



Halla na Cathrach  
Corcaigh  
T12 T997

City Hall  
Cork  
T12 T997

Bernard Fitzpatrick  
Pabia Consulting  
1G North Valley Business Centre  
Mallow Road  
Cork

24/09/18

Ref. R 488/18

<b>Application type</b>	Section 5 Declaration
<b>Description</b>	Whether the following works are considered to be development and if so are they exempted development?  <ol style="list-style-type: none"><li>1. Refurbishment of retail shop 47B MacCurtain Street (former Pharmacy Unit), to provide a convenience store with fresh food deli counter and food prep area at rear; and</li><li>2. Refurbishment of the rear section of retail unit (Car hire unit), at 47A MacCurtain Street, (former office, office store and toilet unit), to provide customer seating area (18no. seats) with ancillary office and toilet facilities for customers and staff of the convenience store (at 47B MacCurtain Street)</li></ol>
<b>Location</b>	47A and 47B MacCurtain Street, Cork City
<b>Applicant</b>	PABIA Consulting Ltd on behalf of Mr. Hongjun Wang

Dear Sir/Madam,

I am asked by Mr. Patrick Ledwidge, Director of Services, Strategic Planning & Economic Development to refer to your request for a section 5 Declaration at the above named property.

Having regard to:

- Section 3 and Section 4 of the Planning and Development Act 2000 (as amended), and;
- The definition of 'Structure' as set out in the Planning and Development Act Section 2.

The proposed development is considered to be development and **not** exempted development.

Yours Faithfully,



---

**Paul Hartnett**  
Assistant Staff Officer  
Strategic Planning & Economic  
Development  
Cork City Council

PLANNER'S REPORT  
Ref. R 488/18

Cork City  
Council  
  
Development  
Management  
  
Strategic  
Planning and  
Economic  
Development

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<b>Description</b>	Whether the following works are considered to be development and if so are they exempted development?  <ol style="list-style-type: none"><li>1. Refurbishment of retail shop 47B MacCurtain Street (former Pharmacy Unit), to provide a convenience store with fresh food deli counter and food prep area at rear; and</li><li>2. Refurbishment of the rear section of retail unit (Car hire unit), at 47A MacCurtain Street, (former office, office store and toilet unit), to provide customer seating area (18no. seats) with ancillary office and toilet facilities for customers and staff of the convenience store (at 47B MacCurtain Street)</li></ol>
<b>Location</b>	47A and 47B MacCurtain Street, Cork City
<b>Applicant</b>	PABIA Consulting Ltd on behalf of Mr. Hongjun Wang

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#### **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.<sup>1</sup>*

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<sup>1</sup> In this report 'the Act' refers to the Planning and Development Act 2000 (as amended) and 'the Regulations' refers to the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

## **THE QUESTION BEFORE THE PLANNING AUTHORITY**

The question has arisen as to whether the following works are considered to be development and if so are they exempted development;

1. Refurbishment of retail shop 47B MacCurtain Street (former Pharmacy Unit), to provide a convenience store with fresh food deli counter and food prep area at rear; and
2. Refurbishment of the rear section of retail unit (Car hire unit), at 47A MacCurtain Street, (former office, office store and toilet unit), to provide customer seating area (18no. seats) with ancillary office and toilet facilities for customers and staff of the convenience store (at 47B MacCurtain Street)

## **SITE LOCATION AND DESCRIPTION**

The subject site is located at 47A and 47B MacCurtain Street, Cork City. Together these two units form part of the collection of three commercial units known as Victoria Buildings. 47A comprises a car hire unit which fronts onto the street, while 47B is currently vacant, but was formally used as a pharmacy.

The units themselves are identified on the NIAH as being of regional importance, however they are not recorded on the record of protected structures. The collection of commercial buildings which form Victoria Buildings were designed by Arthur Hill. Both 47A and 47B retain many interesting features and materials, in particular timber shop-fronts, tiled columns and a mosaic threshold which reads 'Victoria Buildings'.

To the immediate west the site adjoins Cork Baptist Church. To the east the site adjoins the third of this collection of commercial buildings, which is currently in use as a fast food outlet (Hillbilly's).

Within units 47A and 47B works have commenced, which I note has included the erection of internal partition walls and the demolition of an internal dividing wall between 47A and 47B.

## **RELEVANT LEGISLATION AND PLANNING POLICY**

### ***Planning and Development Act, 2000, as amended:***

Section 2(1) of the Act defines "works" as follows:

*"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...*

*"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.*

*"alteration" includes—*

- (a) plastering or painting or the removal of plaster or stucco, or*
- (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;*

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

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

*"Development" in this Act 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 use of any structures or other land.*

Section 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;*

***Planning and Development Regulations, 2001, as amended:***

Article 5(1) of the Regulations as amended by S.I. No. 364 of 2005 substitutes the following for the definition of 'shop' –

*'shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public-*

- (a) for the retail sale of goods,*
- (b) as a post office,*
- (c) for the sale of tickets or as a travel agency,*
- (d) for the sales of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910 Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,*
- (e) for hairdressing,*
- (f) for the display of goods for sale,*
- (g) for the hiring out of domestic or personal goods or articles,*
- (h) as a launderette or dry cleaners,*
- (i) for the reception of goods to be washed, cleaned or repaired,*

*but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which Class 2 or 3 of Part 4 of Schedule 2 applies'.*

***Cork City Development Plan 2015-2021***

The subject site is located within an area zoned ZO1 City Centre Retail Area, where it is an objective of the Council to –

*"To provide for the protection, upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses in the City Centre retail area."*

**ENVIRONMENTAL ASSESSMENT**

Section 4 (4) of the Planning and Development Act (as amended) sets out that:

*"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."*

### ***Environmental Impact Assessment***

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) 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 EIS is not required to be submitted.

