# Comhairle Contae Chorcaí Cork County Council

Veolia Environmental Services Technical Solutions Ltd., c/o Tony Dunlea, C Murphy McCarthy Consulting Engineers Ltd., EastPark House, Marina Commercial Park, Centre Park Road, Cork. T12 P9TP.

Pleanáil agus Forbairt, Halla an Chontae, Bóthar Charraig Ruacháin, Corcaigh T12 R2NC. Fón: (021) 4276891 R-phost: planninginfo@corkcoco.ie Suíomh Gréasáin: www.corkcoco.ie Planning & Development, ., County Hall, Carrigrohane Road, Cork T12 R2NC. Tel (021) 4276891 Email: planninginfo@corkcoco.ie Web: www.corkcoco.ie



28th September 2023

REF:D/277/23LOCATION:Corrin, Fermoy, Co. Cork, P61 FD74.

### RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000 - 2010.

Dear Sir,

On the basis of the information submitted by you on 31<sup>st</sup> August 2023 the Planning Authority, having considered the question whether the provision of 2 no. bunds for storage of bulk storage tanks and 1 no. bund for storage of tank/ equipment within an existing storage yard at **Corrin, Fermoy, Co. Cork** is or is not development and is or is not exempted development has declared that it **is development and is not exempted development**.

#### Reason for Decision

The Planning Authority in considering this referral had particular regard to:

- Sections 2 (1) 3(1), 4 and 5 of the Planning and Development Act (2000, as amended),
- Articles 3, 6, 9 and Schedule 2, Part 1, Class 21 of the Planning and Development Regulations (2001, as amended),
- the conditions attached to Pl. Reg. No. 05/5029, and
- The particulars received by the Planning Authority on 31<sup>st</sup> August 2023.

#### And Whereas Cork County Council has concluded that -

The provision of 2 no. bunds for storage of bulk storage tanks and 1 no. bund for storage of tank/ equipment within an existing storage yard at **Corrin, Fermoy, Co. Cork** constitutes **development that is not exempted development**.





Please note that under Section 5 Subsection 3(a) where a declaration is issued under this section, any person issued with a declaration under subsection 2(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Yours faithfully,

KEVIN O' REGAN, SENIOR EXECUTIVE OFFICER, PLANNING DEPARTMENT.

In order to process your query, it may be necessary for Cork County Council to collect Personal information from you. Such information will be processed in line with our privacy statement which is available to view at <a href="https://www.corkcoco.ie/privacy-statement-cork-county-council">https://www.corkcoco.ie/privacy-statement-cork-county-council</a>

Reference Number	D 277/23
Applicant's Name	Veolia Environmental Services Technical Solutions Ltd. (VESTS)
Section 5 question	Whether the provision of 2 no. bunds for storage of bulk storage tanks and 1 no. bund for storage of tank/ equipment within an existing storage yard is or is not development and is or is not exempted development.
Location	Veolia Environmental Services Technical Solutions Ltd. (VESTS), Corrin, Fermoy, Co. Cork, P61 FD74.

#### Section 5 Request

Murphy McCarthy Consulting Engineers Ltd. on behalf of the applicants [Veolia Environmental Services Technical Solutions Ltd. (VESTS)] are requesting a declaration of exemption in accordance with Section 5 of the Planning and Development Act (2000, as amended), querying whether the provision of 2 no. bunds for storage of bulk storage tanks and 1 no. bund for storage of tank/ equipment within an existing storage yard at Veolia Environmental Services Technical Solutions Ltd. (VESTS), Corrin, Fermoy, Co. Cork is or is not development and is or is not exempted development.

