



COMHAIRLE
CONTAE AN CHLÁIR

CLARE
COUNTY COUNCIL

Registered Post

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Your Client: Nicolas Rynne

9th June, 2022

Section 5 referral Reference R22-20 – Nicolas Rynne

Is the construction of a memorial stone monument to boxer Michael McTigue, at Kilnamona Cross, Kilnamona, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 21st March 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above, and the requested Further Information, received by the Planning Authority on the 24th May 2022.

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.: R22-20



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R22-20

Is the construction of a memorial stone monument to boxer Michael McTigue, at Kilnamona Cross, Kilnamona, Co. Clare, considered to be development and if so, is it exempted development?

AND WHEREAS, Nicolas Rynne 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, 4 and 57 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 33 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer, particularly those contained in the response to the further information request, received by the Planning Authority on 24.05.2022.

And whereas Clare County Council has concluded:

- (d) the construction of a memorial stone to boxer Michael McTigue at Kilnamona Cross, Kilnamona, Co. Clare constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (e) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended
- (f) the said development consisting specifically of:
 - the construction of a memorial stone to boxer Michael McTigue on the southern side of the N85 at Kilnamona Cross, Kilnamona, Co. Clare (as per the information received by the Planning Authority on 24.05.2022)

is exempted development having regard to Class 33 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.

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 memorial stone to boxer Michael McTigue on the southern side of the N85 at Kilnamona Cross, Kilnamona, Co. Clare is development and is exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Anne O'Gorman

Staff Officer

Planning Department

Economic Development Directorate

9th June, 2022

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: 79934

Reference Number: R22-20

Date Referral Received: 21st March 2022

Further Information Received: 24th May 2022

Name of Applicant: Nicolas Rynne

Location of works in question: Kilnamona Cross, Kilnamona, Co. Clare

Section 5 referral Reference R22-20 – Nicolas Rynne

Is the construction of a memorial stone monument to boxer Michael McTigue, at Kilnamona Cross, Kilnamona, Co. Clare, considered to be 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, 4 and 57 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 33 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer, particularly those contained in the response to the further information request, received by the Planning Authority on 24.05.2022.

AND WHEREAS Clare County Council has concluded:

- (a) the construction of a memorial stone to boxer Michael McTigue at Kilnamona Cross, Kilnamona, 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 development consisting specifically of:
 - the construction of a memorial stone to boxer Michael McTigue on the southern side of the N85 at Kilnamona Cross, Kilnamona, Co. Clare (as per the information received by the Planning Authority on 24.05.2022)

is exempted development having regard to Class 33 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.

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 Gareth 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, Gareth Ruane, Senior Executive Planner, hereby declare that the construction of a memorial stone to boxer Michael McTigue on the southern side of the N85 at Kilnamona Cross, Kilnamona, Co. Clare is development and is exempted development.

Signed:



GARETH RUANE
SENIOR EXECUTIVE PLANNER *AR*

Date:

9th June, 2022

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION

FILE REF:	R22 20
APPLICANT(S):	Nicolas Rynne
REFERENCE:	Whether the construction of a memorial stone monument to boxer Michael McTigue at Kilnamona Cross, Kilnamona, Co. Clare is development and if so is it exempted development.
LOCATION:	Kilnamona Cross, Kilnamona, Co. Clare.
DUE DATE:	

The following further information was requested from the applicant on 13.04.2022:

1. (a) *As currently proposed the Planning Authority would consider that the development, which according to the submitted drawings, includes a vehicular access off the L4144 could potentially endanger public safety by reason of traffic hazard or obstruction of road users, particularly having regard to the proximity of same to the N85, the apparent removal of public street lighting, directional signage, etc. It is noted that access for the proposed development is off the L4144, and the proximity of this access to the N85 does not comply with the current design standard DN-GEO-03060 Geometric Design of Junctions (priority junctions, direct accesses, roundabouts, grade separated and compact grade separate junctions). Section 5.2 of above-mentioned standard states "The provision of new priority junctions or direct accesses on minor roads shall not be permitted within 90m of a roundabout or priority junction on national roads.*

Under Article 9(a)(iii) of the Planning and Development Regulations 2001, as amended, Development to which article 6 relates shall not be exempted development for the purposes of the Act. If the carrying out of such development would –

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

In this regard, you are requested to clarify whether a vehicular access is proposed, and in doing so to note the above restriction on exempted development.

- (a) While it is noted in the application form received by the Planning Authority on 21st March 2022 states that "carpark to be omitted on enclosed drawing no. DD1.0", the Planning Authority requires received drawings to reflect same. Please arranged to submit such revised drawings.*
- (b) As noted above, regarding the proposed omission of the carpark, the Planning Authority would have concerns that the proposed picnic benches may attract passing motorists, however in the absence of a safe area to park, the development may result in a traffic hazard, with such motorists parking along the public road (L4144 or N85). In this regard, you are requested to consider the omission of such picnic benches.*

(c) You are requested to consider and submit any other proposals you may have which would ensure that the proposed development would not endanger public safety by reason of traffic hazard or obstruction of road users.

2. Class 33 of the Planning and Development Regulations 2001, as amended, provides for the following conditions and limitations

The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated

In order for the Planning Authority to assess the proposed development against the aforementioned conditions and limitations, you are requested to clarify the total maximum height of the proposed plague relative to the centre of the road opposite, in this case the N85. Please submit your proposals in this regard.

Note to applicant: it is noted that Mr. Michael Hegarty is the stated owner of the lands in question. You are advised to ensure that you have obtained the relevant consent to accommodate the proposed development from Mr. Hegarty in this regard. You are further advised that this request for further information shall be forwarded to Mr. Hegarty for any observations he may have.

A response to the further information request was received by the Planning Authority on 24th May 2022

Item 1(a) –(c)

The applicant has relocated the proposed plague such that same is now located in the hard shoulder area on the opposite side (i.e. the southern side) of the N85.



The proposed parking, picnic area, etc has been omitted and the subject Section 5 referral now pertains to the memorial stone only.

Item 2:

The applicant has clarified that the total maximum height of the proposed memorial stone relative to the centre of the N85 is 1600mm.

Having regard to the altered location and details of the proposed memorial stone, a full reassessment of the proposed development is provided below:

Site Location and Description of the Proposed Development

The works as proposed by Michael McTigue are located hard shoulder to the south of the N85 at Kilnamona Cross.

Specifically, the Section 5 Declaration is in relation to the following:

- A plaque of "Bold" Mike McTigue sitting on a limestone base and stand, with a height of 1.6m above the ground level.

Planning History

None on site.

Background to Referral

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

The applicant is seeking a Section 5 Declaration as to whether the construction of a memorial stone monument to boxer Michael McTigue at Kilnamona Cross, Kilnamona, Co. Clare is development and if so is it exempted development.

The (revised) proposed works are as follows:

- A plaque of "Bold" Mike McTigue sitting on a limestone base and stand, with a height of 1.6m above the ground level. Same will be located on the hard shoulder of the public road on the southern side of the N85 at Kilnamona Cross.

Statutory Provisions**Relevant Statutory Legislation****Planning and Development Act 2000, as amended**

- Section 2(1) interpretation of "works" and "structure".
- Section 3(1) meaning of "development".
- Section 2 of the Planning and Development 2000, as amended also defines the terms used within the Act and the following terms are relevant for the purposes of this referral.

