

Comhairle Cathrach Chorcaí Cork City Council

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

Mr. Kevin Fitzgerald
Lee Road
Carrigrohane
Cork

15th June 2021

RE: R665/21 – Section 5 Declaration
Property: Mount Desert, Lee Road

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise and having regard to —

- Sections 2, 3, 4 and 177U of the Planning and Development Act 2000 (as amended), and
- Articles 6, 8 and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed raising of lands at Mount Dessert, Lee Road, Carrigrohane is **Development** and is **Not Exempted Development** for which appropriate assessment is required.

Yours faithfully,

Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



We are Cork.

PLANNER'S REPORT		Cork City Council Culture, Community and Placemaking
Ref. R665 /21		
Application type	Section 5 Declaration	
Description	<i>See section 2 below</i>	
Location	Mount Desert, Lee Road	
Applicant	Kevin Fitzgerald	
Date	14/06/2021	
Recommendation	<i>Is Development and Is Not 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:

I am applying for a section 5 declaration to carry out the following work on my land at Mount Desert, Lee Rd, Carrigrohane Cork and outlined on the attached map.

Scope of works: Raise two areas of land by 0.95 mts as outline on the attached map together with survey of existing levels. I also enclose photographs indicting the areas where the proposed work is to be carried out and how my hand is impacted. The revision in 2010 (approx. date) of how the Inniscarra Dam operates has resulted in the river flowing at full bore for far greater and longer periods prior to this date. This has resulted in water lodging on my land a lot more frequently at the locations indicated which as resulting in the existing levels of my land subsiding. The raising of the land by 0.95 mts will eliminate this issue and help to restore the land to its original levels. The land has a gravel sub base which compounds the issue. This was established during a county wide hydrology survey some years ago. The material to be used to facilitate the work will come from my land on the opposite side of the road. This excavation was necessary to facilitate the building of a house for my son Bryan and further excavation now to build a house for my wife and myself Planning references 16/07114 and 18/05297. I own the land on both sides of the road as indicated on the enclosed map.

3. Site Description

The property in question is low lying field located on the southern side of the Lee Road, between the road and the River Lee.

4. Planning History

There are no planning applications associated with the subject site. The Section 5 Application Form indicates that there are two permissions associated with lands in the same ownership on the opposite side of the Lee Road. These are as follows:

18/5297	Demolition of an existing single storey detached dwellinghouse and the construction of a new single storey detached dwellinghouse including a new waste water treatment unit, percolation area and all associated site works
Outcome	Granted 27/09/2018
16/7114	The construction of a two storey detached dwelling with split level upper floor including a new site entrance, a waste water treatment unit, percolation area and all associated site works
Outcome	Granted 16/05/2017

I note that neither of the site location maps, submitted with of these planning applications, showed the land that is the subject of this Section 5 application as being within the same ownership / control of the applicants.

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),

The following shall be exempted developments for the purposes of this Act—

(1) – Development consisting of the carrying out of any of the works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced

(Preamble to Land Reclamation Act 1949 – An act to authorise the Minister for Agriculture to carry out land reclamation, field drainage and other works for the improvement of agricultural holdings and to provide for the payment by the occupiers of a contribution towards the cost of those works and for other matters relating to the matters aforesaid.)

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 6

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 8

Works specified in a drainage scheme confirmed by the Minister for Finance under Part II of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995), carried out by, on behalf of, or in partnership with, the Commissioners, with such additions, omissions, variations and deviations or other works incidental thereto, as may be found necessary by the Commissioners or their agent or partner in the course of the works, shall be exempted development.

(B) Works consisting of field drainage for agriculture, other than drainage and/or reclamation of wetlands, shall be exempted development

(C) Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act (a) if the development would –

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

Schedule 2, Part 1

Exempted Development – General – Class 6

~~*(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.*~~

(b) Any works within the curtilage of a house for—

(i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,

(ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.

6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the wake park at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

6.1 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 note that there is a general exemption for landscaping works set out in Class 6 of Part 1 of Schedule 2 in the Regs. This however relates only to lands within the curtilage of the a house, which is not the case for the subject lands.

It also states in section 3(2)(b) that:

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(b) where land becomes used for any of the following purposes—

- (i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,*
- (ii) the storage of caravans or tents, or*
- (iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,*

the use of the land shall be taken as having materially changed.

'Works' is defined in section 2(1) of the Act as *'the carrying out of any works on, in, over, or under land' including '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.'*

I consider that the proposed development, which may include the deposit of builders waste from the demolition of a residence permitted under permission 18/5297, and the raising of the land constitutes development.

