



Comhairle Cathrach Chorcaí Cork City Council

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

John Butt MRIAI
Brian O’Kennedy Associates
Shannon House
Church Road
Douglas
Cork

01/10/19

**RE: Section 5 Declaration R543/19 Unit 1 Village Green,
Church Rd, Douglas**

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
- Articles 6, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the change of use of the property from retail use to use as a ‘Skin and Laser Clinic’ at Unit 1, Village Green, Church Road, Douglas, Cork **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**

Yours faithfully,

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



We are Cork.

PLANNER'S REPORT

Ref. R 543/19

Cork City Council

Development Management
Community, Culture &
Placemaking Directorate

Application type	SECTION 5 DECLARATION
Question	<i>Whether the change of use of the property from retail use to use as a 'Skin and Laser Clinic' is development or is exempted development.</i>
Location	Unit 1, Village Green, Church Road, Douglas, Cork
Applicant	Bartlomiej Wojtasiak (leasee) c/o John Butt of Brian O'Kennedy & Associates (agent)
Date	24/09/2019
Recommendation	Is development and is not 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 not framed using the phrasing of section 5. The applicant states in the request, "*clarification if use of premises as a 'Skin and Laser Clinic' falls under the same class of use as retail, the class this premises is permitted under*".

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

Whether the change of use of the property from retail use to use as a 'Skin and Laser Clinic' is development or is exempted development.

3. SITE DESCRIPTION

The site unit forms part of the Village Green mixed use block off Church Road in Douglas. It is currently vacant and was previously in use as a newsagents/retail shop. The site is located within the development boundaries for Cork City South Environs as set out in the Carrigaline LAP (2017) and is zoned as "existing built up area." The unit in question is a corner unit situated at the Western end of the block. There is parking available to the front of the overall building serving all of the block units.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the change of use of the premises from retail use to use as a ‘Skin and Laser Clinic’.

5. RELEVANT PLANNING HISTORY

None

Adjoining Properties:

- TP 18/5615 Permission GRANTED at unit 4 for the change of use of an existing retail unit to allow for use as a café, alterations to southern elevation to allow for bin store and associated site works
- TP 15/5119 Permission GRANTED at unit 3 for the change of use from retail to sushi and noodle bar at ground floor and alterations to north elevation with associated bin store to adjacent area and all associated works.
- TP 07/11959 Permission GRANTED on appeal for change of use from off licence store on first floor level to open plan office. The special contribution charged for parking in lieu was appealed under and removed under PL 04.228150.
- TP 07/6742 Permission REFUSED at unit 4 for change of use from off licence to restaurant/take-out facility

6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

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

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) in relation to a protected structure or proposed protected structure, includes—*
 - (i) the interior of the structure,*
 - (ii) the land lying within the curtilage of the structure,*
 - (iii) any other structures lying within that curtilage and their interiors, and*
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).*

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(2)

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

Section 4(3)

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

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

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

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 Exempted Development – Classes of Use

CLASS 1

Use as a shop.

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.

CLASS 8

Use—

- (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),*
- (b) as a crèche,*
- (c) as a day nursery,*
- (d) as a day centre.*

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'. It is clear that the proposal constitutes a 'material change in the use of any structures'. It is clearly therefore 'development' within the meaning of the Act.

CONCLUSION Is development

7.2 Exempted development

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

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

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

Section 4(1)

I do not consider that the proposal comes within the scope of section 4(1) of the Act.

Section 4(2)

In my opinion this proposal comes within the scope of section 4(2) as the works relate to a change of use. The substantive issues of the case are set out below.

The proposed works comprise the following:

"the change of use of the property from retail use to use as a 'Skin and Laser Clinic'"

The current use of the unit is indicated as being a retail use which would be classified as Class 1 - Use as a shop.

The proposed use as a 'Skin and Laser Clinic' would be considered to be classified as being predominantly within the scope of Classes 2(b) and 2(c) - Use for the provision of professional services (other than health or medical services) or any other services (including use as a betting office) where the services are provided principally to visiting members of the public. Therefore it is reasonable to conclude that both uses constitute different classes

of use and therefore the proposed development is not considered to be exempted development.

CONCLUSION

Is not 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,

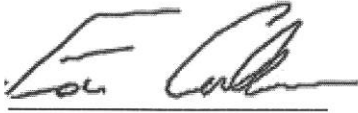
In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and

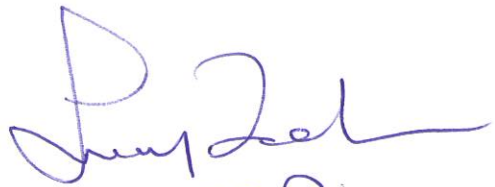
- Articles 6, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the change of use of the property from retail use to use as a 'Skin and Laser Clinic' at Unit 1, Village Green, Church Road, Douglas, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.



Eoin Cullinane
Assistant Planner
24/09/2019



SEP.
24/9/2019.

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
Fón/Tel: 021-4924564/4321
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

Unit 1, Village Green, Church Road, Douglas, 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.