A 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.

Works - include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

- Section 3 (1) of the Act defines development except where the context otherwise requires the carrying out of 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 sets out development which is deemed to be exempted development.
- Section 4(2)(a) states the following:

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,

- Section 5 set out consideration in relation to a declaration and referral on development and exempted development.

Section 5 (6) - (a) The Board shall keep a record of any decision made by it on a referral under this section and the main reasons and considerations on which its decision is based and shall make it available for purchase and inspection.

(c) The Board shall, from time to time and at least once a year, forward to each planning authority a copy of the record referred to in *paragraph (a)*.

Section 5 (7) - A planning authority, before making a declaration under this section, shall consider the record forwarded to it in accordance with *subsection (6)(c)*.

Planning and Development Regulations 2001, as amended

Article 6 Relates to Exempted Development.

Article 6 (1)

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

Article 9(1) Relates to restrictions on exemptions.

Article 9 (1) concerns development to which Article 6 relates and shall not be exempted development for the purposes of the Act.

- (a) If the carrying out of such development would inter alia,
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act
 - (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width
 - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
 - (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area 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,
 - (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,
 - (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,
 - (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
 - a. consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent

- granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
- b. 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,
- c. consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area 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,
- (x) obstruct any public right of way,
- (xi) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area 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 and the development would materially affect the character of the area,

Part 1, Schedule 2 relates to Exempted Development – General:

Class 33 of Part 1 of the Regulations include –

Development consisting of the laying out and use of land—

- (a) as a park, private open space or ornamental garden,
- (b) as a roadside shrine, or
- (c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.

Conditions and Limitations

The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated

Assessment

Is it development?

Works are defined in the Act as “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”.

The erection of a memorial plaque, and the outlined associated works to the adjoining lands, etc, would fall within the scope of "works" as defined in the Act. As such it can be reasonably and logically concluded that the proposed works constitutes "development" under the meaning of development as stipulated in the Act, as development is defined as, inter alia, "the carrying out of any works on, in, over or under land".

Is / is not exempted development?

A question now arises as to whether or not development constitutes exempted under the broader provisions of Section 4 of the Planning and Development Act 2000, namely Section 4 (2)(a).

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

The relevant regulations in this case would be the Planning and Development Regulations 2001, as amended, and specifically Class 33 of Part 1 of said Regulations. From an examination of the submitted drawings, I would consider that the proposed development would consist of the laying out and use of land—

- (a) as a park, private open space or ornamental garden,
- (b) as a roadside shrine, or

In this instance, having regard to the further information response, only subsection (b) would be applicable.

The conditions and limitation attached to Class 33 of the Regulations state

- The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated

The base of the memorial stone is 1m x 1m, while I note that the height of the proposed plaque has been provided, and when measured from the centre of the N85, the height of the proposed memorial stone is 1600mm. Therefore I am satisfied that the proposed memorial stone complies with the conditions and limitations as set out in Class 33 of the Regulations.

Article 9 of the Planning and Development Regulations 2001, as amended, outlines the following restrictions on exempted development:

Development to which article 6 relates shall not be exempted development for the purposes of the Act -

- (d) 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 – **the development does not contravene any condition.**

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width – **having regard to the FIR, no new vehicular access is proposed.**

(iii) endanger public safety by reason of traffic hazard or obstruction of road users – **having regard to the limited size of the proposed memorial stone, I would not consider that same would result in a traffic hazard. While I note that the proposed development is located within the N85 infrastructural safeguard (revised location), I note that the Senior Engineer from the PMO confirmed that the proposed memorial stone could be relocated if required when the final N85 alignment has been decided upon.**

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area 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 - **Not applicable**

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies - **Not applicable**

(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 – **Having regard to the limited scale of the proposed development, I do not consider that same will interfere with the character of the landscape.**

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan - **Not applicable**

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended - **Not applicable**

(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 - **Not applicable – refer to AA screening below**

(viiC)consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000. - **Not applicable**

(viii)consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use - **Not applicable**

(ix)consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan - **Not applicable**

Under Section 7 of the Planning and Development Act 2000, as amended, the Planning Authority is required to consider any relevant decision as made by An Bord Pleanála. I have searched and examined the Board's database of referrals and note there are a number of referrals relating to works within the grounds of railway stations. However, none are directly comparable to the subject application.

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 mandatory requirements for EIA as set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. I therefore consider that the proposal constitutes a sub-threshold development and note the requirements of Article 103 (1)(a) and (b) of the Planning and Development Regulations 2001, as amended. As such 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

The proposed development on a hard shoulder at a remove from any European site.

Having regard to:

- the small scale nature of the development,
- the absence of a pathway to the European site,

it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

Conclusion

Having regard to the details as submitted with the further information response, I consider that the proposed memorial stone complies with the conditions and limitation as specified under Class 33 of the Planning and Development Regulations 2001, as amended.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the construction of a memorial stone to boxer Michael McTigue at Kilnamona Cross, Kilnamona, Co. Clare is development and if so, is exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3, 4 and 57 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 33 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer, particularly those contained in the response to the further information request, received by the Planning Authority on 24.05.2022.

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

- (a) the construction of a memorial stone to boxer Michael McTigue at Kilnamona Cross, Kilnamona, 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 development consisting specifically of:
 - the construction of a memorial stone to boxer Michael McTigue on the southern side of the N85 at Kilnamona Cross, Kilnamona, Co. Clare (as per the information received by the Planning Authority on 24.05.2022)

is exempted development having regard to Class 33 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.

Now therefore Clare County Council (Planning Authority), hereby decides that the construction of a memorial stone to boxer Michael McTigue on the southern side of the N85 at Kilnamona Cross, Kilnamona, Co. Clare is development and is exempted development.



Fiona Barry

Executive Planner

Date: 09.06.2022



Garreth Ruane

Senior Executive Planner

Date: 



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Michael Keating
20 Park Row
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Your Client: Nicolas Rynne

24/05/2022

Section 5 referral Reference R22-20 – Nicolas Rynne

Is the construction of a memorial stone monument to boxer Michael McTigue, at Kilnamona Cross, Kilnamona, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 21st March 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

I acknowledge receipt of your correspondence on the 24th May 2022, responding to the Planning Authority's request for further information.

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

Mise, le meas


Tadhg Holmes
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

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



Michael Keating (Dip. Arch.)
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CLARE COUNTY COUNCIL
PLANNING DEPARTMENT
ECONOMIC DEVELOPMENT DIRECTORATE
ARAS CONTAE AN CHLAIR
NEW ROAD
ENNIS
Co. CLARE
V95 DXP2



23rd May 2022

Re: Section 5 referral Reference **R22-20 – Nicolas Rynne**
Is the construction of a memorial stone monument to boxer Michael McTigue at Kilnamona Cross, Kilnamona, Co. Clare, considered to be development and if so, is it exempted development ?

Dear Sirs,

We are responding to your letter of the 13th April 2022 regarding further information requested. We will deal with the issues in numerical order as raised in your letter.

- 1(a,b,c & d) We have relocated the Memorial Stone to boxer Michael McTigue to not endanger public safety and omitted the car park and picnic area. Please see enclosed drawing,
- 2 The total maximum height of the proposed Memorial Stone relative to the centre of the N85 is 1600mm.