6.2 Exempted development

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

The applicant has not put forward any indication of the provisions, of the Act or Regs, they believe exempts the proposed development from the requirement for planning permission. My review of the relevant legislation indicates that certain land improvement works for the purposes of arterial drainage or agriculture are exempt. The subject proposal does not accord with these exemptions.

I note that one of the planning permissions referenced in the application, 18/5297, relates to the demolition of a dwelling. It is not clear whether the fill proposed will include waste from the demolition. If this is the case, then a material change of use may have taken place for which there is no exemption.

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).

I note that there is a hydrological link between the subject site, which is bounded on its southern side by the River Lee, and both the Cork Harbour SPA and the Great Island Channel cSAC.

Please see Screening Report on the next page.

STEP 1				
Description of the project				
(a) File Reference No:		R665/21		
(b) Brief description of the project or plan:		The raising of lands by the importation of materials		
(c) Brief description of site characteristics:		Site is a low lying field on the northern side of the River Lee		
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW		N/A		
(e) Response to consultation		N/A		
STEP 2				
Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives				
European Site (code)	List of Qualifying Interest / Special Conservation Interests	Distance from proposed development (km)(2)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
Cork Harbour SPA (site code 004030)	Little Grebe (<i>Tachybaptus ruficollis</i>) [A004] Great Crested Grebe (<i>Podiceps cristatus</i>) [A005] Cormorant (<i>Phalacrocorax carbo</i>) [A017] Grey Heron (<i>Ardea cinerea</i>) [A028] Shelduck (<i>Tadorna tadorna</i>) [A048] Wigeon (<i>Anas penelope</i>) [A050] Teal (<i>Anas crecca</i>) [A052] Pintail (<i>Anas acuta</i>) [A054] Shoveler (<i>Anas clypeata</i>) [A056] Red-breasted Merganser (<i>Mergus serrator</i>) [A069] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Lapwing (<i>Vanellus vanellus</i>) [A142] Dunlin (<i>Calidris alpina</i>) [A149] Black-tailed Godwit (<i>Limosa limosa</i>) [A156]	9.7km	River Lee – on southern boundary of site	Y

	<p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Common Gull (<i>Larus canus</i>) [A182]</p> <p>Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]</p> <p>Common Tern (<i>Sterna hirundo</i>) [A193]</p> <p>Wetland and Waterbirds [A999]</p>			
Great Island SAC (site code 001058)	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) [1330]</p>	14.1	River Lee – on southern boundary of site	Y
STEP 3 Assessment of Likely Significant Effects				
(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings				
Construction phase e.g. Vegetation clearance / Demolition / Surface water runoff from soil Excavation/infill/ landscaping (including borrow pits) / Dust, noise, vibration / Lighting disturbance / Impact on groundwater/dewatering / Storage of excavated/construction materials / Access to site / Pests		Construction phase in this instance relates to the act of importation of materials onto the site. No detail has been provided regarding the volume of material. No information has been provided regarding the nature of the material, other than the fact that it will come from the site of two permissions one to include the demolition of an existing residence. It is likely that whatever materials are brought to the site will runoff directly into the River Lee and could potentially be carried to the SAC and SPA sites downstream.		
Operational phase e.g. Direct emission to air and water / Surface water runoff containing contaminant or sediment / Lighting disturbance / Noise/vibration / Changes to water/groundwater due to drainage or abstraction / Presence of people, vehicles and activities / Physical presence of structures (e.g. collision risks) / Potential for accidents or incidents		The importation of material will displace water during flood events. The subject site forms part of the flood plain for the River Lee and floods regularly. Changes in the river system have the potential to impact upon the European sites downstream.		
In combination / other		There are no projects or plans in the vicinity of the		