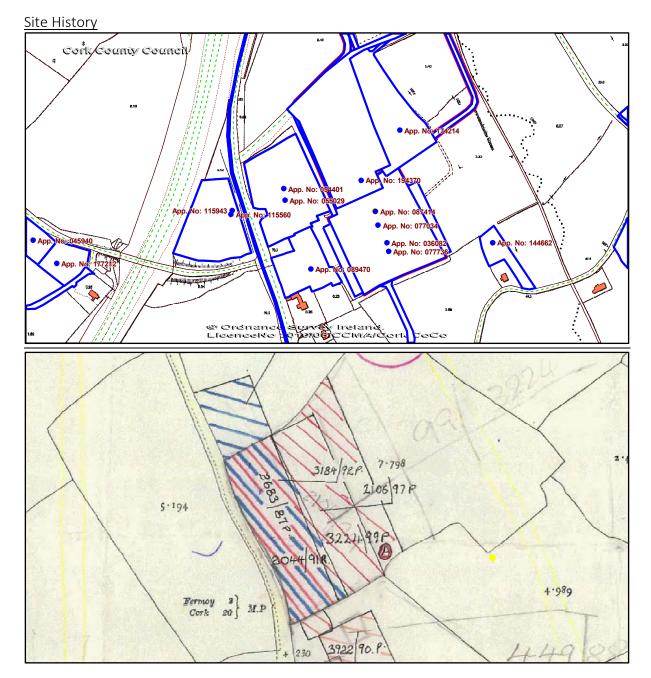
#### Site Description

The subject site forms part of an established complex in use by Veolia Environmental Services Technical Solutions Ltd. (VESTS) who provide waste management services licensed by the EPA. The bunds in question are located towards the rear of the site adjacent to existing bund areas. The site is fully enclosed by walls/fencing with a mature tree line running along the rear boundary. I carried out an inspection of the site on the 13/09/2023 as part of my assessment.

#### Planning History

Section 5 History

None on record in respect of the subject applicant Veolia or in the previous company name Vivendi.



05/5029 – permission granted on appeal (ABP ref: undefined) to AVR Safeway Ltd for extension to chemical (prime and waste) storage building, staff amenities, bulk liquid storage bund and ancillary facilities. The proposed development comprises or is for the purposes of an activity in relation to which a Waste Licence is required.

03/6082 withdrawn outline application by South Coast Transport Ltd. for a car/truck parking and container handling facility including new access road, weighbridge and diesel pumps/storage.

99/3224 – permission granted following appeal (ABP ref: PL.04.112976) to South Coast Transport Ltd. for a shed over wash bays, relocation & extension of first aid/ equipment store/laboratory, weighbridge hut & extension to offices & car park.

97/2106 – permission granted to South Coast Transport Ltd. For the construction of transfer station waste chemicals warehouse and ancillary facilities.

92/3184 – permission granted for workshop and diesel storage unit.

91/2044 – permission refused for a truck store, workshop and diesel storage area.

87/2683 – permission granted for a lorry park.

#### Legislation Context

#### Planning and Development Act (2000, as amended)

Section 2 sets out an interpretation of terms for the purposes of Planning legislation.

defines '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.

"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);

#### Section 3 (1) of the Act states:

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 of the Act sets out developments which shall be exempted development for the purposes of the Act.

Section 4(4) Notwithstanding..... 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.

#### Planning and Development Regulations (2001, as amended)

Section 5 (1) sets out definitions in the context of interpreting Exempted Development. Definitions of relevance to this case are set out below.

"*Industrial building*" means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is-

(a) for or incidental to the making of any article or part of an article, or

(b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, "article" includes-

(i) a vehicle, aircraft, ship or vessel, or (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;

*"industrial undertaker"* means a person by whom an industrial process is carried on and *"industrial undertaking"* shall be construed accordingly;

Description of Development	Conditions and Limitations
CLASS 21	
<ul> <li>(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—         <ul> <li>(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,</li> <li>(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,</li> </ul> </li> </ul>	materially alter the external appearance of the premises of the undertaking. 2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater
<ul> <li>(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.</li> <li>(b) Any works for the provision within the curtilage of</li> </ul>	
an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.	

Article 6(1) of the Regulations states as follows:- "(a) Subject to article 9, development consisting 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** sets out restrictions on exemption to which article 6 relates. It states that development to which article 6 relates shall not be exempted development for the purposes of the Act in a number of specific instances.

#### <u>Article 9, S9 (1)(a)</u>

(a) if the carrying out of such development would-

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

#### <u>Article 9, S9(b)(1)(a)</u>

d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

#### **Consultees**

**Health and Safety Authority (HSA)** – discussed proposal with HSA inspector on the 25/09/2023 who advised the complex is not a Seveso Site and is well under the threshold for Lower Tier designation.

#### <u>EIA</u>

Having reviewed the documentation submitted I am satisfied that an EIA is not required having regard to the nature/scale of development proposed and relevant provisions set out under Schedules 5 and 7 of the Planning and Development Regulations (2001, as amended).

#### Appropriate Assessment

The subject site is located approximately 3.2km south of the River Blackwater SAC (Site Code 002170).

