



# Comhairle Cathrach Chorcaí Cork City Council

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

Joseph O'Brien  
KOBW Architects  
2 Empress Place,  
Summer Hill  
Cork

06/09/19

**RE: Section 5 Declaration R535/19 Unit 7, The Elysian, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows:

Having regard to —

- Sections 2, 3 and 4 of the *Planning and Development Act 2000* (as amended), and
- Article 10 of the *Planning and Development Regulations 2001* (as amended),

It is considered that proposed *fit out the existing office unit for new office facilities for the Work Relations Commission and Department of Employment and Social Protection, for use by visiting members of the public* **Is Development and Is Exempted Development.**

Yours faithfully,

---

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



**We are Cork.**

|                                  |  |  |
|----------------------------------|--|--|
| PLANNER'S REPORT<br>Ref. R525/19 |  | Cork City Council<br>Culture, Community and<br>Placemaking |
| <b>Application type</b>          | Section 5 Declaration  |  |
| <b>Description</b>               | <i>Whether the fit out for new office facilities for the Work Relations Commission and the Department of Employment and Social Protection, for use by visiting members of the public requires planning permissions</i> |  |
| <b>Location</b>                  | Unit 7, The Elysian  |  |
| <b>Applicant</b>                 | The Office of Public Works   |  |
| <b>Date</b>                      | 28/08/2019   |  |
| <b>Recommendation</b>            | <i>Is Development and Is Exempted Development</i>  |  |

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

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

In framing the question to the planning authority, the applicant states in Q2 of the application form:

*The proposal is to fit out the existing office unit for new office facilities for the Work Relations Commission and Department of Employment and Social Protection, for use by visiting members of the public.*

While the description set out states that the proposal includes fit out of the office external works do not form any part of the proposal set out in the application form; nor are external works detailed on the plans provided.

### 3. Site Description

Unit No. 7 of the Elysian is located on the Corner of Albert Street and the walkway between the Elysian and Webworks. The unit has two storeys. The ground floor is a near square oblong shape of approximately 18m x 20m while the first floor extends further to the south and is over three times as large being approximately 50m x 20m.

### 4. Planning History

There are multiple planning applications associated with Unit No. 7 of the Elysian. These are summarised as follows:

| CCC Ref  | Notes   |
|----------|---|
| 04/28877 | Parent Permission – Appeal PL 28.213361 – granted 02/12/2005  |
| 06/31112 | Inserted additional floor – granted 21/11/2006  |
| 08/32747 | Alterations to roof – granted 28/03/2008  |
| 08/33108 | Established adjoining medical facility – Granted 08/08/2008   |
| 08/33197 | Unit 7 created by merging 4 no. offices, one at ground floor and the other three on the first floor. Use granted for: for the provision of financial services as defined under Class 2 of Part 4 of schedule 2 on 09/09/2008. No limiting conditions. |
| 09/33644 | Amendments – not affecting subject office space – Granted 18/05/2009  |
| 14/36024 | Deemed withdrawn  |
| 16/36775 | Change use of Unit 6 to office – Granted 25/05/2016   |

It is noted that Permission 08/33197 was implemented and ACC Bank occupied the subject premises for a number of years. It is currently vacant.



Site Visit 26/08/2019

## 5. Legislative Provisions

### 5.1 The Act

#### Section 2(1),

*“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),*

*The following shall be exempted developments for the purposes of this Act – 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 2001-2013.*

*Section 177U (9) (screening for appropriate assessment)*

*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.*

**5.2 The Regulations**

*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*

Part 4 of Schedule 2 states that the following uses are contained within Class 2:

*Use for the provision of—*

- (a) financial services,*
  - (b) professional services (other than health or medical services),*
  - (c) any other services (including use as a betting office),*
- where the services are provided principally to visiting members of the public.*

**6. ASSESSMENT**

**5.1 Development**

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘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’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

I consider that the proposed element constitutes development as it comprises the undertaking of internal works and a change of use.

### **5.2 Exempted development**

The next issue for consideration is whether or not the matter at hand is exempted development.