	subject site that would lead to cumulative impacts.	
(b) Describe any likely changes to the European Site		
Examples of the type of changes to give consideration to include: Reduction or fragmentation of habitat area / Disturbance to QI species / Habitat or species fragmentation / Reduction or fragmentation in species density / Changes in key indicators of conservation status value (water or air quality etc.) / Changes to areas of sensitivity or threats to QI / Interference with the key relationships that define the structure or ecological function of the site	The application site is not located adjacent or within a European site, therefore there is no risk of habitat loss or fragmentation or any effects on QI species in-situ. It is not clear if the subject site, a low lying field beside the River Lee, is an ex-situ site for the QI bird species in the Cork Harbour SPA. Further information would be required to establish the ecological significance of the site.	
(c) Are ‘mitigation’ measures necessary to reach a conclusion that likely significant effects can be ruled out at screening? (select as appropriate		
Yes	No mitigation measures have been set out. These would however be necessary, if the materials brought to the site could impact on the status of the European Sites and have the potential to travel downstream by the adjoining river. Further information is required regarding the nature of the materials to be imported. If these are potentially harmful then mitigation measures must be implemented.	
STEP 4 Screening Determination Statement		
The assessment of significance of effects: Describe how the proposed development (alone or in-combination) is/is not likely to have significant effects on European site(s) in view of its conservation objectives		
On the basis of the information submitted, it is not possible to ascertain whether the proposed importation of soil is or is not likely to have significant effects on European sites.		
CONCLUSION:		
	Select Y or N	Recommendation: (delete as appropriate)
(i) It is clear that there is no likelihood of significant effects on an European site	N	The proposal can be screened out – Appropriate assessment not required
(ii) It is uncertain whether the proposal will have a significant effect on a European site	Y	Request further information to complete screening Request NIS Refuse planning permission

(iii) Significant effects are likely	n/a	Request NIS Refuse planning permission
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This screening report has concluded that it is not possible, based on the information provided, to ascertain whether the proposed development would have a significant effect on European sites downstream of the site. As this report has conclude elsewhere that the proposed development is not exempted development it is not appropriate to issue a request for further information.

8. CONCLUSION

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout is development and is not exempted development

9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, 4 and 177U of the Planning and Development Act 2000 (as amended), and
- Articles 6, 8 and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed raising of lands at Mount Dessert, Lee Road, Carrigrohane Is Development and is **Not Exempted Development** for which appropriate assessment is required.



Martina Foley
Executive Planner

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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

R-Phost/E-Mail planning@corkcity.ie
Fón/Tel: 021-4924564/4321
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

Mount Desert, Lee Rd, Carrigrohane, 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.

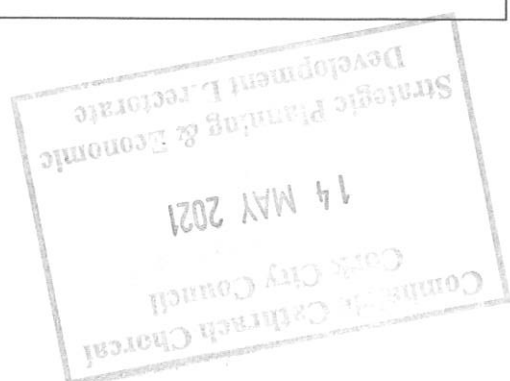
I am applying for a section 5 declaration to carry out the following work on my land at Mount Desert, Lee Rd, Carrigrohane Cork and outlined on the attached map.

Scope of works: Raise two areas of land by 0.95 mts as outlined on the attached map together with survey of existing levels. I also enclose photographs indicating the areas where the proposed work is to be carried out and how my land is impacted. The revision in 2010 (approx. date) of how the Inniscarra Dam operates has resulted in the river flowing at full bore for far greater and longer

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

periods prior to this date. This has resulted in water lodging on my land a lot more frequently at the locations indicated which has resulted in the existing levels of my land subsiding. The raising of the land by 0.95 mts will eliminate this issue and help to restore the land to its original levels. The land has a gravel sub base which compounds the issue. This was established during a county wide hydrology survey some years ago. The material to be used to facilitate the work will come from my land on the opposite side of the road. This excavation was necessary to facilitate the building of a house for my son Bryan and further excavation now to build a house for my wife and myself Planning references 16/07114 and 18/05297. I own the land on both sides of the road as indicated on the enclosed map.



3. Are you aware of any enforcement proceedings connected to this site? NO
 If so please supply details:

4. Is this a Protected Structure or within the curtilage of a Protected Structure? NO

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?

5. Was there previous relevant planning application/s on this site? NO
 If so please supply details:

6. 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		
(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)	
_____	_____	
_____	_____	
_____	_____	


7. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Kevin Fitzgerald	
Applicants Address	Mount Desert Lee Road Carrigrohane Cork		
Person/Agent acting on behalf of the Applicant (if any):	Name:		
	Address:		
	Telephone:		
	Fax:		
	E-mail address:		
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 <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 and address of the owner if available		

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

Signature: 

Date: 13/05/21

ADVISORY NOTES:

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

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

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

- 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

"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.