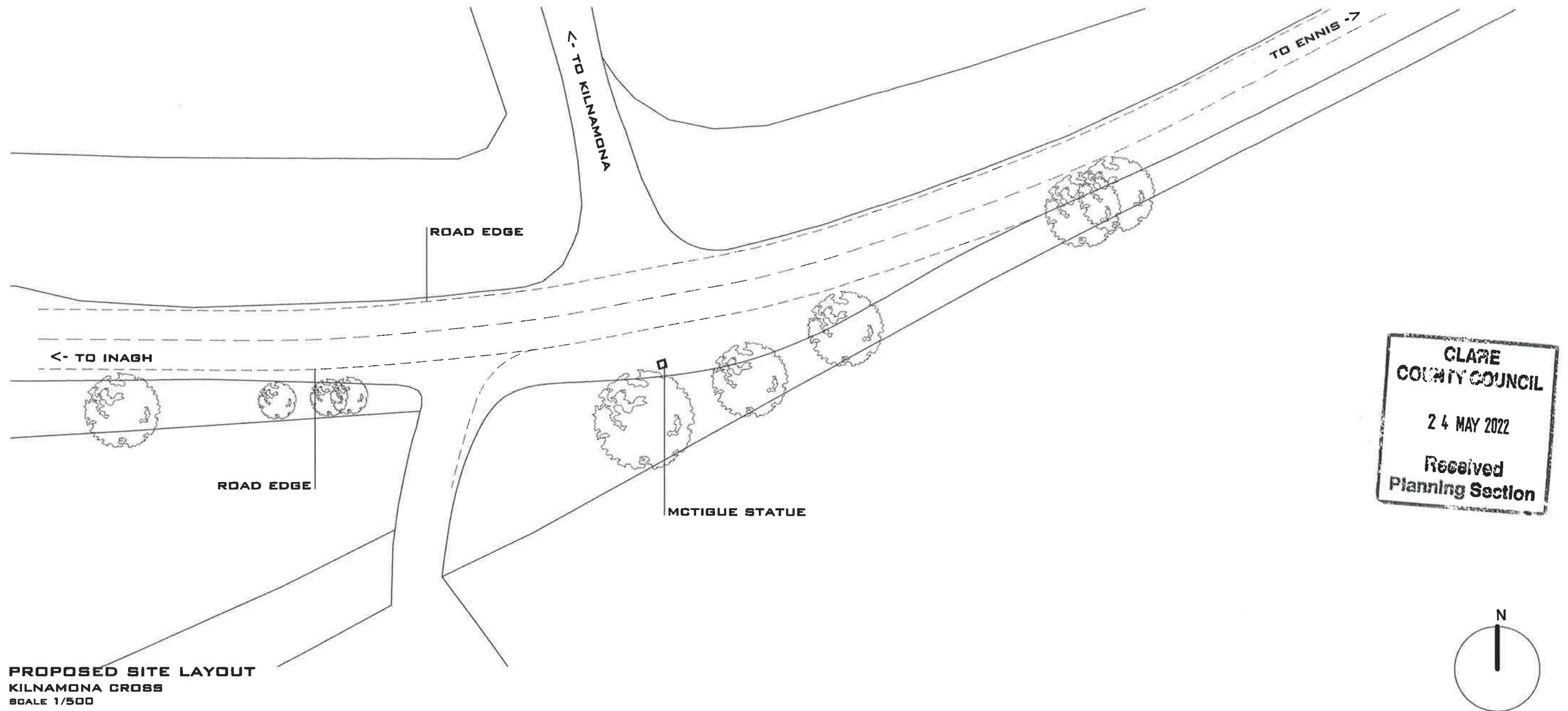
Yours Sincerely,



Michael Keating (Dip. Arch)

ATTACHMENTS:

1. REVISED SITE LAYOUT d.d. 22/05/2022

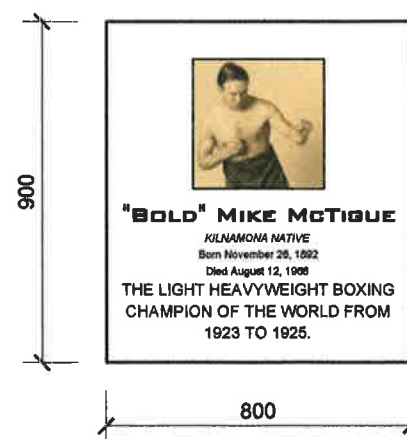


**CLARE
COUNTY COUNCIL**

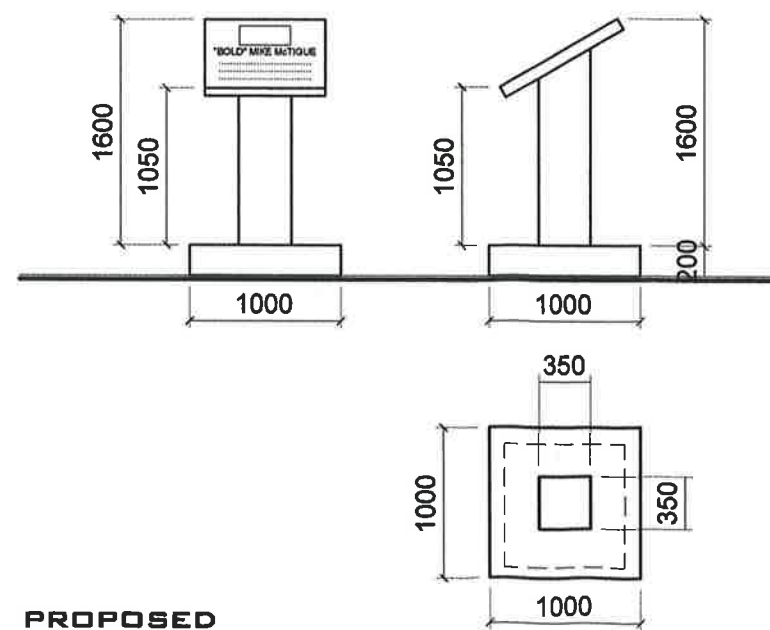
24 MAY 2022

Received
Planning Section

**PROPOSED SITE LAYOUT
KILNAMONA CROSS**
SCALE 1/500



PROPOSED PLAQUE
SCALE 1/20



**PROPOSED
LIMESTONE BASE & STAND**
SCALE 1/50

NOTE

ALL DIMENSIONS MUST BE CHECKED ON SITE. FIGURED DIMENSIONS ONLY TO BE TAKEN FROM THIS DRAWING. NO DIMENSIONS TO BE SCALED FROM THIS DRAWING. ARCHITECT TO BE INFORMED IMMEDIATELY OF ANY DISCREPANCIES BEFORE WORK PROCEEDS.

