

COMHAIRLE CLARE CONTAE AN CHLÁIR COUNTY COUNCIL

Registered Post

Sean Eyres Crossderry, Kilmurry McMahon. Kilrush, Co Clare

September, 2021

Section 5 referral Reference R21-49 – Sean Eyres

Whether the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is considered development and if so, is it exempted development.

A Chara,

I refer to your application received on 06th August, 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie

Mise, le meas

Anne O'Gorman Staff Officer

Planning Department

Economic Development Directorate

An Roinn Pleanála An Stiúrthóireacht Forbairt Gheilleagrach

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department **Economic Development Directorate**

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2











DECLARATION ISSUED UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)

Reference No.: R21-49



Section 5 referral Reference R21-49

Whether the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is considered development and if so, is it exempted development.

AND WHEREAS, Sean Eyres has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 6, Class 7, Class 8 and Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

a) The construction of an under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended

- b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended
- c) the said under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is not exempted development having regard to the Planning and Development Regulations 2001, as amended agricultural structure part 3 schedule 2

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon Co. Clare <u>constitutes development</u> which is <u>not exempted development</u> as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

Anne O'Gorman Staff Officer

Planning Department

Economic Development Directorate

September, 2021

CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No:

73304

Reference Number:

R21-49

Date Referral Received:

06th August, 2021

Name of Applicant:

Sean Eyres

Location of works in question:

Section 5 referral Reference R21-49 – Sean Eyres

Whether the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is considered development and if so, is it exempted development.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
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- c) Class 6, Class 7, Class 8 and Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- d) The works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) the construction of an under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended

(c) the said under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is not exempted development having regard to the Planning and Development Regulations 2001, as amended agricultural structure part 3 schedule 2.

ORDER:

Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Garreth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein.

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Garreth Ruane, Senior Executive Planner, hereby declare that the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co. Clare is considered development which is not exempted development

Signed:

GARRETH RUANE

SENIOR EXECUTIVE PLANNER

Date: 01 September, 2021

CLARE COUNTY COUNCIL SECTION 5 DECLARATION OF EXEMPTION APPLICATION PLANNERS REPORT

FILE REF:

R21-49

APPLICANT(S):

Sean Eyres

REFERENCE:

Whether the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is considered development

and if so, is it exempted development.

LOCATION:

Crossderry, Kilmurry McMahon, Co Clare.

DUE DATE:

1st September 2021

Site Location

The site of the proposed development is located c.3km south of Cranny, with access from the L2130 public road. The subject farmyard is set back c.85m from the existing entrance from the public road. The location itself has grasslands on all sides.

Recent Planning Application History

P05/1333: Permission granted to John Eyres to construct a slatted house.

Enforcement History

None

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Sean Eyres.

The applicant is seeking a Section 5 Declaration as to whether the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is considered development and if so, is it exempted development. The under slat tank that is subject of this query has not been constructed.

Development details and specification

The following has been submitted:

- Maps that clearly show the location of the site and the extent of the landholding;
- Scaled Layout Plan, Floor Plan, Elevations and Section drawing of the proposed under slat tank;
- Declaration request form fully completed, with written description of the proposal;

Flood Risk

Following examination of the relevant GIS information in relation to flood risk assessment, it is noted that the proposed slatted unit is located outside Flood Zones A and B, and that the slurry spreadlands which surround the site are also outside the Flood Zones.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended.*

S.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.

'Works' are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

"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.

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

Environmental Impact Assessment

In assessing this application I have had regard to the provisions of EU Directive 2014/52/EU (which amends EU Directive 2011/92/EU), and which has been transposed into Irish legislation by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (SI No. 296 of 2018). The subject development does not fall within the prescribed classes for which a mandatory EIA is required, as set out in Schedule 5 of the Planning and Development Regulations 2001, as amended.

I have considered the criteria as set out under Schedule 7 of the Planning and Development Regulations 2001, as amended, and I am satisfied that the proposal constitutes a sub-threshold development.