It is noted that CCC Permission 08/33197 changed the use of the subject premises (Unit No. 7, The Elysian) to:

*the provision of financial services as defined under Class 2 of Part 4 of schedule 2 of the Planning and Development Regulations 2001 (as amended).*

No use limiting conditions are set out in the grant. The use was established when ACC Bank occupied the space. The unit has more recently become vacant.

The proposed use is described as an office based use that will be used by visiting members of the public. This accords with a Class 2 use as set out in Part 4 of Schedule 2 as set out in the *Planning and Development Regulations 2001* (as amended).

Accordingly it is considered that the proposed change of use from Financial Services to the proposed use is exempt and does not require planning permission, in accordance with Article 10(1) of the *Planning and Development Regulations 2001* (as amended).

The associated works – the fit out mentioned in the application form – are also exempt as internal changes as per *Section 4(1)(h)* of the *Planning and Development Act 2000* (as amended).

## **7. ENVIRONMENTAL ASSESSMENT**

### **7.1 Screening for Environmental Impact Assessment**

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) 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 an environmental impact statement is not required to be submitted.

### **7.2 Screening for Appropriate Assessment**

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. 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 the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

## **8. Conclusion**

The question has been asked whether:

*The proposal is to fit out the existing office unit for new office facilities for the Work Relations Commission and Department of Employment and Social Protection, for use by visiting members of the public,*

is development and, if so, whether it is exempted development.

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed *fit out the existing office unit for new office facilities for the Work Relations Commission and Department of Employment and Social Protection, for use by visiting members of the public* is development and is exempted development

**9. 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
- Article 10 of the *Planning and Development Regulations 2001* (as amended),

It is considered that proposed *fit out the existing office unit for new office facilities for the Work Relations Commission and Department of Employment and Social Protection, for use by visiting members of the public* **Is Development and Is Exempted Development.**



Martina Foley  
Executive Planner

Agreed. Gwen Jordan McGee, SEP  
28/08/19

**COMHAIRLE CATHRACH CHORCAÍ**  
**CORK CITY COUNCIL**

Strategic Planning & Economic Development Directorate,  
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail [planning@corkcity.ie](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924564/4321  
Líonra/Web: [www.corkcity.ie](http://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**

Offices at Unit 7, The Elysian, fronting Eglinton St, Old Station Rd & Albert Street, 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 proposal is to fit out the existing office unit for new office facilities for the Work Relations Commission and Department of Employment and Social Protection, for use by visiting members of the public.

We consider that a change of use planning permission is not required, as the permitted Class 2 use would include the proposed use, for other office use where services are provided principally to visiting members of the public and therefore it is not a material change of use.

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

*(Use additional sheets if required).*

Under the parent planning permission for the Elysian, ref. 04/2887, planning permission ref. 08/33197 permitted a change of use , from 1 ground floor and 3 first floor office units, to use as a single office unit Class 2 financial services.

CLASS 2 use allows for the provision of - (a) financial services, (b) professional services (other than health or medical services), (c) any other services (including use as a betting office) where the services are provided principally to visiting members of the public.

### 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  | 1,407 m <sup>2</sup>  |
| (b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)? | Yes <input type="checkbox"/> No <input type="checkbox"/><br>If yes, please provide floor areas. (sq m)<br>N/A _____                               |
| (c) If concerning a change of use of land and / or building(s), please state the following:  |   |
| Existing <input checked="" type="checkbox"/> previous use (please circle)<br>Class 2 Financial Services where principally for visiting public.   | <input checked="" type="checkbox"/> Proposed existing use (please circle)<br>Class 2 Professional Services where principally for visiting public. |

### 4. APPLICANT/ CONTACT DETAILS

|  |   |   |
|--|---|---|
| Name of applicant (principal, not agent):  |   | The Commissioners of Public Works in Ireland.                       |
| Applicants Address   | Unit 20, Lakeside Retail Park, Claremorris, Co. Mayo F12 DK30 |   |
| Person/Agent acting on behalf of the Applicant (if any):   | Name:   | KOBW Architects   |
|  | Address:  | 2 Empress Place<br>Summer Hill<br>Cork                              |
|  | Telephone:  | [REDACTED]  |
|  | Fax:  |   |
|  | E-mail address:   |   |
| Should all correspondence be sent to the above address?<br><small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small> |   | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |

### 5. LEGAL INTEREST

|   |  |  |
|---|--|--|
| Please tick appropriate box to show applicant's legal interest in the land or structure       | A. Owner   | B. Other <input checked="" type="checkbox"/> |
| Where legal interest is 'Other', please state your interest in the land/structure in question | Lessee/ Tenant   |  |
| If you are not the legal owner, please state the name and address of the owner if available   | KW PRS ICAV an Umbrella Fund with segregated liability between funds acting for an behalf of KW PRS Fund 7 |  |



6.1 / We confirm that the information contained in the application is true and accurate:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*[Handwritten Signature]*  
*21<sup>ST</sup> August 2019*

**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, Strategic Planning & Economic Development  
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- 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

21<sup>st</sup> August 2019.

Ms Gwen Jordan  
Senior Executive Planner  
Cork City Council,  
City Hall,  
Anglesea Street,  
Cork.



Our Ref.: 2672/ 3.1

Dear Ms. Jordan,

**Offices at Unit 7, The Elysian, Fronting Eglington Street, Old Station Road & Albert Street.**

On behalf of our clients, The Office of Public Works, we enclose a Section 5 Declaration Application Form, with the €80 application fee receipt and the following drawings showing the existing and proposed plans.

- Site Location Plan Scale 1:1000
- Murphy Surveys' drawing no. MSL32052\_E,FP,XS&CP-Rev 1
- 2672/ PL-100 Proposed Ground Floor Plan
- 2672/PL101 Proposed First Floor Plan

#### **Planning Record.**

In 2008, under the parent planning permission for the Elysian, ref. 04/2887, planning permission ref. 08/33197 permitted a change of use, from 1 ground floor and 3 first floor office units, to use as a single office unit Class 2 financial services.


CLASS 2 Use allows for the provision of— (a) financial services, (b) professional services (other than health or medical services), (c) any other services (including use as a betting office), where the services are provided principally to visiting members of the public.

#### **Exempted Development.**

The proposal is to fit out the existing unit for new office facilities for the Work Relations Commission and the Department of Employment and Social Protection, for use by visiting members of the public.

We consider that a change of use planning permission is not required, as the permitted Class 2 use would include the proposed use, for other office use where services are provided principally to visiting members of the public and therefore it is not a material change of use. We would appreciate if the council would provide a Section 5 Declaration for the use.

Yours sincerely,

  
Joseph O'Brien  
Kelly Barry O'Brien Whelan Architects

Enc.



# Comhairle Cathrach Chorcaí

## Cork City Council

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

Cork City Council  
City Hall  
Cork

22/08/2019 14:16:06

Receipt No. : SUPER1/614244/6102759

JOSEPH O BRIEN  
2 EMPRESS PLACE  
SUMMERHILL  
CORK  
SECTION 5

|                          |       |
|--------------------------|-------|
| APPLICATION FEES 56000   | 80.00 |
| GOODS 80.00              |       |
| VAT Exempt/Non-vatable   |       |
| SECTION 5 JOSEPH O BRIEN |       |

Total : 80.00 EUR

Tendered :  
Customer Not Present 80.00

Change : 0.00

Issued By : Martin Walsh  
From : Cash Supervisor 1  
Vat reg No.0005426M

Cash Office | Finance Department |  
Cork City Council, Ground Floor, New Civic Offices, City Hall, Cork T12 T997, Ireland |

