

## SECTION 5 DECLARATION – PLANNER’S REPORT

**File Reference:** R 508/19

**Description:** Whether the change of use from health/medical services to use as an office is or is not development and is or is not exempted development.

**Applicant:**

**Location:** 1 Georges’s Quay, Cork

### 1. PURPOSE OF REPORT

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

### 2. SITE LOCATION

The site is located at 1 Georges Quay and is also known as 1 Buckingham Place (junction of Georges Quay and White Street).

### 3. SITE HISTORY

*On this site:*

T.P. 09/34033: Permission granted for a change of part of the ground floor of 1 Buckingham Place/George’s Quay from office to health/medical services. (The initial application referred to the rear section of the ground floor only however under an FI request the front portion was shown as a reception area).

T.P. 06/31049: Permission granted for a mixed use development at 1 and 2 Buckingham Place (providing for the retention of bar use in ground floor of No. 1).

T.P. 00/24732: Permission granted for an extension to the Exchange Bar by changing the use of part of a ground floor office to bar use.

### 4. RELEVANT PLANNING POLICY/OBJECTIVES

***Cork City Development Plan 2015-2021***

The site is zoned ‘Z02 City Centre Commercial Core Area’ in Map 1 Volume 2 of the Plan which has as its objective: *‘To support the retention and expansion of a wide range of commercial, cultural, leisure and residential uses in the commercial core area (apart from comparison retail uses).’*

Paragraph 15.8 goes on to state that *‘the Commercial Core Area reflects the commercial and employment zone of the City Centre extending from the City Centre Retail Area. All uses are permitted throughout the CCA, except comparison retail uses, which are restricted to the City Centre Retail Area. Retail uses serving local needs only are open for consideration in this zone (Chapter 13).’*

The structure is a Protected Structure and listed on the N.I.A.H. and lies within the South Parish Architectural Conservation Area and the city’s zone of archaeological potential.

The site also lies within Flood Risk Zones A and B.

## 5. RELEVANT LEGISLATION

### *Planning and Development Act, 2000 as amended*

Section 2(1) of the Act Planning and Development Act, 2000 as amended proffers the following interpretations:

*'structure' means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—*

*(a) where the context so admits, includes the land on, in or under which the structure is situate, and*

*(b) in relation to a protected structure or proposed protected structure, includes—*

*(i) the interior of the structure,*

*(ii) the land lying within the curtilage of the structure,*

*(iii) any other structures lying within that curtilage and their interiors, and*

*(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);*

*"unauthorised structure" means a structure other than—*

*(a) a structure which was in existence on 1 October 1964, or*

*(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34 of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);*

*"unauthorised use" means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—*

*(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or*

*(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;*

*"unauthorised works" means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—*

*(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or*

*(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;*

*"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.*

Article 3 (1) of the Act offers the following meaning of "development":

*'except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.'*

Section 4(1) of the Act relates to 'exempted development and lists exempted development for the purposes of the Act including (h) *'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;'*

Section 57 (1) states *'Notwithstanding section 4(1)(h), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—*

*(a) the structure, or*

*(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.'*

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

Class 14 of Part 1 of Schedule 2 relates to exemptions for certain changes of use. None of these are relevant to the question under consideration.

Part 4 of the Second Schedule outlines 'Classes of Use' with:

**CLASS 2 -**

*'Use for the provision of—*

*(a) financial services,*

*(b) professional services (other than health or medical services),*

*(c) any other services (including use as a betting office),*

*where the services are provided principally to visiting members of the public.'*

**CLASS 3 -**

*'Use as an office, other than a use to which class 2 of this Part of this Schedule applies.'*

**CLASS 8**

*'Use—*

*(a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),*

*(b) as a crèche,*

*(c) as a day*

*nursery,*

*(d) as a day centre.'*

Article 6(1) of the Regulations states as follows:-

*"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) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, (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"...*

## 6. PLANNING ASSESSMENT & RECOMMENDATION

Article 3 (1) of the Act offers the following meaning of "development":

*'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.'* It is clear that a change of use is proposed between two differing use classes – from Class 8 to either Class 2 or 3 (not defined in the application). The change of use is considered therefore to be a material change of use and 'development'.

