

## Comhairle Cathrach Chorcaí Cork City Council

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

Colm Cummins, Electricity Supply Board, 27 Lower Fitzwilliam Street, Dublin D02 KT93

25/08/2022

RE: Section 5 Declaration R730/22 ESB Oil Tank Farm, Former ESB Marina Generating Station lands, Centre Park Road, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 02<sup>nd</sup> August 2022, I wish to advise as follows:

The Planning Authority, in view of the above and having regard to —

- Section 2(1), 3(1) and 4 (1)(g) of the Planning and Development Act 2000 (as amended)
- the particulars received by the Planning Authority on 02/08/2022.
- the planning history of the site
- the pattern of development in the area

The Planning Authority considers that the dismantling and removal from site by a Statutory Undertaker of 7 No. steel tanks and associated pipe work formerly used for the storage of oil as part of the ESB's electricity generating operations at Marina Generating Station IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 25<sup>th</sup> August 2022.





# Comhairle Cathrach Chorcaí Cork City Council

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

Is mise le meas,

Sate Lagre

Kate Magner

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



## PLANNER'S REPORT

## Ref. R 730/22

Cork City Council

Development Management Strategic Planning and Economic Development

Application type

**SECTION 5 DECLARATION** 

Question

Is the dismantling and removal from site by a Statutory Undertaker of 7 no. steel tanks and associated pipe work formerly used for the storage of oil as part of the ESB's electricity generating operations at Marina Generating Station development, and if so, is it exempted

development?

Location

ESB Oil Tank Farm, Former ESB Marina Generating Station Lands,

Centre Park Road, Cork

Applicant

Colm Cummins, ESB

Date

25/08/2022

Recommendation

Is development and is exempted development.

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

Whether the dismantling and removal from site by a Statutory Undertaker of 7 no. steel tanks and associated pipe work formerly used for the storage of oil as part of the ESB's electricity generating operations at Marina Generating Station development, and if so, is it exempted development.

#### 3. SITE DESCRIPTION

The total ESB site at Marina comprises c.8 hectares which is divided in two by Centre Park Road. the subject site measures 2.63 hectares acres and is located to the south of Centre Park Road.

in total seven tanks are located on two specifically constructed oil tank bunds. Three no. tanks on the west bund and four no. tanks on the east bund. The tanks have not been operational for several years and have been empty of oil since 2018. In the intervening period there has been some damage caused to them and their integrity has been reduced. The ESB has recently identified a number of health and safety risks associated with having this infrastructure remaining on site and it is now an urgent requirement to remove the structures from the site. The site has also been zoned for educational use in the CDP 2022-2028 and the tanks removal will facilitate the first stage in the clearance of the lands.

#### 4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the dismantling and removal of 7 no. steel tanks.

#### 5. RELEVANT PLANNING HISTORY

- TP 15/36312 Permission granted for the continued use of the existing 45m high, free standing birdcage communication structure, carrying antennae and communication dishes, within an existing 2.4m high palisade compound previously granted temporary permission 10/34271.
- TP 10/34271 Temporary permission granted for a) permission to retain the existing 45m high, free standing birdcage communications structure, carrying antennae and communication dishes with associated ground-mounted equipment cabinets, within an existing 2.4m high palisade compound previously granted temporary permission An Bord Pleanala re PL.28.208925 and b) permission to attach 15 no x1.7m antennae and 10 no x0.6m dishes to allow for future third party colocation.
- TP 04/25446 Planning permission refused for the erection of a 45 metre high, free standing communications structure, carrying antennae and communication dishes with associated ground mounted equipment cabinets to form part of ESB's communication system and to share with other licensed operators within a 2.4metre high palisade compound.

#### 6. LEGISLATIVE PROVISIONS

#### 6.1 Planning and Development Act, 2000 as amended

#### Section 2(1)

Section 2(1) Interpretation - defines the terms used within the Act including the following;

- "statutory undertaker" means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—
- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

"use", in relation to land, does not include the use of the land by the carrying out of any works thereon

"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) defines development as follows:

"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) (a) – (I) sets out what is exempted development for the purposes of this Act and includes;

- (g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;
- (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;

#### 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 3(1) of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. It is considered that the proposal constitutes development as it comprises the alteration by reason of the dismantling and removal of the redundant oil tanks and therefore 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).

It is considered that elements of the proposal come within both subsections (1) and (2) c. section 4.