B

A

REVISION	DATE	DESCRIPTION

PROJECT MIKE MCTIGUE STATUE KILNAMONA CROSS			MICHAEL KEATING DIP. ARCH. 20 PARK ROW / FRANCIS STREET - ENNIS - CO. CLARE T 085 842 1780 E michaelkeating2015@gmail.com		
CLIENT NICOLAS RYNNE			DRAWING PROPOSED SITE LAYOUT, STAND AND PLAQUE		
DRAWN BY M.E.	DATE 22/05/2022	SCALE 1/500	SIZE A 3	JOB NO 2019/92	DRWG NO DD2.01

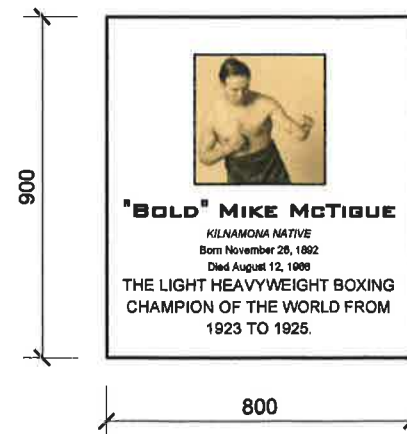


**CLARE
COUNTY COUNCIL**

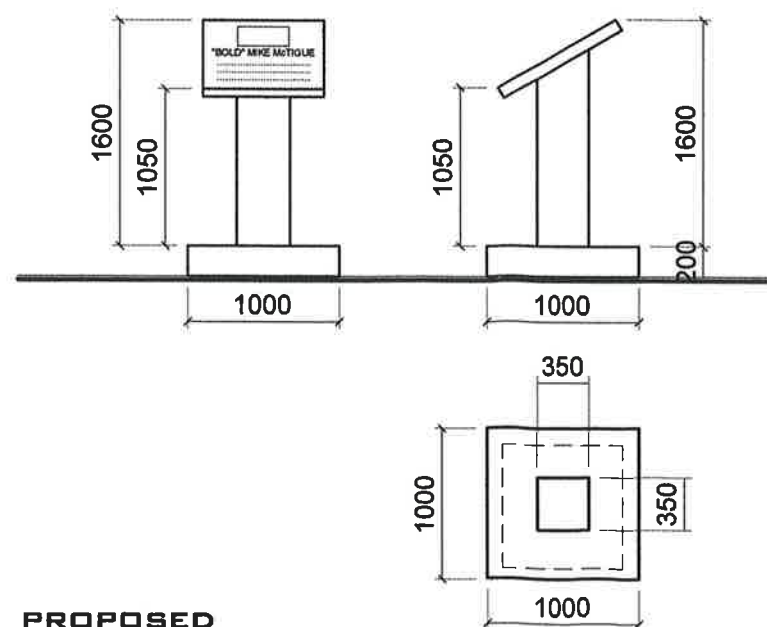
24 MAY 2022

**Received
Planning Section**

**PROPOSED SITE LAYOUT
KILNAMONA CROSS
SCALE 1/500**



**PROPOSED PLAQUE
SCALE 1/20**



**PROPOSED
LIMESTONE BASE & STAND
SCALE 1/50**

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B

A

REVISION DATE DESCRIPTION

PROJECT MIKE MCTIGUE STATUE KILNAMONA CROSS			MICHAEL KEATING DIP. ARCH. 20 PARK ROW / FRANCIS STREET - ENNIS - CO. CLARE T 085 842 1780 E michaelkeating2015@gmail.com		
CLIENT NICOLAS RYNNE			DRAWING PROPOSED SITE LAYOUT, STAND AND PLAQUE		
DRAWN BY M.E.	DATE 22/05/2022	SCALE 1/500	SIZE A 3	JOB NO 2019/92	DRWG NO DD2.02



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Michael Keating
20 Park Row
Ennis
Co. Clare
V95 P90V

RL 5660 3312 7IE

Your Client: Nicolas Rynne

13/04/2022

Section 5 referral Reference R22-20 – Nicolas Rynne

Is the construction of a memorial stone monument to boxer Michael McTigue, at Kilnamona Cross, Kilnamona, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 21st March 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please be advised that the following Further Information is requested:

1.

- (a) As currently proposed the Planning Authority would consider that the development, which according to the submitted drawings, includes a vehicular access off the L4144 could potentially endanger public safety by reason of traffic hazard or obstruction of road users, particularly having regard to the proximity of same to the N85, the apparent removal of public street lighting, directional signage, etc. It is noted that access for the proposed development is off the L4144, and the proximity of this access to the N85 does not comply with the current design standard DN-GEO-03060 *Geometric Design of Junctions (priority junctions, direct accesses, roundabouts, grade separated and compact grade separate junctions)*. Section 5.2 of above-mentioned standard states "The provision of new priority junctions or direct accesses on minor roads shall not be permitted within 90m of a roundabout or priority junction on national roads.

Under Article 9(a)(iii) of the Planning and Development Regulations 2001, as amended, Development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would –

(iii) *endanger public safety by reason of traffic hazard or obstruction of road users.*

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





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

In this regard, you are requested to clarify whether a vehicular access is proposed, and in doing so to note the above restriction on exempted development.

- (b) While it is noted in the application form received by the Planning Authority on 21st March 2022 states that "carpark to be omitted on enclosed drawing no. DD1.0", the Planning Authority requires received drawings to reflect same. Please arranged to submit such revised drawings.
- (c) As noted above, regarding the proposed omission of the carpark, the Planning Authority would have concerns that the proposed picnic benches may attract passing motorists, however in the absence of a safe area to park, the development may result in a traffic hazard, with such motorists parking along the public road (L4144 or N85). In this regard, you are requested to consider the omission of such picnic benches.
- (d) You are requested to consider and submit any other proposals you may have which would ensure that the proposed development would not endanger public safety by reason of traffic hazard or obstruction of road users.

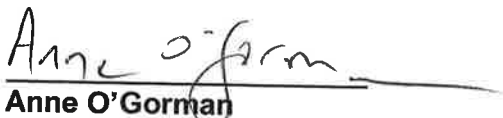
- 2. Class 33 of the Planning and Development Regulations 2001, as amended, provides for the following conditions and limitations:

The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated

In order for the Planning Authority to assess the proposed development against the aforementioned conditions and limitations, you are requested to clarify the total maximum height of the proposed plaque relative to the centre of the road opposite, in this case the N85. Please submit your proposals in this regard.

Note to applicant: it is noted that a third party is the stated owner of the lands in question. You are advised to ensure that you have obtained the relevant consent to accommodate the proposed development from the landowner in this regard. You are further advised that this request for further information shall be forwarded to that landowner for any observations they may have.

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





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Michael Hegarty
Knockatemple
Kilnamona
Co. Clare

RL 5660 3313 5 IE

21/03/2022

Section 5 referral Reference R22-20 – Nicolas Rynne

Is the construction of a memorial stone monument to boxer Michael McTigue, at Kilnamona Cross, Kilnamona, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

The Planning Authority wishes to advise that it has received a Section 5 (Declaration on Development and/or Exempted Development) application with respect to the works listed above and issues this letter to inform you as the stated owner of the property in question.

Please note that the Planning Authority has sought further information on the proposal from the applicant and attaches a copy of same for your attention.

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



CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION

FILE REF:	R22 20
APPLICANT(S):	Nicolas Rynne
REFERENCE:	Whether the construction of a memorial stone monument to boxer Michael McTigue at Kilnamona Cross, Kilnamona, Co. Clare is development and if so is it exempted development.
LOCATION:	Kilnamona Cross, Kilnamona, Co. Clare.
DUE DATE:	15 TH April 2022

Site Location and Description of the Proposed Development

The works as proposed by Michael McTigue are located in a field to the rear of an existing grassy verge at the junction of the L4144 and N85 at Kilnamona Cross.

