

# Comhairle Cathrach Chorcaí Cork City Council

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

Valero Marketing Ireland Limited  
c/o David Mulcahy  
David Mulcahy Planning Consultants Ltd.  
67 Old Mill Race  
Athgarvan  
Newbridge  
Co. Kildare

14/02/2025

**RE: Section 5 Declaration R908/24 Texoil, Link Road, Ballincollig,  
Co. Cork, P31WY65**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 23<sup>rd</sup> December 2024, I wish to advise as follows:

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

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000, as amended, and**
- (b) previous determinations under An Bord Pleanála referrals in particular RL 3489**

**and has concluded that:**

**the replacement of an underground interceptor tank could not be considered as being within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as the new tank is a new structure and is to be located in a different location to the tank which was removed and cannot therefore be considered as 'works for the maintenance, improvement or other alteration of a structure.'**

**Therefore, the Planning Authority in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Planning and Development Act (as amended), hereby decides that:**



**We are Cork.**

**The replacement of an underground interceptor tank which forms part of the wider drainage infrastructure network, with a new interceptor tank at Texoil, Link Road Ballincollig, Cork**

**'is development and is not exempted development'.**

It is considered that *the specific question for which a declaration is sought* **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT** at Texoil, Link Road, Ballincollig, Co. Cork, P31WY65

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, 14<sup>TH</sup> February, 2025.

Is mise le meas,



**David Foley**  
**Development Management Section**  
**Planning & Integrated Development**  
**Cork City Council**

**Description:** Replacement of an underground interceptor tank which forms part of the wider drainage infrastructure network, with a new interceptor tank.  
**Applicant:** Valero Marketing Ireland Limited.  
**Location:** Texoil, Link Road, Ballincollig Cork.  
**Received:** 23.12.2025

#### PURPOSE OF REPORT

This report relates to a request for a declaration under Section 5(1) of the Planning Act ("Request for a Declaration) regarding whether the replacement of existing underground tank installation is or is not exempted development in terms of the meaning assigned to "development" in the Planning and Development Act, 2000 (as amended).

#### DESCRIPTION OF SITE

The subject site is a former petrol station and fuel depot site located on Leo Murphy Road – a relief road linking the Kilmoney Link Road and Main St. Ballincollig. An apartment/duplex scheme is nearing completion on a site to the immediate north of this site.

#### THE QUESTION

As per the Request for Declaration the question posed to the Planning Authority is as follows:

*'Whether the replacement of an underground interceptor tank which forms part of a wider drainage infrastructure network, with a new underground interceptor tank is or is not development and is or is not exempted development'.*

#### STATUTORY PROVISIONS

The exemption status of the subject works and use is appropriately assessed by the following interpretations and provisions:

- Section 2(1) of the Act:

"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, except where the context otherwise requires, "development" means—  
(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or  
(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).'
- Section 4(1)(h) establishes that '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) of the Act provides that the Minister may make regulations that provide for exempted development.
- Article 6(1) of the Planning and Development Regulations, ("the Regulations") establishes that, subject to other specified conditions and limitations, classes of development specified in Schedule 2, Part 1 of the Regulations constitute exempted development.

#### **Restrictions on exemption**

- Article 9(1)(a)(i)  
'Development to which article 6 relates shall not be exempted development for the purposes of the Act 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'.

#### **PLANNING HISTORY**

17/6910: Permission granted by Cork County Council (former administrative area) for the following:

- Demolition of all existing structures including forecourt canopy
- Construction of a new single storey amenity building of 490 sq.m. comprising of a retail store of 100 sq.m, seating area coffee offer, hot food deli, ancillary food preparation, storage, staff, plant and toilet areas,
- Erection of replacement forecourt canopy,
- Installation of replacement underground fuel tanks,
- Relocation of existing forecourt pump islands,
- Relocation of existing monolith signage,
- Revised car parking and services areas,

- New front boundary walls and all associated site, drainage, boundary, landscaping and development works.

Detailed conditions in relation to drainage and interceptors were attached to this grant of permission which has not been enacted (date of final grant 30.08.2018 - Permission was not enacted and has expired).

16/7070: Extension of duration (5 years) granted on planning permission 11/5691 (permission ceased to have effect on 26.10.2021).

11/5691: Permission granted for (1) Alterations to existing entrance and construction of new entrance to create a one-way traffic flow system to the facility and (2) Other ancillary works to facilitate the new entrance including removal of front boundary fence, trees and hedging, relocating jet wash pad and new car parking spaces.