#### Section 4(1)

This proposal comes within the scope of section 4(1), being the works proposed to dismantle and remove from the site by a Statutory Undertaker of 7 no. steel tanks and associated pipe work. The works do not extend to the provision of new infrastructure or entail works outside of the development envelope. The works are to be undertaken by ESB which is a statutory undertaker as defined in section 2 of the Act. Therefore, it is considered that that the exempted development provisions of Section 4(1)(g) of the Planning and Development Act, 2000, as amended, are applicable namely that the development consists of the carrying out by a statutory undertaker of works.

In this regard it is considered that the proposed works are exempted development for the purposes of Section 4(1)(g) of the Planning and Development Act 2000.

#### Restrictions on exemption

It is not considered 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 applicant is advised as follows: -

#### Having regard to:

- Section 2(1), 3(1) and 4 (1)(g) of the Planning and Development Act 2000 (as amended)
- the particulars received by the Planning Authority on 02:08.2022.
- the planning history of the site
- the pattern of development in the area

The Planning Authority considers that the dismantling and removal from site by a Statutory Undertaker of 7 no. steel tanks and associated pipe work formerly used for the storage of oil as part of the ESB's electricity generating operations at Marina Generating Station IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

Gillian Tyrrell
Assistant Planner
25.08.2022

# COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork. R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924762

Líonra/Web: www.corkcity.ie

## **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

ESB OIL TANK FARM, FORMER ESB MARINA GENERATING STATION LANDS, CENTRE PARK ROAD, CORK

## 2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:							
<u>Sample Question:</u>	ample 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 ar	nd described under this section will be assessed under the section 5 declaration.						
Is the dismantling and removal from site by a Statutory Undertaker of 7 No. steel tanks and associated pipe work formerly used for							
the storage of oil as part of E	SB's electricity generating operations at Marina Generating Station development and if so,						
is it exempted development?							
ADDITIONAL DETAILS	REGARDING QUESTION/ WORKS/ DEVELOPMENT:						
(Use additional sheets if							
Please see attached inf							
	TI A THE						
	DEVELOPMENT MANAGEMENT						
	ССР						
************************	0 2 AUG 2022						
	CORK CITY COUNCIL						

3.	Are you aware of any enforcement proceedings connected to this site?  If so please supply details:  N/A						
4.	Is this a Protected Structure or within the curtilage of a Protected Structure? N/A						
	If yes, has a Declaration under Section 5 requested or issued for the property by		ne Planning & Development Act 2000 been anning Authority? \[ \sum N/A				
5.	Was there previous relevant planning application/s on this site?  If so please supply details: 99/23271, 03/26842, 04/28077, 04/28446, 06/31305, 07/32549, 07/731591, 08/32776, 10/34271, 13/35649, 15/36312						
6.	APPLICATION DETAILS						
	the following if applicable. Note: Floor areas be indicated in square meters (sq. M)	are measure	ed from the inside	e of the external walls and			
(a) Floor area of existing/proposed structure/s							
(1	b) If a domestic extension, have any preview extensions/structures been erected at location after 1 <sup>st</sup> October, 1964, (includ for which planning permission has been obtained)?	this ling those	Yes If yes, please p	No provide floor areas. (sq m)			
9990990000	c) If concerning a change of use of land ar						
Existi	ng/ previous use (please circle)	Proposed	Proposed/existing use (please circle)				
N/A		N/A					
8. LEG	AL INTEREST						
150,673,550,760,350,0	se tick appropriate box to show applican interest in the land or structure	t's <b>A.</b> Ow	ner 🗸	B. Other			
F-128-128-28-28-28-28-28-28-28-28-28-28-28-28-2	re legal interest is 'Other', please state interest in the land/structure in question	n N	I/A				
340703940.0355699	u are not the legal owner, please state t e and address of the owner if available		I/A				
	We confirm that the information contain	ned in the a	application is t	rue and accurate:			
Signat							
Date:	26/07/2022						

## **CONTACT DETAILS**

#### 10. Applicant:

Name(s)	Electricity Supply Board
Address	27 Lower Fitzwilliam Street, Dublin, D02 KT93

## 11. Person/Agent acting on behalf of the Applicant (if any):

Name(s):	Colm Cummins	Warr		
Address:	27 Lower Fitzwilliam Street, Dublin, Do			
Telephone:				
E-mail address:  Should all correspo (Please note that if the answ address)	indence be sent to the above address?  ver is 'No', all correspondence will be sent to the Applicant's	Yes	V	No 🗌

## 12. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

## **ADVISORY NOTES:**

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

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.