Specifically, the Section 5 Declaration is in relation to the following:

- A plaque of "Bold" Mike McTigue sitting on a limestone base and stand, with a height of 1.6m above the ground level.
- 4 no. picnic benches located adjacent to the plaque,
- A landscaped walkway within the grassy verge
- Fencing to the rear of the plaque and amenity location
- A vehicular entrance off the L4144 (Kilnamona Road)
- Note: the submitted site layout shows 5 no. parking spaces within the grassy verge, however the application form as received by the Planning Authority on 21st March 2022 states that the "carpark to be omitted on enclosed drawing no. DD1.0".

Site context



Planning History

None on site.

Background to Referral

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

The applicant is seeking a Section 5 Declaration as to whether the construction of a memorial stone monument to boxer Michael McTigue at Kilnamona Cross, Kilnamona, Co. Clare is development and if so is it exempted development.

The proposed works are as follows:

- A plaque of “Bold” Mike McTigue sitting on a limestone base and stand, with a height of 1.6m above the ground level.
- 4 no. picnic benches located adjacent to the plaque,
- A landscaped walkway within the grassy verge
- Fencing to the rear of the plaque and amenity location
- A vehicular entrance off the L4144 (Kilnamona Road)

Statutory Provisions

Relevant Statutory Legislation

Planning and Development Act 2000, as amended

- Section 2(1) interpretation of “works” and “structure”.
- Section 3(1) meaning of “development”.
- Section 2 of the Planning and Development 2000, as amended also defines the terms used within the Act and the following terms are relevant for the purposes of this referral.

A 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.

Works - include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

- Section 3 (1) of the Act defines development except where the context otherwise requires the carrying out of 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 sets out development which is deemed to be exempted development.
- Section 4(2)(a) states the following:

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,

- Section 5 set out consideration in relation to a declaration and referral on development and exempted development.

Section 5 (6) - (a) The Board shall keep a record of any decision made by it on a referral under this section and the main reasons and considerations on which its decision is based and shall make it available for purchase and inspection.

(c) The Board shall, from time to time and at least once a year, forward to each planning authority a copy of the record referred to in *paragraph (a)*.

Section 5 (7) - A planning authority, before making a declaration under this section, shall consider the record forwarded to it in accordance with *subsection (6)(c)*.

Planning and Development Regulations 2001, as amended

Article 6 Relates to Exempted Development.

Article 6 (1)

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

Article 9(1) Relates to restrictions on exemptions.

Article 9 (1) concerns development to which Article 6 relates and shall not be exempted development for the purposes of the Act.

(a) If the carrying out of such development would inter alia,

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area 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,
- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,
- (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,
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
 - a. consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
 - b. 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,
 - c. consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area 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,
- (x) obstruct any public right of way,
- (xi) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area 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 and the development would materially affect the character of the area,

Part 1, Schedule 2 relates to Exempted Development – General:

Class 33 of Part 1 of the Regulations include –

Development consisting of the laying out and use of land—

(a) as a park, private open space or ornamental garden,

(b) as a roadside shrine, or

(c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.

Conditions and Limitations

The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated

Assessment

Is it development?

Works are defined in the Act as “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”.

The erection of a memorial plaque, and the outlined associated works to the adjoining lands, etc, would fall within the scope of “works” as defined in the Act. As such it can be reasonably and logically concluded that the proposed works constitutes “development” under the meaning of development as stipulated in the Act, as development is defined as, inter alia, “the carrying out of any works on, in, over or under land”.

Is / is not exempted development?

A question now arises as to whether or not development constitutes exempted under the broader provisions of Section 4 of the Planning and Development Act 2000, namely Section 4 (2)(a).

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

The relevant regulations in this case would be the Planning and Development Regulations 2001, as amended, and specifically Class 33 of Part 1 of said Regulations. From an examination of the submitted drawings, I would consider that the proposed development would consist of the laying out and use of land—

- (a) as a park, private open space or ornamental garden,
- (b) as a roadside shrine, or

In this instance both subsection (a) and (b) would be applicable.

Regarding the conditions and limitations, while I note that the height of the proposed plaque has been provided, same has not been taken from the centre of the road opposite the structure. In this instance, as the proposed structure is addressing the N85, I would consider it appropriate that the measurement is taken from same. I would recommend that further information is requested in this regard. In this regard, the provisions of Article 6 of the Planning and Development Regulations 2001 as amended are noted. Article 6(1) states that inter alia, subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 of the Planning and Development Regulations 2001, as amended, outlines the following restrictions on exempted development:

Development to which article 6 relates shall not be exempted development for the purposes of the Act -

(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 – **the development does not contravene any condition.**
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width – **From the drawings submitted it would appear that a vehicular access is to be provide off the L4144 (Kilnamona Road). From a review of the Planning Authority ARC Gis this road has a maximum with of 3.8 meters.**
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users – **The impact of the proposed development on public safety is uncertain. A report from the Road Design Section**

(appended to this report) was received by the Planning Authority on 08.04.2022. The report states the following:

*"The access for the proposed development is off the L4144, the proximity of this access to the N85 does not comply with the current design standard DN-GEO-03060 **Geometric Design of Junctions (priority junctions, direct accesses, roundabouts, grade separated and compact grade separate junctions)**. Section 5.2 of above mentioned standard states **"The provision of new priority junctions or direct accesses on minor roads shall not be permitted within 90m of a roundabout or priority junction on national roads."***

I note that the submitted application form states that the car parking is to be omitted. While this is noted, the submitted drawings show a vehicular access, and there is no mention of same being omitted. I would therefore recommend that further information is requested on whether the vehicular access is being proposed. I note that the vehicle access would appear to necessitate the removal of a public light, directional signage and potentially an ornamental standing stone as per red arrow below:



Further, in the interests of full assessment, I would consider it appropriate that the applicant is requested to submit revised drawings showing the omission of the car parking spaces.

I note that the proposed development is located within the N85 infrastructural safeguard. The Senior Engineer from the PMO has commented as follows:

"From a PMO perspective, I don't have a difficulty with the proposal as we do not know the alignment that the new section of road will take and therefore, it would be wrong of us to hold up the plans that the KDA have to erect the monument there. If it is in the way of the route once confirmed, we can relocate it at that stage".

I would have concerns that the proposed picnic benches could attract traffic from passing motorists, and with the removal of the carparking and potential removal of the vehicular accessway, I would have concerns that such motorists may park at the junction, thus resulting in a potential traffic hazard. Such motorists may also consider stopping at the gravelled verge on the opposite side of the N85, which would necessitate pedestrians crossing the N85, to access the proposed development, which would not be desirable. Having regard to such concerns, I would consider it appropriate to

request further information on this element (i.e. picnic benches) of the proposed development, particularly who it is envisaged would use same and where such users would park.

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area 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 - **Not applicable**

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies - **Not applicable**

(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 – **Having regard to the limited scale of the proposed development, I do not consider that same will interfere with the character of the landscape.**

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan - **Not applicable**

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended - **Not applicable**

(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 - **Not applicable – refer to AA screening below**

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000. - **Not applicable**

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use - **Not applicable**

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan - **Not applicable**

Under Section 7 of the Planning and Development Act 200, as amended, the Planning Authority is required to consider any relevant decision as made by An Bord Pleanála. I have searched and examined the Board's database of referrals and note there are a number of referrals relating to works within the grounds of railway stations. However, none are directly comparable to the subject application.

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 mandatory requirements for EIA as set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. I therefore consider that the proposal constitutes a sub-threshold development and note the requirements of Article 103 (1)(a) and (b) of the Planning and Development Regulations 2001, as amended. As such 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

The proposed development is located in a green field at a remove from any European site.