### ***Appropriate Assessment***

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

## **PLANNING ASSESSMENT**

### ***Is or is not development***

There are a number of issues which require to be taken into consideration in assessing this Section 5 application, and in determining whether or not the following constitutes development -

1. Refurbishment of retail shop 47B MacCurtain Street (former Pharmacy Unit), to provide a convenience store with fresh food deli counter and food prep area at rear; and
2. Refurbishment of the rear section of retail unit (Car hire unit), at 47A MacCurtain Street, (former office, office store and toilet unit), to provide customer seating area (18no. seats) with ancillary office and toilet facilities for customers and staff of the convenience store (at 47B MacCurtain Street)

The first matter relates to whether or not the refurbishment of 47B MacCurtain Street to provide a convenience store with fresh food deli counter and food prep area at rear. It is noted that the previous use associated with this unit was a pharmacy. Section 3(1) of the Planning and Development Act 2000, as amended, states that 'development' means 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. The Planning and Development Regulations in Schedule 2 of part 4 indicate a 'shop' as a distinct use class (class 1). In accordance with section 5 of the Regulations, pharmacies are considered as a class 1 development. I am therefore satisfied that the provision of a convenience store with fresh food deli counter and food prep area is consistent with the previous use associated with the site.

However the first question raised by the applicant is inter-related to the second when considered in the context of the proposed site layout plan provided with the section 5 application. Moreover, this changes the manner in which the first question in combination with the second is assessed.

With regard to the second matter listed above which relates to the provision of customer seating with ancillary office and toilet facilities for customers and staff of the

convenience store at 47B MacCurtain Street. In essence, the provision of same requires the amalgamation of both 47A and 47B. I note as per drawing number *E-13-01-03 Proposed Floor Plan – Gala Shop* that the amalgamation of these units will be achieved by removing an internal wall. I noted on my site visit that works have been undertaken to remove this internal wall. I consider that the removal of this wall would constitute 'works', which is defined as including any act or operation of construction, demolition or alteration, and the carrying out of said works would therefore comprise 'development' as defined in the Act.

### ***Is or is not exempted development***

Having established that the proposed amalgamation of the two retail units is 'development' as defined by the Planning and Development Act 2000, as amended, it must then be determined whether or not such development constitutes exempted development.

Section 4(1)(h) of the Planning and Development Act (as amended) states that 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 comprises exempted development. The external configuration of 47A and 47B will be altered in terms of access provision to both units through amalgamation.

I further note that section 4(1)(h) refers to 'structure' in the singular, and in this regard it is important to consider the each unit as singular structures, which I consider most pertinent in the case of assessing these individual planning units.

47B currently comprises a floor area of approximately 97sq.m, through its proposed amalgamation with 47A will increase in area by up to approximately 70sq.m including lobby access (and sluice room). This is an increase of up to 72% in floor area. I am of the opinion that this amalgamation and increase in floor area of the two units into a singular larger unit constitutes a change of use, which I considered to be a material change of use.

The carrying out of works for the facilitation of the provision of a refurbished retail unit including the provision of customer seating and ancillary spaces requires amalgamation as identified in the accompanying site layout drawings. I therefore consider that these works to individual units would not come within the scope of Section 4(1)(h) of the 2000 Act, in that they would not involve works for the maintenance, improvement or other alteration of a structure. I therefore consider that the proposed amalgamation of no. 47A and 47B MacCurtain Street is not exempted development.

### **RECOMMENDATION**

Having regard to:

- Section 3 and Section 4 of the Planning and Development Act 2000 (as amended), and;
- The definition of 'Structure' as set out in the Planning and Development Act Section 2.

The proposed development is considered to be development and not exempted development.



---

Siún McCarthy  
Assistant Planner  
**Strategic Planning & Economic  
Development Directorate**

17/09/2018

*Agreed. S. Minihan (SEP) 19.09.2018*



Exemption Certificate Cover Letter [20.08.2018]

The Development Management Section,  
Strategic Planning & Economic Development Directorate,  
Cork City Council,  
City Hall,  
Anglesea Street,  
Cork  
**Attn: The Senior Staff Officer**

Date: 20/08/2018

**Ref: Section 5 Exemption Certificate Application for 47A & 47B McCurtain Street, Cork**

Dear Sir or Madam,

We wish to apply for a Section 5 Exemption Certificate Application for refurbishment of premises at 47A & 47B McCurtain Street, Cork.

A 7 Day Notice and Fire Safety Certificate application were made at the commencement of the works and the FSC was duly issued on 21 June 2018. The works proceeded on the basis that planning was not required as retail use was being maintained in the entire development and as such no planning was necessary.

This exemption application is being sought to ensure that there will be no future queries on title of the property should ownership change.

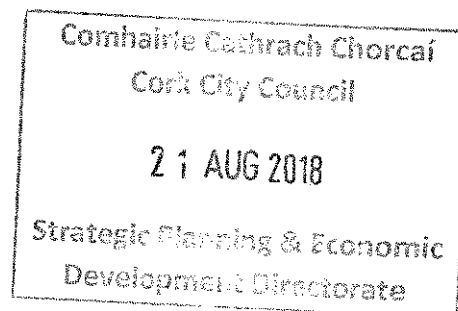
Enclosed please find an application form and 2no. copies of the following:

- E-13-01-01 Site Location Map, scale 1:1000 @ A4
- E-13-01-02 Existing Floor Plan – Former Pharmacy, scale 1:100 @ A3
- E-13-01-03 Proposed Floor Plan – Gala Shop, scale 1:100 @ A3
- E-13-01-04 Proposed Shop Unit Front Elevation and Section, scale 1:100 @ A3

We trust that our application will receive your approval.

Yours Faithfully,

  
Bernard FitzPatrick, BE, MIEI



**PABIA Consulting Ltd**

Tel 021 242 8890 Email info@pabia.ie Web www.pabia.ie  
Address 1G, North Valley Business Centre, Mallow Road, Cork, T23 KH74

Registered in Ireland.  
Company No: 584592  
VAT No: 3424140KH

**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**

47 A & B McCurtain Street, Cork City

**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.*

Are the following works considered to be development and if so are they exempted development?

1. Refurbishment of retail shop at 47B McCurtain Street, (former Pharmacy Unit), to provide a convenience store with fresh food deli counter and food prep area at rear; and
2. Refurbishment of the rear section of retail unit, (Car hire unit), at 47A McCurtain Street, (former office, office store and toilet of unit), to provide customer seating area (18 No. seats) with ancillary office and toilet facilities for customers and staff of the convenience store (at 47B McCurtain Street).