In accordance with Article 103 (1)(a) and (b) of the Planning and Development Regulations 2001, as amended, and having regard to the nature and scale of the proposed development and the nature of the receiving environment I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Appropriate Assessment

See assessment below.

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is or is not development and is or is not exempted development.

Particulars of Proposal

The particulars of the proposal and site are set out below:

Capacity of under slat tank

223.24 cubic metres

Distance from road

Greater than 10 metres

Distance from dwellings

C.107m

Planning and Development Regulations 2001 (as amended)

There are four classes of development within Schedule 2, Part 3 of the Planning and Development Regulations 2001 which concern the provision of Agricultural Structures. They are Classes 6, 7, 8 and 9 which are outlined as follows:

Class 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

Class₇

Works consisting of the provision of a roofed structure for the housing of pigs, mink or poultry, having a gross floor space not exceeding 75 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

Class 8

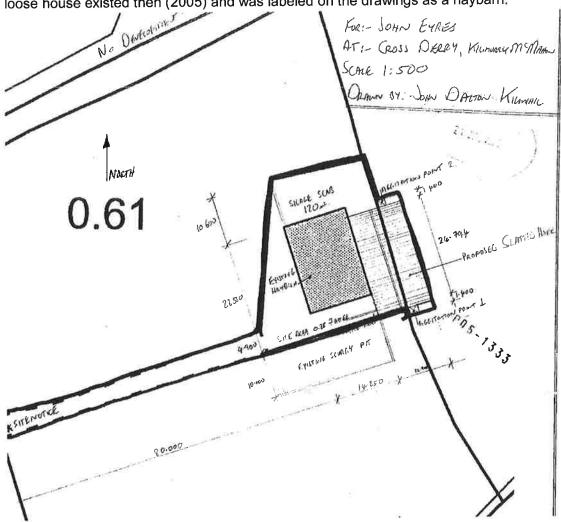
Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.

Class 9

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

Classes 6, 7 and 8 above allow for 'ancillary provision for effluent storage' to be provided as part of the principal works, which are the provision of roofed structures (Class 6, 7) or the types of structures set out in Class 8. There is no Class of exempted works that concerns the provision of effluent storage exclusively. In this case, the works are to

provide an under slat tank below an existing cubicle / loose house. I note from examination of the previous planning permission file on site (P05/1333) that the cubicle / loose house existed then (2005) and was labeled on the drawings as a haybarn:



For complete clarity, Class 9 allows for 'Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule'. The subject tank cannot be considered compatible with this exemption because Limitation No. 1 on Class 9 states:

"No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent".

Conclusion

Having regard to the above it is considered that the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare constitutes both 'works' and 'development', and that the subject development is not compatible with any of the Classes of Exempted Development for Agricultural Structures within Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

Since the proposed development is not an exempted development and cannot therefore be constructed without planning permission, Screening for Appropriate Assessment is not required.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is or is not development and is or is not exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 6, Class 7, Class 8 and Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council (Planning Authority) has concluded:

- (a) the construction of an under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended
- (c) the said under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is not exempted development having regard to the Planning and Development Regulations 2001, as amended (agriculture 5 hours, 12-73, School 2).

Now therefore Clare County Council (Planning Authority), hereby decides that the construction of an under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is development and is not exempted development.