Having regard to:

- the small scale nature of the development,
- the absence of a pathway to the European site,

it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

Conclusion

Further information is required on the following:

- Whether a vehicular access is proposed. The applicant shall be advised that the inclusion of same could potentially endanger public safety by reason of traffic hazard or obstruction of road users, particularly having regard to the proximity of same to the N85.

- The inclusion of picnic benches, which may attract passing motorists
- Compliance with the conditions and limitation as specified under Class 33 of the Planning and Development Regulations 2001, as amended.

Recommendation

I recommend that the following Further Information is requested:

1. (a) As currently proposed the Planning Authority would consider that the development, which according to the submitted drawings, includes a vehicular access off the L4144 could potentially endanger public safety by reason of traffic hazard or obstruction of road users, particularly having regard to the proximity of same to the N85, the apparent removal of public street lighting, directional signage, etc. It is noted that access for the proposed development is off the L4144, and the proximity of this access to the N85 does not comply with the current design standard DN-GEO-03060 *Geometric Design of Junctions (priority junctions, direct accesses, roundabouts, grade separated and compact grade separate junctions)*. Section 5.2 of above-mentioned standard states *"The provision of new priority junctions or direct accesses on minor roads shall not be permitted within 90m of a roundabout or priority junction on national roads.*

Under Article 9(a)(iii) of the Planning and Development Regulations 2001, as amended, Development to which article 6 relates shall not be exempted development for the purposes of the Act If the carrying out of such development would –

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

In this regard, you are requested to clarify whether a vehicular access is proposed, and in doing so to note the above restriction on exempted development.

- (b) While it is noted in the application form received by the Planning Authority on 21st March 2022 states that "carpark to be omitted on enclosed drawing no. DD1.0", the Planning Authority requires received drawings to reflect same. Please arranged to submit such revised drawings.
 - (c) As noted above, regarding the proposed omission of the carpark, the Planning Authority would have concerns that the proposed picnic benches may attract passing motorists, however in the absence of a safe area to park, the development may result in a traffic hazard, with such motorists parking along the public road (L4144 or N85). In this regard, you are requested to consider the omission of such picnic benches.
 - (d) You are requested to consider and submit any other proposals you may have which would ensure that the proposed development would not endanger public safety by reason of traffic hazard or obstruction of road users.
2. Class 33 of the Planning and Development Regulations 2001, as amended, provides for the following conditions and limitations

The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated

In order for the Planning Authority to assess the proposed development against the aforementioned conditions and limitations, you are requested to clarify the total maximum height of the proposed plaque relative to the centre of the road opposite, in this case the N85. Please submit your proposals in this regard.

a third party
Note to applicant: it is noted that ~~Mr. Michael Hegarty~~ is the stated owner of the lands in question. You are advised to ensure that you have obtained the relevant consent to accommodate the proposed development from ~~Mr. Hegarty~~ in this regard. You are further advised that this request for further information shall be forwarded to ~~Mr. Hegarty~~ for any observations ~~he~~ may have.
the land owner
that Landowner



Fiona Barry

Executive Planner

Date: 11.04.2022



~~Garrett Ruane~~

Senior Executive Planner

Date: 13-04-2022

AO: Please forward a copy of this request for further information to Mr. Michael Hegarty, Knockatemple, Kilnamona, Co. Clare for any observations he may have.

Tadhg Holmes

From: Sean Lenihan
Sent: Friday 8 April 2022 14:06
To: Tadhg Holmes
Cc: Fiona Barry; John Gannon; Eamon ODea
Subject: RE: R22-20 Section 5 Referral

Importance: High

Hi Tadhg,

I had previously discussed this with Fiona.

From a PMO perspective, I don't have a difficulty with the proposal as we do not know the alignment that the new section of road will take and therefore, it would be wrong of us to hold up the plans that the KDA have to erect the monument there. If it is in the way of the route once confirmed, we can relocate it at that stage.

To be clear, that is my view in terms of its impact on the Capital Scheme. Road Design and the MD Office may well have other issues of concern.

Regards,

Sean

Seán Lenihan, BE CEng FIEI

Senior Engineer

Clare County Council, New Road, Ennis, Co. Clare, V95 DXP2.

T: 065 6821616 | **M:** 087 2352105 | **E:** slenihan@clarecoco.ie | **W:** www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

From: Tadhg Holmes <tholmes@clarecoco.ie>
Sent: Friday 8 April 2022 10:09
To: John Gannon <JGannon@clarecoco.ie>; Sean Lenihan <slenihan@clarecoco.ie>
Cc: Fiona Barry <FBarry@clarecoco.ie>
Subject: FW: R22-20 Section 5 Referral
Importance: High

John, Sean

This is just a reminder to please forward any observations in relation to the attached by close of business today, the 8th of April.

Kind regards

Tadhg

Tadhg Holmes

Clerical Officer

Planning Department, Economic Development Directorate

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

T: 065 6846212 | E: tholmes@clarecoco.ie | W: www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

From: Tadhg Holmes

Sent: Friday 25 March 2022 14:34

To: John Gannon <JGannon@clarecoco.ie>; Sean Lenihan <slenihan@clarecoco.ie>

Cc: Fiona Barry <FBarry@clarecoco.ie>

Subject: R22-20 Section 5 Referral

John, Sean

Please find attached a Section 5 (Request for a Declaration on Development and Exempted Development) application relating to a proposed memorial monument at Kilnamona Cross.

Fiona Barry (copied) has requested that this application be referred to you for review and observations.

Please review the attached and revert with any comments by Friday 8th April 2022.

Kind regards

Tadhg

Tadhg Holmes

Clerical Officer

Planning Department, Economic Development Directorate

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

T: 065 6846212 | E: tholmes@clarecoco.ie | W: www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

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Tá an t-eolas atá sa ríomhphost seo, agus in aon cheangaltán leis, rúnda, agus is d'aird agus d'úsáid an fhaighteora nó na bhfaighteoirí amháin nó eintiteas ainmnithe thuas atá sé. Murar tusa faighteoir beartaithe an ríomhphost seo nó aon chud de, níor chóir duit an teachtaireacht seo a úsáid, a nochtadh, a chóipeáil, a dháileadh nó a choinneáil. Más rud é gur trí bhotún a fuair tú an ríomhphost seo cuir sin in iúl don tseoltóir gan mhoill.

Tadhg Holmes

From: James Keane
Sent: Friday 8 April 2022 15:15
To: Tadhg Holmes
Cc: Planning Office
Subject: RE: R22-20 Section 5 Referral
Attachments: Section 5 referral, planning exempted development.docx

Tadhg,

Please find attached the Road Design Office response in relation to the Section 5 referral mentioned below.

Regards,

James Keane

Acting Executive Engineer

Road Design Office

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

T: 065 6846478 | **E:** jkeane@clarecoco.ie | **W:** www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

From: Tadhg Holmes <tholmes@clarecoco.ie>
Sent: 25 March 2022 14:34
To: John Gannon <JGannon@clarecoco.ie>; Sean Lenihan <slenihan@clarecoco.ie>
Cc: Fiona Barry <FBarry@clarecoco.ie>
Subject: R22-20 Section 5 Referral

John, Sean

Please find attached a Section 5 (Request for a Declaration on Development and Exempted Development) application relating to a proposed memorial monument at Kilnamona Cross.