#### RELEVANT AN BORD PLEANALA REFERRALS:

**RL2211:** The installation of storage tanks and drumming off installation at Carbon Chemicals Group, Raheens East, Ringaskiddy, Co. Cork.

Decision: *'is development and is not exempted development'.*

**RL2340:** The provision of a septic tank at Ballinacarrow, Mullingar, Co. Westmeath.

Decision: *'is development and is not exempted development'.*

**RL2850:** The removal of underground fuel storage tanks and the installation of two underground fuel storage tanks at Woodstock Service Station, Athy, Co. Kildare.

Decision: *'is exempted development'.*

**RL3069:** The removal of oil tanks to be replaced with larger or new fuel tanks at Marmullane, Pembroke, Passage West. Co. Cork.

Decision: *'is development and is exempted development'.*

**RL3233:** The replacement of 4 no. underground fuel storage tanks (86,000 litres) with 4 no. underground fuel storage tanks (160,000 litres) at Chawke's Service Station, Castletroy, Co. Limerick.

Decision: *'Is development and is exempted development'.*

**RL3489:** The installation of 2 underground fuel storage tanks of 40,000l capacity each and the decommissioning of an existing 28,000l tank at an existing filling station at Ballyraine, Letterkenny, County Donegal.

Decision: *'is development and is not exempted development'.*

#### ASSESSMENT

Assessment under Section 5(1) of the Act is a two-part process. Firstly, it must be determined whether the works in question constitute development. Secondly, it must be determined whether the works constitute exempted development or not.

I consider that the replacement of an underground interceptor tank with a new interceptor tank constitutes "development," having regard to:

- the definition of development set out in Section 3(1) of the Act (which includes “the carrying out of any works...under land”)
- the definition of “works” as set out in Section 2(1) of the Act (which includes any act of construction or excavation).

I note that the installation of an underground tank would have no material visual impact on the premises.

I also note the aforementioned decisions on several comparable Section 5 Referrals to An Bord Pleanála - in particular RL3489 wherein the Bord did not accept the Inspector's recommendation that the development was 'exempted development' and explained that decision as follows:

*'in deciding not to accept the Inspector's recommendation that the development proposed was exempt development, the board considered that the fact that the new tanks were to be located in a different location to the tanks which they were replacing meant that the proposal was fundamentally different from previous determinations of the Board referred to on the file, and that the proposal did not come within the scope of S4(1)(h) of the Act.'*

The Bord concluded that the development could not be considered as being within the scope of Section 4 (1)(h) of the Act as the new tanks were to be located in a different location to the tank which was being de-commissioned and the existing tank was not being replaced but being left in situ albeit that it is being taken out of use, and could not therefore be considered as works for the maintenance, improvement or other alteration of a structure.

The Planning Report submitted with this current application states as follows:

*'In December 2024 an underground interceptor tank (7 sqm.) was removed from a location near the northern boundary of the site. This underground interceptor tank formed part of the underground storm drainage network system.'*

*The proposed replacement underground interceptor tank (7sq.m.) will be located approximately 10m away from the location of the underground interceptor tank that was removed and will be connected to the same underground storm drainage network system.'*

*The replacement interceptor will be the same specification as that which was removed – 10,000l Forecourt separator with alarm.'*

The applicant agent states that *'the replacement interceptor can reasonably be described as maintenance, improvement (as more high spec replacement) or alteration of an existing structure – the structure being the established underground drainage network.'* I do not agree with same in that the structure in this case is a new structure – the interceptor tank - to which no exemption applies. It appears to be the case that the interceptor is to be relocated to the rear portion of the site to serve that development (rather than the petrol station element) thereby effectively sub-dividing the site/planning unit.

As the proposed interceptor tank is in this instance a new structure and is to be located in a new location to the old structure which has been removed from the site, the proposed development cannot therefore be considered under S.4.1(h) of the Act i.e. works relating to *'the maintenance, improvement or other alteration of any structure.'*

**RECOMMENDATION**

In considering this referral, the Planning Authority has had regard to:

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000, as amended, and
- (b) previous determinations under An Bord Pleanála referrals in particular RL 3489

and has concluded that:

the replacement of an underground interceptor tank could not be considered as being within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as the new tank is a new structure and is to be located in a different location to the tank which was removed and cannot therefore be considered as *'works for the maintenance, improvement or other alteration of a structure.'*

Therefore, the Planning Authority in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Planning and Development Act (as amended), hereby decides that:

