

Comhairle Contae Chorcaí  
Cork County Council

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Mr. Brian McCutcheon,  
McCutcheon Halley  
Chartered Planning Consultants,  
6, Joyce House,  
Barrack Square,  
Ballincollig  
Co. Cork.

Our Ref: D/44/21.

23rd November, 2021.

**RE/ Section 5 Request for Declaration under Section 5 of the Planning & Development Act, 2000 (as amended) in regard to alterations and extensions to the permitted tank farms and the implementation of measures to mitigate visual impact at West Cork Distillers, Marsh Road, Skibbereen, Co. Cork.**

Dear Sir,

I refer to your application received on 28<sup>th</sup> October, 2021 on behalf of West Cork Distillers in connection with the above.

I wish to inform you that Cork County Council will not be making a declaration on this development and the application will be referred to An Bord Pleanála under Section 5(4) of the Planning & Development Act, 2000, as amended, for determination.

Yours faithfully,

**KEVIN O'REGAN**  
**SENIOR EXECUTIVE OFFICER**

The Secretary  
Planning Department  
Cork County Council  
Norton House  
Skibbereen  
Co. Cork

14 October 2021

**Re: Request for a Declaration under Section 5 of the Planning and Development Act, 2000 (as amended) in regard to alterations and extensions to the permitted tank farms and the implementation of measures to mitigate visual impact at West Cork Distillers, Marsh Road Skibbereen, Co. Cork**

Dear Sir/Madam,

We act for West Cork Distillers, Marsh Road Skibbereen, Co. Cork and submit on their behalf this request for a Declaration under Section 5 of the Planning and Development Act, 2000 (as amended)<sup>1</sup>. We attach the completed application form and the required fee of €80.00.

The question on which the Declaration is sought is whether the alterations and extensions to the permitted tank farms at West Cork Distillers by the installation of additional items of plant and equipment, and structures of the nature of plant and equipment, and by the implementation of the mitigation measures proposed in the attached Landscape and Visual Impact Assessment (LVIA) by Macroworks are or are not, development and are, or are not, exempted development.

The works in question are shown in blue and referenced as Site A and Site B on the Site Layout Plan (Drawing No. 30F in Appendix A). The works comprise the alteration and extension of the tank farms which were included in the grants of permission under Planning Register Ref. Nos. 17/365 and 19/779. Appendix A also includes Site Sections (Drawing No. 31D) and Tank Farm Details (Drawing No.7 TF5) which show the height and locational context of the structures for which the Declaration is sought. The Landscape and Visual Impact Assessment (LVIA) by Macroworks is attached as Appendix b.

Previous Declaration D/2/21

A previous Declaration on this question, which was issued by the Planning Authority on 3<sup>rd</sup> February 2021 under Planning Register Ref. No. D/2/21, concluded that the alterations and extensions to the permitted tank farms were not exempted development on the grounds that.

<sup>1</sup> Hereafter referred to as "the Planning Act"

[www.mhplanning.ie](http://www.mhplanning.ie)

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Registered office: 6 Joyce House, Barrack Square, Ballincollig, Co. Cork. Directors: Brian McCutcheon, BA(Lcon) Dip.TE Dip.GIS M.J. (Chairman), Tom Halley, BA(Hon), MRUP ES: AFCH(Hons) Cert. C. I. Eng. (MPE).

REG. NO. D/2/2021  
PLANNING (WEST) DEPT  
28 OCT 2021  
CORK COUNTY COUNCIL  
NORTON HOUSE, SKIBBEREEN, CO. CORK  
Also in DUBLIN  
Freston House, Arran  
Court  
Arran Quay, Dublin 7  
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- The development materially alters the external appearance of the undertaking;
- The development contravenes Condition 26 of the permission granted under Planning Register Ref. No. 17/365;
- The information provided is insufficient to enable the Planning Authority to determine whether subthreshold environmental impact assessment or appropriate assessment is required.
- 

#### Previous Declaration D/18/21

A further Declaration on this question, which was issued by the Planning Authority on 15<sup>th</sup> April 2021 under Planning Register Ref. No. D/18/21, concluded that the alterations and extensions to the permitted tank farms were not exempted development on the grounds that:

- the development materially alters the external appearance of the premises of the undertaking and does not, therefore meet the requirement of the conditions and limitations of Column 2 of Class 21 of Part 1 of Schedule 2 of the Planning Development Regulations, 2001, as amended, and
- the proposed development is subject to the restrictions on exemption as set down in Article 9(1)(a)(i) of the Planning and Development Regulations 2001, as amended, on the grounds that the development would contravene a condition attached to a permission under the Act, specifically condition 26 attached permission granted under 17 /365.