The structure is a Protected Structure although it appears that no works to the fabric are proposed. No drawings (elevations/floorplans) have been attached to the application. From Google maps the building was occupied in 2011 by Cork Dental Care. However this use appears to have ceased by 2017. The applicant states that it reverted to office use subsequent to its use as a medical practise however no planning permission was issued for this change of use.

There is no exemption in the Planning and Development Regulations 2001 (as amended) for a change of use from Class 8 (as permitted under T.P. 09/34033) to use as an office under either Class 2 or 3 of the Part 4 Classes of Use of the Regulations. (Note: Class 14 Exempted Development Schedule 2 does not provide for an exemption between the classes in question).

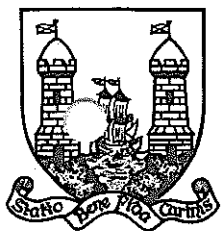
Therefore the proposed change of use from a medical use to use as an office therefore **'is development and is not exempted development.'**

E. Mitchell

Evelyn Mitchell

Senior Executive Planner.

29.04.2019.



# Comhairle Cathrach Chorcaí Cork City Council

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

Day Property Holdings  
c/o Finbar Murphy Solicitors  
8 Washington St  
Cork

07/05/2019

## RE: Section 5 R508/19 1 Georges Quay Cork

Dear Sir/Madam,

I refer to your request for a section 5 Declaration at the above named property.

Article 3 (1) of the Act offers the following meaning of "development":

*'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.'* It is clear that a change of use is proposed between two differing use classes – from Class 8 to either Class 2 or 3 (not defined in the application). The change of use is considered therefore to be a material change of use and 'development'.

The structure is a Protected Structure although it appears that no works to the fabric are proposed. No drawings (elevations/floorplans) have been attached to the application. From Google maps the building was occupied in 2011 by Cork Dental Care. However this use appears to have ceased by 2017. The applicant states that it reverted to office use subsequent to its use as a medical practise however no planning permission was issued for this change of use.

There is no exemption in the Planning and Development Regulations 2001 (as amended) for a change of use from Class 8 (as permitted under T.P. 09/34033) to use as an office under either Class 2 or 3 of the Part 4 Classes of Use of the Regulations. (Note: Class 14 Exempted Development Schedule 2 does not provide for an exemption between the classes in question).

Therefore the proposed change of use from a medical use to use as an office therefore **'is development and is not exempted development.'**



**We are Cork.**

COMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCIL

Strategic Planning & Economic Development Directorate,  
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail [planning@corkcity.ie](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924564/4321  
Lionra/Web: [www.corkcity.ie](http://www.corkcity.ie)

**SECTION 5 DECLARATION APPLICATION FORM**  
under Section 5 of the Planning & Development Acts 2000 (as amended)

**1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT**

1 George's Quay, Cork

**2. QUESTION/ DECLARATION DETAILS**

**PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:**

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

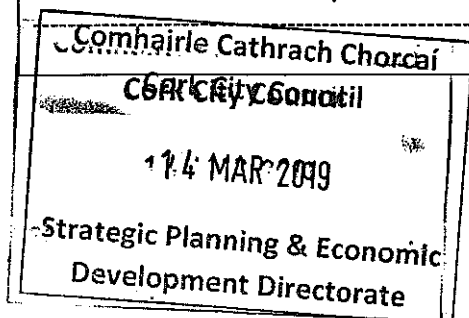
This structure previously had office use designation. Then it got permission TP 09/34033 (see attached) to change to medical. It then reverted to office (legal office as is compatible with development plan and in medical area). Does TP 09/34033 still apply or is it defunct?

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

(Use additional sheets if required).

Could a letter be provided please to approve the reversion to office use?

The matter is urgent as a tenant wishes to take up occupation urgently as they are out of their previous building and their occupation would enhance the area by taking a landmark property out of vacancy.