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 Development Management Section, Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

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- 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.





27 Sráid Mhic Liam Íochtarach Baile Átha Cliath, DO2 KT92, Éire Fón +353 1 676 5831 27 Lower Fitzwilliam Street Dublin, D02 KT92, Ireland Phone +353 1 676 5831

Development Management Section,
Community, Culture & Placemaking Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork City,
T12 T997

26th July 2022

RE: APPLICATION FOR DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE P&D ACT AT MARINA OIL TANK FARM

A Chara,

As part of the decommissioning of ESB's Former Generating Station at Marina, we intend to remove 7 No. steel tanks, pipe work and associated infrastructure from our lands on the southern side of Centre Park Road. ESB are of the view that the removal works constitute exempted development and are seeking a Declaration under Section 5 of the Planning and Development Act 2000, as amended.

#### **Site Context**

The total ESB site at Marina comprises c.19.9 acres (8 hectares), which is divided in two by Centre Park Road, 13.3 acres of which is to the north and 6.5 acres to the south of the Road (see Fig. 1 below). The main infrastructure on site includes Fuel Oil Storage, an above ground Gas Installation (AGI), Gas Turbine Power Station, Steam Turbine Power Station (decommissioned), Administration Building, Stores, 110kV Substation Compound, Cooling Water Pumphouse and Office Block with frontage on to Centre Park Road.

#### Background

Marina Power Station is located in the heart of Cork City Docklands and has produced electricity since 1954. For over sixty years, there has been continuous incremental investment in electricity infrastructure at Marina. Two power stations have been constructed in conjunction with extensive Transmission and Distribution Networks. Marina was originally designed as a coal and oil-fired station when it was commissioned in 1954, comprising two 30MW steam units. In 1964 and additional 60MW unit was added. With the discovery of natural gas off the coast of Cork, it was decided to convert the station to a combined-cycle configuration by the addition of a gas turbine unit and heat recovery boiler in the late 1970's increasing the station's capacity to 205MW.

Prior to closure, the former Marina Generating Station was of vital strategic importance in the provision of flexible generation and transmission system support within the confines of a major urban centre. The Transmission and Distribution infrastructure on site remain of critical importance to the region.



It is intended that future proposals for the site will be on the basis of integrating development with the wider receiving environment in the area is so far as possible.

When operational, oil fuel for the station was stored in tanks, located on the southern side of Centre Park Road. When the station ceased oil fired generating operations, the tanks were emptied and flushed/cleaned. In total 7 No. tanks are located on two specially constructed oil tank bunds. 3 No. tanks in the West Bund and 4 No. tanks in the East Bund. The tanks have not been operational for several years and ESB does not foresee any need to bring the tanks back into use. Their removal will facilitate the first stage in the clearance of these lands.



Fig. 1.0. Oil Tank Farm at ESB Marina.

The tanks have been empty since 2018. In the intervening period there has been some damage caused to them and their integrity has been reduced. ESB has recently identified a number of health and safety risks associated with having this infrastructure remaining on site. It is an urgent requirement for ESB to remove the structures from site at the earliest possible opportunity.

#### The Proposed Works

For the purposes of our Section 5 Application, the works that will be required are as follows:

- 1. Flush/Clean the tanks. An extensive cleaning was completed in 2018 when the remaining oil in the tanks was removed. It is expected that the final cleaning required now will be minimal.
- **2.** Dismantle the 7 No. steel tanks, pipework and associated infrastructure on site and remove for recycling.
  - a. 4 No. from East Bund (Dia. C.25m & Ht. c. 10.5m)



- b. 3 No. from West Bund (Dia. C.34m & Ht. c. 10.5m)
- **3.** As the tanks are structurally independent, there will be no ground disturbance during their removal.