Fiona Barry (copied) has requested that this application be referred to you for review and observations.

Please review the attached and revert with any comments by Friday 8th April 2022.

Kind regards

Tadhg

Tadhg Holmes

Clerical Officer

Planning Department, Economic Development Directorate



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

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Tá an t colas atá sa ríomhphost seo, agus in aon cheangaltán leis, rúnda, agus is d'aird agus d'úsáid an fhaighteora nó na bhfaighteoirí amháin nó eintiteas ainmnithe thuas atá sé. Murar tusa faighteoir beartaithe an ríomhphoist seo nó aon chud de, níor chóir duit an teachtaireacht seo a úsáid, a nochtadh, a chóipeáil, a dháileadh nó a choinneáil. Más rud é gur trí bhotún a fuair tú an ríomhphost seo cuir sin in iúl don tseoltóir gar mhoill.

Road Design Planning Report

Planning reference Link to iPlan	Road Design Reference <u>R22-20/JK/OUT/7652</u>	Date of issue 08/04/2022
Applicant	Nicholas Rynne	
Date Submitted	21/03/2022	
Project Address	Kilnamona Cross, Kilnamona, Co. Clare.	
Development Description	Memorial to Mike McTigue at Kilnamona Cross	
Issued to	planoff@clarecoco.ie	

A Chara

Following a review of the section 5 planning referral as detailed above please see below for comments.

1.0 Road Layout and Specification

The access for the proposed development is off the L4144, the proximity of this access to the N85 does not comply with the current design standard DN-GEO-03060 *Geometric Design of Junctions (priority junctions, direct accesses, roundabouts, grade separated and compact grade separate junctions)*. Section 5.2 of above mentioned standard states "*The provision of new priority junctions or direct accesses on minor roads shall not be permitted within 90m of a roundabout or priority junction on national roads.*"

Signed:



Date: 08/04/2022

James Keane
A/Executive Engineer
Road Design Office



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Michael Keating
20 Park Row
Ennis
Co. Clare
V95 P90V

Your Client: Nicolas Rynne

21/03/2022

Section 5 referral Reference R22-20 – Nicolas Rynne

Is the construction of a memorial stone monument to boxer Michael McTigue, at Kilnamona Cross, Kilnamona, Co. Clare, considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 21st March 2022 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

Tadhg Holmes

Tadhg Holmes
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
 Email: planoff@clarecoco.ie
 Website: www.clarecoco.ie



Comhairle Contae an Chláir
 Clare County Council

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 DETAILS.

(a) Name and Address of person seeking the declaration	NICOLAS RYNNE 18 RIVERSIDE INAGH, Co. CLARE V95 VX97
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	MICHAEL KEATING Dip. Arch. 20 PARK ROW ENNIS, Co. CLARE V95 P90V

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?

MEMORIAL (MONUMENT) AT KILNAMONA CROSS

(COMMERATION STONE MONUMENT TO BOXER MIKE McTIGUE)

- (b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

CARPARK TO BE OMITTED ON ENCLOSED DRAWING No. DD1.0

- (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)

- PROPOSED SITE LAYOUT, SCALE 1/500 @ A3

- SITE LOCATION MAP, SCALE 1/2500 @ A4

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT

(a) Postal Address of the Property/Site/Building for which the declaration sought:	KILNAMONA CROSS KILNAMONA, 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):	NO LEGAL INTEREST
(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: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	MICHAEL HEGARTY KNOCKATEMPLE KILNAMONA Co. CLARE
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	YES
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	NO
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	NO
(h) Date on which 'works' in question were completed/are likely to take place:	AUGUST 2022

SIGNED: DATE: 21-8-2022

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:

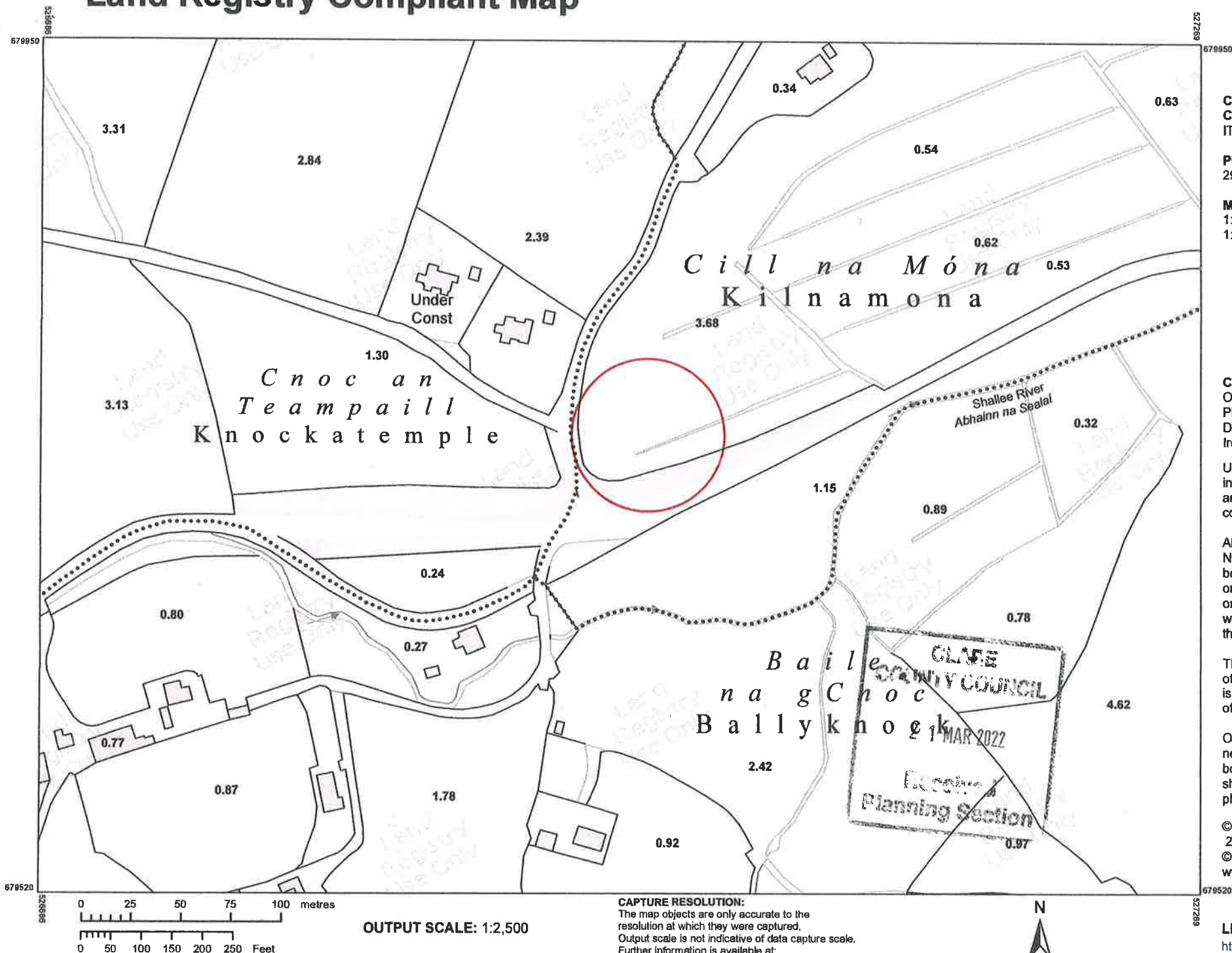
Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

