TITLE: [PD-PC] Development Application DA06/1275 for Manufacturing Sheds, Depot, Office and Storage at Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow

ORIGIN:

Development Assessment

FILE NO: DA06/1275 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application for utilisation of the subject site and its existing buildings for the purposes of manufacturing sheds, depot, office and storage.

The business, which specialises in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment, is best defined as “light industry” and “depot” in accordance with Tweed LEP 2000. To enable “light industry” to be permissible the provisions of Clause 8(2) of Tweed LEP 2000 must be satisfied.

The proposed development has issues regarding permissibility, contamination, and suitability for the site given the rural character of the area.

The proposed development attracted thirteen individual objections (including one from the Environmental Defenders Office). The objections were focused on the suitability of the site given its rural character and its impact given the proximity to other dwellings.

Having regard to the objections received and an assessment against Clause 8(2) of the Tweed LEP 2000 the proposed business is not considered suitable for the location and therefore the proposed development is recommended for refusal.

RECOMMENDATION:

That Development Application DA06/1275 for a manufacturing sheds, depot, office and storage at Lot 201 DP 1002166, Pottsville Road Sleepy Hollow be refused for the following reasons: -

1. **Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development can not be determined to satisfy sub section (a)(ii), the orderly and economic use and development of the land.**

   It is Council’s view that the proposal has the ability to impact upon external properties; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

2. **In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Tweed LEP 2000.**

It is Council's view that the proposed development does not satisfy the provisions contained within Clause 8(2) of the Tweed LEP 2000.

3. **Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.**

   It is Council's view that use of rural land for the purposes of a light industry development is considered unacceptable for the site.

4. **In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the publics interest.**

   It is Council's view that it is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of the 1(a) rural zone.

REPORT:

Applicant: **Mr J McLean and Ms A McLean**
Owner: **Roads & Traffic Authority of NSW**
Location: **Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow**
Zoning: **1(a) Rural**
Cost: **$40,000**

BACKGROUND:

The Subject Site

The subject land is described as Lot 201 DP 1002166 Pottsville–Mooball Road, Sleepy Hollow and has a total area of 2.821 hectares.

The land "straddles" Pottsville–Mooball Road, with a large triangular shaped parcel of land of approximately 2.811 hectares occurring on the western side of Pottsville-Mooball Road and a small irregular shaped parcel of approximately 100m^2 located on the eastern side of Pottsville-Mooball Road

The development would occur wholly on the larger parcel of land on the western side of Pottsville-Mooball Road.

The land has frontage to Pottsville-Mooball Road of approximately 390m and the Pacific Highway of approximately 362m. With vehicular access from Pottsville Mooball Road only.

Current improvements include two (2) galvanized iron sheds an attached cavity brick office building and associated amenities, located on a large fill pad area. Vehicular access to the site exists from Pottsville-Mooball Road. A car parking area exists to the east of the existing sheds. The site is fenced. Power and reticulated water are available to the site.

The site is located in an area generally characterised as rural, although it is immediately adjoined by the Pacific Highway to the west and Pottsville-Mooball Road to the east.

Adjoining land to the south is vacant rural land currently utilised for grazing.

There are eight dwelling houses (and/or rural workers dwellings) within a 300m radius of the subject site.

The Proposed Development

Council is in receipt of a Development Application for utilisation of the subject site and its existing buildings for the purposes of manufacturing sheds, depot, office and storage. The applicant has indicated that the proposed use would replace a business that previously operated within Byron Shire.

The development has two main components:

1. The manufacturing of agricultural equipment business specialises in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment (defined as “light industry” and is a Clause 8(2) matter under Tweed LEP 2000);

2. The depot component would provide secure storage of plant and machinery, including earthmoving, construction and agricultural equipment. Maintenance of this equipment would also be carried out (defined as “depot” and is permissible in the rural zone).

The proposed development is staged with Stage 1 utilising the existing buildings (with minor alterations) and Stage 2 involving further upgrades of site facilities.

It is acknowledged that such use would involve electrical machinery that can constitute a noise source for adjoining residences.

Site History

The site is zoned rural 1(a) and has a known development history as follows:

- On 31 May 1982 Council approved T4/1762 to enable use of the site for the establishment of a truck depot and vehicle maintenance area. Such a use (depot) is a permissible land use in the 1(a) zone;

- In 1999 the ABI Group leased the land from the RTA for the purpose of a roadwork’s construction depot to facilitate construction of the Pacific Highway;

The current applicant is now occupying the site to store all the equipment associated with the business. However, following noise complaints Council Officers inspected the premises and discovered that manufacturing works on a cane bin had commenced prior to the determination of this Development Application. Subsequently a $600 Penalty Infringement Notice (PIN) was issued on 26 March 2007, with the applicant advised that work is to cease immediately.

Should the application be refused in accordance with the recommendation Council would need to pursue the validity of use of the site for storage given that the applicant has occupied the site.

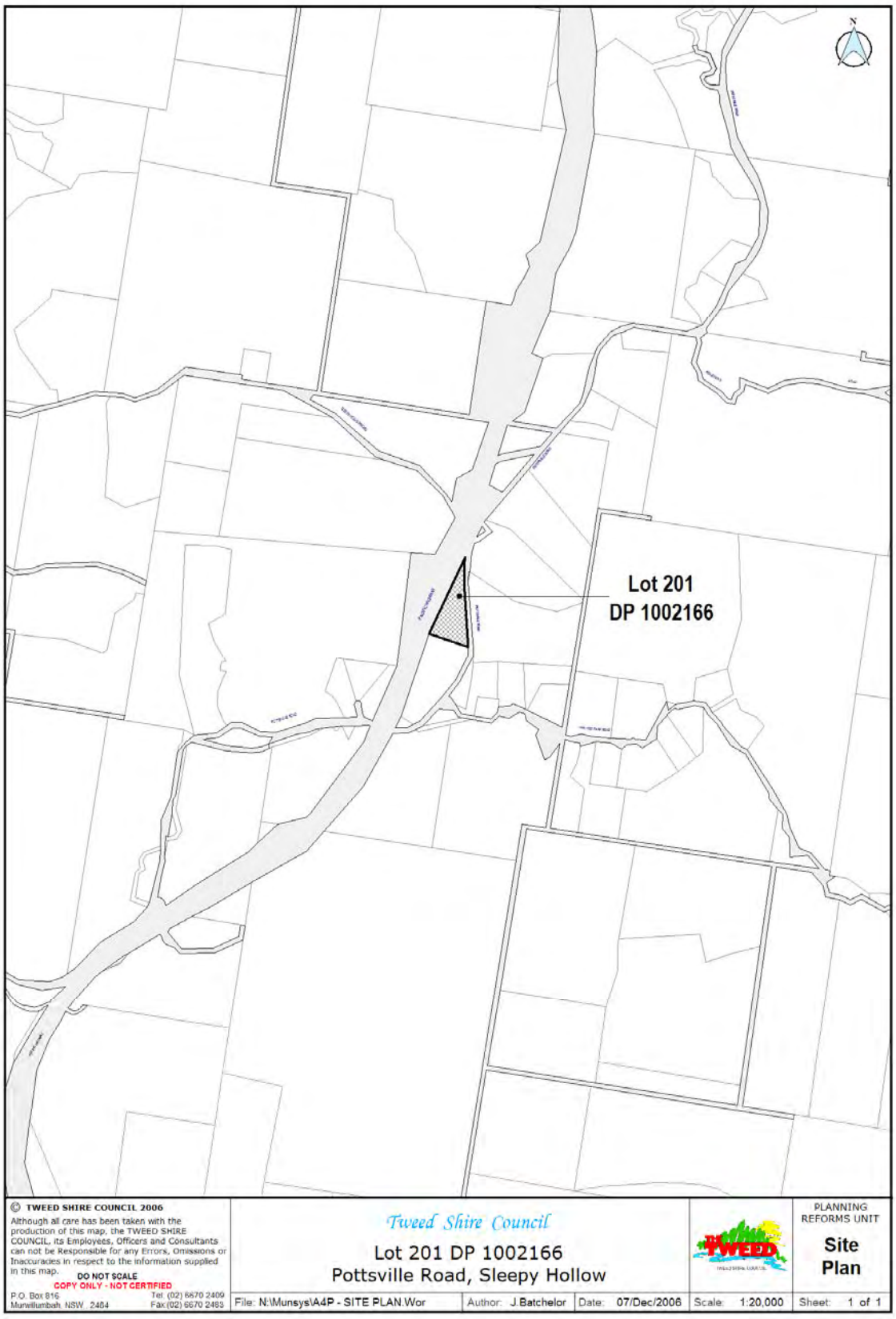
Public Submissions

The proposed development attracted thirteen individual objections following exhibition of the application. The objections were focused on the suitability of the site given its rural character and its proximity to other dwellings.

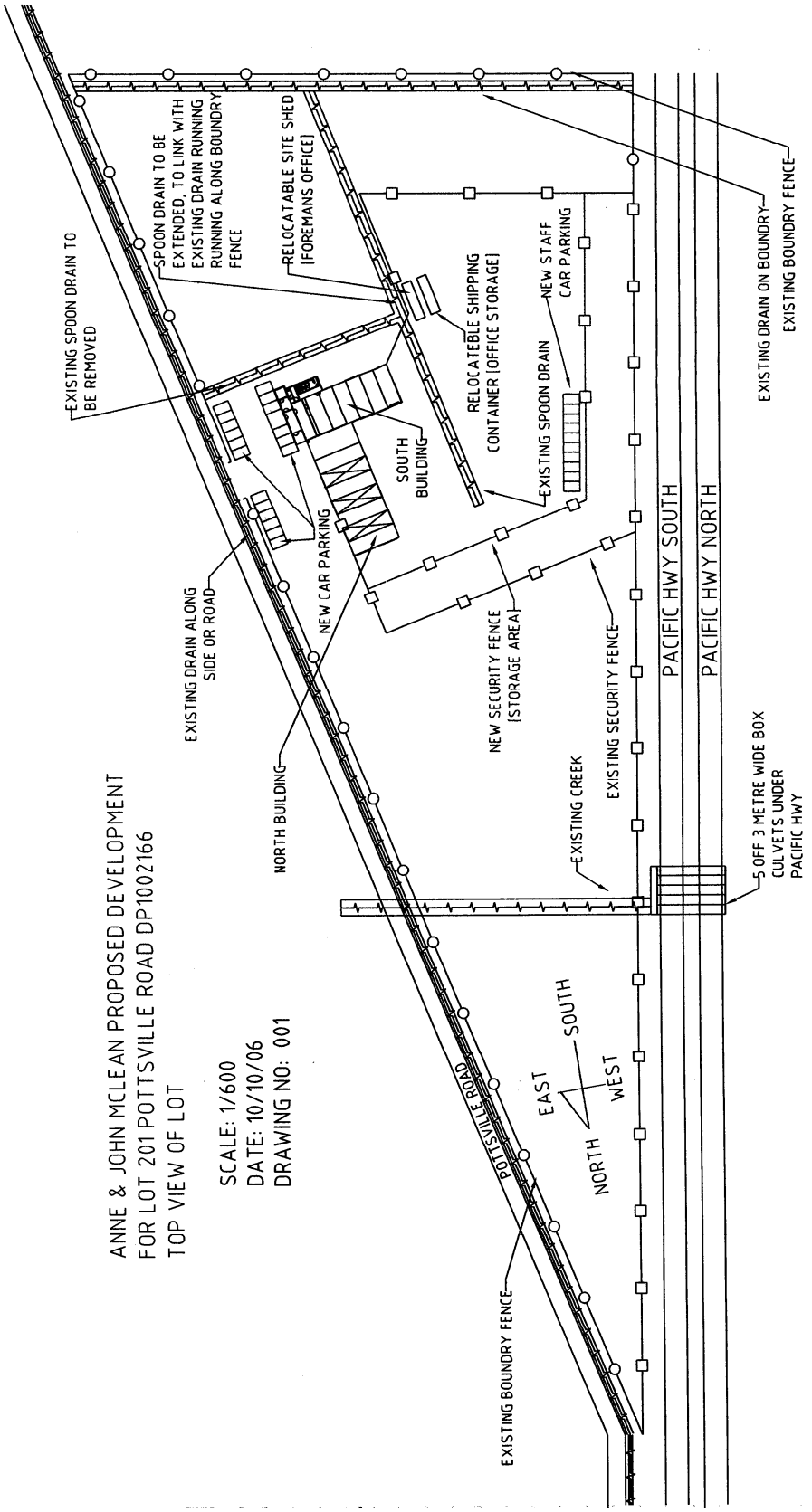
Conclusion

Having regard to the site’s characteristics, the site history, the objections received following notification and an assessment against Clause 8(2) of the Tweed LEP 2000 the proposed business is not considered suitable for the location and therefore the proposed development is recommended for refusal.