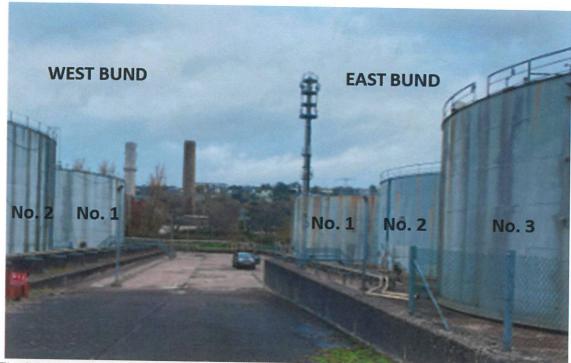


Fig. 2.0. View North of Oil Tanks



Fig. 3.0. Oil Tank Farm on southern side of Centre Park Rd. - ESB Marina.



### **Exempted Development**

Having regard for the provisions of the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001-2022, as a statutory undertaker, ESB respectfully submit that the proposed works involving the removal of the 7 No. Oil Tanks, constitutes exempted development.

In consideration of the above and due to the location of the proposed structure within lands of an industrial installation used for the production of electricity, the nature of the proposed works could be deemed exempted development under Section 4 (1)(g) which states (emphasis added):

development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;

ESB has also relied upon Section 4 (1)(h) of the Act when carrying out maintenance, improvement, or alterations to structures or more specifically under Schedule 2, Part I, Class 21 of the Planning and Development Regulations, at our generation site, where an industrial process of generating electricity is carried out.

### **Summary and Conclusion**

As the tanks are redundant and have some structural damage, they can no longer be utilised for their original purpose. They require dismantling and removal from site. Due to the risks associated with overturning, sliding and buoyancy, ESB wish to expedite their removal.

As a statutory undertaker, ESB consider the works to facilitate their removal, exempted development. We are seeking some guidance in this regard prior to submitting a formal Section 5 Declaration Application.

If we can be of any further assistance with regard to any aspect of this submission, please do not hesitate in contacting the undersigned.

Yours Sincerely,

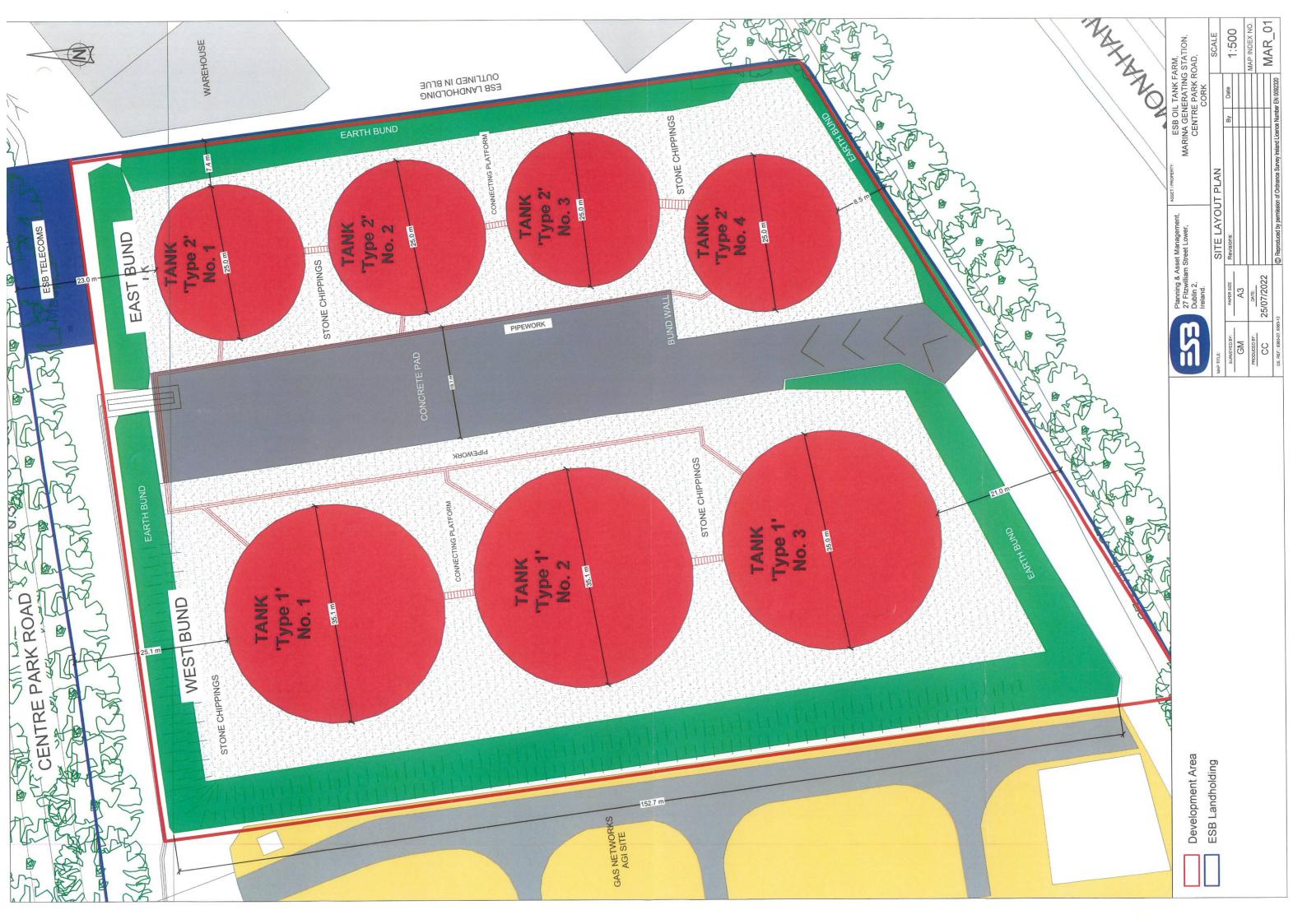
Colm Cummins | Planning & Asset Management| Engineering & Major Projects