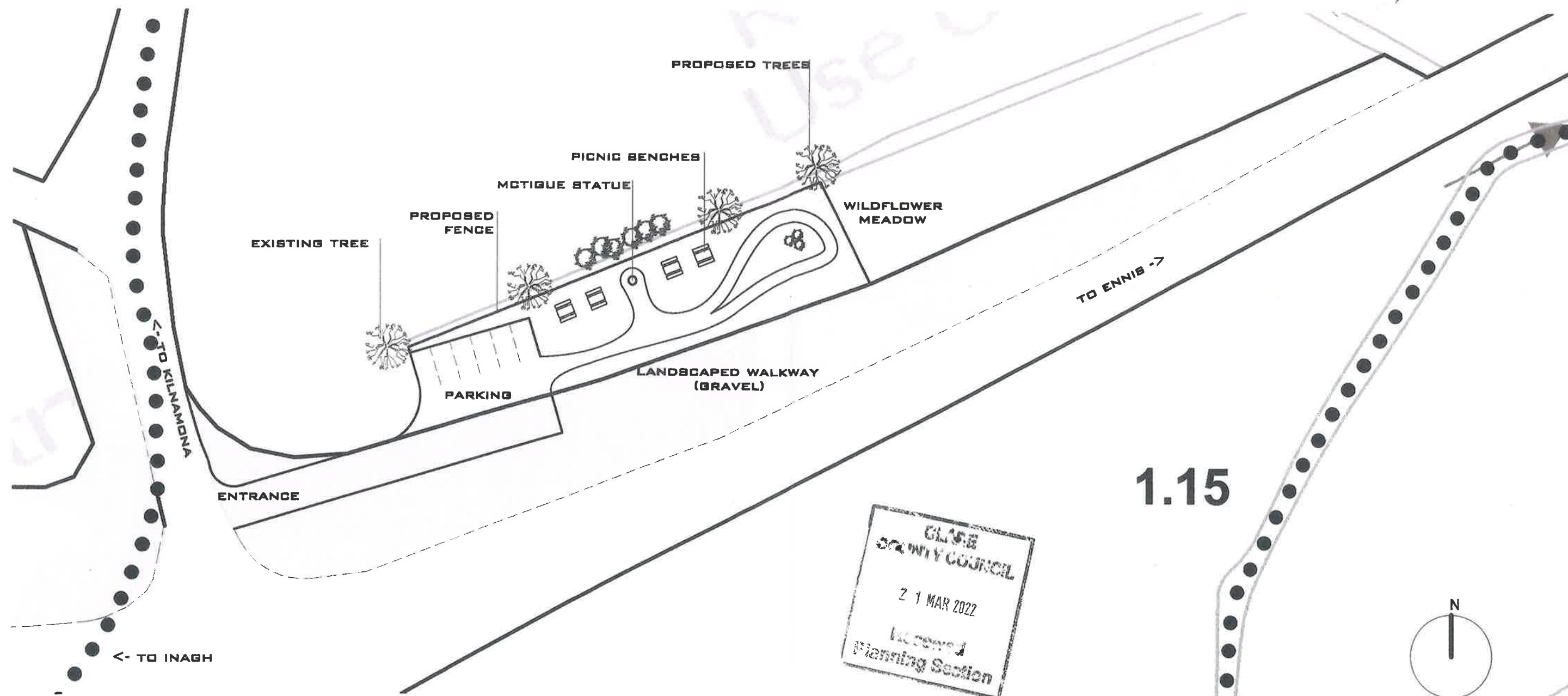
- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information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

FOR OFFICE USE ONLY

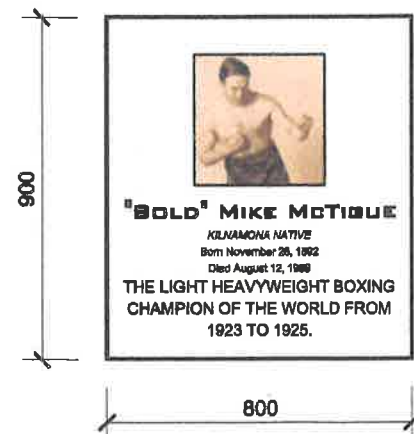
Date Received:	Fee Paid:
Date Acknowledged:	Reference No.:
Date Declaration made:	CEO No.:
Decision:			

Land Registry Compliant Map

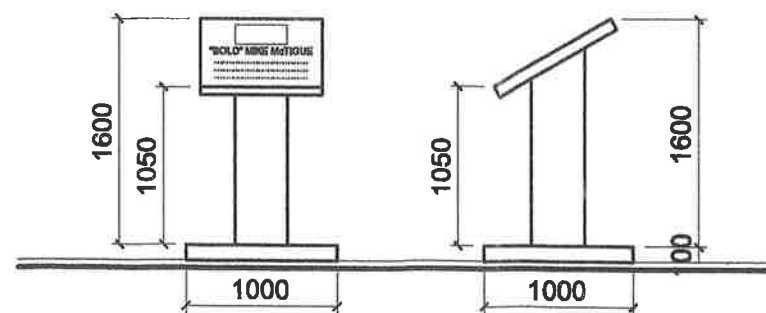




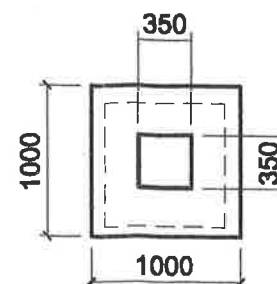
PROPOSED SITE LAYOUT
SCALE 1/500



PROPOSED PLAQUE
SCALE 1/20



PROPOSED
LIMESTONE BASE & STAND
SCALE 1/50



NOTE

ALL DIMENSIONS MUST BE CHECKED ON SITE. FIGURED DIMENSIONS ONLY TO BE TAKEN FROM THIS DRAWING. NO DIMENSIONS TO BE SCALED FROM THIS DRAWING. ARCHITECT TO BE INFORMED IMMEDIATELY OF ANY DISCREPANCIES BEFORE WORK PROCEEDS.

B

A

REVISION DATE DESCRIPTION

PROJECT MIKE MCTIGUE STATUE KILNAMONA CROSS		MICHAEL KEATING DIP. ARCH. 20 PARK ROW / FRANCIS STREET - ENNIS - CO. CLARE T 085 842 1780 E michaelkeating2015@gmail.com			
CLIENT NICOLAS RYNNE		DRAWING PROPOSED SITE LAYOUT, STAND AND PLAQUE			
DRAWN BY M.E.	DATE 05/02/2020	SCALE 1/500	SIZE A 3	JOB NO 2019/92	DRWG NO DD1.0

Clare County Council
Aras Contae an Chláir
New Road
Ennis
Co Clare

21/03/2022 13:42:13

Receipt No. : L1CASH/0/330022
REPRINT

NICHOLAS RYNNE
18 RIVERSIDE
INAGH
CO. CLARE

SECTION REFERENCES
GOODS 80.00
VAT Exempt/Non-vatable

Total :

80.00 EUR

Tendered :
CREDIT CARDS

80.00

Change :

0.00

Issued By : L1CASH - Noelle Barry
From : MAIN CASH OFFICE LODGEMENT AREA
Vat reg No.0033043E