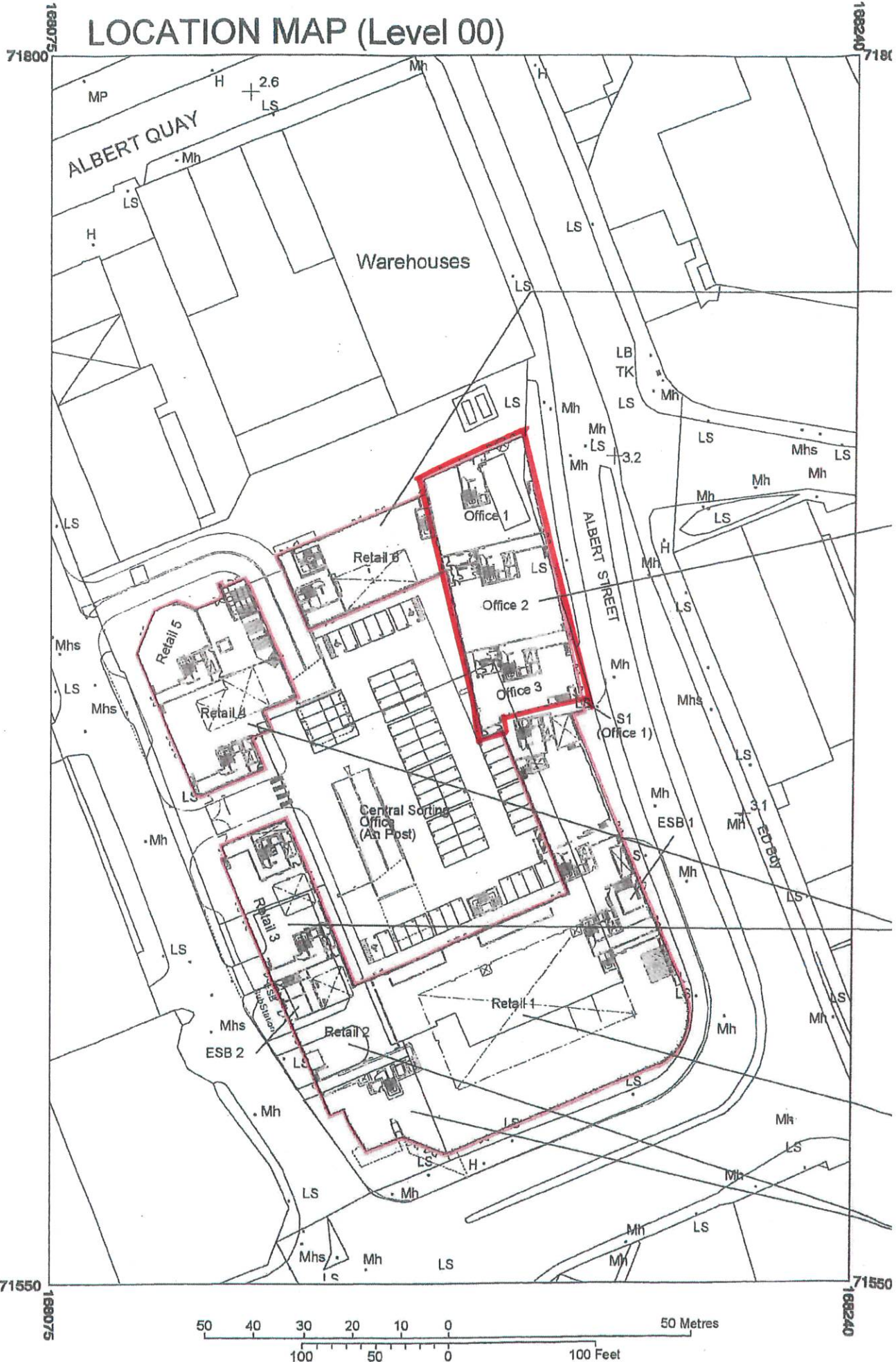
☎: +353 21 4924434 | ✉: [cashoffice@corkcity.ie](mailto:cashoffice@corkcity.ie) | 🌐: <http://www.corkcity.ie>