Clarification if use of premises as a 'Skin and Laser Clinic' falls under the same class of use as retail,
the class this premises is permitted under

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Refer to attached letter

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	140sqm
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(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)
Retail	Skin and Laser Care
_____	_____
_____	_____

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Bartlomiej Wojtasiak
Applicants Address	Touch of Beauty 2 Carrols Quay Cork City	
Person/Agent acting on behalf of the Applicant (if any):	Name:	John Butt MRIA
	Address:	Brian O'Kennedy & Associates Engineers + Architects Shannon House Church Road Douglas, Cork City
	Telephone:	021-4899854
	Fax:	
	E-mail address:	johnb@bok.ie
Should all correspondence be sent to the above address? <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	Leasee	
If you are not the legal owner, please state the name and address of the owner if available	John Fitzgerald Church Road Douglas, Cork City	

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

Signature: _____

Date: 16-09-2019 _____

.....

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.

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Planning Pack Map

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PUBLISHED: 27/08/2019
ORDER NO.: 50081017_1

MAP SERIES: 1:1,000
MAP SHEETS: 6428-08

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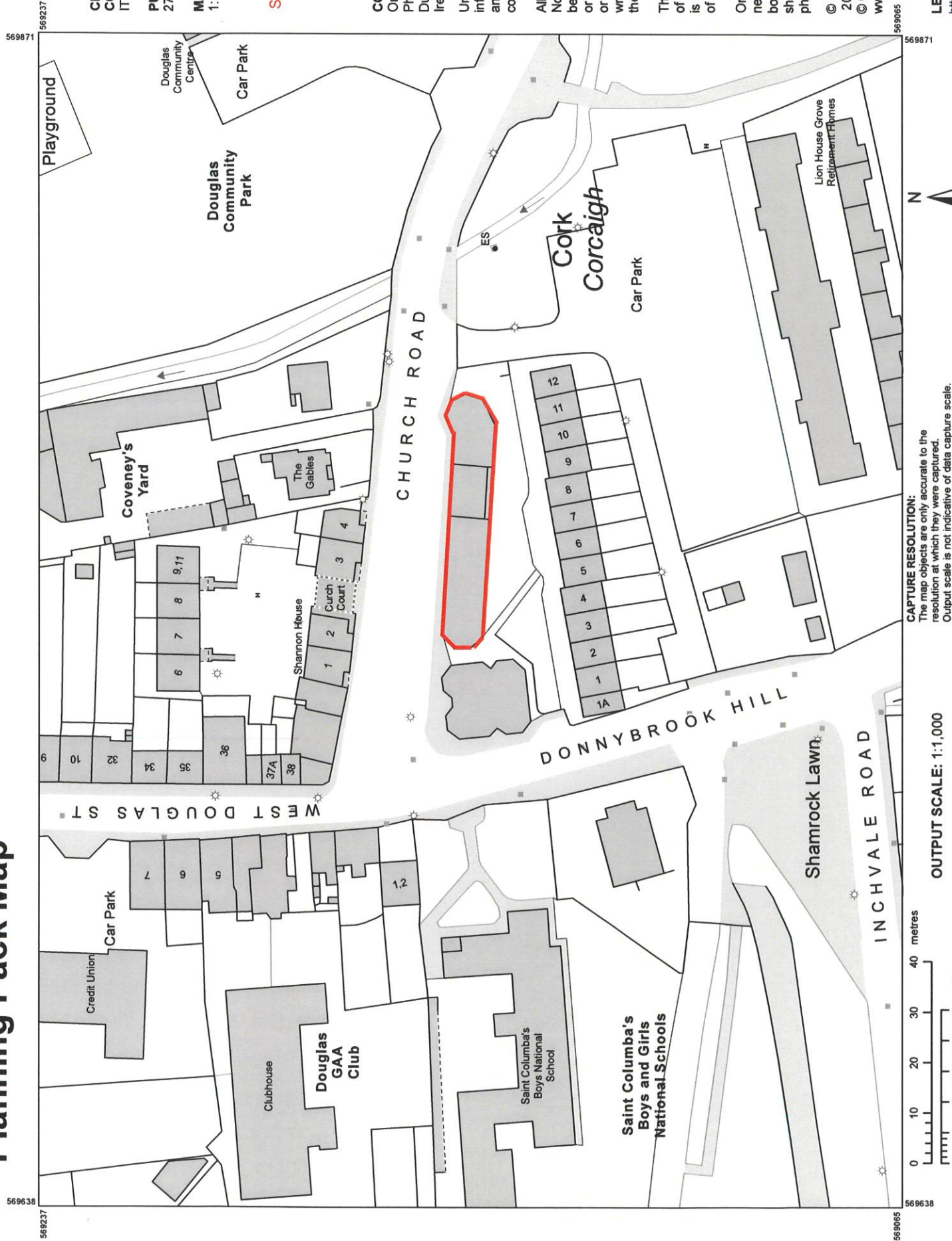
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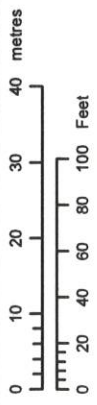
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Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'

OUTPUT SCALE: 1:1,000



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