The replacement of an underground interceptor tank which forms part of the wider drainage infrastructure network, with a new interceptor tank at Texoil, Link Road Ballincollig, Cork

*'is development and is not exempted development'.*



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Evelyn Mitchell,  
Senior Executive Planner.  
12/02/2025

**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](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924029  
Lionra/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. NAME OF PERSON MAKING THE REQUEST**

Valero Marketing Ireland Limited

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

~~Kilck Road, Block B, Liffey Valley Office Campus, Quarryvale Dublin 22, D22 X0T3~~  
Texoil, Link Road, Ballincollig, Co. Cork P31 WY65

**3. 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.*

Refer to the Planning Statement attached.

Whether the replacement of an underground interceptor tank which forms part of a wider drainage infrastructure network, with a new underground interceptor tank at Texoil, Link Road, Co. Cork, P31 WY65 is or is not development and is or is not exempted development.

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**  
(Use additional sheets if required).

**CORK CITY COUNCIL**  
**PLANNING & DEVELOPMENT**

23 DEC 2024

**DEVELOPMENT MANAGEMENT**



4. Are you aware of any enforcement proceedings connected to this site?  
If so please supply details:

NO

5. Is this a Protected Structure or within the curtilage of a Protected Structure? ☐

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? ☐

6. Was there previous relevant planning application/s on this site? ☐  
If so please supply details:

Refer to planning statement

#### 7. 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	7sq.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 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:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)

#### 7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name of the owner if available		

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

Signature:

James Twomey

Date:

19<sup>th</sup> December 2024

#### **ADVISORY NOTES:**

The application must be accompanied by the required fee of €80. Payment may be made at the Cork City Council cash desk, by cheque, by telephone with a credit/debit card, or by electronic fund transfer.

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.**

Please email [planning@corkcity.ie](mailto:planning@corkcity.ie) with any queries.

- 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**

*"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protection policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr/>.*

*We request that you read these as they contain important information about how we process personal data.*

1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-

**\* NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED**

- (a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,
  - (b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,
  - (c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,
  - (d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,
  - (e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,
  - (f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,
  - (g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,
  - (h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,
  - (i) plans and drawings shall indicate the name and address of the person by whom they were prepared.
2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.
  3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.

<b>DM</b>	<b>DAVID MULCAHY</b>
	<b>PLANNING CONSULTANTS LTD</b>
	67 The Old Mill Race, Athgarvan, Co. Kildare
	PH: 045 4050307 E-mail: <a href="mailto:info@planningconsultant.ie">info@planningconsultant.ie</a> <a href="http://www.planningconsultant.ie">www.planningconsultant.ie</a>
Company No: 493 133 Directors: D. Mulcahy & M. Mulcahy	

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

20<sup>th</sup> December 2024

**Re: Section 5 Application for replacement interceptor at Ballingcollig, Cork.**

Dear Sir/Madam,

Please find enclosed a section 5 planning application which includes

- Application Form
- Planning Report x 2
- Site Location Map x 2
- Site Layout Plan x 2
- Site Layout Comparison Plan x 2

We also enclose the fee of €80.

Please acknowledge receipt of this application in writing and direct all future correspondence to this office.

Signed:



David Mulcahy  
BA (Mod. Natural Sciences), MRUP, MSc. Urban Design, MIPI, MRTPI  
**David Mulcahy Planning Consultants Ltd**  
**CHARTERED PLANNING CONSULTANTS**

**CORK CITY COUNCIL**  
**PLANNING & DEVELOPMENT**

**23 DEC 2024**

Member of the Irish Planning Institute

**DEVELOPMENT MANAGEMENT**

**DM** **DAVID MULCAHY  
PLANNING CONSULTANTS LTD**  
67 The Old Mill Race, Athgarvan, Co. Kildare  
PH: 045 405030/086 350 44 71  
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Company No: 493 133 Directors: D. Mulcahy & M. Mulcahy



## **PLANNING REPORT**

TO SUPPORT SECTION 5  
APPLICATION FOR

### **REPLACEMENT OF INTERCEPTOR TANK**

AT

**TEXOIL, LINK ROAD, BALLINCOLLIG,  
CO. CORK, P31 WY65**

Client: Valero Marketing Ireland Limited

19<sup>th</sup> December 2024

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## 1.0 INTRODUCTION

David Mulcahy Planning Consultants Ltd have been instructed by **Valero Marketing Ireland Limited** to prepare a planning report to support a section 5 application in relation to replacement of an interceptor tank at Texoil, Link Road, Ballincollig, Co. Cork, P31 WY65

A declaration is sought under Section 5 of the Planning and Development Act 2000 (as amended) from Cork County Council to establish:

*"Whether the replacement of an underground interceptor tank which forms part of a wider drainage infrastructure network, with a new underground interceptor tank at Texoil, Link Road, Ballincollig, Co. Cork, P31 WY65 is or is not development and is or is not exempted development".*

This report will clearly demonstrate that the proposed replacement of underground interceptor tank is development and is exempted development.