Planning Pack Map

CENTRE COORDINATES:
 ITM 562431,572283
PUBLISHED: 12/05/2021
ORDER NO.: 50192340_1
MAP SERIES: 1:2,500
MAP SHEETS: 6381-B

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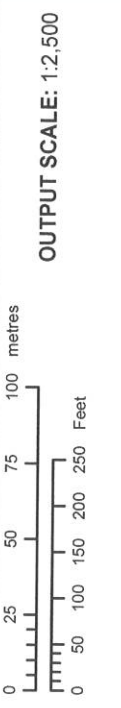
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 Output scale is not indicative of data capture scale.
 Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'



572068

572068



Site Location Map

CENTRE COORDINATES:
 ITM 562431,572283

PUBLISHED: 12/05/2021
ORDER NO.: 50192340_1

MAP SERIES: 6 Inch Raster
 6 Inch Raster
 CK073
 CK074

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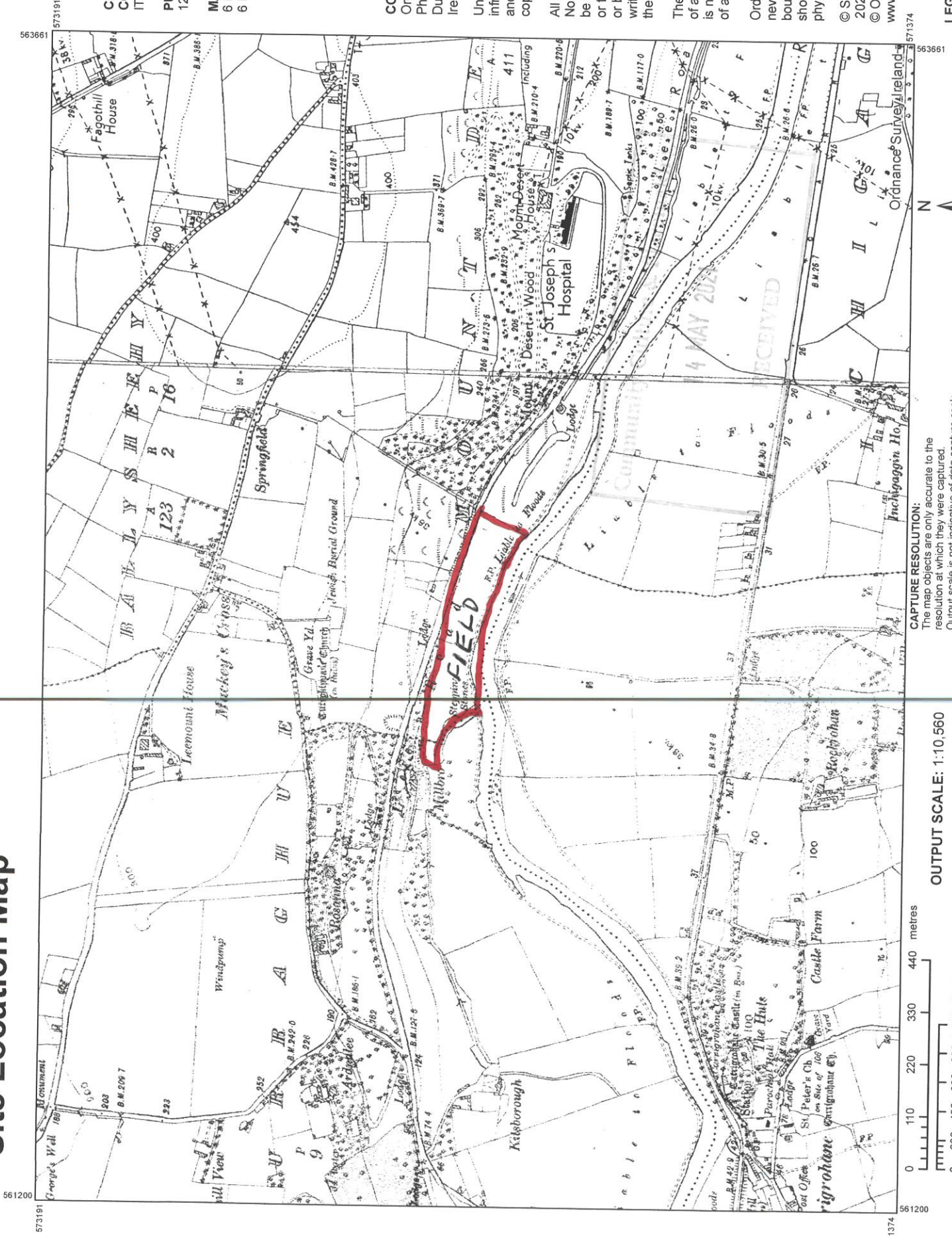
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<http://www.osi.ie>, search 'Capture Resolution'

OUTPUT SCALE: 1:10,560

0 110 220 330 440 metres

0 200 400 600 800 1,000 Feet

571374