Comhairle Cathrach Chorcaí  
Cork City Council

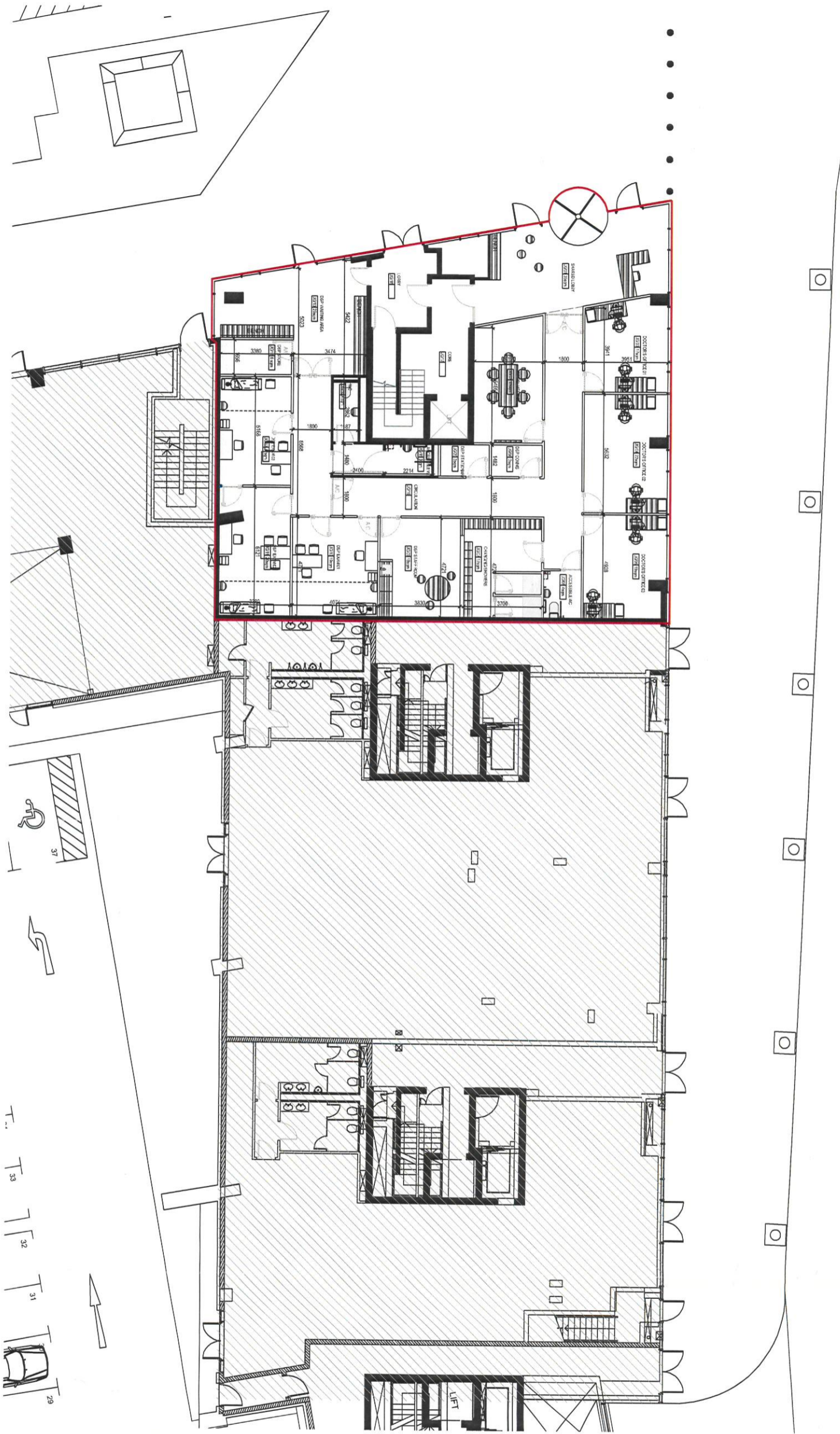


# LOCATION MAP (Level 00)



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Line of existing kerb



PROPOSED GROUND FLOOR PLAN

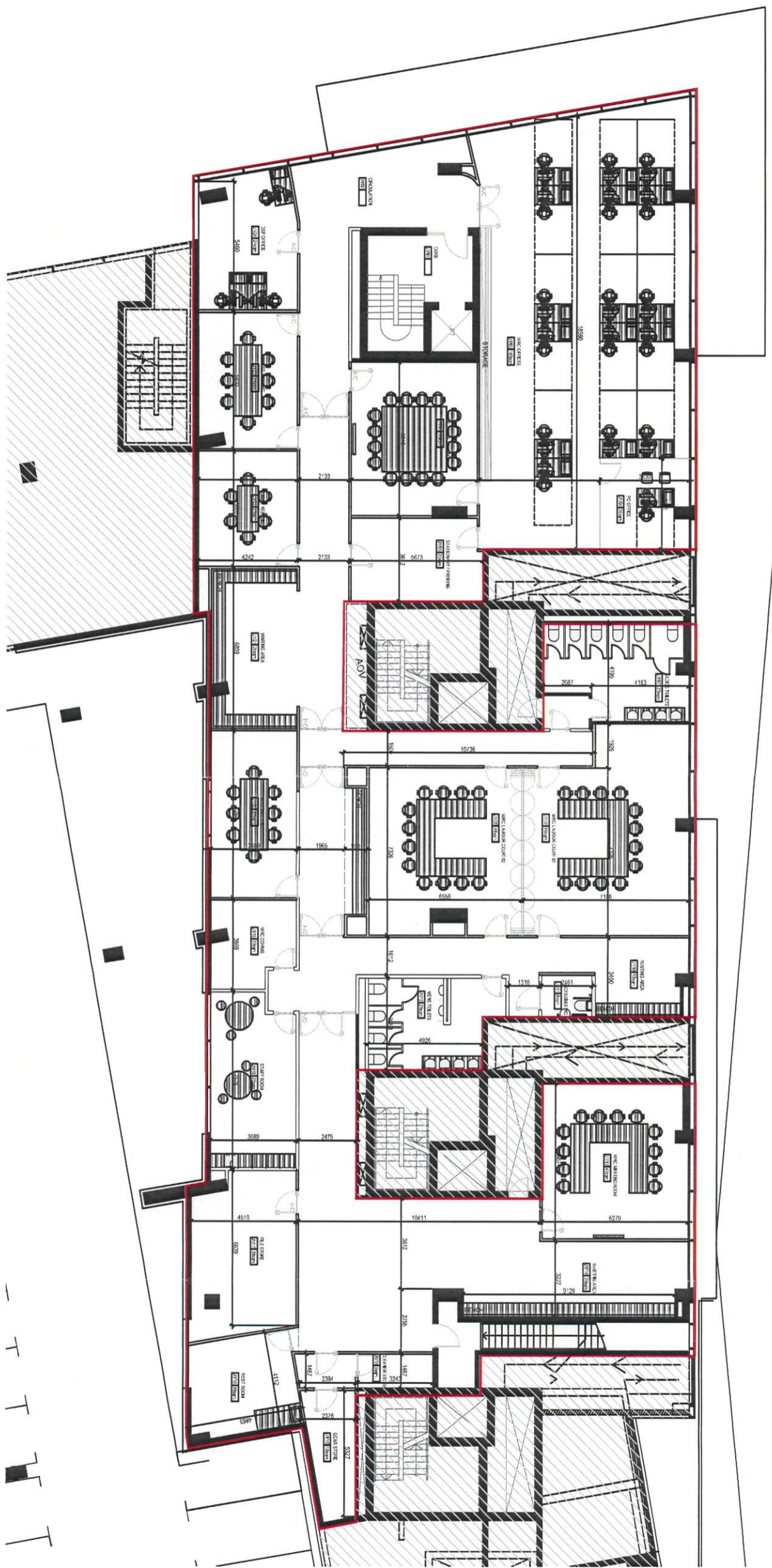
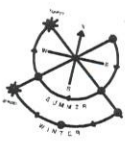
PROJECT:  
FIT OUT - UNIT 7 THE ELYSIAN  
PORT LANE, ALBERT STREET, CORK

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| REV | DATE | BY | REASON |
|-----|------|----|--------|
| ED  |      |    | REVIEW |

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No. | Date | Int | Revision  
 DRAWING  
 PROPOSED FIRST FLOOR PLAN

PROJECT  
 FIT OUT - UNIT 7 THE ELYSIAN  
 PORT LANE, ALBERT STREET, CORK

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2 Empress Place, Summer Hill, Cork, T23 K488 Ireland.  
 t: +353 21 4822319 f: +353 21 4529454 e: info@cobw.ie w: www.cobw.ie  
 JOB No. PL-101 DATE: 21.08.19  
 DRAWN BY: J.C. REVIEWED BY: N.I.  
 PROJECT NO: 1100@A11:1200A3