All bold and underlined italics are author's own.

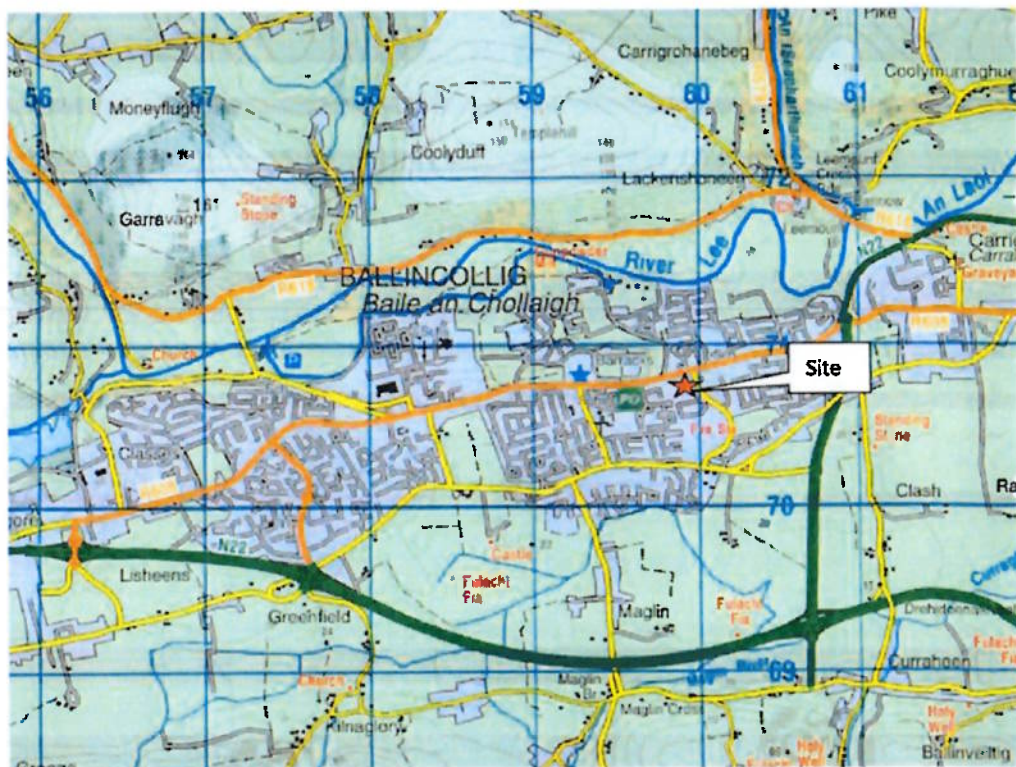


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## 2.0 SITE LOCATION & DESCRIPTION

### 2.1 Site Location

The subject site is located on the west side of the Leo Murphy Link Road in Ballincollig, Cork - see. Fig No.1 below.



**Fig No.1:** Site Location Map (source: Myplan.ie - OSI Licence No.EN 0080915).

### 2.2 Site Description

The subject site currently contains a vacant filling station with a fuel depot located to the rear. The Fuel Depot is temporarily closed but will reopen once the interceptor is replaced.



