and residential growth.'* This objective will in no way be compromised by the subject proposal but will enhance existing facilities for shoppers and will avoid vacancy.

It is recognised in Section 7.85 that district centres provide a range of comparison outlets.

Section 7.94 states that *'The Retail Planning Guidelines (2012) advise the relevant planning authorities to regularly monitor trends in their area and update retail policies if appropriate. Cork City Council will monitor large retail permissions and review changes in population targets that may be carried out during the lifetime of the Plan to identify any policy adjustments required. It may also be necessary to review policy in light of the changing nature of*

the retail sector to ensure the vibrancy and vitality of the various centres. Para ZO 8.2 states that District Centres will be required to have a mix of anchor units and individual retail and service units.

Para ZO 8.4 states that development proposals in this zone must demonstrate how the proposal would respect, reflect or contribute to the character and vibrancy of the particular district centre, commensurate with the nature and scale of the development. The proposal in this instance would support the vibrancy and vitality of the centre by meeting demand and ensuring that longer term vacancy is avoided. There is clearly a demand for an extended JD Sports without increasing in any way the quantum of retail floorspace within the centre but will enable them to widen the range of sports goods and fashion within the centre.

Metropolitan Cork Joint Retail Strategy 2015

The joint Retail Strategy identifies Mahon Point Shopping Centre as a level 2 district centre in the retail hierarchy. The Retail Strategy states in relation to Mahon Point:

'Mahon District Centre which has a wider and higher order range of comparison floorspace and an adjacent retail warehouse park, and performs a different role and function to the other district centres within the Metropolitan Area.'

Policy 3 of the joint Retail Strategy seeks the following in relation to District Centres:

'To support the vitality and viability of District Centres to ensure that such centres provide an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas, with an emphasis on convenience and appropriate comparison shopping, in order to protect the primacy of Cork City Centre.'

The proposal seeks to meet evolving market demand whilst at the same time not increase the total amount of retail floorspace within the shopping centre so that the primacy of the City Centre as a retail centre can be maintained as there is no increase in floorspace in this instance.

Retail Planning Guidelines 2012

The Retail Planning Guidelines was published in 2012 with the aim of ensuring *'that the planning system continues to play a key role in supporting competitiveness in the retail sector for the benefits of the consumer in accordance with proper planning and sustainable development.'*

Shopping Centres are defined in the Guidelines as *'predominantly purpose-built centres comprising a mix of large and small units. . .'*

In Section 2.2.1 (Metropolitan Locations) it is pointed out that the large cities of Cork, Limerick/Shannon, Galway and Waterford provide a range of high-order comparison shopping which is largely unmatched in smaller cities and towns.

It is acknowledged in Section 2.4.1 that there are no caps on comparison floorspace.

With regard to defined District Centres specifically it is stated that within the gateway cities and towns, hub towns and other larger towns (approximately 10,000 population), locations for the provision of essential local services and facilities to serve particular environs of the city or town, known as district centres, will be identified in the settlement strategy. These should also be supported in developing their retail offer to a scale which accords with the retail strategy.

Mahon is a designated District Centre and the Retail Planning Guidelines states *'the role of a district centre is to provide a range of retail and non-retail service functions (e.g. banks, post office, local offices, restaurants, public houses, community and cultural facilities for the community at a level consistent with the function of that centre in the core strategy.'*

In summary on planning policy the proposal is not in any way contrary to planning policy and in fact is consistent with the requirement to have vital and vibrant shopping centres and for retailing to be responsive to changing retail trends which are the bedrock of planning policy at national and local levels.

We trust that you will consider the above in your deliberations on the above and we await acknowledgement of safe receipt.