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

*(Use additional sheets if required).*

### 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	149.49 Sq.m
(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 checked="" type="checkbox"/> If yes, please provide floor areas. (sq m)
(c) If concerning a change of use of land and / or building(s), please state the following:	
<del>Existing</del> / previous use (please circle)  Retail Pharmacy	Proposed/ <del>existing</del> use (please circle)  Retail Shop

### 4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	Mr Hongjun Wang	
Applicants Address	24 Old Avenue, Riverstown, Glanmire, Co.Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	PABIA Consulting Ltd
	Address:	Unit 1G, North Valley Business Centre, Mallow Road, Cork
	Telephone:	
	Fax:	
	E-mail address:	
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 <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 <input type="checkbox"/>	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	Property leased from owner	
If you are not the legal owner, please state the name and address of the owner if available	Mrs Angela MacCarthy c/o Maclock Ltd Caherlag, 59 Old Blackrock Road, Ballintemple, Cork T12 PA9H	

**PABIA Consulting Ltd**  
 Unit 16,  
 North Valley Business Centre,  
 Malinbeg,  
 Co. Fermanagh,  
 BT23 7YJ, UK

Tel: 031 323 8800  
 Email: info@pabia.ie  
 Web site: www.pabia.ie

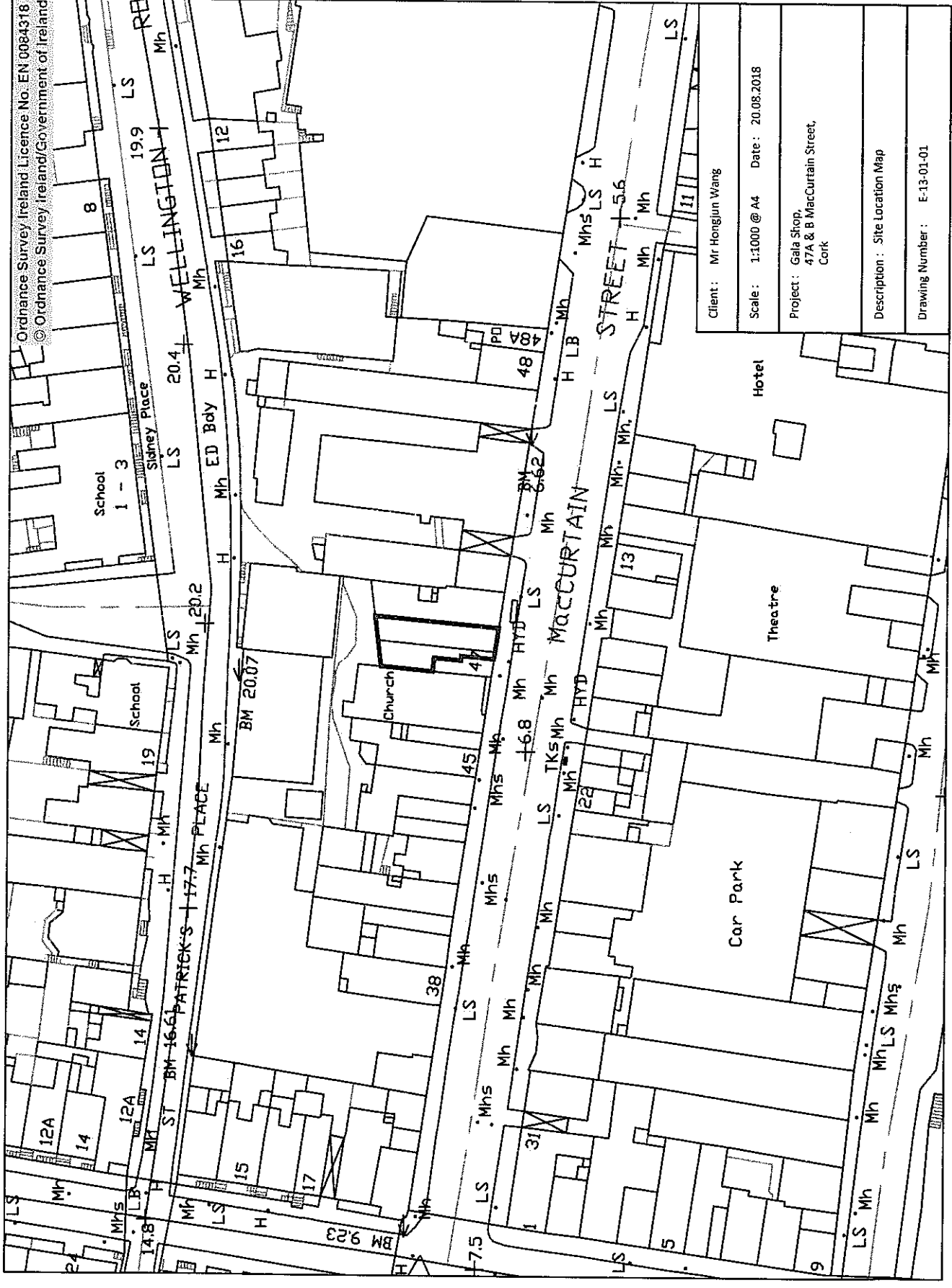
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 Project Management - Surveys  
 Dangerous Substances Act Consultancy

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 SURVEY DATE = 31-Dec-1973  
 LEVELLED DATE = 31-Dec-1983

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 LRX,LRX = 567879.572182  
 ULX,ULY = 567646.572354  
 URX,URY = 567879.572354

Projection: ITM  
 ITM Centre Point Co-ordinate:  
 X,Y = 567762.572268

Extraction Date: 06-Mar-2018  
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LAND TO WHICH THE SECTION 5 DECLARATION APPLICATION RELATES

**PABIA Consulting Ltd**  
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 Project Management - Surveys  
 Dangerous Substances Act Consultancy