**Fig No.2:** Location of site (source: Myplan.ie - OSI Licence No.EN 0080915).



**Fig No.2a:** Satellite image of the site – Google Maps. Approximate location of tank shown.



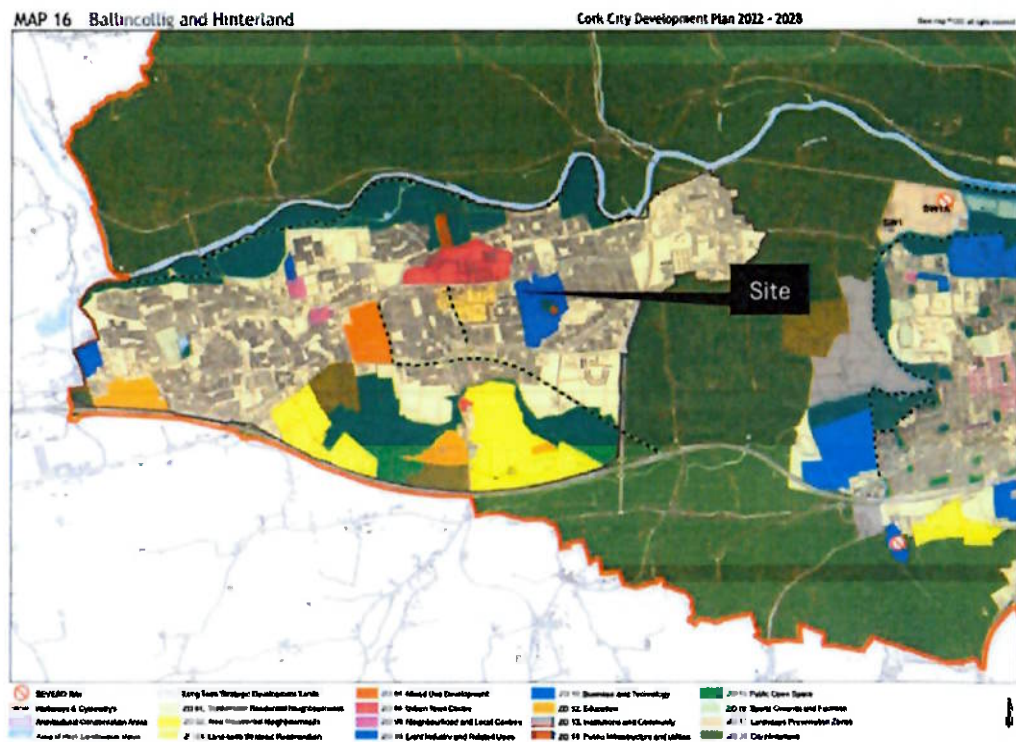


**Fig No.2b:** View of site from public road (source: Google Street View).

### 3.0 PLANNING CONTEXT

#### 3.1 Cork County Development Plan 2022-28

The subject site is zoned ZO.09 Light Industry & Related Uses.



**Fig No.3** Zoning objective for the site under the Cork County Development Plan 2022-28.

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## 4.0 PLANNING HISTORY

### 4.1 Subject Site

There is a planning history relating to the subject site.

17/6833 – incomplete application

Reference	17/6910
Applicant Name	SIRIO RETAIL OPERATIONS LIMITED
Application Type	PERMISSION
Description	(i) Demolition of all existing structures including forecourt canopy; (ii) construction of new single storey amenity building of 490 sq.m comprising of a convenience retail store of 100 sq.m, seating area, coffee offer, hot food deli, ancillary food preparation, storage, staff, plant and toilet areas; (iii) erection of replacement forecourt canopy; (iv) installation of replacement underground fuel tanks; (v) relocation of existing forecourt pump islands; (vi) relocation of existing monolith signage; (vii) revised car parking and services areas; (viii) new front boundary walls, and (ix) all associated site, drainage, boundary, landscaping and development works.
Address	Celtic Fuels Depot Ballincollig Industrial Estate, Link Road Poulavone Carrigrohane, Ballincollig Co.Cork
Decision	CONDITIONAL
Grant Date	30/8/2018

Reference	167070
Applicant Name	TEDCASTLES OIL PRODUCTS (T/A TOP OIL) SIRIO RETAIL OPERATIONS LIMITED
Applicant	Top Oil, Promenade Road, Dublin 3
Application Type	EXTENSION OF DURATION Planning Reg. No. 11/5691
Decision Date	27/1/2017
Decision	Granted

14/5947 - withdrawn

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11/5691

Applicant

TEXOIL LIMITED

Address

Alexandra Road, Dublin Port, Dublin 1

Application

PERMISSION

Description

1. Alterations to existing entrance and construction of new entrance to create a one-way traffic flow system to the facility.

2. Other ancillary works to facilitate the new entrance including removal of front boundary fence, trees and hedging, relocating jet wash pad and new car parking spaces

Address

Celtic fuels, Ballincollig Industrial Estate, Poulavone Carrigrohane

Decision

CONDITIONAL

Grant Date

27/10/2011

## **5.0 DESCRIPTION**

### **5.1 Introduction**

In December 2024 an underground interceptor tank (7sq.m) was removed from a location near the northern boundary of the site. This underground interceptor tank formed part of the underground storm drainage network system.