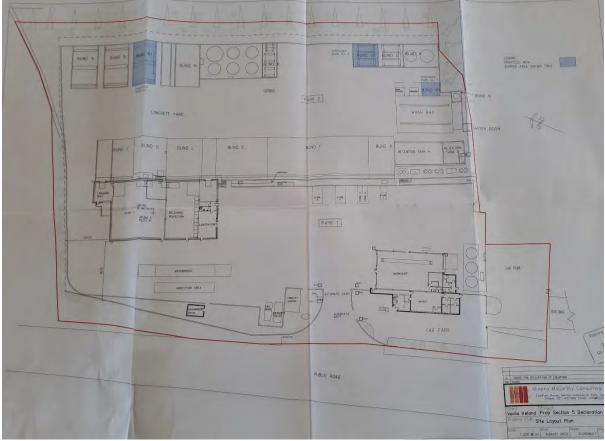
It is noted that no service connections are proposed as part of the development proposal and the site is licensed by the EPA. Having regard the nature, scale and location of the development I am satisfied that the proposed development would not affect the integrity of the Natura 2000 sites referred to and a Stage 2 AA is not required in this case.

#### <u>Assessment</u>

This Section 5 application is querying whether the provision of 2 no. bunds for storage of bulk storage tanks and 1 no. bund for storage of tank/ equipment within an existing storage yard at Veolia Environmental Services Technical Solutions Ltd. (VESTS), Corrin, Fermoy, Co. Cork is or is not development and is or is not exempted development.

#### Description of Proposed Works

The development proposal for which the Section 5 determination is sought relates to the proposed provision of 2 no. bunds for storage of bulk storage tanks and 1 no. bund for storage of tank/ equipment within an existing storage yard.



Extract of Site Layout Plan submitted

In the documentation submitted it is stated the site is licensed by the EPA, that the existing storage yard is a complete bunded area as the surfacewater goes to a holding tank and that the proposed bunds will have low walls. Confirmation is sought that the proposed low level bunds/bulk storage units are exempted development under Class 21 of the Planning and Development Regulations (2001, as amended).

#### Is the Proposal Development?

On the basis of the information submitted it is considered that the proposal amounts to 'works' and also relates to "structures" as defined by Section 2 (1) of the Planning and Development Act (2000, as amended) and therefore the comes within the meaning of 'development' in accordance with Section 3 of the Planning and Development Act (2000, as amended). The question at hand, therefore, is whether the development is exempted development.

#### Is the Proposal Exempted Development

It is considered that the key legislative provision for determining the query raised is set out under Schedule 2, Part 1, Class 21 of the Planning and Development Regulations (2001, as amended) as put forward by the applicant.

Having regard to the nature of the processing/business being carried out by the applicants, Veolia Environmental Services Technical Solutions Ltd. (VESTS), as detailed in the application, I

am satisfied that the applicant can be deemed an "*industrial undertaker*" for the purposes of the legislation and the process involved relates to an industrial undertaking.

The scale and nature of the proposed bunds and referenced bulk storage units have not been fully detailed by supporting drawings to enable a full assessment of the proposal relative to the scope of Class 21 of the Planning and Development Regulations (2001, as amended).

#### Restrictions on Exemption

I have reviewed the proposal against potential restrictions on exemption as set out under Article 9 of the Planning and Development Regulations (2001, as amended). The key relevant potential restrictions on exemption are discussed below.

Article 9, S9 (1)(a)

(b) if the carrying out of such development would-

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

From a review of the site planning history condition no. 2 of the most recent permission granted on site, Pl. Reg. No. 05/5029, precludes the construction of any ancillary structures other than those permitted (see extract below).

2	Ancillary structures other than those	In	the	interests	of	orderly
	shown on plans shall not be	dev	elopme	ent		-
	constructed on site without the prior					
	permission of the Planning					
	Authority, notwithstanding the					
	Exempted Development provisions					
	of the Planning & Development					
	Regulations, 2001, as amended.					

As such it is considered that this restriction on exemption applies and therefore the proposal does not constitute exempted development.

#### Article 9, S9(b)(1)

d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

I consulted HSA inspector on the 25/09/2023 who advised the complex is not a Seveso Site and is well under the threshold for Lower Tier designation.

As such it is therefore concluded that there is no restriction on exemption having regard to Article 9, S9(b)(1) of the Regulations.