Map Series:  
 1:1000

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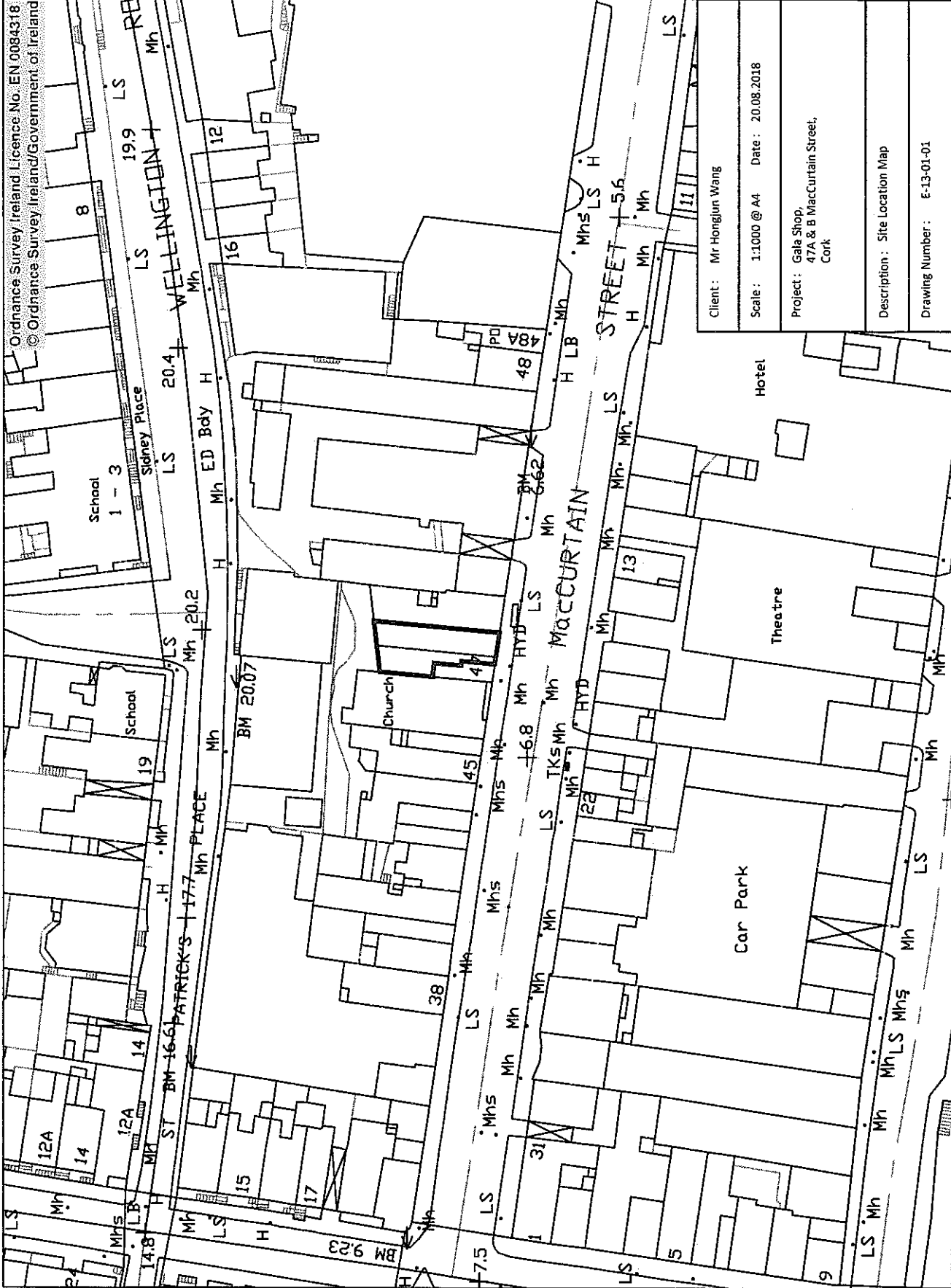
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ITM Centre Point Co-ordinate:  
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Extraction Date:  
 06-Mar-2018

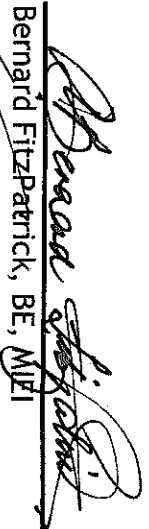
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6. I/We confirm that the information contained in the application is true and accurate:

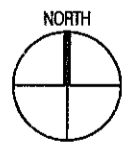
Signature: \_\_\_\_\_

  
Bernard FitzPatrick, BE, MFI

Date: 20 August 2018

**PABIA Consulting Ltd**  
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 North Valley Business Centre,  
 Malloy Road,  
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Note:

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ALL MEASUREMENTS & QUANTITIES TO BE CONFIRMED ON-SITE BY CONTRACTOR

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Surveyed by: - Date: xx.xx.xxxx  
 Drawn by: KS Date: 20.08.2018  
 Checked by: - Date: xx.xx.xxxx

Revisions

No.	Date	Description
-	20.08.18	Issued for exemption

**PABIA Consulting Ltd**

Client: Mr Wang

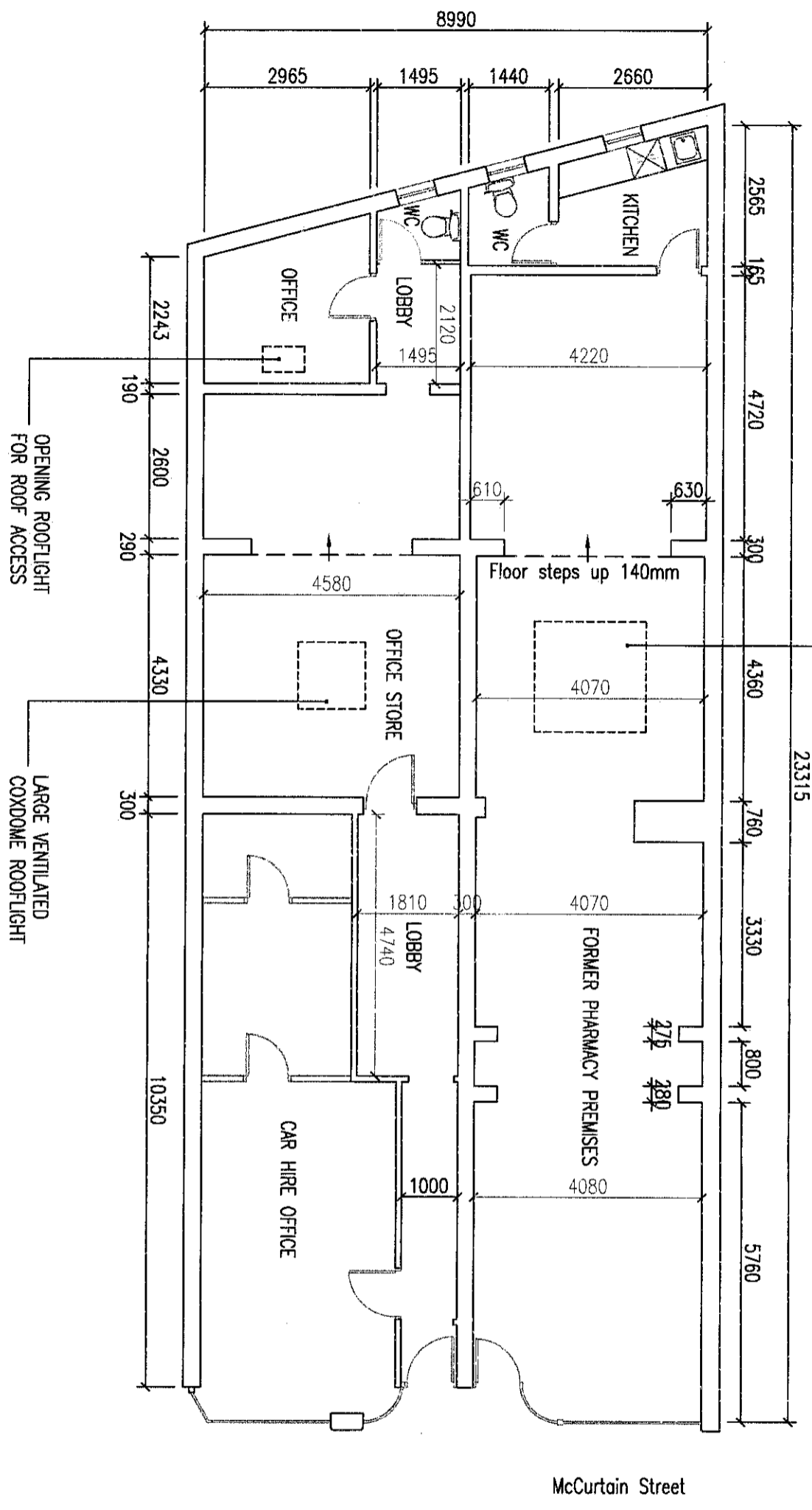
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Project: Galia Shop  
 47A&B McCurtain Street,  
 Cork City