The proposed replacement underground interceptor tank (7sq.m) will be located approximately 10m away from the location of the underground interceptor tank that was removed and will be connected to the same underground storm drainage network system.

The replacement interceptor will be same specification as that which was removed - 10,000l Forecourt Separator with alarm.

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## **6.0 RELEVANT LEGISLATION**

### **6.1 Development**

Section 3(1) of the Planning and Development Act, 2000 definitions:

*'development' is "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".*

*"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"*

*"works" includes "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal".*

### **6.2 Section 4 (1) (h) of the PDA,2000**

*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.*

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## **7.0 ESTABLISHED PRECEDENT**

### **7.1 Introduction**

There is no precedent we can find for an underground interceptor tank, but the following precedents relating to underground fuel storage tanks are considered relevant.

### **7.2 Woodstock Service Station, Woodstock Street, Athy, County Kildare: ABP Ref: 35.RL.2850**

Questions came before the Board as to whether the renovation of a service station to include:

1. **the removal of underground fuel storage tanks (20,000 litres) and the installation of two underground fuel storage tanks (30,000 litres);**
  2. the construction of a new drainage layout and services duct layout;
  3. the erection of four number "Amber" signs and droplet logo signs on the stanchions of the canopy structure;
  4. the erection of new side cladding and three number "Amber" signs and droplet logos on the canopy structure; and
  5. the erection of new cladding and the new logo "Diesel", "Petrol", "Costcutter" "Hotfood/Deli" and "Fresh Coffee" on the roadside double pole ID sign;
- at Woodstock Service Station, Woodstock Street, Athy, County Kildare, are or are not exempted development:

An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) section 4 of the Planning and Development Act 2000, as amended,
- (b) articles 6, 9 and Part 2 of Schedule 2 to the Planning and Development Regulations 2001, and

- 
- (c) the planning history of the site.

An Bord Pleanála concluded, inter alia, that -

- (a) The removal of underground fuel storage tanks (20,000 litres) and the installation of two underground fuel storage tanks (30,000 litres) of limited scale, located underground, does not result in intensification of the site, does not raise new planning issues and comes within the scope of section **4(1)(h) of the Planning and Development Act, 2000;**

Therefore An Bord Pleanála, decided that the said renovation of a service station at Woodstock Service Station, Woodstock Street, Athy, County Kildare is **exempted development.**

## **7.2 Passage West, County Cork: An Bord Pleanála Reference Number: 04.RL.3069**

A question arose as to whether the **removal of two oil tanks of 2,500 litres and 3,000 litres capacity with their replacement with a 5,000 litre tank** at the site of an established fuel depot business at Marmullane, Pembroke, Passage West, County Cork is or is not development or is or is not exempted development.

An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) articles 5, 6, and 9 of the Planning and Development Regulations, 2001, as amended, and
- (c) Class 21 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001:

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An Bord Pleanála has concluded that -

- (a) the removal of two fuel tanks and their replacement with a single tank does not result in intensification of use of the site,
- (b) does not result in a material alteration of the external appearance of the site, and
- (c) does not raise new planning issues and comes **within the scope of section 4(1)(h) of the Planning and Development Act, 2000:**

An Bord Pleanála decided that the said removal of two oil tanks and their replacement with a larger tank at the site of an established fuel depot business at Marmullane, Pembroke, Passage West, Co. Cork is development and is **exempted development**.