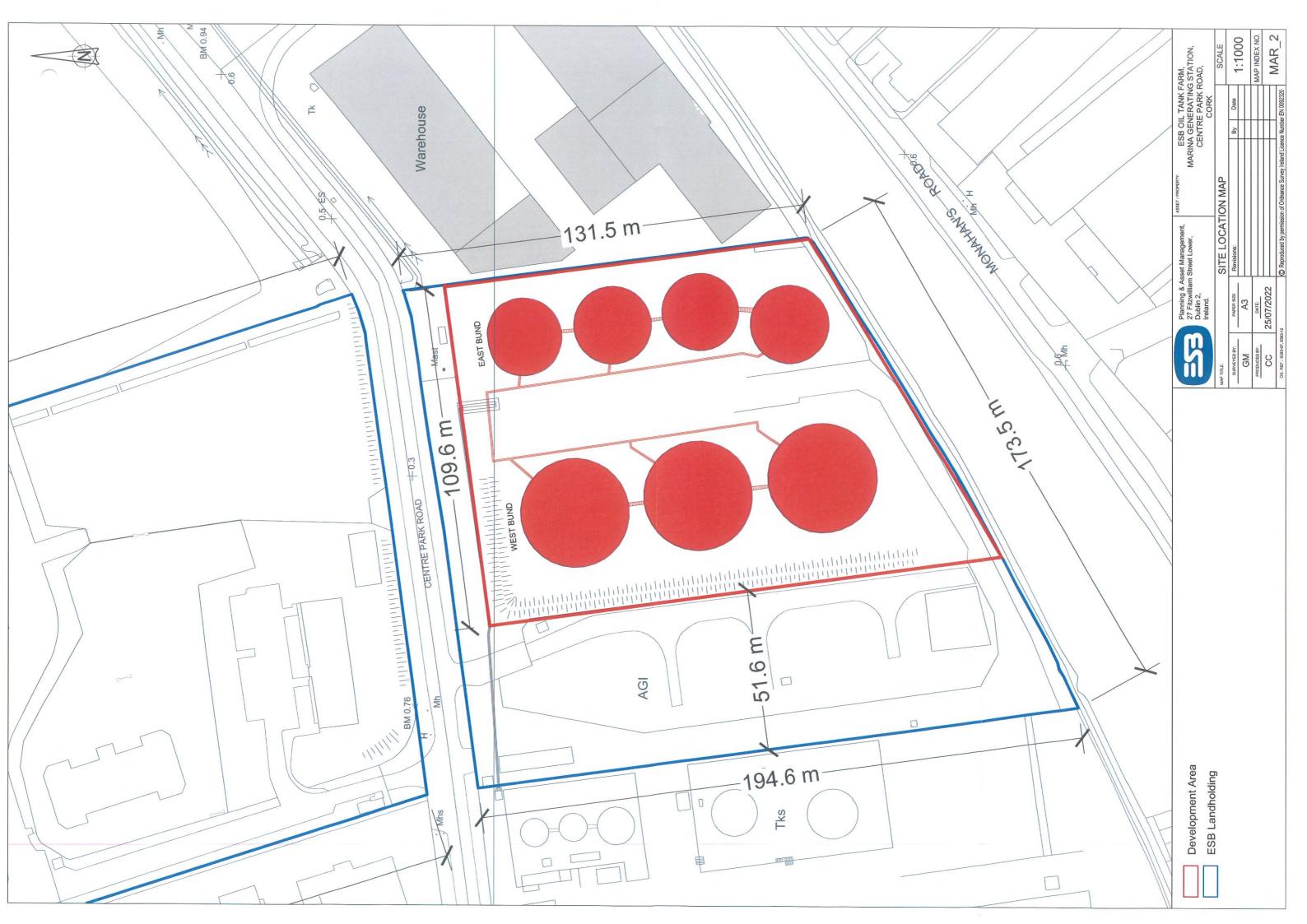
| T: +353 1 702 6357 / +353 87 763 8171 | Email: colm.cummins@esb.ie