Description: Existing Floor Plan - Former Pharmacy

Drawing Number: E-13-01-02

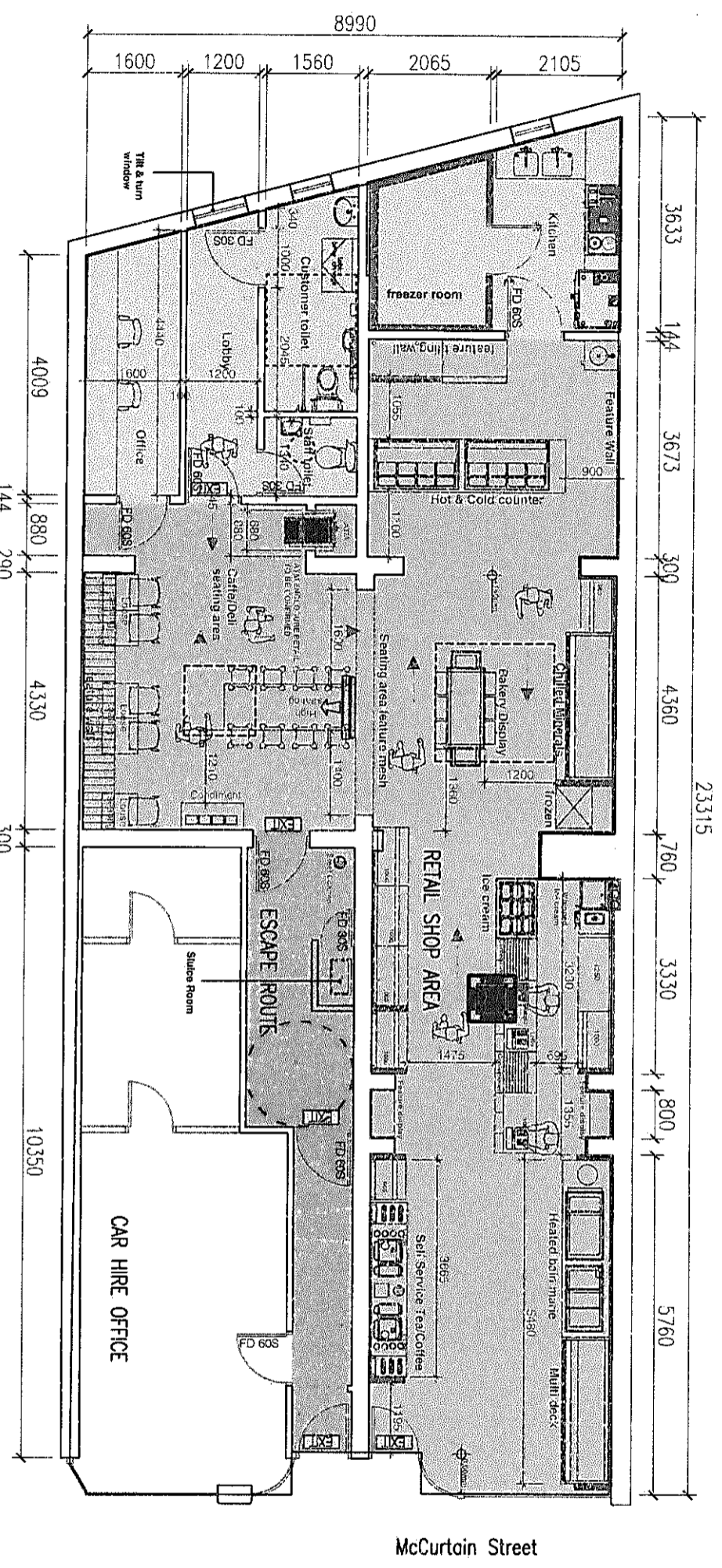
**EXISTING GROUND FLOOR PLAN**  
 Scale 1:100



McCurtain Street

**PABIA Consulting Ltd**  
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**PROPOSED GALA SHOP - FLOOR PLAN**  
 Scale 1:100

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No.	Date	Description
-	20.08.18	Issued for exemption

**PABIA Consulting Ltd**

Client: Mr Wang  
 Scale: 1:100 @ A3  
 Project: Gala Shop  
 47A&B McCurtain Street,  
 Cork City  
 Description: Proposed Floor Plan - Gala Shop  
 Drawing Number: E-13-01-03