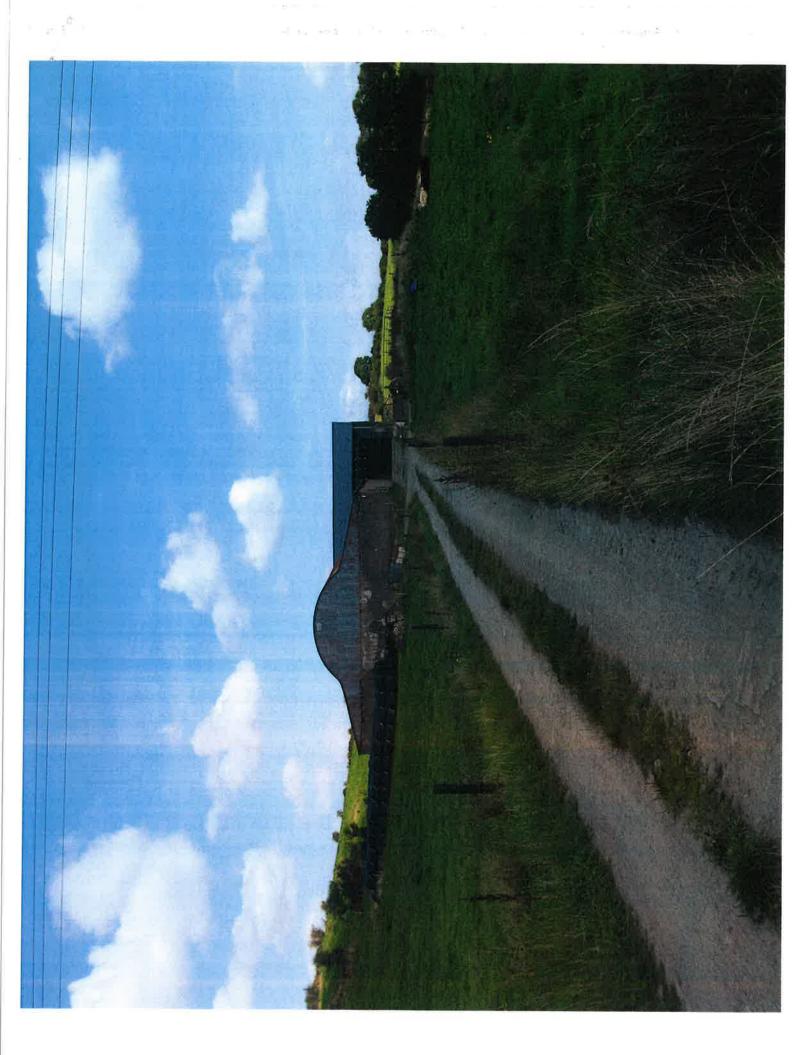
Assistant Planner

Date: 30th August 2021

Senior Executive Planner

Date:

3110812









COMHAIRLE CONTAE AN CHLÁIR COUNTY COUNCIL

Sean Eyres Crossderry, Kilmurry McMahon, Kilrush, Co Clare

13th August, 2021

Section 5 referral Reference R21-49 - Sean Eyres

Whether the construction of a under slat tank under existing animal housing at Crossderry, Kilmurry McMahon, Co Clare is considered development and if so, is it exempted development.

A Chara,

I refer to your application received on 06th August, 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

Siobhan Mundovan **Planning Department**

Economic Development Directorate

An Roinn Pleanála An Stiúrthóireacht Forbairt Gheilleagrach

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department Economic Development Directorate

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2







P07

CLARE COUNTY COUNCIL COMHAIRLE CONTAE AN CHLÁIR

Planning Department, Economic Development Directorate, Clare County Council, New Road, Ennis, Co. Clare. V95DXP2 Telephone No. (065) 6821616
Fax No. (065) 6892071 OLARE
Email: planof acknowledge COUNCIL

Comhairle Contae an Chláir Clare County Council

0 6 AUG 2021

Heerive

REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT (Section 5 of the Planning & Development Act 2000 (as amended))

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETA	. CORRESPONDENCE DETAILS.				
(a) Name and Address of person seeking the declaration	SEAN EYRES CROSSDERRY KILMURRY Mc MAHON KILRUSH CO. CLARE				
(b) Telephone No.:	= 10				
(c) Email Address:	NOME				
(d) Agent's Name and address:	NIALL GEOGHEGAN BALLYBEG ENNIS CO. CLARE				