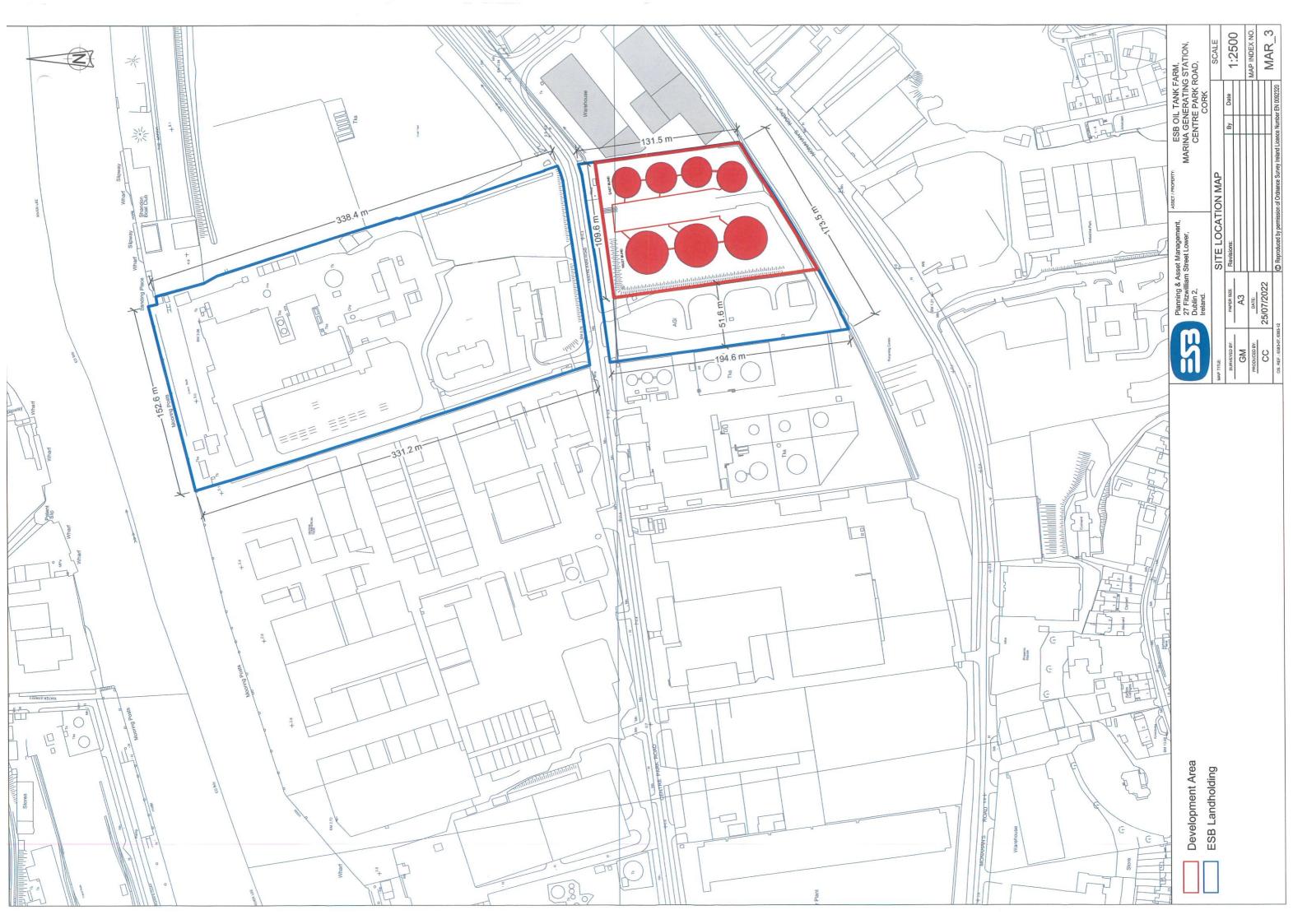


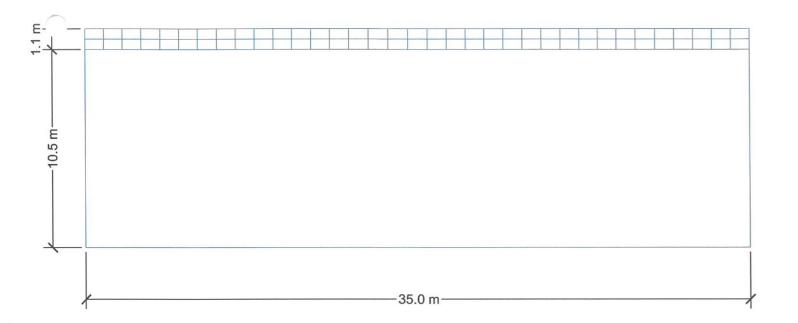
## **DOCUMENTS SUBMITTED**

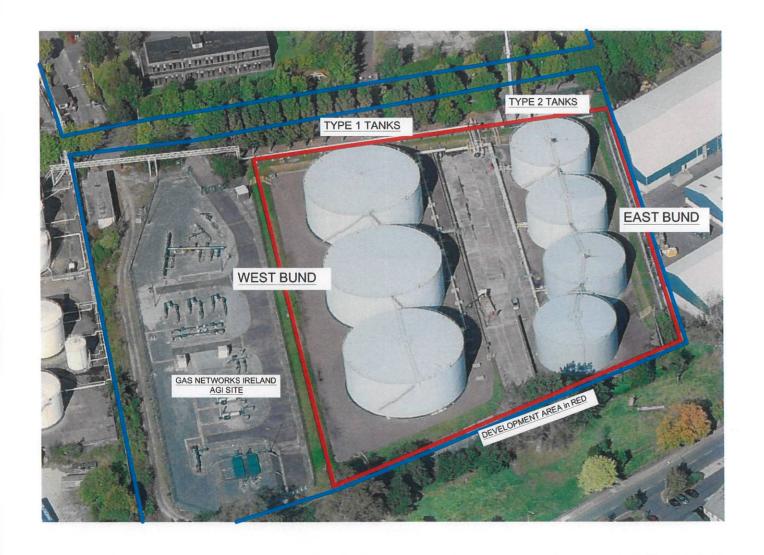
- 1. Completed Cork City Council Section 5 Declaration Application Form & Application Fee.
- 2. Drawings
  - a. Site Layout Plan (MAR\_1) Scale 1:500
  - b. Site Location Map (MAR\_2) Scale 1:1,000
  - c. Site Location Map (MAR\_3) Scale 1:2,500
  - d. West Bund Type 1 Oil Tank Detail (Mar\_4) Scale 1:200
  - e. East Bund Type 2 Oil Tank Detail (Mar\_5) Scale 1:200