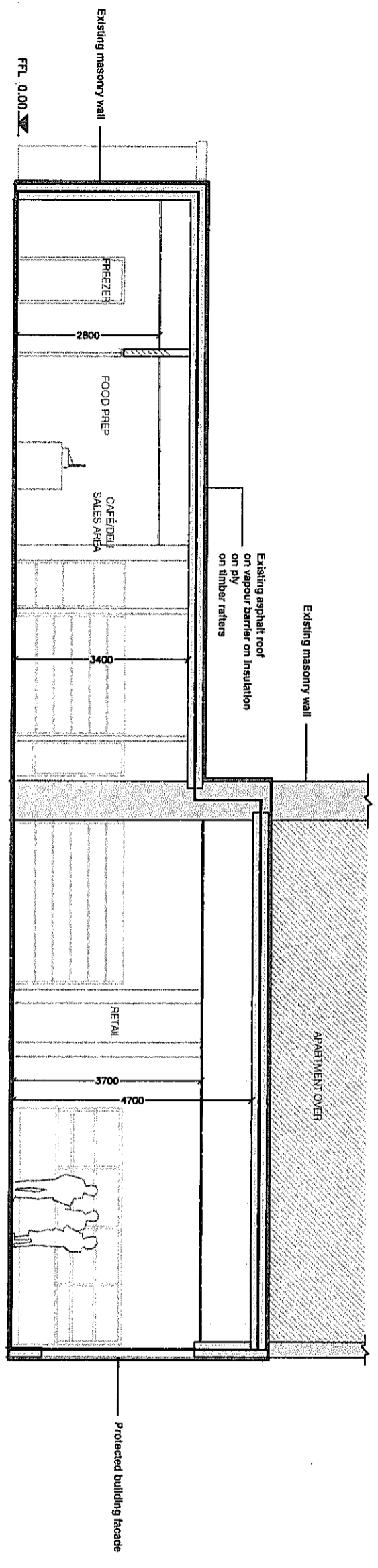
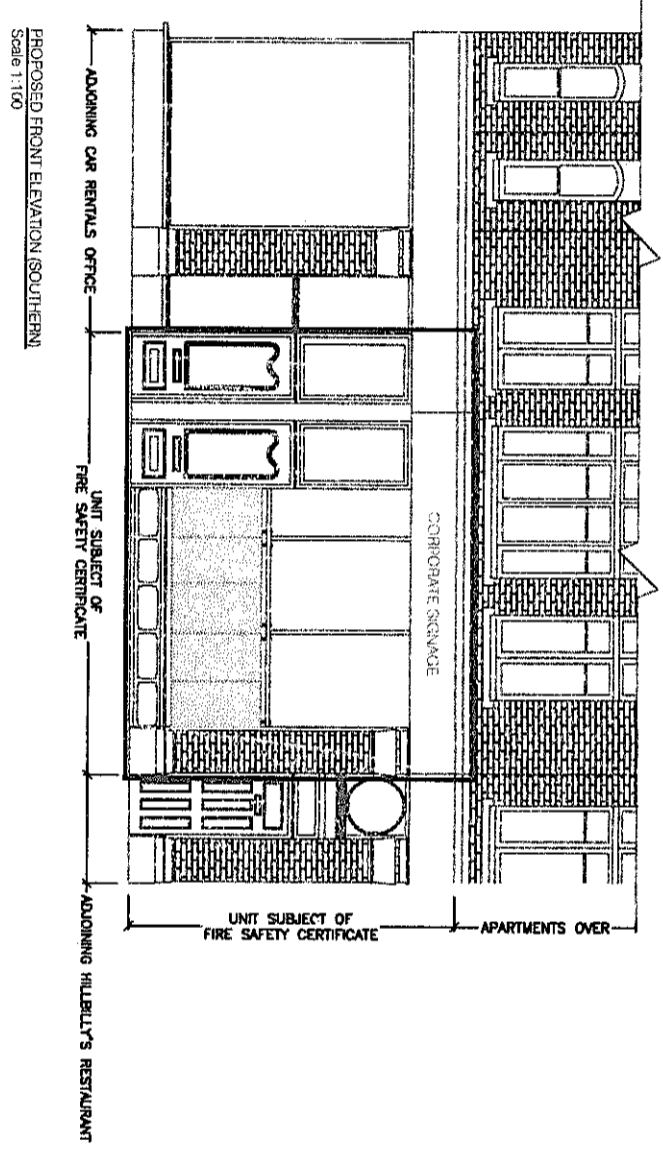
**PABIA Consulting Ltd**  
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Tel: 021 242 8890  
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COMPARTMENT

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Revisions	
No.	Description
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**PABIA Consulting Ltd**

Client: Mr Hongjun Wang

Scale: 1:100 @ A3

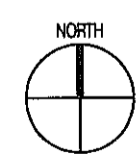
Project: Gala Shop  
 47A&B McCurtain Street,  
 Cork City

Description: Proposed Shop Unit Front Elevation and Section

Drawing Number: E-13-01-04

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 Drawn by: K5 Date: 20.08.2018  
 Checked by: - Date: xx.xx.xxxx