SITE DIAGRAM:



DEVELOPMENT PLAN:



1/A

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

Clause 8 & 11 of the Tweed LEP 2000 detail the permissibility of developments.

The land is zoned Rural 1(a) under the provisions of the Clause 11 of Tweed LEP 2000. The objectives of the Rural 1(a) zone are as follows:

Primary Objectives

- *To enable the ecologically sustainable development of land that is suitable primarily for agricultural and natural resource utilization purposes and associated development.*
- *To protect rural character and amenity.*

Secondary Objectives

- *To enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *To provide for development that is not suitable in or near urban areas.*
- *To prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *To provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

For the purposes of the Tweed LEP 2000, the proposed storage and maintenance of machinery and equipment would be defined as a “depot”. A depot is permissible with consent in the Rural 1(a) zone.

The manufacturing of agricultural equipment is best defined as “light industry” and is a Clause 8(2) matter under Tweed LEP 2000.

Clause 8(2) states that:

(2) The consent authority may grant consent to development specified in Item 3 of the Table to clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:

*(a) the development is necessary for any **one** of the following reasons:*

(i) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,
(ii) it meets an identified urgent community need,

*(iii) it comprises a major employment generator, **and***

(b) there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, ***and***

(c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, ***and***

(d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

The applicant has addressed Clause 8(2) as follows:

Clause 8 (2)(a)

The proposed agricultural equipment manufacturing business satisfies sub-clause (i) for the following reasons:

1. *The use is part of a diversified small business, which also includes a "depot" for the storage and maintenance of plant, machinery and equipment. The "depot" is permissible with consent in the 1(a) zone and is also proposed as part of this application.*

   The nature and function of the business is such that the two (2) separate land uses are intrinsically linked due to the reliance on,

   - *The efficient and effective use of capital expensive equipment and machinery, which for prohibitive cost reasons, could not be replicated at separate sites for each land use activity.*
   - *The shared need for large land areas for storage purposes.*
   - *A shared market catchment.*
   - *The efficient sharing of multi-skilled labour resources.*

   Further, the diversification of the business allows it to respond to the increasingly vulnerable and cyclical nature of the regional rural and agricultural economy. That is, the viability of the agricultural equipment manufacturing activity is directly related to the ability of the other business activity (depot) to sustain it, its staff and resources during periods of economic "downturn".

2. *While cane bins are sold into areas such as Ballina, Kyogle and Grafton Shires, the use principally services a catchment from the Tweed Border to the southern Byron Shire. In this regard, the locality is central to the service catchment and in particular, this site is well located in terms of access to major road transport infrastructure. The business operator has attempted to identify sites in the locality for a number of years, out of need to improve accessibility to all areas of the service catchment and to*

reduce road transport costs arising from the receipt and delivery of goods, materials and products.

The use is also considered to satisfy sub-clause (iii) for the following reasons.

1. *The development is a major employment generator in terms of the total employment created through the manufacture and sale of cane transport bins.*

   While the development would itself initially employ six (6) employees (full time equivalent) the development indirectly generates and sustains a large number of the jobs in local and regional sugar industry, which relies exclusively on cane bins for the harvesting and transport of cane. The applicant estimates that its market share of the new cane bin market in Tweed Shire is approximately 50%. It is currently also developing a new specification to handle "green cane" proposed for use in the production of electricity at the Condong Sugar Mill co-generation project. The Tweed Economic Development Corporation advises that the Tweed Sugar Cane Industry directly employs approximately 280 people, including farm labour, transport and milling (Tom Senti, TEDC, 20.10.06, pers comm). At approximately 50% market share, the development contributes significantly to the generation of approximately 140 jobs.

Council Assessment:

These comments are not entirely concurred with. The applicant is relying upon the depot and the light industry use being intrinsic and states that this site suits the businesses needs. Whilst this may be true this does not exclude other sites where a depot and light industry could be undertaken together.

In addition whilst the business has a wide catchment area the subject site is not the only option, as industrial estates in Murwillumbah would also be considered capable of accommodating the applicants catchment area.

The applicant claims that indirectly this business contributes significantly to 140 jobs. This statement has not been substantiated and is not considered to satisfy Clause 8(2)(a)(iii)

The applicant's arguments for satisfying Clause 8(2) (a) are not considered sufficient.

Clause 8(2)(b)

There is no other appropriate site on which the development is permitted with consent (other than as advertised development) in reasonable proximity.

There is no other appropriate site within at least 10 kilometres radius on which the development would be permitted (other than advertised development). While the development would be permitted on land zoned 2(d) Village zone at

Mooball and Burringbar, there is no available land of sufficient size, nor adequately removed from existing residential development, that would be suitable.

Similarly, areas of land zoned 2(c) Urban Expansion zone at Pottsville and surrounding areas are essentially residential estates to which various Development Control Plans and Strategies apply that would preclude this type of development. Moreover and in any event, the amenity impacts of a development of this nature would be unsuitable in these areas.

The Council has identified the need for industrial land in the southern parts of the Shire at Pottsville; however, at this stage the rezoning and development of Industrial land at Pottsville is some years away.
Assessment of areas beyond approximately 10 kilometres radius of the subject site is not considered "reasonable proximity" to the site, particularly given the locational attributes and centrality of the site in the context of its service catchment.

Council Assessment:

These comments are not entirely concurred with. The applicant is only relying upon a 10km radius for consideration. The business was previously operating from Byron Shire, to service from the northern parts of the Tweed border down to the southern parts of Byron Shire. To restrict a search to a 10km radius is misleading, as the industrial estates within Murwillumbah are 17km from the site and would be capable of accommodating this catchment.

Whilst industrial land is required in the southern parts of the Shire this alone is not justification for the utilisation of rural land that is within the proximity of eight dwelling houses.

The applicant's arguments for satisfying Clause 8(2) (b) are not considered sufficient.

Clause 8(2)(c)

The development will be generally consistent with the scale and character of existing and future lawful development in the immediate area.

The development would essentially rely on existing site improvements including existing workshop buildings, subject to minor alterations and additions. The size, design and appearance of these buildings is compatible with agricultural and rural buildings in the immediate area and nearby locality (refer Photoplate 5).

The site until recently has been utilised as an RTA depot and has been used for open storage of plant, machinery and road construction materials. In this regard, the development would not significantly alter the existing built character of the locality.

The land also immediately adjoins the dual carriageway Pacific Highway, which includes an open truck and car parking rest area, less than 100 metres distance away, directly to the west of the site (refer Photoplate 6).

The land is also located in close proximity (<500m) to other uses of a semi-rural nature, including 'Rainforest Secrets' (formally Pioneer Plantation), as well as the former Sleepy Hollow Golf Course Club House building.

Council Assessment:

These comments are not entirely concurred with. The applicant is relying upon the Pacific Highway and other farm buildings to justify a proposed industrial use.

The site has historically been used as a depot and this component of the application is considered acceptable, however, it is the manufacturing process that is considered unsuitable for the rural location.

The character of this area is not considered suitable to accommodate the proposed light industry use.

The applicant's arguments for satisfying Clause 8(2) (c) are not considered sufficient.

Clause 8(2)(d)

The development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

The development would be consistent with the aims of the TLEP 2000. In particular the development would:

(i) Make beneficial use of existing infrastructure and developed land rather than undeveloped or vacant land and in so doing, avoids conflict with environmental and residential amenity values of other land.

(ii) Positively contribute to sustainable economic development of the Shire through an integral role in the Tweed Sugar Cane Industry as well as the future supply of "green power" at the Condong Sugar Mill.

The development would meet the following objectives of the Rural 1(a) zone:

- *"to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilization purposes and associated development " (our emphasis).*

- *"To protect rural character and amenity" in so far as the development would utilise land and infrastructure that already exists and has been utilised for similar purposes in the recent past, rather than other undeveloped rural or agricultural land. Further, due to the recent use of the land for similar purposes, the use would be consistent with expectations of amenity in the locality".*

- *"to prevent the unnecessary fragmentation or development of land, which may be needed for long-term urban expansion".*

Council Assessment:

These comments are not entirely concurred with. The applicant is implying that this site would operate in an ancillary fashion to the rural pursuits for adjoining lands.

The manufacturing of cane bins is a separate and independent operation to that of cane production. There is nothing preventing this business from successfully operating within an approved industrial estate as has been demonstrated by its previous location within Byron Bay Industrial Estate.

Furthermore, the proposed development is not considered to protect the rural character and amenity but rather further hinder the residents in the immediate vicinity who have already been impacted by the Pacific Highway. This has been demonstrated by the complaints received to date about commencement without consent and the thirteen submissions opposing the development.

The applicant's arguments for satisfying Clause 8(2) (d) are not considered sufficient.

Clause 8(2) has not been adequately satisfied and therefore the proposed development is recommended for refusal.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. Suitable services are available to the site, and conditions can be imposed should Council determine to approve the development.

Clause 16 of the TLEP requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to three storeys. The existing buildings comply with this criterion.

Clause 22 of the Tweed LEP 2000 relates to development near designated roads.

The Pottsville-Mooball Road is a Council designated road. It is proposed that the development site would be accessed via the existing driveway access from Pottsville-Mooball Road.