### 3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s		
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/>	If yes, please provide floor areas. (sq m) _____
(c) If concerning a change of use of land and / or building(s), please state the following:		
Existing/ previous use (please circle)	Proposed/existing use (please circle)	
_____	_____	
_____	_____	
_____	_____	

### 4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Day Property Holdings	
Applicants Address	90 Finbar Murphy Sheshon of Wastin Road Cork		
Person/Agent acting on behalf of the Applicant (if any):	Name:	CATHERINE KIRWAN	
	Address:	see above	
	Telephone:	[REDACTED]	
	Fax:	[REDACTED]	
	E-mail address:	ca [REDACTED]	
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

### 5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	SOLICITOR	
If you are not the legal owner, please state the name and address of the owner if available	FINBARR MURPHY SOLICITOR 8 WASTIN ROAD ST CORN	

ref: CK

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

Signature:  Fub Mary Jai Ken  
(CATHERINE KWAN)

Date: 14/3/18





COMHAIRLE CATHRACH CHORCAI - CORK CITY COUNCIL

PLANNING AND DEVELOPMENT ACT 2000

NOTIFICATION OF DECISION TO GRANT

PERMISSION

SUBJECT TO CONDITIONS UNDER SECTION 34 OF THE ACT OF 2000

TO: Buckingham Place Development Ltd., Reg No. T.P.09/34033  
c/o Cunnane Stratton Reynolds,  
Copley Hall,  
Cottlers Street,  
Cork.

Application Received: 12/08/09  
Further Information Requested: 05/10/09  
Further Information Received: 25/11/09

In pursuance of the powers conferred upon them by the above mentioned Acts, Cork City Council have by order dated *17<sup>th</sup> December 2009* decided to grant PERMISSION for the development of land, namely:  
Permission for the change of use of the part of the ground floor of No. 1 Buckingham Place / No. 1 Georges Quay from office to health / medical services. The area of the change of use consists of 21.5sq.m. No. 1 Buckingham Place / No. 1 George's Quay is a Protected Structure.

In accordance with plans and particulars submitted on 12/08/09, Further Information Requested on 05/10/09 and Further Information Received on 25/11/09.

Subject to the conditions and reasons set out in the attached Schedule.

If there is no appeal against said decision, a grant of PERMISSION in accordance with the decision, will be issued after the expiration of the period within which an appeal may be made to An Bord Pleanála (see footnote).

It should be noted that until a grant of PERMISSION has been issued, the development in question is NOT AUTHORISED.

NB. This permission is subject to 4 condition(s).

Signed on behalf of Cork City Council

*J. McElann*  
Senior Staff Officer, Planning & Development Directorate

Date: *17/12/09*

NB See Notes Overleaf.

*17/12/09*  
cc

## NOTES

1. An appeal against a decision of a planning authority, under section 34 of the Planning and Development Act 2000, may be made to An Bord Pleanála within 4 weeks beginning on the date of decision. An appeal shall be made in writing and shall state the subject matter of the appeal and the grounds of the appeal. An appeal by the applicant for permission should be accompanied by this form. In the case of an appeal by any other person, the name of the applicant, particulars of the proposed development and the date of the decision of the planning authority should be stated.  
  
The correct fee must accompany each appeal to An Bord Pleanála. For clarification of correct fee please contact An Bord Pleanála.  
  
*For details of the new Appeals procedure, please note attached leaflet.*  
  
*Appeals should be addressed to: An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1.*
2. Grant of permission under the Planning and Development Act 2000 is not to be taken as a waiver of the provisions of any local Act, Order, Regulation or any other Statutory Provision in force in Cork City.
3. This notification does not exempt the applicant from any requirements which the Fire Authority, pursuant to the Fire Services Act, 1981, and the Building Control Regulations, 1992, made pursuant to the Building Control Act, 1990, may require to be implemented. These requirements may call for changes in the constructional details of the development. You are therefore advised to contact the Fire Department, Cork City Council to discuss these matters prior to the submission of the Commencement Notice (as required by Article 6, Part 2 of the Building Control Regulations, 1992) and the making of an application for a Fire Safety Certificate pursuant to Article 9, Part 3 of said Building Control Regulations, 1992 (if applicable).
4. The Applicant should note that changes in the Constructional details consequent on 3 above may require permission under the Planning and Development Act 2000.
5. The Planning Authority, in deciding this planning application, has had regard to any submissions or observations received in accordance with the Planning and Development Regulations 2001-2006.
6. In accordance with Article 20 of the Planning and Development Regulations 2006 you are hereby required to remove forthwith any site notice erected in respect of this planning application.

# Comhairle Cathrach Chorcaí Cork City Council



Fón/Tel: 021-4924000  
Faics/Fax: 021-4314238  
Líonra/Web: [www.corkcity.ie](http://www.corkcity.ie)

Tag/Ref

Halla na Cathrach  
Corcaigh.