No.	Date	Description
-	20.08.18	Issued for exemption

**PABIA Consulting Ltd**

Client: Mr Wang

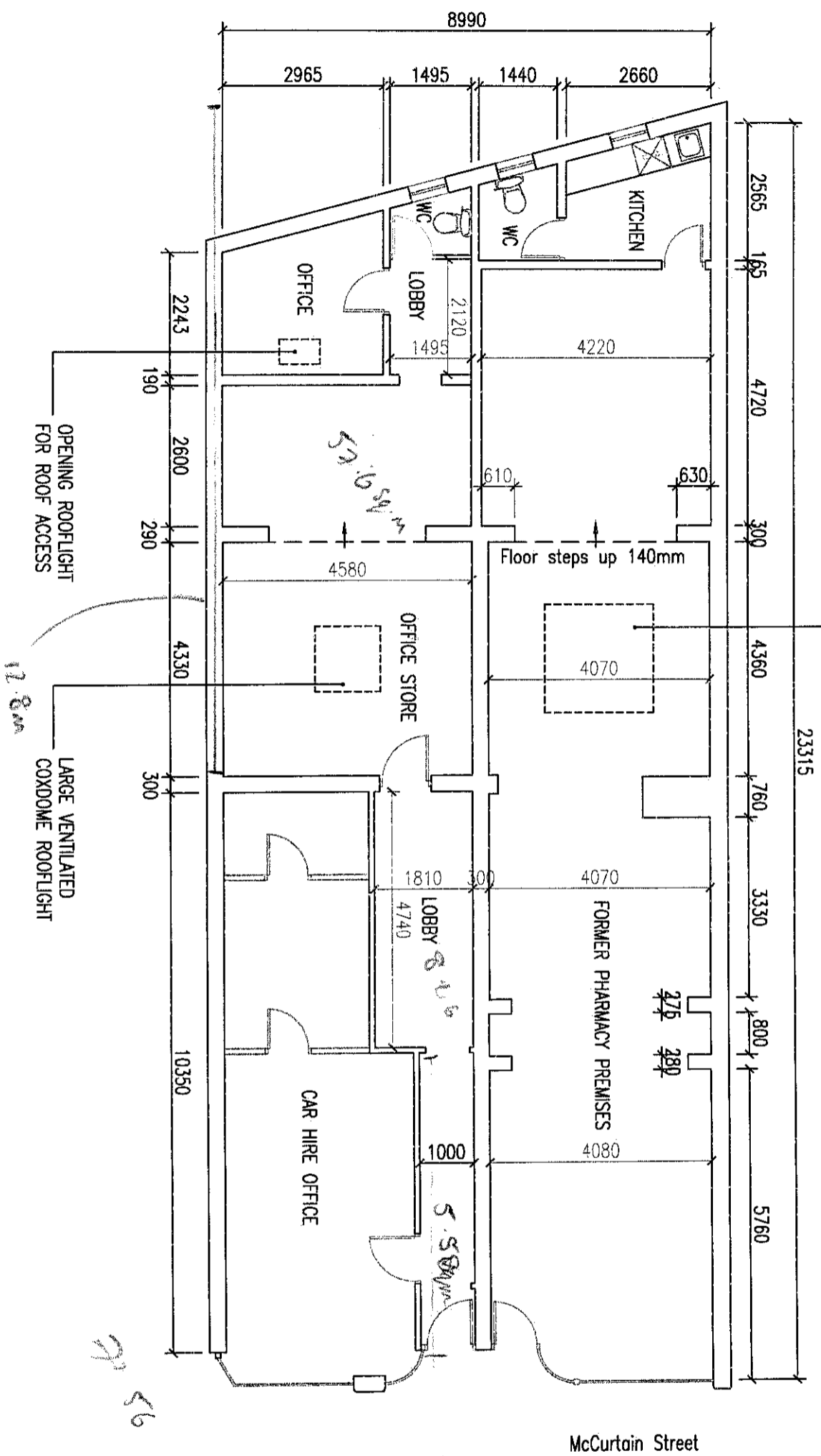
Scale: 1:100 @ A3

Project: Gala Shop  
 47A&B McCurtain Street,  
 Cork City

Description: Existing Floor Plan - Former Pharmacy

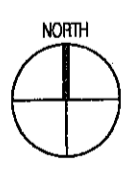
Drawing Number: E-13-01-02

**EXISTING GROUND FLOOR PLAN**  
 Scale 1:100



**PABIA Consulting Ltd**  
 Unit 16,  
 North Valley Business Centre,  
 Malloy Road,  
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 T23 KH74  
 Tel: 021 242 8890  
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Engineering Consultancy - Planning & Design  
 Project Management - Surveys  
 Dangerous Substances Act Consultancy



Note:

1. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT DRAWINGS & SPECIFICATION.
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 Checked by: - Date: xxxxxx

No.	Date	Description
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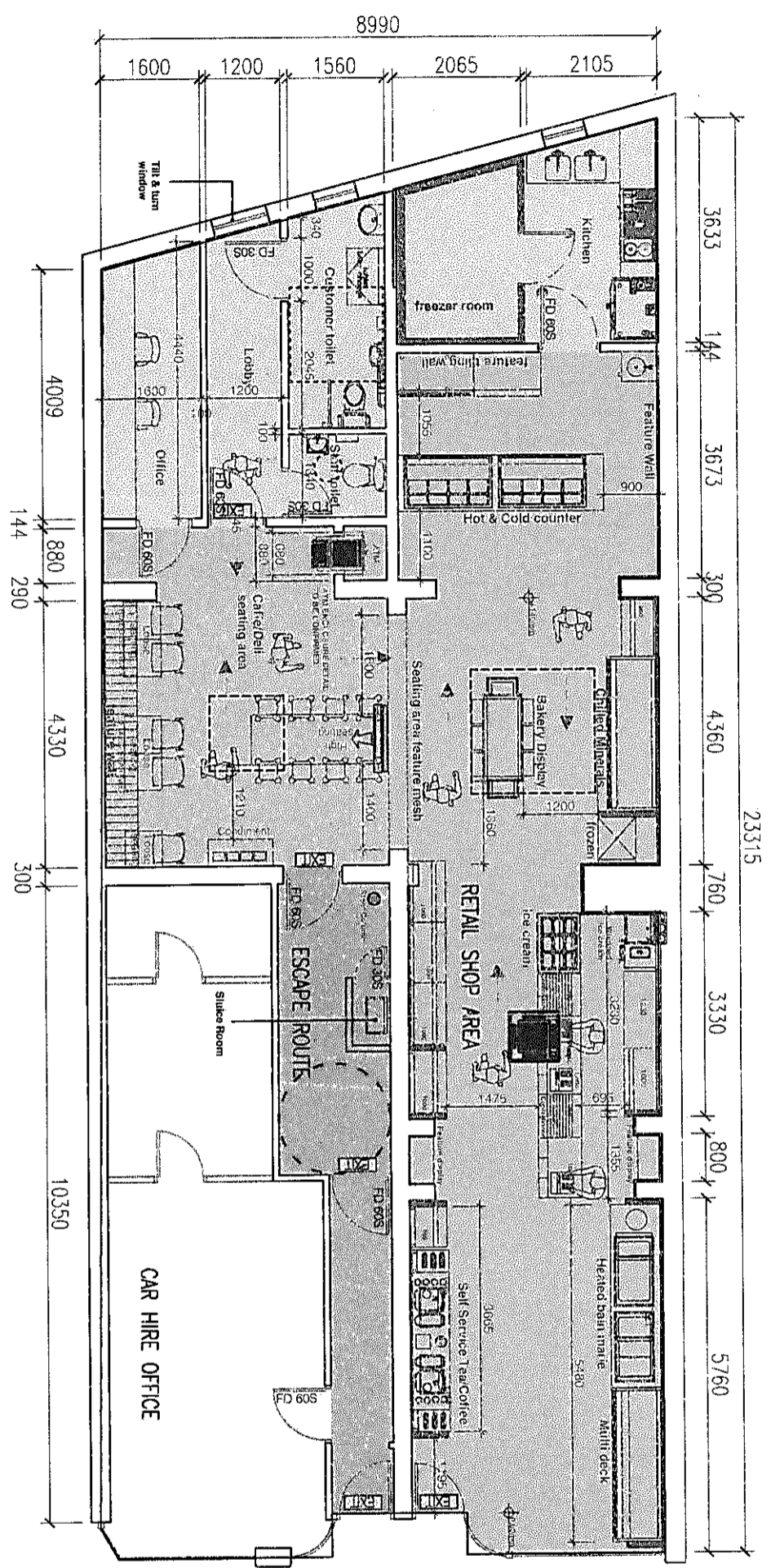
Client: Mr Wang