2. DETAILS REGARDING DECLARATION BEING SOUGHT				
(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT Note: only works listed and described under this section will be assessed.				
Sample Question: Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?				
IS THE CONSTRUCTION OF AN UNDERSLAT TANK UNDER				
EXISTING ANIMAL HOUSING AT CROSSDERRY, KILMURRY				
McMAHON. DEVELOPMENT AND IF SO IS IT EXEMTED DEVELOPMENT				
(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.				
THE APPLICANT IS LOOKING TO BUILD AN UNDERSLAT				
TANK UNDER HIS EXISTING CUBICLE LOOSE HOUSE				
(ANIMAL HOUSING).				
THE APLICANT IS FARMING 58.16 HECTARS				
HOUSING REQUIREMENTS FOR				
THE HOUSING PERIOD IS FOR 35 SUCKLER COWS				
35 WEANLONS				
35 CALVES				
1 BULL				
(c) List of plans, drawings etc. submitted with this request for a declaration: (Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)				
TIPLAN OF EXISTING ANIMAL HOUSING WITH NEW				
UNDERSLAT TANK SHOWING SECTION OF UNDERSLATTANK.				
BI FARMARD LAYOUT PLAN (SITE PLAN) 1:500				
FARMARD LAYOUT PLAN (SITE PLAN) 1:500 31 SITE MAPS 1:2500/4/ LAND MAP 1:10560 2				

	3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT				
(a)	Postal Address of the Property/Site/Building for which the declaration sought:	CROSSDERRY, KILMURRY Mc MAHON, KILRUSH, Co. CLARE.			
(b)	Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No			
(c)	Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	APPLICANT IS LANDOWNER.			
(d)	If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.	APPLICANT IS LANDOWNER			
(e)	Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	APPLICANT IS LANDOWNER			
(f)	Are you aware of any enforcement proceedings connected to this site? If so please supply details:	No			
(g)	Were there previous planning application/s on this site? If so please supply details:	N/A			
(h)	Date on which 'works' in question were completed/are likely to take place:	NOVEMBER 2021			

SIGNED: Mils Cray

DATE: 30/07/2021

GUIDANCE NOTES

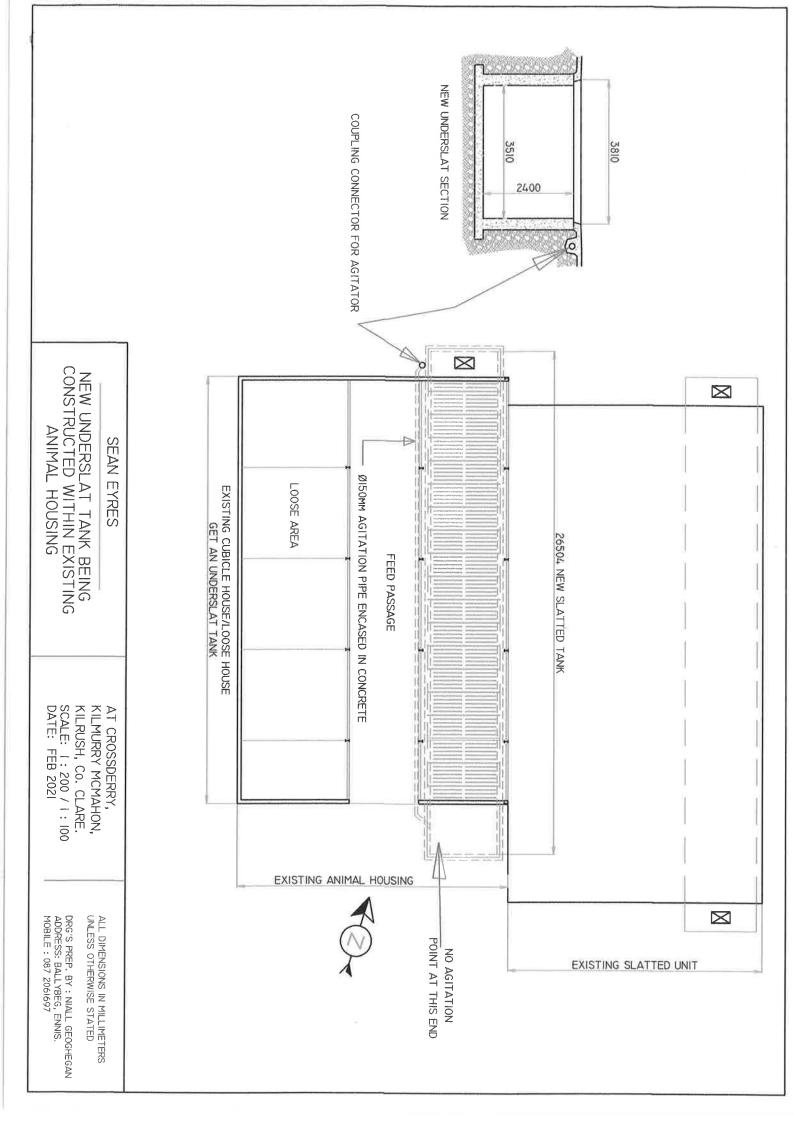
This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