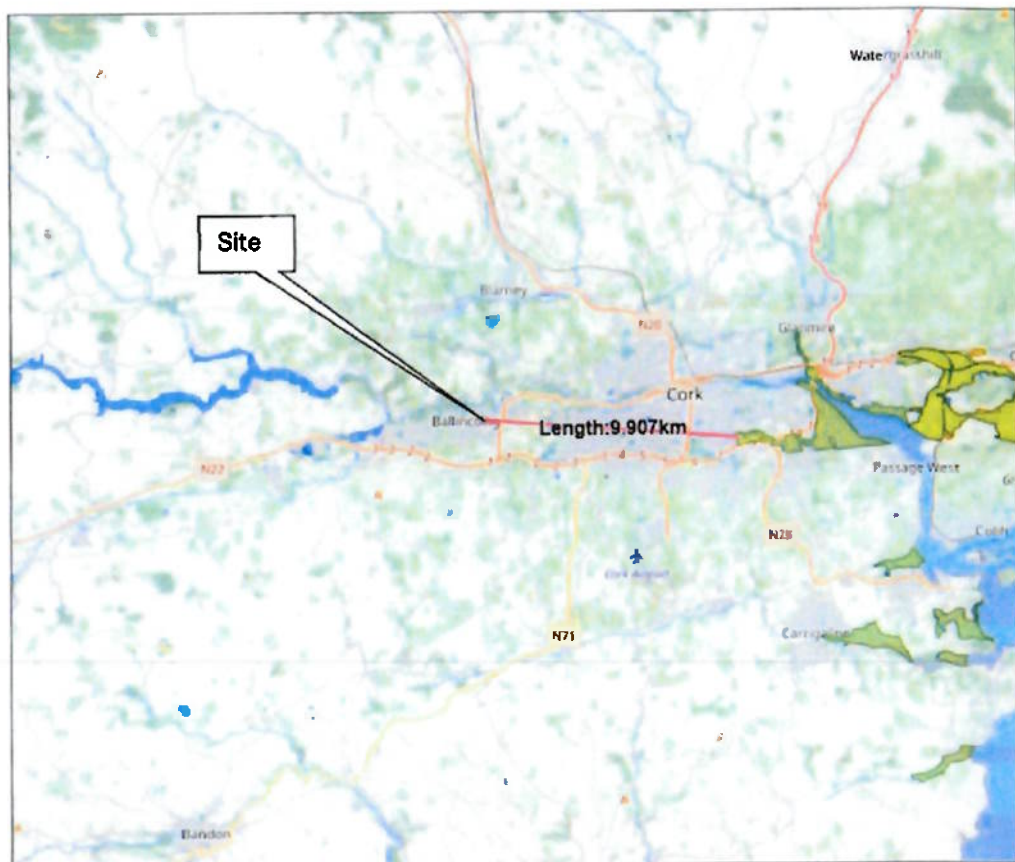
## **8.0 APPROPRIATE ASSESSMENT SCREENING**

### **8.1 Requirement for Appropriate Assessment Screening**

It is noted that Section 177U (9) of the PDA, 2000 (as amended) states that "*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.]*".

The subject site is not situated within or adjacent to any Natura 2000 site. The closest Natura 2000 site Cork Harbour SPA, Site Code 004030 is situated over **9km** from the site (see diagram below) and there is no direct pathway to same. It is submitted therefore that there is no material risk to protected habitats in any Natura 2000 site.





**Fig. No.4** Location of site relative to Natura 2000 sites (source: EPA Mapping).



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## 9.0 EXEMPTION

### 9.1 Introduction

The question before the Council is *"Whether the replacement of an underground interceptor tank, which forms part of a wider drainage infrastructure network, with a new underground interceptor tank at Texoil, Link Road, Ballincollig, Co. Cork, P31 WY65 is or is not development and is or is not exempted development"*.

#### Works

There is no dispute that the removal and installation of the interceptoryor constitutes works; the key question is are they exempted development?

#### Exempt Development

Under Section 4 1 h the key tests are as follows:

1. *Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure,*

The replacement interceptor can reasonably be described as maintenance, improvement (as more high spec replacement) or alteration of an existing structure – the structure being the established underground drainage network.

2. *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.*

The replacement tank will be located underground and will not be visible and therefore will not affect the character of the drainage network (also underground) or any neighbouring structures.

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Whilst it is fully accepted that every case is assessed on its own merits, due regard has to be had to the An Bord Pleanála decision at Woodstock in Athy and Passage West, County Cork. In both those cases the removal of underground fuel storage tanks and the installation of replacement storage tanks was not deemed to require planning permission by virtue of s.4 (1) (h) of the PDA, 2000, as amended.

## 10.0 CONCLUSION

The question before the Council is:

*"Whether the replacement of an underground interceptor tank which forms part of a wider drainage infrastructure network with a new underground interceptor tank at Texoil, Link Road, Ballincollig, Co. Cork, P31 WY65 is or is not development and is or is not exempted development".*

In December 2024 an underground interceptor tank (7sq.m) which formed part of the underground storm drainage network system was removed from the subject site in Ballincollig. The applicant now seeks a declaration as to whether the installation of a replacement underground interceptor tank of the same size at a slightly different location (10m) but connected to the same drainage infrastructure network is exempted development.

This report has demonstrated that the removal and installation of the interceptor is exempted development under s.4 (1) (h) of the PDA, 2000.