The applicant has addressed the matters for consideration under sub-clause (4), as follows:

- *The development would (due to its similar nature to the recent prior use of the site as an RTA depot) generate a similar type of traffic, including employee motor vehicles, large rigid trucks and earthmoving equipment, however, the volume of traffic would be expected to lower than peak movements associated with the prior use (average of 1 reticulated vehicle per week and 1-2 small delivery vans per day).*

- *The location and design of the access is pre-existing and is suitable for the intended use. The access comprises a piped culvert crossing approximately 11.5 metres wide at the boundary, splaying to approximately 34 metres wide at the edge of the existing road pavement in Pottsville-Mooball Road. A car parking area exists to the south of the driveway entry (refer plans, Appendix A), however, vehicles entering the site can bypass the car park area via an internal road leading to the western side of the site.*

  Some road shoulder widening on the southbound lane of Pottsville-Mooball Road may be required. On this basis, but in any event, having regard to the low traffic volume, width of the driveway access, the ready availability of off street parking and on-site circulation and manoeuvrability, the development would not adversely impact on through traffic on Pottsville-Mooball Road.

- *There are no improvements, road widening or upgrading works proposed on Pottsville-Mooball road in the vicinity of the site (Paul Morgan, TSC, 23.10.06, per comm.). In any event, the buildings are located a minimum of 20 metres from Pottsville-Mooball Road and would allow any possible future widening to occur. The site area and layout are such that the existing access and car parking area could be relocated in the future if necessary.*

- *The nature of the development and the type of traffic likely to be generated necessitates access to a high standard road, rather than lower standard roads or local access roads with a quiet rural amenity.*

- *The development would not be sensitive to road traffic noise.*

- *The development would have a visual amenity consistent with the long term use of the site as an RTA works depot. Perimeter tree planting and rehabilitation by the RTA in the Pacific Highway corridor adjacent to the site provides a visual screen from areas to the west of the site. Similarly, existing perimeter vegetation on the Pottsville-Mooball Road frontage provides a screen from areas to the east. Proposed further perimeter tree planting along the Pottsville-Mooball Road frontage, landscape gardens in front (east) of the office building and shed, as well as repair and maintenance of the existing buildings, would in fact improve the visual amenity of the site.*

- *No other practical access is available.*

- *The development is not for commercial or retail development.*

<u>Council Assessment</u>

These comments are generally concurred with however, the site will clearly be utilised for commercial gain. Further Council's Development Engineer has provided that site access is suitable provided that the applicant provides the minimum Basic Right Turn BAR treatment for a right turn movement from

Pottsville-Mooball Road into the development in accordance with figure 6.37 of Austroads 2005, Intersections at Grade.

Clause 24 of the Tweed LEP 2000 specifies setback controls from designated roads for land in the Rural 1(a) zone.

The required setbacks in this instance would be 30 metres for the “depot” and 50 metres for the agricultural equipment manufacturing (light industry).

The development would not achieve these setbacks.

The applicant has lodged a SEPP 1 Objection to this standard as follows:
This objection is prepared in respect of the standard contained in Clause 24 (3) of the Tweed LEP 2000, relating to setbacks from Designated Roads. The specific provision(s) to which this objection relates is the minimum setbacks for development in the Rural 1(A) zone as follows:

- *Industries: 50 metres (including Light Industries)*
- *Anything else: 30 metres (including depot)*

The objective of the Standard is as follows:

- *To control development along designated roads.*

The underlying aims of the objective are to:

(i) Ensure that the long-term efficiency, safety and capacity of designated roads are not adversely impacted by development.

(ii) Prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.

In this case, it is proposed that the nearest building associated with the development would be setback a minimum of approximately 24 metres from Pottsville-Mooball Road.

In the circumstances of this case, the proposed setbacks would be satisfactory and compliance with the Standards contained in Clause 24(3) of the LEP are unreasonable and unnecessary for the following reasons.

1. The development would utilise existing buildings on the site, with minor alterations and additions to permanent buildings located no closer to Pottsville-Mooball Road.

2. The Tweed Shire Council advises that having regard to the current capacity of the road, the existing low traffic volumes utilising this section of the road, the good horizontal and vertical alignment of the road in the vicinity of the site and the forecast growth in traffic likely to use the road in the medium term, there are no plans to upgrade the road by way of realignment or widening of the road reserve and little likelihood that this would be necessary for the foreseeable future (Mr Paul Morgan, TSC, 23.10.06 pers comm.). Even in the event that upgrading were required in

the future, a significant increase in the capacity of the road could be achieved by formation and pavement widening in the order of six (6) to eight (8) metres, with a concomitant increase in the road reserve of the same order. The proposed development would not impede or prevent future upgrading/widening of the road.

3. *The immediate past use of the site was as an RTA works depot. The proposed use is essentially the same or similar in character and would generate similar types of traffic, but at lower volumes than the RTA depot during its peak use throughout the construction of the Chinderah-Yelgun Pacific Highway upgrade.*

   The development would be within the reasonable expectations in the locality for traffic generation from the site.

4. *The nominal capacity of the road is up to 2000 vehicles per day (vpd) (class D road). Recent Tweed Shire Council traffic count data (25.05.05) indicates an AADT volume of 1077 vpd in the vicinity of the site. The development would be expected to generate in the order of 16 vpd (AADT) and therefore be well within the capacity of the road.*

   Furthermore, the proposed access to the site complies with Council's rural access to property construction requirements, provides satisfactory width dimensions for heavy vehicle access and meets Austroads sight distance requirements. The development would be unlikely to compromise traffic safety and efficiency.

5. *The development is not of a type that would be sensitive to road traffic noise.*

   Having regard to foregoing, the proposed setbacks would be satisfactory and no good planning purpose would be served by strict adherence to the standards contained in Clause 24(3).

Council Assessment

The above comments are generally concurred with and therefore the standard is considered unreasonable and unnecessary from a traffic perspective and subsequently the SEPP 1 is supported.

Clause 34 of the TLEP relates to flood prone land. The objective of this clause is to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land and to minimise any adverse effect of flooding on the community.

Council's Development Engineer has provided that:

"The applicant indicates that the site will be affected by overbank flooding of a local un-named creek that passes through the northern part of the site. They advise that after local enquiry and assessment of debris marks associated with the major flooding event that occurred in the area

in June 2005 that flooding only affected the "lowest lying" unfilled parts of the subject property and did not affect the buildings on the site.

This assessment is accepted and it is noted that the local flooding event in 2005 was estimated to be approximately equal to a 1 in 100 year flood event. In this regard it is considered that the development buildings will enjoy adequate immunity from flooding.

DCP 5 requires commercial and industrial developments on flood liable land in rural areas to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage.

A condition will be imposed so that the development complies with the requirements of DCP 5 prior to the issue of the occupation certificate."

The proposed development is considered capable of meeting the provisions of Clause 34 subject to conditions being imposed should Council determine to approve the application.

Clause 35 of the TLEP requires the applicant determine if Acid Sulfate Soils are present on the site and provide a management plan if that is the case. The site is affected by Acid Sulfate Soils, however, suitable conditions of consent can be provided should Council determine to approve the application.

Clause 39 of the TLEP relates to the remediation of contaminated land. In this regard Council's Environmental Health Officer has provided that should this application be approved it would <u>first</u> "need to have a statement from an accredited contamination site auditor which indicates that the site is suitable for the intended use."

<u>North Coast Regional Environmental Plan 1988</u>

The following Clauses of the NCREP are relevant and are addressed below.

<u>Clause 12</u> – Impact on Agricultural Activities

The site has been extensively modified by filling with gravel and the construction of sheds and associated buildings. The recent history of the use of the site is not for agricultural activities. In any event, the land is of marginal agricultural value, comprising of poorly drained low flats, extensive gravel fill and elevated rocky and vegetated land.

Adjoining and surrounding land is utilized for grazing purposes.

The development would not lead to a loss of prime crop and pasture land, or adversely impact upon nearby agricultural activities.

<u>State Environmental Planning Policies</u>

SEPP 55 Remediation of Land

The Tweed Council has been notified of a proposed Category 2 remediation under the provisions of the SEPP.

Council's Environmental Health Officer has provided the following comments:

> *"Previous investigations into this site have detected arsenic contamination of soils. Council was notified in October of a proposal to remediate the site. Remediation works are not the subject of this application. These works have been commenced, but are yet to be completed and validated.*
>
> *SEPP55 provides as follows:*
>
> ***7 Contamination and remediation to be considered in determining development application***
>
> *(1) A consent authority must not consent to the carrying out of any development on land unless:*
>
> *(a) it has considered whether the land is contaminated, and*
>
> *(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
>
> *(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
>
> *The SEE indicates that an EPA accredited auditor will monitor the remediation works and certify that the site is suitable for the proposed development. The information submitted appears to satisfy SEPP 55 Clause 7c. It has been verbally suggested that an auditor may not be engaged. It is recommended that Council require the site to be certified by an accredited auditor. The applicant is requested to:*
>
> - *Confirm that an EPA accredited auditor will be certifying the remediation works at the site, and*
> - *Advise wether they wish a deferred commencement condition to be applied with respect to this matter, or whether the accreditation of the site will be provided prior to determination o the application?*

Based on this advice the applicant was asked for additional information. Council's Environmental Health Officer has reviewed the additional information and provided that:

> *"Several documents have now been received, including*

- *A Remediation Action Plan and Site Validation for Proposed Industrial Site at Lot 201 DP 1002166 Pottsville Rd Sleepy Hollow, February 2007.*
- *Two letters from Coffey Geotechnics to Barry McLean dated 10 January 2007 and 22 February 2007.*

The letter dated 10 January 2007 specifically states that the Coffey documents do not constitute a Site Audit from an accredited contaminated site audit.

The letter dated 22 February states the site is suitable for industrial use, but further states 'Coffee considered it essential that the Site Management Plan (SMP) is incorporated into the operational management of the site. Given the large volume of fill to the site other contamination may be encountered. It is considered prudent that the SMP therefore includes a range of contaminants, rather than just arsenic. Both on site staff and contractors visiting the site need to be aware of the SMP and risks involves particularly, with excavation within the site'.

I have met with the Director of Environment & Community Services and discussed these comments. The applicant is requested to provide a statement from an accredited contamination site auditor which indicates that the site is suitable for the intended use."

Based on the above comments form Council's Environmental Health officer should Council determine to approve this application the above additional information request would need to be satisfied first or alternatively a deferred commencement condition be imposed. Given the potential for unauthorised works to occur as a result of the business waiting to start it would be highly recommended that this matter be satisfied prior to final determination.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

Draft SEPP (Application of Development Standards) 2004 was exhibited between 10/05/2004 and 16/06/2004. Currently SEPP 1 provides local councils with flexibility in applying development standards. The Department, in consultation with councils and the community has undertaken a comprehensive review of how SEPP 1 has been used over the past 20 years. This review has led to a new draft policy that provides clearer and tighter criteria that development applicants must meet if they wish to vary from a development standard. The aim is to have the flexibility to achieve better planning outcomes.

The Draft has not progressed further and is not considered to have any determining weight in relation to this matter.

(a) (iii) Development Control Plans (DCP's)

Development Control Plan No. 2 –Parking

Off-street car parking shall be in accordance with DCP No. 2 for light industry calculated at a rate of 1 space/100m^2. The estimated GLA is 380m^2 and therefore the required number of car parks is 4.

The applicants have also submitted that the site may from time to time operate as a depot. Under DCP 2, 10% of the site must be allocated for parking, access lanes, unloading and loading. The applicants argue that only the compound area of 14000m^2 should used as the development area. This is a reasonable argument and therefore 1400m^2 should be allocated for parking, access, unloading and loading.