Yours sincerely,



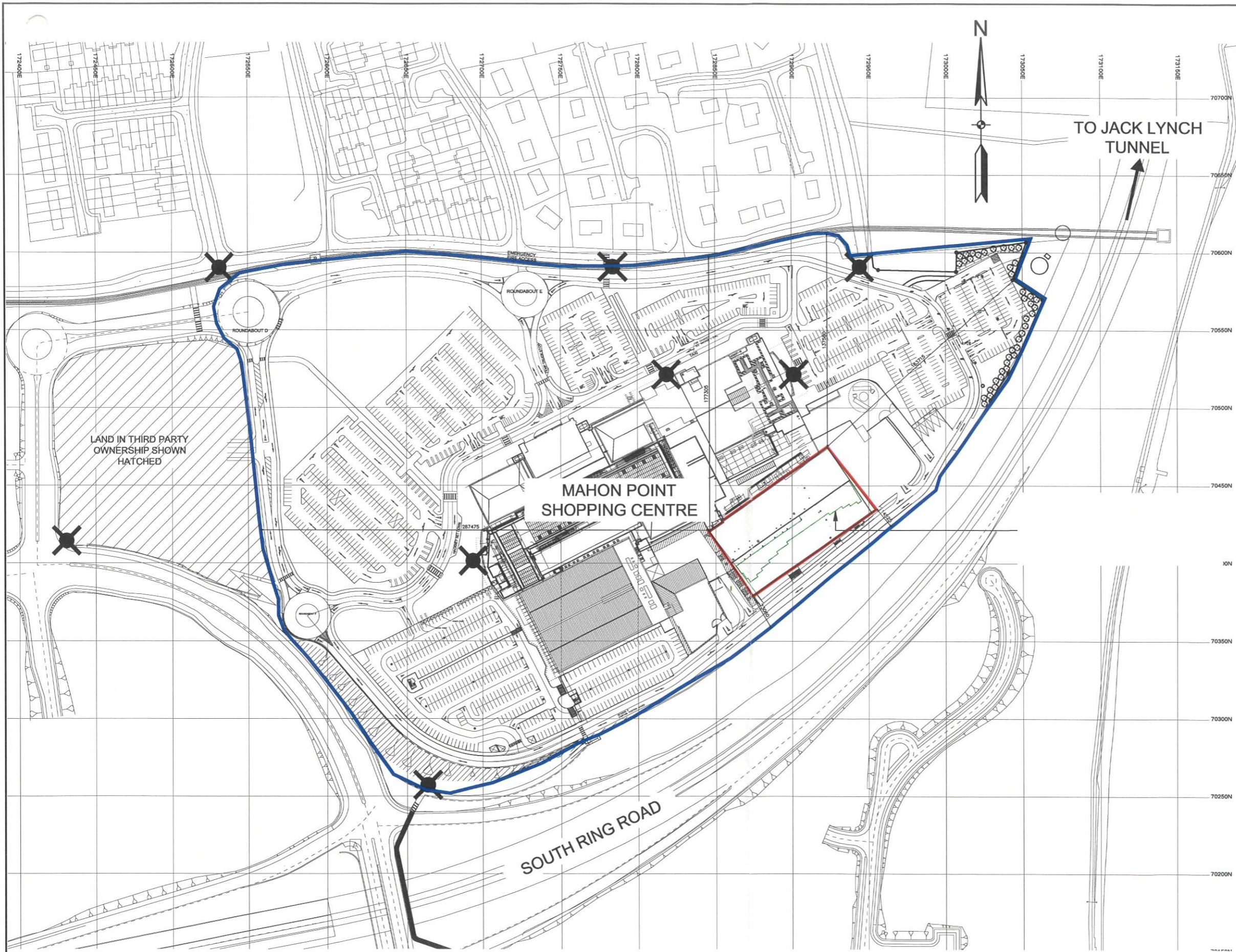
Eamonn Prenter MIPI MRTPI

Director