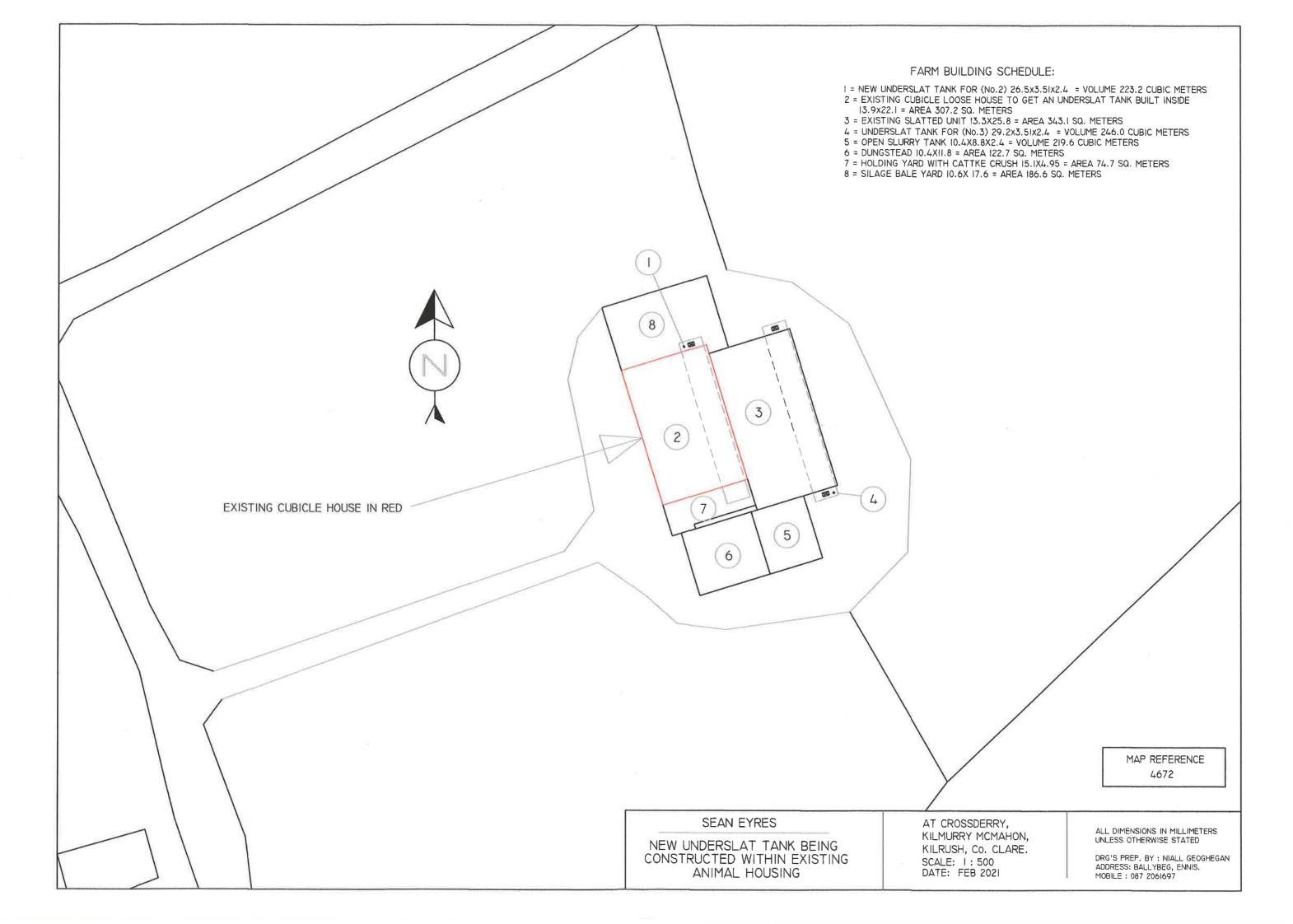
- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Countil
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