RE: T.P.09/34033

## FIRST SCHEDULE

Having regard to the objectives of the Current Development Plan & the existing pattern of development in the area, it is considered that subject to compliance with the conditions set out in the Second Schedule the proposed development would not seriously injure the amenities of the area, or of property in the vicinity and would be in accordance with the proper planning & sustainable development of the area.



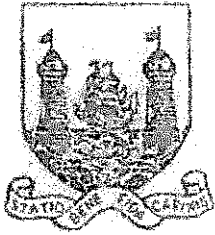
Schedule of Conditions attached to  
Planning Permission issued by Cork  
City Council - Ref. T.P. 09/34033

Second Schedule

1. The development shall be carried out in accordance with the drawings and specifications submitted to the Planning Authority on 12/08/09 & Further Information documentation received on 25/11/09 except where altered or amended by conditions in this permission.

Reason: To enable the Planning Authority to check the proposed development when completed.

- 2.(a) The Developer shall ensure that no appreciable negative environmental impacts occur because of the construction works associated with this development. The developer shall give particular attention to dust, noise, odour, litter, dirt on public roads, surface water runoff, spillage of fuel oils. Operations liable to produce dust shall be screened and dust suppression devices used where appropriate. Fuel oils and other chemicals shall be adequately bunded, with bunds having volumes of at least 110% of the volumes of fuel stored. Prior to commencement of development the developer shall submit to the Planning Authority for agreement, details outlining how these issues are to be addressed.
- (b) Noise during site clearance and construction shall not exceed 65 dB (A), Leq 30 minutes and the peak noise shall not exceed 75 dB (A), when measured at any point off site.
- (c) Working hours during site clearance and construction shall be restricted to 0800-1800 hours on Mondays to Fridays and to 0800-1600 hours on Saturdays. Activities outside these hours shall require the prior approval of the Planning Authority.
- (d) All builders' rubble arising from this development shall be assessed for reuse on site. Waste Gypsum shall be segregated and delivered to an appropriate facility. Proposals for dealing with construction and demolition waste shall be submitted to the Planning Authority for agreement.



Schedule of Conditions attached to  
Planning Permission issued by Cork  
City Council - Ref. T.P. 09/34033

Second Schedule

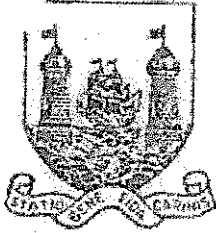
2 cont/d...

- (e) Construction waste such as wood, metal, and cardboard, shall be segregated and submitted for recycling. Waste Gypsum shall be segregated and delivered to an appropriate facility. Hazardous construction waste such as paint, lubricants, oil, lighting, wood preservative shall be segregated and disposed of at an approved facility.
- (f) The developer shall ensure that any waste removed off-site during site clearance operations or construction works will be removed by authorised waste contractors only. The material shall only be taken to sites authorised by Cork City Council or the Environmental Protection Agency.
- (g) All asbestos arising from the demolition section of this development shall be disposed of in accordance with the procedures of Cork City Council.
- (h) The developer shall constitute a waste management company or structure for dealing with waste existing in the development. Prior to commencement of development the developer shall submit to the Planning Authority for written agreement, full details of a waste management structure proposed for the development. Details shall include proposals for waste reduction, reuse, recycling, storage, as well as who will manage the waste, present it for collection, and dispose of it.
- (i) The developer shall provide within the curtilage of the site designated vented waste storage space of sufficient capacity to accommodate a minimum of  
1 No. of 1.100 m<sup>3</sup> wheeled bins.

Alternatively, a communal type storage area may be provided for a larger type bin. It will be necessary in all cases to be able to present the wheeled bins at a convenient location for refuse collection. Details of waste storage and presentation shall be agreed with the Planning Authority.

- (j) Prior to commencement of development the developer shall submit to the Planning Authority, full details of the quantity and composition of any and all healthcare waste anticipated to arise in this development.

# Comhairle Cathrach Chorcaí Cork City Council



Halla na Cathrach  
Corcaigh.

Fón/Tel: 021-4924000  
Faics/Fax: 021-4314239  
Lionra/Web: www.corkcity.ie Tag/Ref

Schedule of Conditions attached to  
Planning Permission issued by Cork  
City Council - Ref. T.P. 09/34033

## Second Schedule

2 cont/d....