REG No. 17/365  
 PLANNING DEPARTMENT  
 28 OCT 2021  
 CORK COUNTY COUNCIL  
 MORTON HOUSE, SKIBBEREEN

#### Class 21 of Part 1 of Schedule 2 of the Planning Regulations

The works in question fall within the definition of "development" in Section 3(1) of the Planning Act. The question to be determined is whether the works are "exempted development" under the Regulations published by the Minister under Section 4(2)(a) of the Act. Article 6(1) of the Planning and Development Regulations, 2001 (as amended)<sup>2</sup> provides that, 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.

In our opinion the alterations and extensions to the permitted tank farms fall within the scope of Class 21 of Part 1 of Schedule 2 of the Planning Regulations, which provides the following exemptions in regard to development for industrial purposes:

*(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:*

*(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,*

*(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,*

*(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.*

*(b) Any works for the provision within the curtilage of 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.*

<sup>2</sup> Hereafter referred to as "the Planning Regulations"

The Planner's report on D/2/21 dated 02/02/2021 acknowledged that:

*On the basis of the information submitted it is reasonable to accept that the tanks comprise the installation of plant and machinery by an industrial undertaker for a purpose relating to the industrial process carried out on the land. The submitted documentation includes site sections which indicate that the plant and equipment are below 15m in height and therefore comply with condition and limitation no.2.*

A similar conclusion was reached in the Planner's Report on D/18/21 which acknowledged that:

*"On the basis of the information submitted it is reasonable to accept that the tanks comprise the installation of plant and machinery by an industrial undertaker for a purpose relating to the industrial process carried out on the land. The submitted documentation includes site sections which indicate that the plant and equipment are below 15m in height and therefore comply with condition and limitation no.2. The question remains as to whether the development meets condition no. 1, whether the plant and equipment materially alter the external appearance of the premises of the undertaking".*

#### Impact on the External Appearance of the Premises

The potential impact on the external appearance of the undertaking has been reassessed in the attached Landscape and Visual Impact Assessment (LVIA) by Macroworks. This concludes that

- (i) the impact on landscape character is not deemed to be materially different to that anticipated at the time permission was granted for the tank farm; and
- (ii) mitigation in the form of colour scheme and screen planting will reduce any impact to 'Slight' or 'Slight-imperceptible' across all viewpoints;
- (iii) the residual impact will therefore be lower than anticipated at the time of granting the original permission, if the mitigation measures now proposed, are implemented.

#### Compliance with Condition 26 of Planning Register Ref. No. 17/365

The issues in regard to compliance with Condition 26 are being addressed by the installation of new cooling towers as set out in the compliance submission dated 07/06/2021. In any case the installation and operation of the tanks does not have any material impact on the noise levels within the site.

#### Screening for Subthreshold Environmental Impact Assessment and Appropriate Assessment

Section 4(4) of the Planning Act states that notwithstanding paragraphs (a), (i), (ia) and (l) of Subsection (1) and any regulations under Subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

The declaration issued under D/2/21 concluded that the extensions and alteration to the tank farms were not exempted development because:

*The information provided is insufficient to enable the Planning Authority to determine whether sub-threshold environmental impact assessment or appropriate assessment of the development is, or is not required*

The revised Screening Reports which were submitted under D/18/21 allowed the Planning Authority to determine, that EIA and AA are not triggered by the proposed development. Copies of the screening statements are attached as Appendices C and D.