The proposed new car parking as shown on drawing No. 001 dated 10/10/06 could satisfactorily address parking requirements for the development.

Development Control Plan No. 5 – Development of Flood Liable Land

DCP 5 requires commercial and industrial developments on flood liable land in rural areas to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage.

As such, the proposed development is considered capable of compliance with DCP 5, subject to conditions of consent that would be applied should Council determine to approve this application.

(a) (iv) Any Matters Prescribed by the Regulations

There are no additional matters that affect this application.

(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality

Visual Impacts

Filling with gravel and the construction of sheds and associated buildings has extensively modified the subject site. In addition the use of this site for storage of machinery and work parts and tools is considered unsightly.

Should Council wish to determine this application the applicant should be responsible for screening the site from both the Pacific Highway and the Pottsville Mooball Road with mature vegetation.

Noise

Council's Environmental Health Officer has reviewed the proposal and provided the following comments:

"The SEE suggests that the development would not adversely impact the amenity of the area and is not dissimilar to the previous RTA depot. The hours of operation are proposed to be:

- *7am to 6pm Monday to Friday and 7am to 5pm Saturday, with no work on Sundays and public holidays.*

The report recommends the implementation of a management plan for the site.

The assessing planner advises that so far there is one written complaint and many verbal enquiries. She also understands that a public petition is being organised.

In my experience the development has potential to impact local amenity. Whilst the freeway is adjacent, the district is generally a quiet rural area. Whilst the site was previously used for an RTA depot residents may have been more tolerant of those activities because they were for a limited time and they were for the provision of public infrastructure.

The applicant is requested to provide a noise impact assessment from a suitably qualified person for consideration.

It is noted that the SEE indicates that the storage of plant and machinery will be limited to 25. Condition to be applied. Given the proposed operating hours lighting is unlikely to impact amenity. Condition to be applied.

The SEE indicates that tree planting will be carried out along the Pottsville/Mooball Road frontage to reduce visual impacts. No plans or details have been provided. Suggest plans etc are obtained and conditions be applied given that prospect of objections."

As per the request for additional information the applicant supplied an amended Noise Impact Assessment. Council's Environmental Health Officer has reviewed the revised assessment proposal and provided the following comments:

"A Noise Level Impact Assessment, Craig Hill Acoustics, December 2006 has now been received. Several questions were raised with Craig Hill by Email and responses provided Having considered those comments the report is considered satisfactory and conditions can be applied. Please note the last comment from Craig Hill Acoustics – 'I would imagine Council would require a compliance test on completion accompanied by a Noise Management Plan to ensure no noise nuisance occurs'.

The following conditions are recommended:

- *The premise shall be designed, constructed and operated in accordance with the Noise Level Impact Assessment, Craig Hill Acoustics, December 2006.*

- *All manufacturing and maintenance activities to be conducted within the buildings. The north building shall be used for manufacturing and the south building shall be used for maintenance of agricultural equipment.*
- *Prior to the commencement of any maintenance or manufacturing processes those attenuation measures identified in the approved Noise Level Impact Assessment shall be completed to the satisfaction of Director Environment & Community Services. Prior to commencement of maintenance or manufacturing a compliance test shall be conducted by a suitably qualified person and a compliance report provided to Council. That report shall also be accompanied by a Noise Management Plan for the premise.*
- *Hours of Operation shall be 7am to 6pm Monday to Friday and 7am to 5pm Saturday, with no work on Sundays and public holidays.*
- *Deliveries shall be restricted to 7am to 5pm Monday to Friday."*

Should Council determine to approve this application the above conditions would need to be imposed on any consent.

Drainage

Council's Development Engineer has provided the following:

> *"An existing gully/un-named creek is located to the north of the subject development. Overland flow from the site is discharged to this gully via several spoon drains that traverse the subject land and the table drain in Pottsville-Mooball Road.*
>
> *The applicant proposes to undertake a minor modification to the north-south spoon drain by extending it in a southerly direction to intersect with the spoon drain running parallel to the southern fence line. The modification is minor in nature and will assist by diverting stormwater away from the existing southern building and proposed car park area.*
>
> *Roof water presently discharges to the natural surface and then drains via surface drains to the table drain in Pottsville-Mooball Road. A condition will be required to pipe this roof water so that it discharges to the spoon drain."*

Should Council determine to approve this application suitable conditions of consent can be provided.

(c) Suitability of the site for the development

For the reasons detailed in the above report the proposed rural site is not considered suitable for an industrial type development.

(d) Any submissions made in accordance with the Act or Regulations

The development application was advertised and notified to surrounding properties for a period of two weeks, closing on 29 November 2006. During this period thirteen written submissions were received (including one from the

Environmental Defenders Office). The issues raised in the submissions are addressed in the following table.

Issue	Comment	Assessment
Site Suitability	*Relocate them now to a heavy industrial area not in the scenic coastal Tweed Valley*	The above report addresses site suitability and concludes that the site is not suitable for the proposed development. These objections form part of the reasons for refusal.
	They should be in industrial areas like the one planned for 3km from Pottsville	
	The business was previously in an industrial park why relocate it to a nice rural area.	
	We moved into a rural area for peace and quiet ad although we expect progress we do not want to be sitting in the middle of an industrial estate.	
	It is out of character with the rural locality.	
	The site is located within a major flood path and should not be used for commercial and or industrial purposes.	
Noise	*The noise levels of electrical grinding for eleven hours a day is above acceptable levels in this rural area*	The applicant has submitted several Noise Impact Assessments, which have all been reviewed by Council's Environmental Health Officer. Based on those reports it is possible for the site to have acoustic attenuation to reduce the impact on neighbours. However, given the large site area there appears to be the opportunity for work to be undertaken outside any attenuated buildings and therefore concern in regard to noise is still expressed. One of the reasons for refusal is that the proposal has the ability to impact upon external properties.
	Using machinery which is of the highest noise value in a non industrial area is unacceptable	
	Use of angle grinders , power hacksaws, redial drills, milling machines, lathes, electrical presses etc is unacceptable for a rural location/	
Traffic	*The amount of heavy vehicles on this road is dangerous*	Council's Development Engineer has reviewed the proposed access and road network and has indicated that from an Engineering perspective the proposed development could be facilitated subject to minor alterations to allow for a specific turning bay outside the site. However, from an amenity perspective the impact of this development on the adjoining residences is considered unreasonable. Therefore, one of the reasons for refusal is that the proposal has the ability to impact upon external properties.
	Heavy vehicle traffic creates problems for safety for children waiting for the school bus.	
	The DA is misleading as there is no direct access to the Pacific Highway and Pottsville Mooball Road would need to be used as the only access.	
	The extra traffic (25 vehicles) is unacceptable for the rural locality.	

Issue	Comment	Assessment
Aboriginal Relics	*There are aboriginal sites of historic interest along this section of coastline – the Tweed would do well to preserve it for the future of the country*	There are no known items of significance on the subject site. Notwithstanding should Council determine to approve this application standard conditions of consent would need to be imposed to ensure that if any artefact was discovered site works are to cease immediately.
Precedent	*If one of these activities is allowed to operate it will set a precedence for further industrial operations*	The proposed development could potentially set an unwarranted precedent for utilisation of rural land for industrial purposes. Therefore one of the reasons for refusal is that it is in the general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of the 1(a) rural zone.
	The applicant claims the use is permissible due to the precedent of the site but in the past it has just been a one man nursery operation and then temporarily used by the RTA.	
Permissibility	*The proposed business sounds more like a factory and industrial activity than a rural one.*	These objections form part of the reasons for recommending refusal of this application. Specifically the proposed development does not satisfy the provisions contained within Clause 8(2) of the Tweed LEP 2000.
	The proposal is to develop an industrial facility on rural zoned land.	
	There is a non-compliance with the zone objectives.	
	The application does not adequately satisfy Clause 8(2)	
Contamination	*The site is contaminated with arsenic*	Council's Environmental Health Officer has reviewed the applicant's statements in this regard and concluded that prior to any approval being granted this application would first "need to have a statement from an accredited contamination site auditor which indicates that the site is suitable for the intended use."
False Information	*The DA is misleading and incorrectly states the facts*	The application as submitted has been assessed against Council's records. The DA as submitted has sufficient detail to enable a determination, however, based on this assessment the application is recommended for refusal.
	The applicants Clause 8(2) Assessment are breathtaking nonsense.	Council's assessment has detailed the inadequacies with the applicants Clause 8(2) Assessment that forms the basis for the reasons for refusal.
Setbacks	*The buildings do not comply with the setback criteria as detailed within tweed LEP 2000.*	This aspect of the development has been assessed against SEPP1 and is considered acceptable on merit. Therefore this aspect does not form part of the reasons for refusal.
Amenity	*We are both shift workers who*	The potential for this development to

Issue	Comment	Assessment
	need sleep during the day. Use of the site for industrial purposes would interfere with the noise levels in the area and require sound treatments to my house.	impact on adjoining properties forms one of the reasons for refusal.
Property Values	*This development would de-value my property*	This is not a matter for consideration under Section 79C of the Environmental Planning & Assessment Act 1979.

(e) Public interest

The issues raised within the submissions are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for utilisation of rural land for industrial purposes and therefore it is in the public interest for this application to be refused.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal;

2. i) Determine to approve this development in principal; and
   ii) Request the applicant to provide a statement from an accredited contamination site auditor, which indicates that the site is suitable for the intended use; and
   iii) Delegate the authority to approve the application to the Director of Planning & Development subject to suitable conditions of consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be unhappy with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

POLICY IMPLICATIONS:

The proposed development could potentially set an unwarranted precedent for utilisation of rural land for industrial purposes.

CONCLUSION:

Having regard to the objections received following notification, an assessment against Clause 8(2) of the Tweed LEP 2000, the rural character of the area, and the proximity of the development to residential properties the proposed use is not considered suitable for the location and therefore the proposed development is recommended for refusal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any **"non confidential"** attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

NOTICE NO. DA06/1275

TWEED SHIRE COUNCIL

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

To: Mr J McLean and Ms A McLean
C/- Barry McLean
PO Box 818
MURWILLUMBAH NSW 2484

Pursuant to Section 81(1)(a) of the Act, notice is hereby given of the determination by the Tweed Shire Council of Development Application No. **DA06/1275** relating to land described as:-

Lot 201 DP 1002166
Pottsville Road
Sleepy Hollow

to be developed in accordance with plans and details submitted for the purpose of –

MANUFACTURING SHEDS, DEPOT, OFFICE AND STORAGE

The Development Application has been determined by the granting of consent subject to the conditions described below:-

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos 1-29 prepared by Darren Gibson Planning and dated 10 October 2006, except where varied by the conditions of this consent.

[GEN0005]

2. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0045]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

4. The development is to be carried out in accordance with Development Control Plan No. 16 - Subdivisions Manual and Councils adopted Development Design and Construction Specifications.

[GEN0125]

5. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

6. The premises shall be designed, constructed and operated in accordance with the Noise Level Impact Assessment, Craig Hill Acoustics, December 2006.

[GENNS01]

7. This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

9. Any carparking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority **PRIOR** to the issue of a Construction Certificate for building works.