- (k) Healthcare waste shall be disposed of in a manner agreed with Cork City Council and shall not be presented for refuse collection or for disposal at any sanitary landfill site. Prior to commencement of development the developer shall submit to the Planning Authority for written agreement proposals for disposal of this waste.

Reason: In the interests of orderly disposal and management of waste.

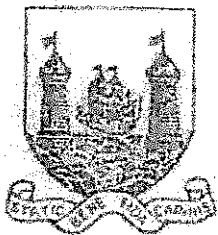
3. No further external roller shutters, awnings, canopies, protecting signs or other signs shall be erected on the premises except with a prior grant of planning permission.

Reason: To ensure that advertising signs are kept to a minimum and designed to respect the traditional streetscape elements in the area.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

# Co. mhairle Cathrach Chorcaí Cork City Council



Halla na Cathrach  
Corcaigh.

Fón/Tel: 021-4924000  
Faics/Fax: 021-4314238  
Lionra/Web: [www.corkcity.ie](http://www.corkcity.ie) Tag/Ref

Buckingham Place Development Ltd.,  
c/o Cumane Stratton Reynolds,  
Copley Hall,  
Cotters Street,  
Cork.

16<sup>th</sup> December, 2009.

Re: Permission for the change of use of the part of the ground floor of No. 1 Buckingham Place / No. 1 Georges Quay from office to health / medical services. The area of the change of use consists of 21.5sq.m. No. 1 Buckingham Place / No. 1 George's Quay is a Protected Structure

Dear Sir/Madam,

I refer to the enclosed Notification of decision of grant of Planning Permission (T.P.09/34033) in respect of the above development.

Please note that in addition to the conditions attaching to this planning permission, the enclosed water requirements must also be implemented. Should you require to discuss any aspects of these additional water requirements you are advised to contact the Water Department, Cork City Council at 4966222.

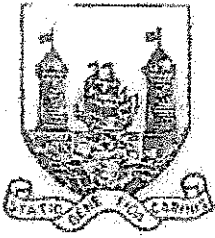
Yours faithfully,

Senior Executive Officer,  
Planning & Development.

**NOTE:** You are hereby put on notice that Drainage requirements must be implemented in accordance with the Building Control Act 1990 and Building Regulations made thereunder.

c.c. Principal Building Surveyor.

# Comhairle Cathrach Chorcaí Cork City Council



Halla na Cathrach  
Corcaigh.

Fón/Tel: 021-4924000  
Faics/Fax: 021-4314238  
Lionra/Web: www.corkcity.ie Tag/Ref

Re: T.P.09/34033

The following are the City Engineer's Water requirements for the above proposed development.

The Development shall have:-

- (i) A separate water supply and this supply shall be metered. The metering arrangements shall be agreed with the City Council Water Section.
  - (ii) Cold water storage of not less than one days demand shall be provided.
  - (iii) All fittings except drinking points shall be fed from storage.
  - (iv) Each WC suite installed in an existing non-domestic premises, whether in an additional WC suite or a replacement for an existing suite, shall have a maximum flush of 6 litres using a multi flush or single flush facility.
- 2.(i) A 1:200 map showing the position of all existing/proposed meters for the property shall be submitted to the Water Department prior to development commencing. Details of the agreement shall be submitted to the Planning Authority for record purposes.
  - (ii) All New Meters shall include a transponder with each meter and both shall be to Cork City Council Water Department specification. They shall be installed by Water Department.
  - (iii) A metering proposal document shall be agreed with the Water Department prior to commencement on site where more than one user is involved. Details of the agreement shall be submitted to the Planning Authority for record purposes.
  - (iv) Prior to occupation and departure of the premises the occupier shall inform the Water Department Metering Section of the any change in water user details for charging purposes.
3. Any redundant water services shall be traced back to the public main by the developer and shall be blanked off by Cork City Council at the developer's expense.
  4. The various water connections shall be agreed with the Cork City Water Section before work commences.
  5. Any existing lead services pipes to the site shall be replaced/made redundant at no cost to the local authority. This work shall be carried out to the satisfaction of the Water Department Cork City Council.
  6. All work shall comply with the City Council' General Specifications for Watermains and Services for New Developments.