## Conclusion

The previous Declarations issued under D/2/21 under D/18/21 concluded that while the alterations and extension to the tank farms fell within the general category of Class 21 they were not exempted development in this specific case on the grounds that

- The development materially alters the external appearance of the undertaking;
- The development contravenes Condition 26 of the permission granted under Planning Register Ref. No. 17/365;

These issues have now been addressed by

- (a) the submission of the Landscape and Visual Impact Assessment (LVIA) by Macroworks which is attached to this request; and
- (b) the compliance submission in regard to Condition 26 of Planning Register Ref. No. 17/365 which was previously submitted on 07/06/2021.

Yours sincerely,

*Brian McCutcheon*

Brian McCutcheon  
McCutcheon Halley



## Appendices

### Appendix A Drawings

Site Location Maps  
Site layout Plan  
Drawings of Plant and Equipment

### Appendix B:

Landscape and Visual Impact Assessment (LVIA) by Macroworks

### Appendix C

EIA Screening Statement by Rowan

### Appendix D:

AA Screening Statement by Rowan



## **CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION**

### **APPLICANT CHECKLIST**

(Please tick ✓)

- 4 No. Copies of Application Form:**
- 1 No. Copy of Contact Details:**
- 4 No. Copies 6" O.S. Maps:**
- 4 No. Copies 25" O.S. Maps:**
- 4 No. Copies of Site Layout Plan:**
- 4 No. Copies Scaled Drawings of Development:**
- €80 Application Fee:**


### **FOR OFFICE USE ONLY**

<b>Receipt No.</b>	
<b>Cash/Cheque/ Credit Card</b>	
<b>Date</b>	
<b>Declaration Ref. No.</b>	

**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 Teagasc (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 <http://www.corkcoco.ie/Privacy-Policy> 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 [dpo@corkcoco.ie](mailto:dpo@corkcoco.ie) 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 3 – CONTACT DETAILS)**

West Cork Distillers Ltd.

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

Fastnet Industrial Estate  
Marsh Road  
Skibbereen  
Co. Cork

**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

Whether the alterations and extensions to the permitted tank farms at West Cork Distillers by the installation of additional items of plant and equipment, and structures of the nature of plant and equipment, are or are not, development and are, or are not, exempted development

PLANNING (WEST) DEPARTMENT  
29 OCT 2021  
CORK COUNTY COUNCIL  
NORRISH QUAY, SKIBBEREEN

**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<sup>2</sup>)

(a) Floor area of existing/proposed structure(s):	n/a - plant and equipment
(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):	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide floor areas (m <sup>2</sup> ) and previous planning referencet(s) where applicable:
(c) If a change of use of land and/or building(s) is proposed, please state the following:  Existing/previous use  Industrial	Proposed use  Industrial
(d) Are you aware of any enforcement proceedings connected to this site?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, please state relevant reference number(s):  SKB 20066

**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 <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is "Other", please state your interest in the land/structure:		
If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details):		

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

Is this a Protected Structure/Proposed Protected Structure or within the curtilage of a Protected Structure: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
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 <input type="checkbox"/> No <input checked="" type="checkbox"/>
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 <input type="checkbox"/> No <input checked="" type="checkbox"/>

**7. APPROPRIATE ASSESSMENT:**

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

3

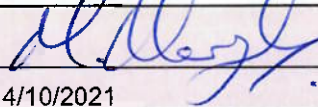


**8. DATA PROTECTION DECLARATION:**

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 <http://www.corkcoco.ie/privacy-statement-cork-county-council> 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)	 p.p. West Cork Distillers Ltd
Date	14/10/2021

**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.

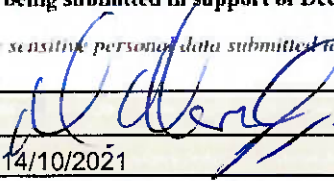
Special Categories of data / Sensitive Personal data include:

- 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

In order for the Planning Authority to process the sensitive 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 <https://www.corkcoco.ie/privacy-statement-cork-county-council> 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	 p.p. West Cork Distillers Ltd
Date	14/10/2021

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](mailto:planninginfo@corkcoco.ie) or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: [westcorkplanninginfo@corkcoco.ie](mailto: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.**



Appendix A

Site Location Maps and Drawings