[PCC0055]

10. The developer shall submit detailed engineering plans to the PCA for the parking spaces as shown on Drawing No. 001 dated 10/10/05 including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11.

    Full design detail of the proposed parking and articulated vehicle manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

11. Any works to be carried out within the adjoining road reserve is subject to a Section 138 application and approval being issued by Tweed Shire Council as the road authority.

    Application for these works and receipt of approval is to be obtained prior to the issue of a construction certificate for building works within the development site.

[PCC0075]

12. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to the satisfaction of the General Manager or his delegate.

[PCC0465]

13. Council has no flood records nor ground levels in this rural locality. The Construction Certificate application must provide historical evidence, by local enquiry, of the extent of flood affect on the property, if any, and provide a design flood level for the development.

[PCC0695]

14. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:

    (a) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water.

    (b) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage in accordance with Section A3 of Council's Consolidated DCP.

[PCC0705]

15. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person shall be submitted to the Principal Certifying Authority prior to issue of the Section 138 approval. Safe public access shall be provided at all times.

[PCC0865]

16. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for any works within the road reserve.

[PCC0885]

17. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -

    (a) The applicant shall provide a Basic Right Turn BAR treatment for a right turn movement from Pottsville-Mooball Road into the development in accordance with figure 6.37 of Austroads 2005, intersection at Grade.

    The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

    - Road works/furnishings
    - Stormwater drainage
    - Water and sewerage works
    - Sediment and erosion control plans
    - Location of all services/conduits
    - Traffic control plan

[PCC0895]

18. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority **PRIOR** to the issue of a construction certificate.

    The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

[PCC1065]

19. All roof waters are to be disposed of through properly jointed pipes to the spoon drain located to the west of the existing buildings. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZ3500.3.2. Note: A detailed stormwater and drainage plan is to be submitted to and approved by the PCA prior to commencement of building works.

[PCC1115]

20. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under section 68 of the Local Government Act 1993.

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

[PCC1145]

21. Erosion and Sediment Control shall be provided in accordance with the following:

(a) The Construction Certificate Application for building works must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality.*

(b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

22. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system a waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by Tweed Shire Council PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.

[PCC1255]

23. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

Stage 1

(a) Tweed Road Contribution Plan: $7,777
S94 Plan No. 4 (Version 4.0)

Sector8a_4

[PCC0215]

24. A **certificate of compliance** (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall **NOT** be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Stage 1

Water DSP6: 0.05781 ET @ $4598 $266

Stage 2

Water DSP6: 0.00948 ET @ $4598 $44

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

[PCC0265]

PRIOR TO COMMENCEMENT OF WORK

25. The erection of a building in accordance with a development consent must not be commenced until:

(a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

(b) the person having the benefit of the development consent has:

(i) appointed a principal certifying authority for the building work, and

(ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

(c) the principal certifying authority has, no later than 2 days before the building work commences:

(i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and

(ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

(d) the person having the benefit of the development consent, if not carrying out the work as an owner-building, has:

(i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and

(ii) notified the principal certifying authority of any such appointment, and

(iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

26. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least **2 days** prior to work commencing.

[PCW0225]

27. **Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003**, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(a) showing the name, address and telephone number of the principal certifying authority for the work, and

(b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

28. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed

development and existing infrastructure including areas external to the development site where works are proposed.

[PCW0005]

29. Written approval for any application under Section 138 of the Roads Act 1993 is required prior to commencing works within the road reserve.

[PCW0705]

30. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

    Please note that this sign is to remain in position for the duration of the project.

[PCW0985]

31. The proponent shall notify Councils Engineering & Operations Division of intention to commence drawing water in accordance with the requirements of the approval to draw water.

[PCW1045]

32. Any alteration to the existing on-site sewage management facilities must be approved to the satisfaction of the General Manager or his delegate.

[PCW1125]

33. It is the responsibility of the contractor to identify and locate all underground utility services prior to commencing works.

[PCW1165]

DURING CONSTRUCTION

34. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

    Monday to Saturday from 7.00am to 7.00pm

    No work to be carried out on Sundays or Public Holidays

    The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

35. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

36. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

37. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied in accordance with WorkCover 2000 Regulations.

[DUR0415]

38. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.

    Note: Many materials including some timbers such as western red cedar do not comply and it is the applicants responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

39. Exits are to be provided so that no point on the floor of the building shall be more than 20 metres from:

    (a) an exit; or

    (b) a point from which travel in different directions to two exits is available in which case the maximum distance to one of those exits shall not exceed 40 metres.

[DUR1285]

40. Exit signs which comply with Part E4.5 of the Building Code of Australia and are designed in accordance with Part E4.8 of the Building Code of Australia and are to be installed. Mounting heights shall be in accordance with AS2293.1.

[DUR1295]

41. Emergency lighting to comply with Part E4.2 of the Building Code of Australia shall be provided. Details of the system to be used and a certificate from the electrical engineer to certify that the system will comply with all relevant requirements of Part E4.4 of the Building Code of Australia and AS 2293.1 are to be submitted to the PCA prior to installation.

[DUR1305]

42. Doors forming exits, paths of travel to exits and parts of exits shall comply with the relevant provisions of D2.19 and D2.20 of the Building Code of Australia.

[DUR1315]

43. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]

44. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.

[DUR1705]

45. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

    (a) internal drainage, prior to slab preparation;

    (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;

    (c) external drainage prior to backfilling.

    (d) completion of work and prior to occupation of the building.

[DUR2485]

46. Plumbing

(a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.

(b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

47. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

* 43.5^0C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and

* 50^0C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

48. All proposed works to be undertaken are to be carried out in accordance with the conditions of development consent, approved construction certificate, Section 138 approval, drawings and specifications.

[DUR0005]

49. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

50. The provision of off street car parking generally in accordance with drawing No.001 dated 10/10/06 including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890.

[DUR0085]

51. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

52. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties.

[DUR0805]

53. All fill and cut batters shall be obtained wholly within the subject land.

[DUR0825]

54. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council.

[DUR0985]

55. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

56. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

57. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

58. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

59. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.

(a) That the pavement has been designed and constructed in accordance with Tweed Shire Councils adopted Construction and Design Specification, D2.

(b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils adopted Design and Construction Specifications, C242-C245, C247, C248 and C255.

[DUR1805]

60. During the relevant stages of road construction, reports shall be submitted to the PCA by a Registered NATA Geotechnical firm demonstrating.

(a) That the pavement layers have been compacted in accordance with Councils adopted Design and Construction Specifications.

(b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

61. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

62. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications.

[DUR1875]

63. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

64. The written consent of the registered proprietors of adjoining land, where the said works encroach thereon is to be submitted to Council prior to works commencing.

[DUR2005]

65. The works are to be completed in accordance with Councils Development Control Plans and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

66. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.

[DUR2185]

67. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

68. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by the EPA.

[DUR2215]

69. All roofwaters are to be disposed of through properly jointed pipes to the spoon drain located to the west of the existing buildings. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note - All roofwater must be connected to an inter allotment drainage system where applicable.

[DUR2335]

70. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

[DUR2375]

71. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

72. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DUR2415]

73. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the General Manager or his delegate.

[DUR2425]

74. All waters that are to be discharged from the site shall a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

75. All water drawn from Councils reticulated system shall be via a Tweed Shire Council metered standpipe. The location o the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[DUR2575]

76. Acid sulfate soils shall not be exposed or disturbed. Materials one (1) metre or greater below the natrual ground level shall not be exposed or disturbed.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

77. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

78. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

79. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.

[POC0525]

80. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

81. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

82. Prior to the issue of an Occupation Certificate a defect liability bond (in cash **or** unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works approved under Section 138 of the Roads Act (minimum $1,000.00) which will be held by Council for a period of 6 months from the date on which the Occupation Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[POC0165]

83. Work as executed plans are to be provided to Council in accordance with Councils adopted Development Design and Construction Specification.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the <u>DEVELOPER</u> to prepare and submit works-as-executed plans.

[POC0765]

USE

84. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.

[USE0125]

85. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.

[USE0135]

86. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

[USE0145]

87. Hours of operation of the business are restricted to between 7:00am and 6:00pm, Monday to Friday and 7:00am to 5:00pm on Saturday with no work on Sunday and public holidays

[USE0185]

88. Deliveries shall be restricted to 7:00am to 5:00pm Monday to Friday.

[USENS05]

89. Prior to the commencement of use, Development Consent No.T4/1762 is to be surrendered in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.

[USENS06]

90. Prior to the commencement use, a Long-Term Site Management Plan relating to site contamination is to be prepared in accordance with the recommendations in Section 13.0 of the "Remedial Action Plan and Site Validation" report prepared by Graham Lancaster and Lee O'Conner of Southern Cross University and dated February 2007. The plan is to be approved by the General Manager or his delegate.

[USENS07]

91. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises.

[USE0205]

92. Upon receipt of a noise compliant that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction

of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer

[USE0245]

93. Any vehicles that remain on site for periods in excess of five (5) minutes are required to switch off their engines.

[USE0255]

94. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW and not exposed to any flood waters.

[USE1035]

95. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate.

[USE1055]

96. A maximum of twenty-five (25) articles of plant and machinery (trucks or the like) shall be stored at the premises at any one time.

[USENS01]

97. Any spray painting shall be carried out within a Workcover approved booth. Spray painting shall not be carried out without the booth having been inspected and approved by WorkCover.

[USENS02]

98. All manufacturing and maintenance activities to be conducted within the buildings. The north building shall be used for maintenance of agricultural equipment.

[USENS03]

99. Prior to the commencement of any maintenance or manufacturing processes, those attenuation measures identified in the approved Noise Level Impact Assessment shall be completed to the satisfaction of Council's Director of Environment and Community Services. Prior to commencement of maintenance or manufacturing a compliance test shall be conducted by a suitably qualified person and a compliance report provided to Council. That report shall also be accompanied by a Noise Management Plan for the premises. The Noise Management Plan is to be approved by the General Manager or his delegate.

[USENS04]

The reasons for the imposition of conditions are to minimise any adverse impact the development may cause and to give effect to the objectives of the Environmental Planning and Assessment Act, 1979.

The application was determined on: **1 May 2007**
The consent to operate from: **1 May 2007**
The consent to lapse on 1 May 2008 unless commenced prior to that date.

RIGHT OF APPEAL

If you are dissatisfied with this decision Section 97 of the Environmental Planning and Assessment Act, 1979 gives you to right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice.