#### **Recommendation**

Accordingly, whereas a question has been raised regarding whether the provision of 2 no. bunds for storage of bulk storage tanks and 1 no. bund for storage of tank/ equipment within an existing storage yard at Veolia Environmental Services Technical Solutions Ltd. (VESTS), Corrin, Fermoy, Co. Cork is or is not development and is or is not exempted development. and having had regard to:

- the details submitted to the Planning Authority on the 31/08/2023
- Sections 2 (1) 3(1), 4 and 5 of the Planning and Development Act (2000, as amended)
- Articles 3, 6, 9 and Schedule 2, Part 1, Class 21 of the Planning and Development Regulations (2001, as amended)
- the conditions attached to Pl. Reg. No. 05/5029

it is concluded by the Planning Authority that:

whether the provision of 2 no. bunds for storage of bulk storage tanks and 1 no. bund for storage of tank/ equipment within an existing storage yard at Veolia Environmental Services Technical Solutions Ltd. (VESTS), Corrin, Fermoy, Co. Cork is **development** and is not **exempted development**.

The Planning Authority had regard to the following:

- the details submitted to the Planning Authority on the 31/08/2023
- Sections 2 (1) 3(1), 4 and 5 of the Planning and Development Act (2000, as amended)
- Articles 3, 6, 9 and Schedule 2, Part 1, Class 21 of the Planning and Development Regulations (2001, as amended)
- the conditions attached to Pl. Reg. No. 05/5029

John Ledor

John Lalor Executive Planner 26/09/2023

John Tierney A/Senior Executive Planner 26/09/2023



### <u>CORK COUNTY COUNCIL APPLICATION</u> FOR SECTION 5 DECLARATION OF EXEMPTION

#### APPLICANT CHECKLIST

<u>4 No. Copies of Application Form:</u> <u>1 No. Copy of Contact Details:</u> <u>4 No. Copies 6" O.S. Maps:</u> <u>4 No. Copies 25" O.S. Maps:</u> <u>4 No. Copies of Site Layout Plan:</u> <u>4 No. Copies Scaled Drawings of Development:</u> <u>680 Application Fee:</u>



# Planning Department 3 1 AUG 2023 Cork Councy Sector County Hall Cork,

#### FOR OFFICE USE ONLY

Receipt No.	PL200 2296	
Cash/Cheque/ Credit Card	CHERNE	
Date	31 8 23	
Declaration Ref. No.	D/277/23	

#### DATE STAMP HERE

You should make sure that you are satisfied that any information/documentation that you submit is appropriate to be viewed by the public. Please do not submit any information that you do not want 3<sup>rd</sup> parties to view.

In the case of a Declaration of Exemption for Land Reclamation, the following additional information is required: • A copy of the details submitted to the Council's Environment Department (Inniscarra) for a Waste Licence Permit

- Correspondence from Teagase (detailing how the land reclamation would benefit the land in question for agricultural purposes)
- Details of existing and proposed levels
- Details of fill material and duration of fill.

#### DATA PROTECTION

The planning process is an open and public one. In that context, all applications for Declarations of Exemption are made available for public inspection.

Personal information collected by Cork County Council is done so in order for us to process your application for a Section 5 Declaration of Exemption. Legally we can process this information as it is necessary for us to comply with our statutory/legal obligations. The protection of our personal data is a key priority for the Council and your data will be processed in line with our Privacy policy which is available at

<u>http://www.corkcoco.ie/Privacy-Policy</u> or hardcopy from our offices at County Hall, Carrigrohane Road, Cork, Ireland. Should you have any questions about our privacy policy or the information we hold about you, please contact us by email to <u>dpo@corkcoco.ie</u> or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

#### 1. NAME OF APPLICANT: (ADDRESS TO BE SUPPLIED AT QUESTION A – CONTACT DETAILS)

Veolia Environmental Services Technical Solutions Limited (VESTS)

## 2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION OF EXEMPTION IS SOUGHT:

Veolia Environmental Services Technical Solutions Limited (VESTS) Corrin Fermoy Co. Cork P61 FD74

#### 3. QUESTION/DECLARATION DETAILS:

Please state the specific question for which a Declaration of Exemption is sought Note: Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption

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#### 4. 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 metres $(m^2)$