There is established precedent for similar type development by An Bord Pleanála.

The Council are therefore requested to confirm the s.5 declaration that the works are **DEVELOPMENT AND ARE EXEMPTED DEVELOPMENT**.

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## **SEPARATE ENCLOSURES**

**No.1** Drawings prepared by JA Gorman Consulting Engineers.

- i. OS Map with site outlined in red
- ii. Existing Site Plan and Proposed Plan
- iii. Proposed Site Plan showing old and new interceptor

# Planning Pack Map



# Tailte Éireann

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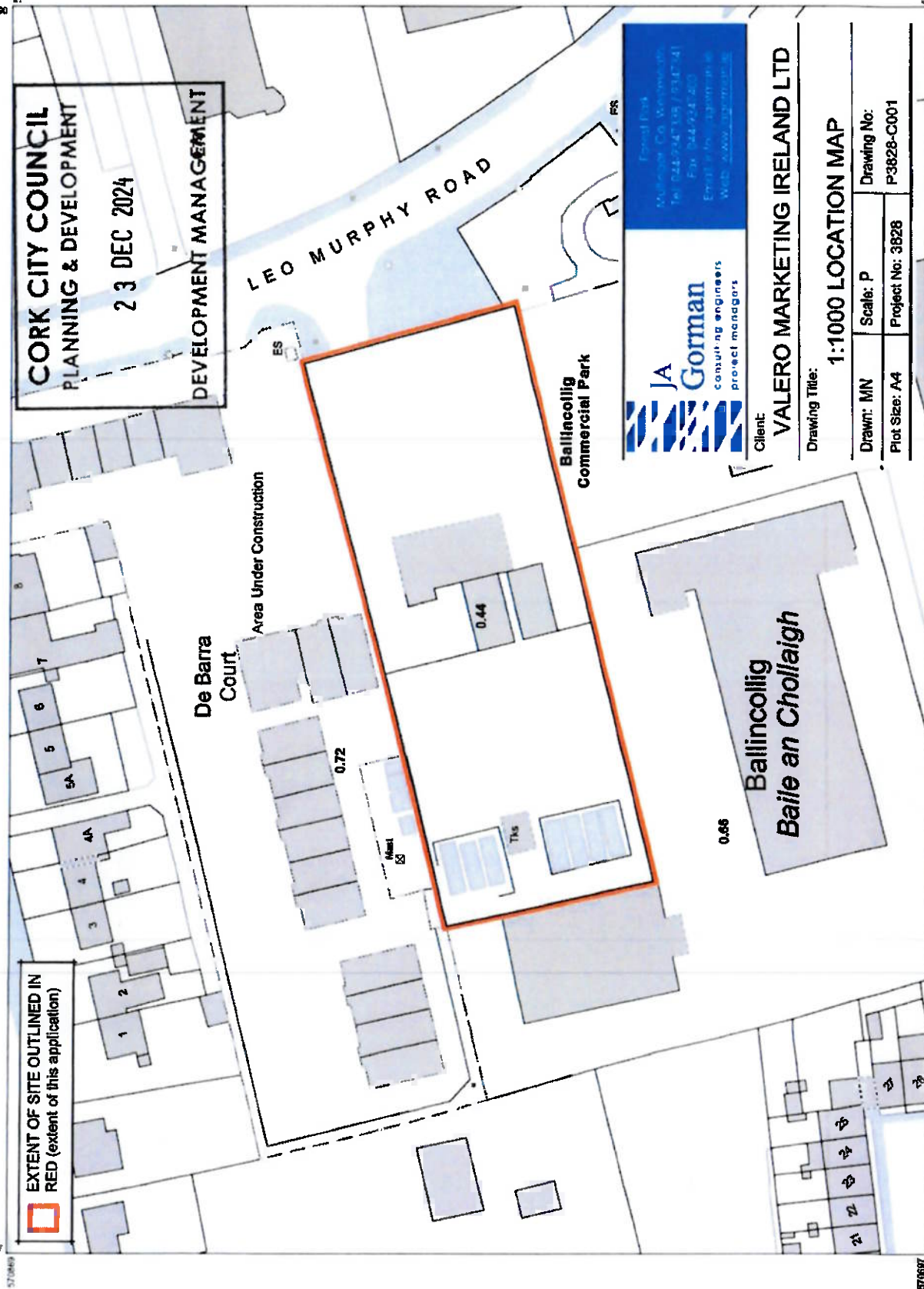
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