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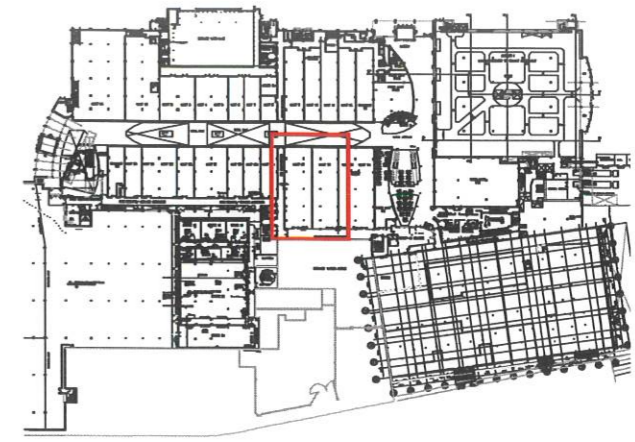
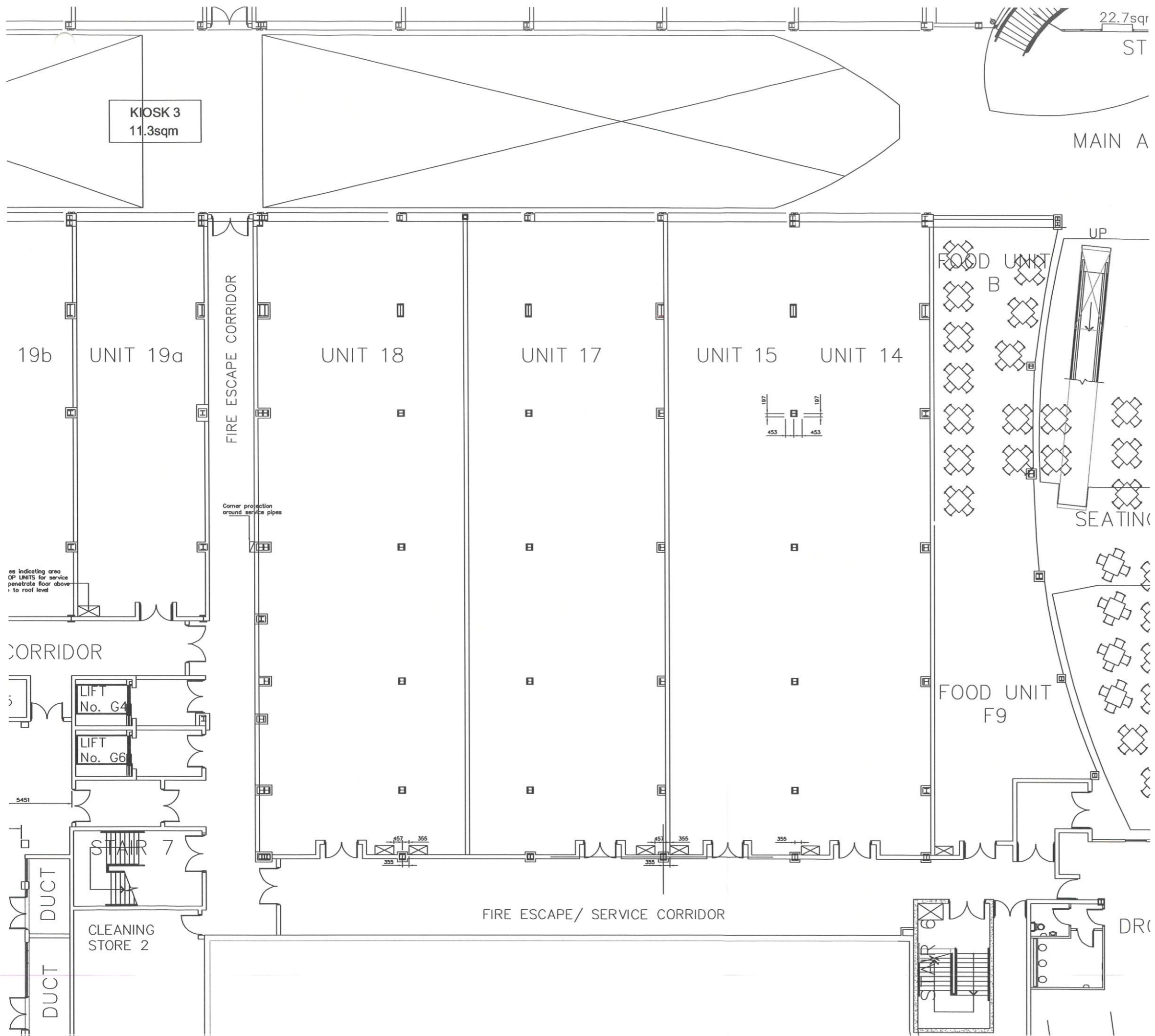