FOR OFFICE USE ONLY		
Date Received:	 Fee Paid:	3
Date Acknowledged:	 Reference No.:	
Date Declaration made:	 CEO No.:	
Decision:	 	





Planning Pack Map Ordnance Survey SEAN EYRES EXISTING ANIMAL HOUSING IN REP 0.60 0.87 **National Mapping Agency** 1.12 7.59 CENTRE COORDINATES: ITM 517497,657860 4.72 1.42 ORDER NO.: 50211681_1 PUBLISHED: 0.99 06/08/2021 MAP SERIES: MAP SHEETS: 1:5,000 1.62 Cluain Draighneach Cloondrinagh 2.24 3.31 TO GET NEW UNDERSTAT TANK 7.63 0.26 COMPILED AND PUBLISHED BY: 0.85 Ordnance Survey Ireland, 0.67 Phoenix Park, Dublin 8, Ireland. Unauthorised reproduction infringes Ordnance Survey ireland and Government of Ireland 0.92 copyright. Cros Doire 2.12 All rights reserved. Crossderry No part of this publication may be copied, reproduced or transmitted in any form or by any means without the prior written permission of the copyright owners. 0.64 0.66 The representation on this map of a road, track or footpath is not evidence of the existence of a right of way. 0.68 0.62 Ordnance Survey maps never show legal property boundaries, nor do they 1.34 1.26 2,13 show ownership of physical features. Lios Ui 0.59 Mhuirchín 1.09 Lissyvurriheen ©Suirbhéireacht Ordanáis Éireann, 2021 ©Ordnance Survey Ireland, 2021 1.27 6.42 1.02 2.09 1.95 www.osi.le/copyright CAPTURE RESOLUTION: LEGEND: The map objects are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. Further information is available at: **OUTPUT SCALE: 1:2,500** http://www.osi.ie; search 'Large Scale Legend' http://www.osi.le; search 'Capture Resolution

Site Location Map SEAN EYRES ANIMAL HOUSING IN RED LANDHOLDING IN BLUE SPREADLANDS GREEN **National Mapping Agency** CENTRE COORDINATES: ITM 517497,657860 PUBLISHED: ORDER NO .: 06/08/2021 50211681_1 MAP SERIES: MAP SHEETS: 6 Inch Raster CE059 COMPILED AND PUBLISHED BY: Ordnance Survey Ireland, Phoenix Park, Dublin 8. Ireland. S Unauthorised reproduction infringes Ordnance Survey Ireland and Government of Ireland 38 77 CONTRA copyright. 84 water All rights reserved. No part of this publication may be copied, reproduced or transmitted in any form or by any means without the prior written permission of the copyright owners. The representation on this map of a road, track or footpath is not evidence of the existence of a right of way. Ordnance Survey maps never show legal property boundaries, nor do they show ownership of physical features. 100 ©Suirbhéireacht Ordanáls Éireann, 2021 COrdnance Survey Ireland, 2021 www.osl.ie/copyright Ordnance Survey Ireland CAPTURE RESOLUTION: The map objects are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. LEGEND: N 1,125 metres **OUTPUT SCALE: 1:10,560** http://www.osi.ie; Further information is available at: search 'Large Scale Legend' http://www.osi.le; search 'Capture Resolution

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VAT Exempt/Non-vatable

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Change:

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From: MAIN CASH OFFICE LODGEMENT AREA
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