(a) Floor area of existing/proposed structure(s):	N/A Application for proposed bunds
<ul> <li>(b) If a domestic extension is proposed, 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):</li> </ul>	Yes No I I I I I I I I I I I I I I I I I I
<ul><li>(c) If a change of use of land and/or building(s) is proposed, please state the following:</li></ul>	
Existing/previous use	Proposed use
N/A Application for proposed bunds	N/A Application for proposed bunds
(d) Are you aware of any enforcement proceedings connected to this site?	Yes No V If yes, please state relevant reference number(s):

#### 5. LEGAL INTEREST OF APPLICANT IN THE LAND/STRUCTURE:

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner	B. Other
Where legal interest is <b>"Other"</b> , please state your interest in the land/structure:	N/A Applicant is owner	PIBLITING
<b>If you are not the legal owner</b> , please state the name of the owner/s (address to be supplied at Question C in Contact Details):	N/A Applicant is owner	31 AUG 2023

#### 6. PROTECTED STRUCTURE DETAILS / ARCHITECTURAL CONSERVATION AREA:

Is this a Protected Structure/Proposed Protected Structure or within the curtilage of a Protected Structure: Yes 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: Yes No
If yes, please state relevant reference No
Is this site located within an Architectural Conservation Area (ACA), as designated in the County Development Plan? Yes No

#### 7. APPROPRIATE ASSESSMENT:

Would the proposed development require an appropriate assessment becaus	e it would l	be likely to	)
have a significant effect on the integrity of a European site (SAC, SPA etc)?	Yes	No 📝	1

#### 8. DATA PROTECTION DECLARATION:

In order for the Planning Authority to process the personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <a href="http://www.corkcoco.ie/privacy-statement-cork-county-council">http://www.corkcoco.ie/privacy-statement-cork-county-council</a> or in hardcopy from any Council office; and to having your information processed for the following purposes:

### Processing of your Declaration of Exemption application by the Planning Authority

I give permission for my personal information to be processed for the purpose stated above

Signed (By Applicant Only)	Der White	and the second
Date	30/08/2023	

### **GDPR** Special Categories of data / Sensitive Personal data - Explicit Consent

Where Special Categories of personal data / sensitive personal data are provided as part of / in support of a declaration application, explicit consent to the processing of the special categories of data must be given by the person to whom the data refers, namely the Data Subject.

Special Categories of data / Sensitive Personal data include:

- Race
- Ethnic origin
- Political opinions
- Religion
- Philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health data
- Concerning a natural person's sex life
- Sexual orientation

Planting Depertment 31 Aug 2023 Cork County Fran County Fran Class

In order for the Planning Authority to process the sensitive **person**al data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <a href="https://www.corkcoco.ie/privacy-statement-cork-county-council">https://www.corkcoco.ie/privacy-statement-cork-county-council</a> or in hardcopy from any Council office; and to having your information processed for the following purposes:

### Sensitive personal data being submitted in support of Declaration of Exemption Application

*I give permission for my sensitive personal data submitted to the Planning Authority to be processed for the purpose stated above.* 

Signed	N/A	
Date		

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: planninginfo@corkcoco.ie or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: westcorkplanninginfo@corkcoco.ie However if consent to the use of personal data is withdrawn during the declaration of exemption decision-making process this information cannot be considered as part of the decision making process. Once a decision has been made, an applicant is not entitled to withdraw consent, as the right of erasure does not apply to a situation where processing is required for compliance with a legal obligation or for the performance of a task carried out in the public interest.

**Please** note that all information / supporting documentation submitted will be available publicly to view at the **Planning** Authority offices.

#### **ADVISORY NOTES:**

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

The application must 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 Planning Department, Cork County Council, Floor 2, Co. Hall, Carrigrohane Road, Cork, T12 R2NC; or for applications related to the Western Division, The Planning Department, Cork County Council, Norton House, Cork Road, Skibbereen, Co. Cork, P81 AT28.

- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- 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 of Exemption is sought.
- Any person issued with a Declaration of Exemption may on payment to An Bord Pleanála refer a Declaration of Exemption for review by the Board within 4 weeks of the date of the issuing of the Declaration of Exemption decision.
- In the event that no Declaration of Exemption 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 of Exemption was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption 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.

9. I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct, accurate and fully compliant with the <u>Planning and Development Acts 2000</u>, <u>as amended</u> and the Regulations made thereunder:

Signed (Applicant or Agent as appropriate)	Del	What			
	DIRECTOR,	VEOLIA ENVIRONMENTAL	SERVICES	TERHNICH	STRUTTONS LAD
Date	30	d n	202	3	

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