NOTES

- LANDS OUTLINED IN BLUE IN SAME OWNERSHIP OF APPLICANT
- SITE OUTLINE IN RED

TITLE

MAHON POINT SHOPPING CENTRE
SITE LOCATION / LAYOUT



KEY PLAN - NTS

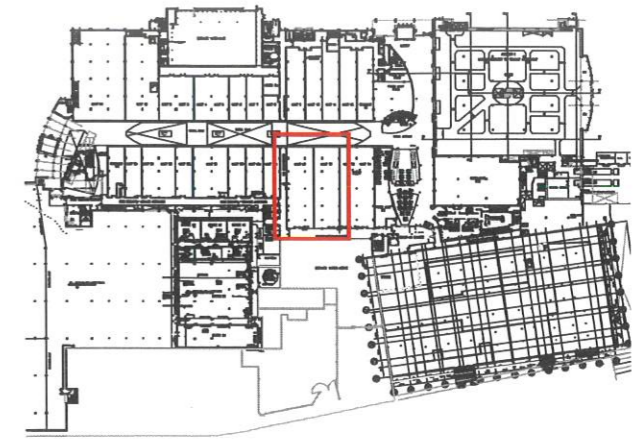
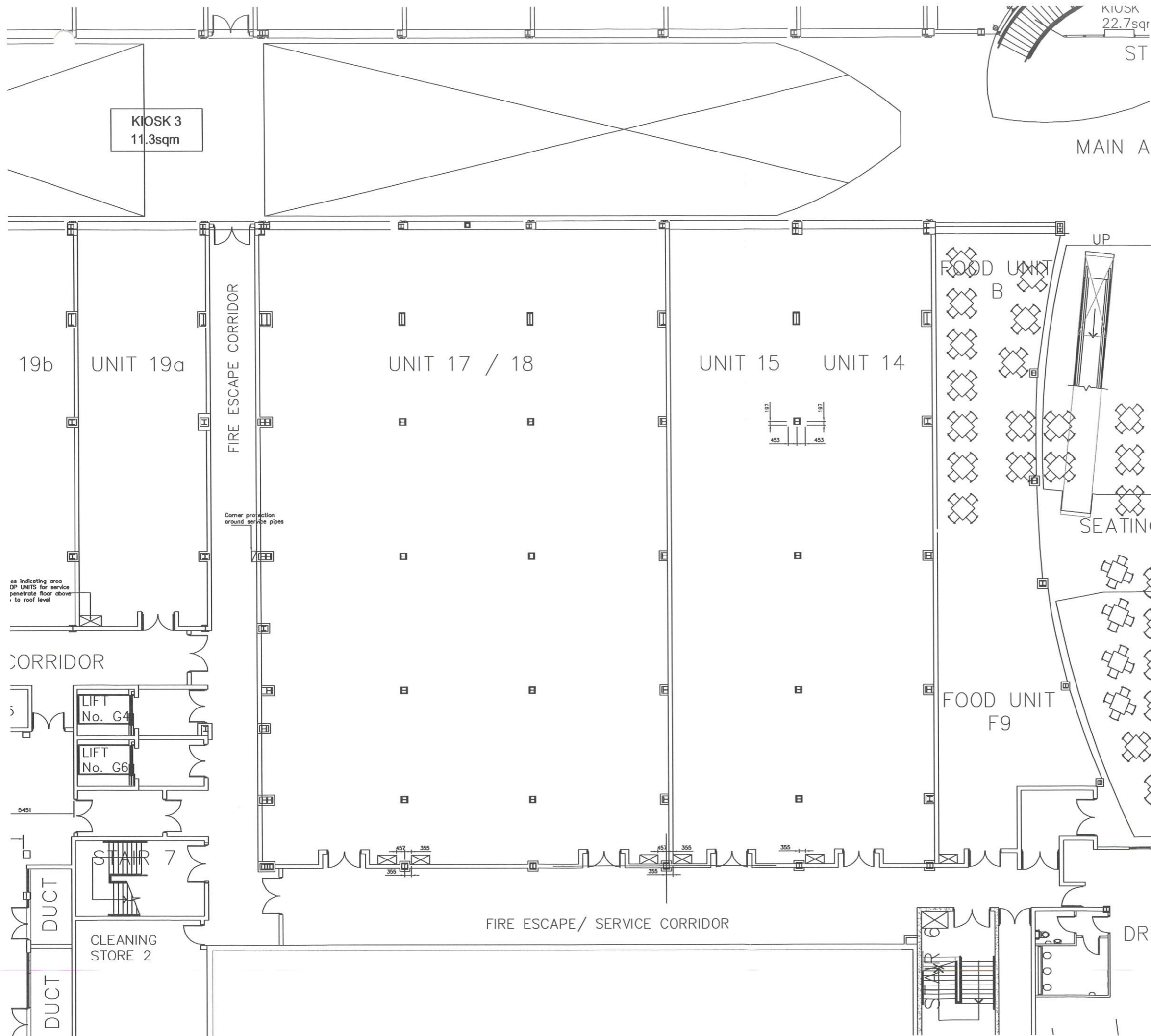
REV	DATE	AMENDMENT

CUNNANE STRATTON REYNOLDS
LAND PLANNING & DESIGN

DUBLIN OFFICE
3 MOLESWORTH PLACE DUBLIN 2
TEL 01 661 0419 FAX 01 661 0431
EMAIL info@csrlandplan.ie



PROJECT: MAHON POINT CORK	DATE: JULY-2022
DRAWING: EXISTING PLAN OF UNITS 17 & 18	SCALE: 1:200
	DRAWN: PG
	CHECKED: EP
	DRAWING NO: 22248-01-101



KEY PLAN - NTS

REV	DATE	AMENDMENT

CUNNANE STRATTON REYNOLDS
LAND PLANNING & DESIGN

DUBLIN OFFICE
3 MOLESWORTH PLACE DUBLIN 2
TEL 01 661 0419 FAX 01 661 0431
EMAIL info@cslrlandplan.ie



PROJECT: MAHON POINT CORK	DATE: JULY-2022
DRAWING: PROPOSED AMALGAMATION OF UNITS 17 & 18	SCALE: 1:200
	DRAWN: CHECKED: PG EP
	DRAWING NO: 22248-01-102