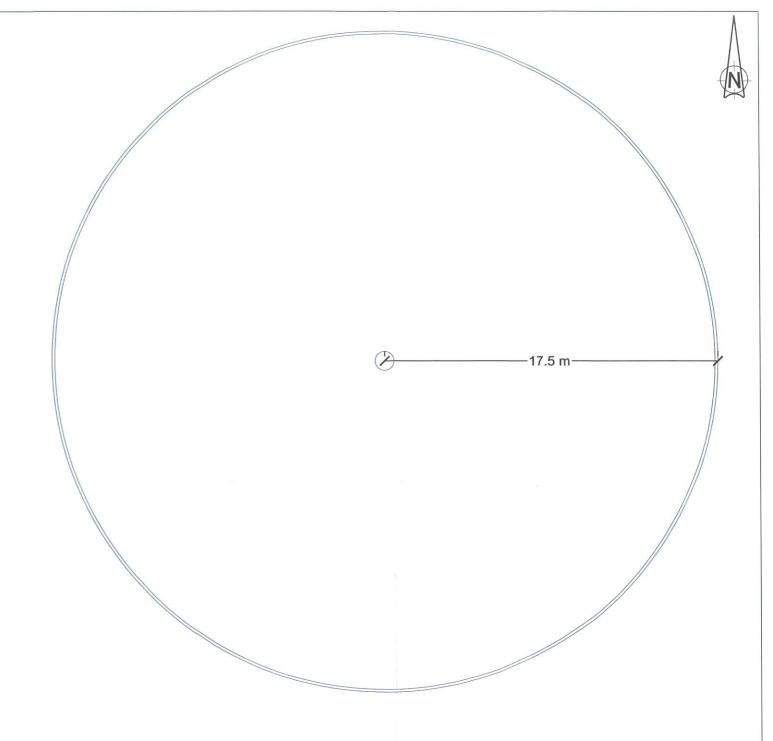




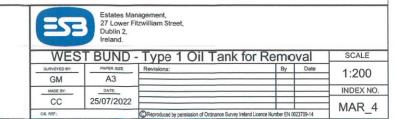


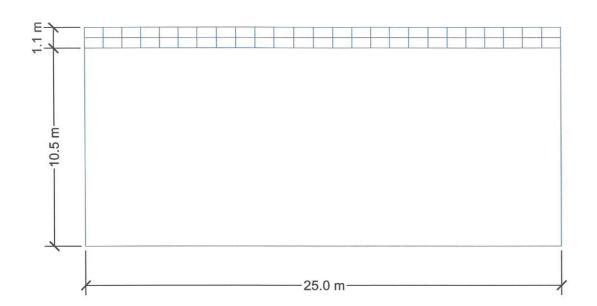


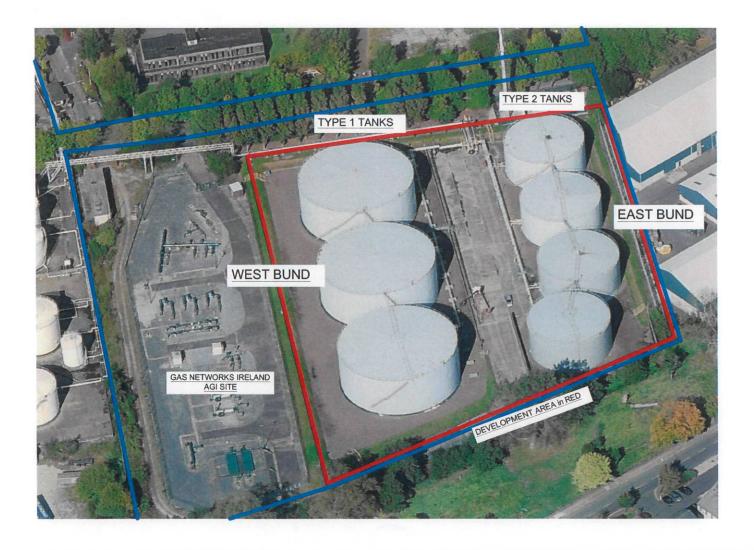


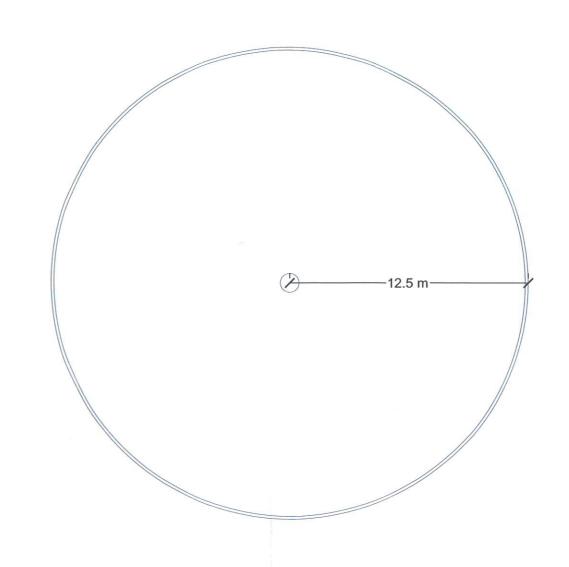


WEST BUND
'TYPE 1' OIL TANK
3 No. TO BE REMOVED









EAST BUND
'TYPE 2' OIL TANK
4 No. TO BE REMOVED