Scale: 1:100 @ A3

Project: Gala Shop  
 47A&B McCurtain Street,  
 Cork City

Description: Proposed Floor Plan - Gala Shop

Drawing Number: E-13-01-03



**PROPOSED GALA SHOP - FLOOR PLAN**  
 Scale 1:100

**PABIA Consulting Ltd**

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Dangerous Substances Act Consultancy

**Note:**

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**Revisions**

No.	Date	Description
-	20.08.18	Issued for exemption

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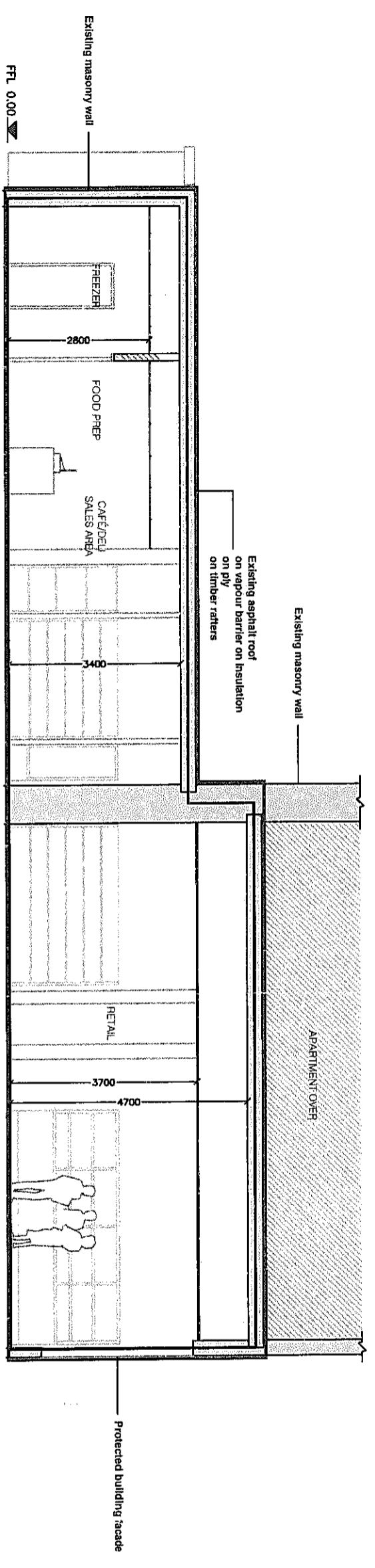
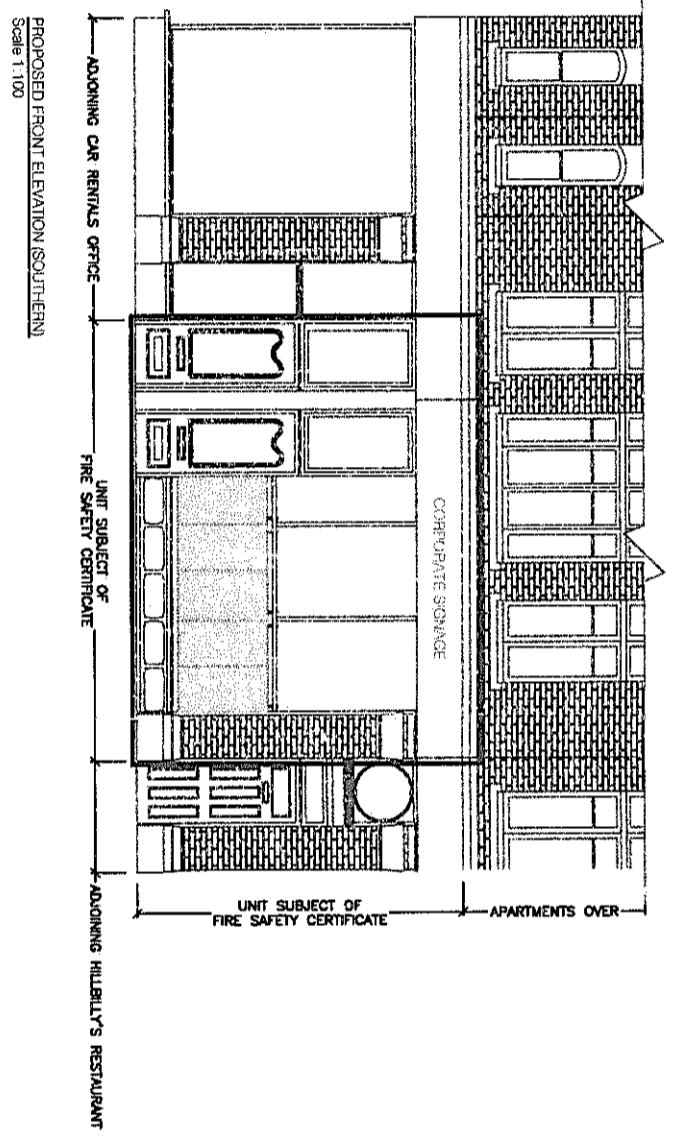
Client: Mr Honglun Wang

Scale: 1:100 @ A3

Project: Gala Shop  
47A&B McCurtain Street,  
Cork City

Description: Proposed Shop Unit Front Elevation and Section

Drawing Number: E-13-01-04



COMPARTMENT