Signed on behalf of the Tweed Shire Council

Noel Hodges, Director, Planning & Development
1 May 2007

A/1

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

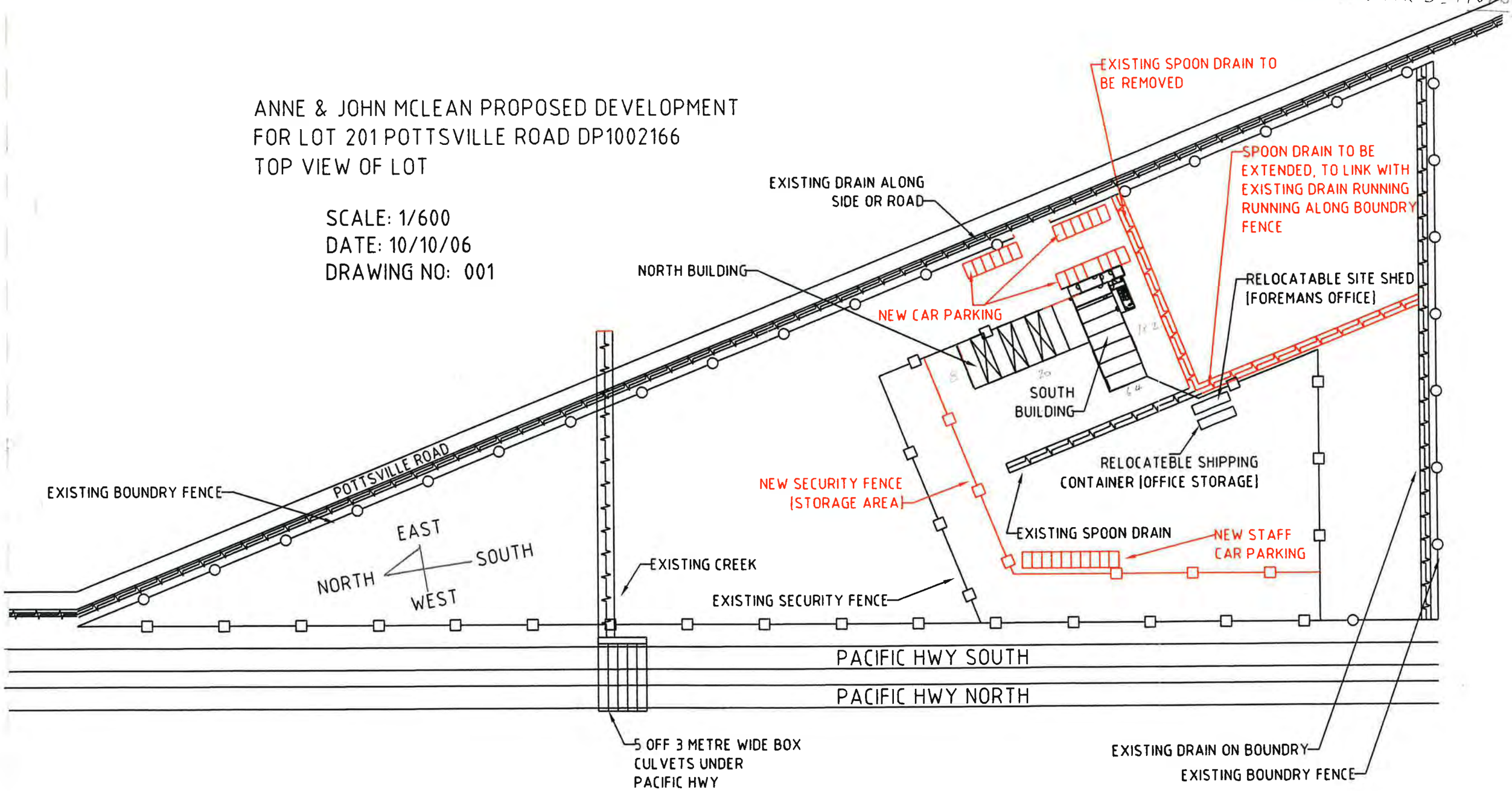
SIGNED:

GLA = 177+ 165 = 342 m²

∴ 2 77 x 5 = 140 m²

ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT FOR LOT 201 POTTSVILLE ROAD DP1002166 TOP VIEW OF LOT

SCALE: 1/600
DATE: 10/10/06
DRAWING NO: 001

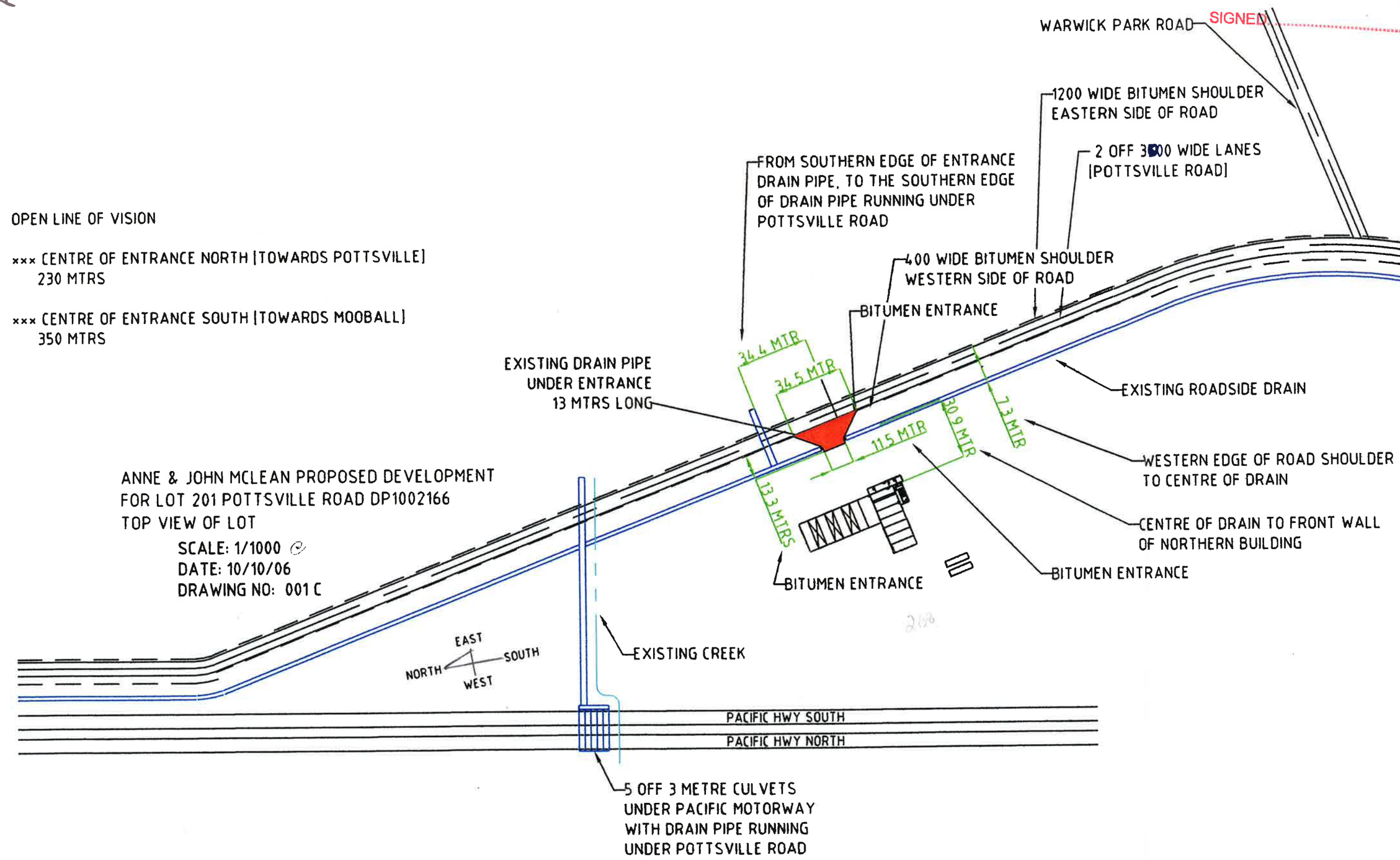


A/2

OPEN LINE OF VISION

××× CENTRE OF ENTRANCE NORTH [TOWARDS POTTSVILLE]
230 MTRS

××× CENTRE OF ENTRANCE SOUTH [TOWARDS MOOBALL]
350 MTRS



ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT
FOR LOT 201 POTTSVILLE ROAD DP1002166
TOP VIEW OF LOT

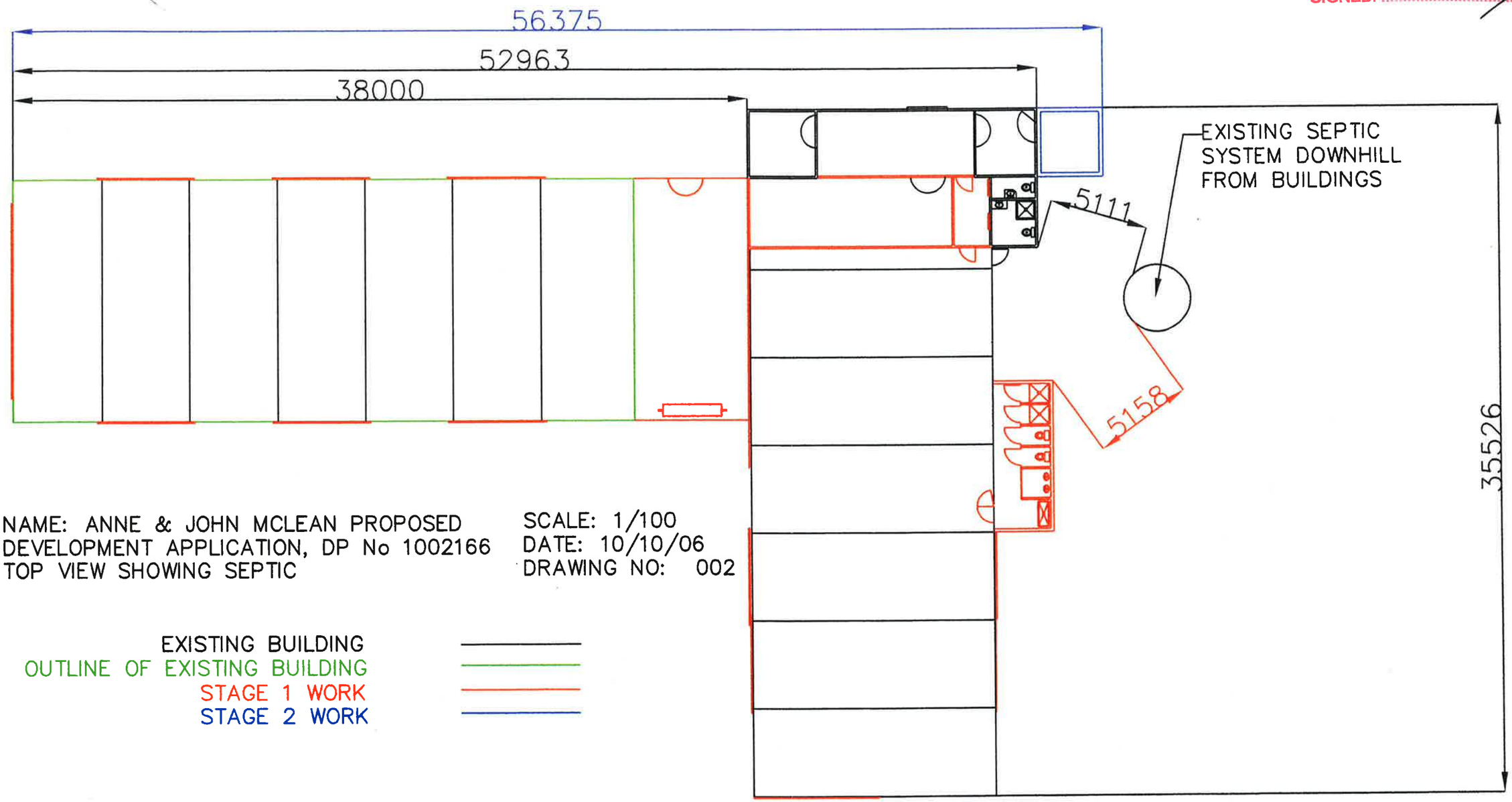
SCALE: 1/1000 @
DATE: 10/10/06
DRAWING NO: 001 C

A/3

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED: .....



NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166
TOP VIEW SHOWING SEPTIC

SCALE: 1/100
DATE: 10/10/06
DRAWING NO: 002

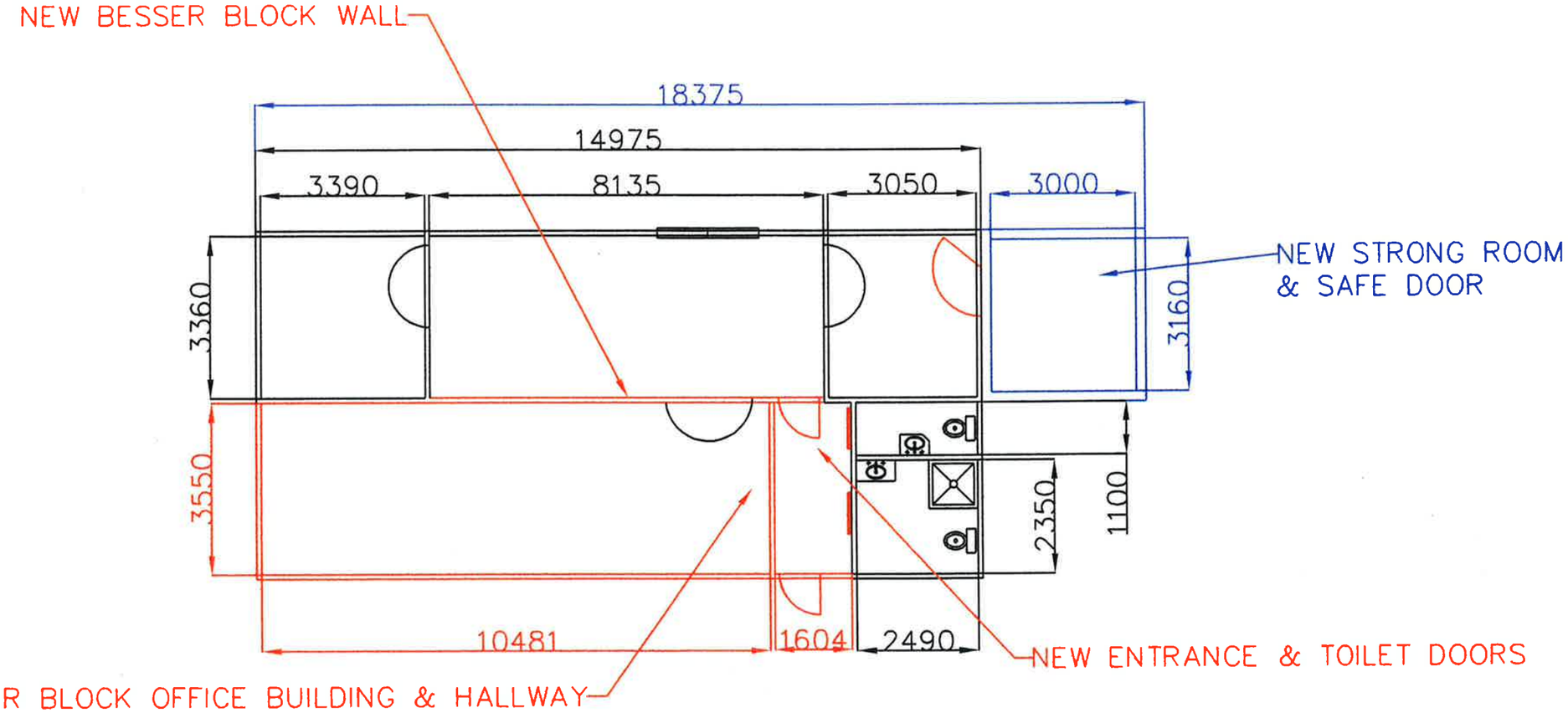
EXISTING BUILDING
OUTLINE OF EXISTING BUILDING
STAGE 1 WORK
STAGE 2 WORK

A/4

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED: .....

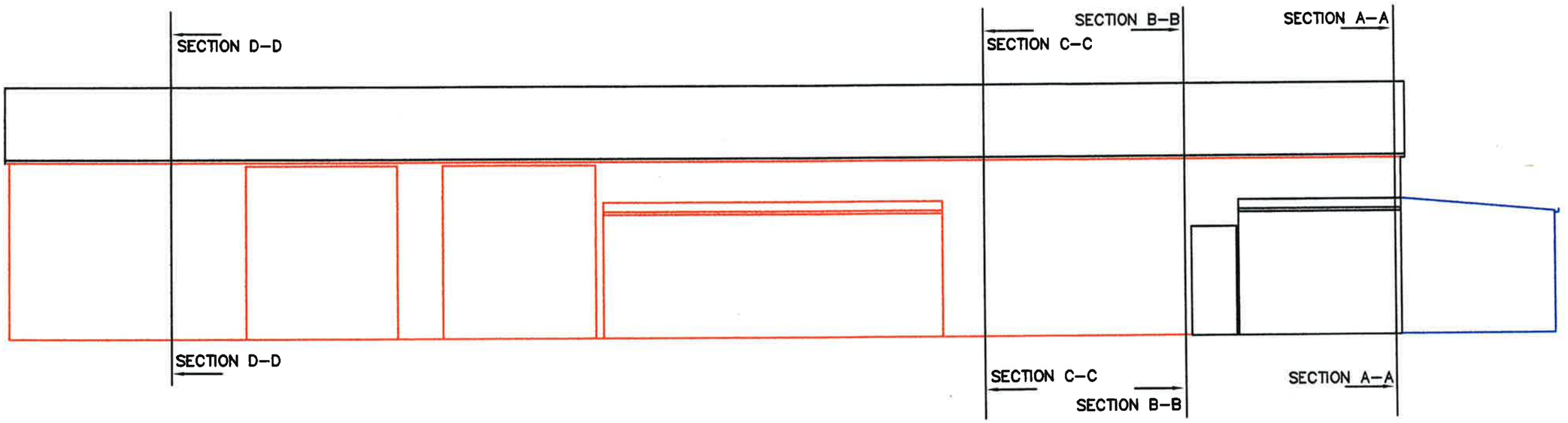


NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166
SOUTHERN BUILDING, TOP VIEW OFFICES, DETAIL

SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 004

EXISTING BUILDING
NEW WORK STAGE 1
NEW WORK STAGE 2

A/5



EXISTING BUILDING
NEW WORK STAGE 1
NEW WORK STAGE 2

NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166
SOUTHERN BUILDING,
SHOWING SECTION VIEW LINES THROUGH BUILDING

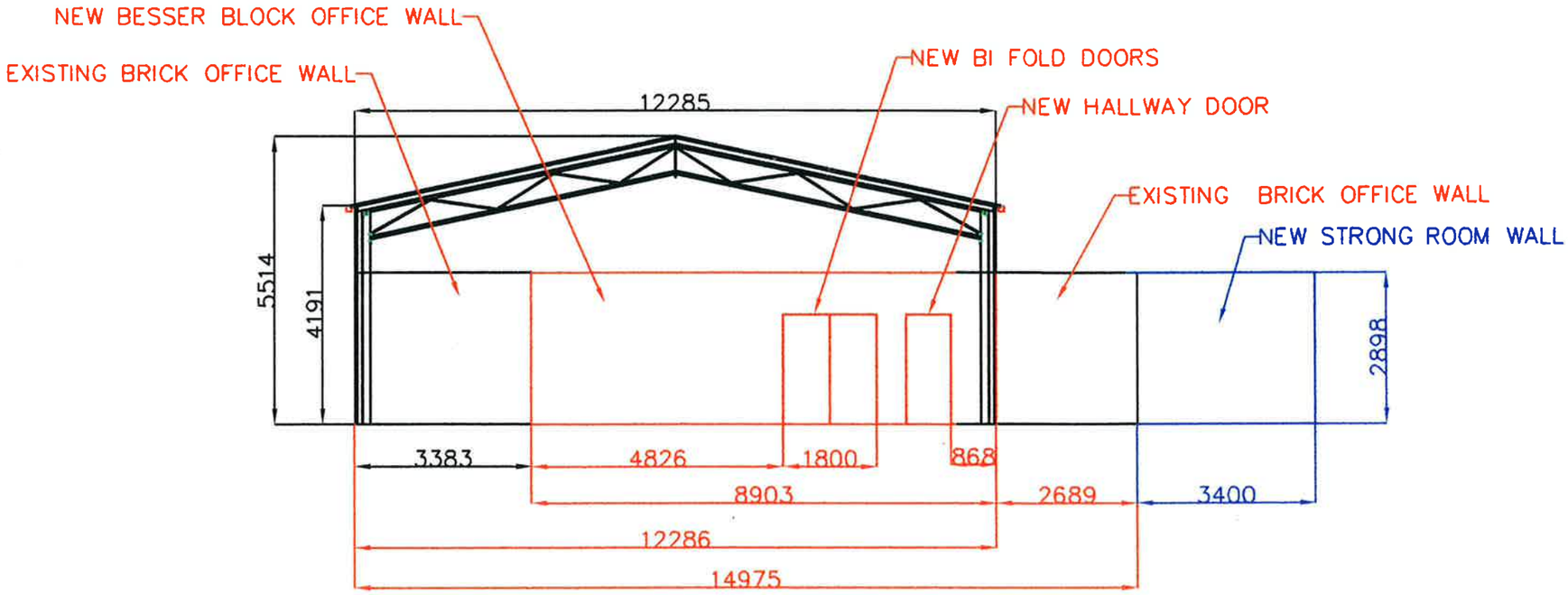
SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 005

A/6

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED:



NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166 SOUTHERN BUILDING, SECTION VIEW A–A

SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 006

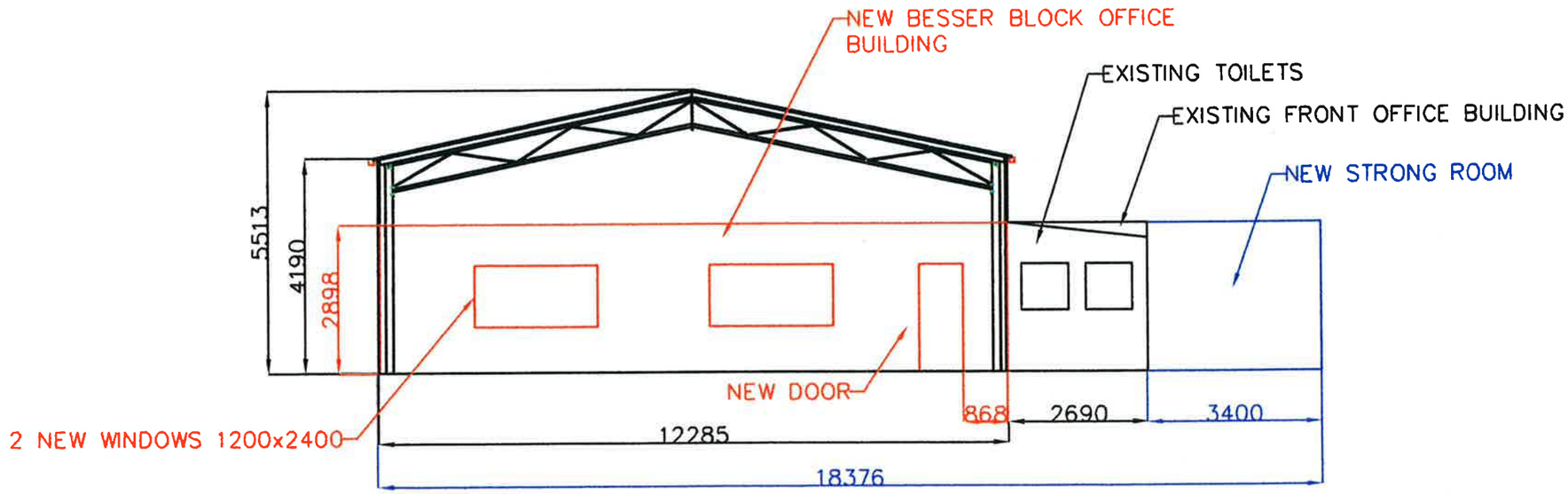
EXISTING BUILDING
NEW WORK STAGE 1
NEW WORK STAGE 2

A/7

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED: M. Hodges



EXISTING BUILDING
NEW WORK STAGE 1
NEW WORK STAGE 2

NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166
SOUTHERN BUILDING, SECTION VIEW B–B

SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 007

A/8

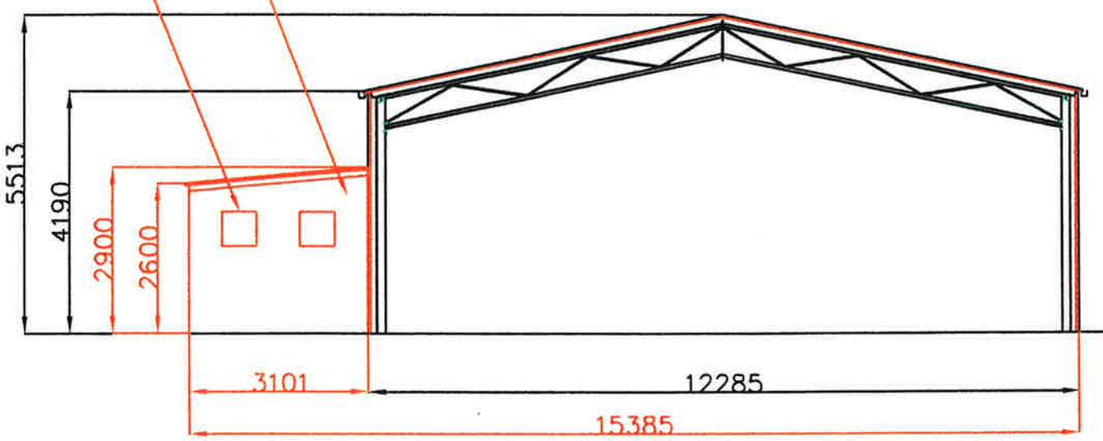
THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED:

NEW BESSER BLOCK TOILET AREA
NOTE: TO BE CONNECTED TO EXISTING SEPTIC

NEW WINDOWS AS SHOWN IN DETAIL VIEW



NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166
SOUTHERN BUILDING, SECTION VIEW C–C

SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 008

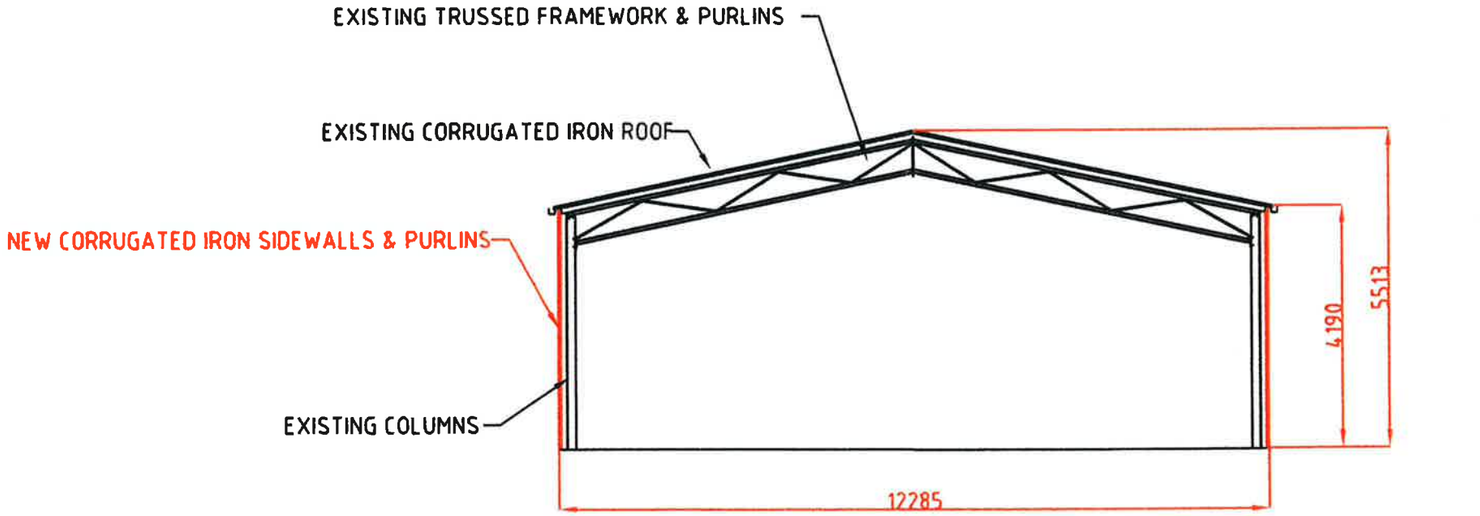
EXISTING BUILDING
NEW WORK STAGE 1

A/9

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED: .....

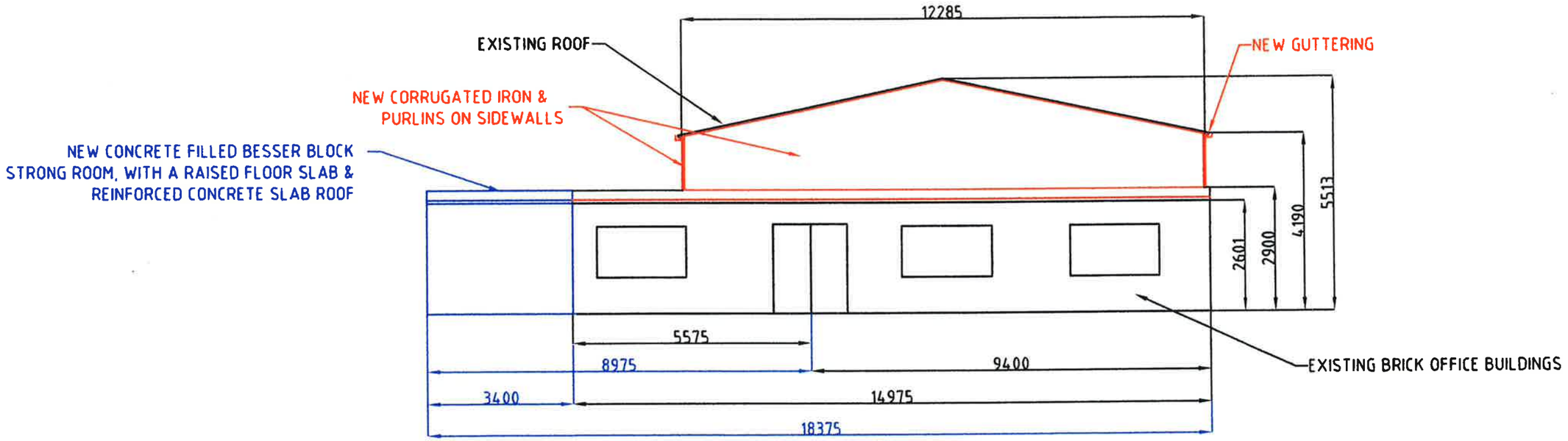


NAME: ANNE & JOHN MCLEAN PROPOSED
DEVELOPMENT APPLICATION, DP No 1002166
SOUTHERN BUILDING, SECTION VIEW D-D

SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 009

EXISTING BUILDING
NEW WORK STAGE 1

A/10



EXISTING BUILDING
NEW WORK STAGE 1
NEW WORK STAGE 2

NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166
SOUTHERN BUILDING, EASTERN ELEVATION

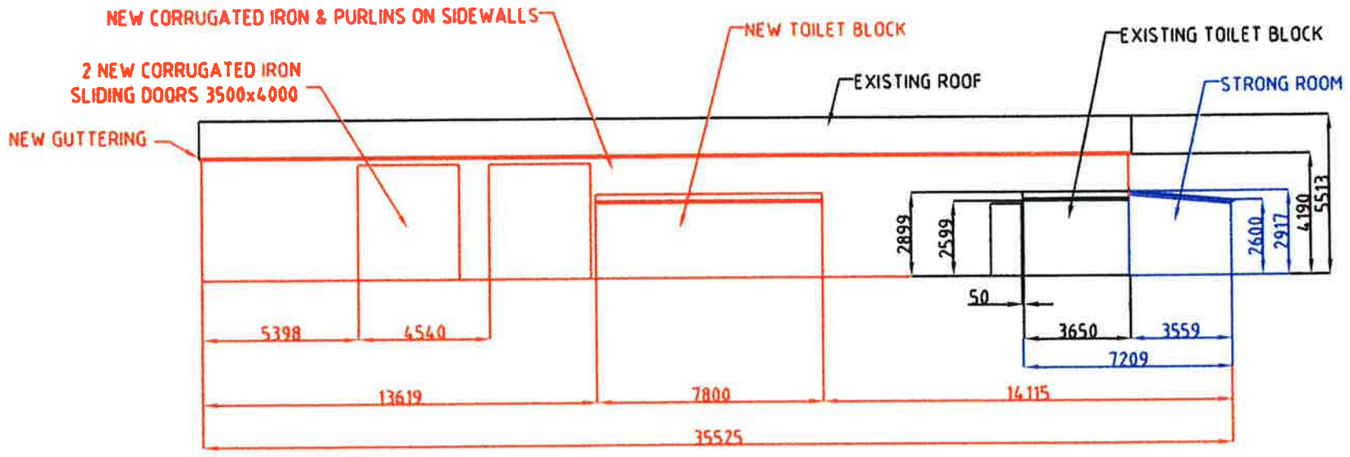
SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 010

A/11

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED: .....



EXISTING BUILDING
NEW WORK STAGE 1
NEW WORK STAGE 2

NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166
SOUTHERN BUILDING, SOUTHERN ELEVATION

SCALE: 1/100
DATE: 10/10/06
DRAWING NO: 11

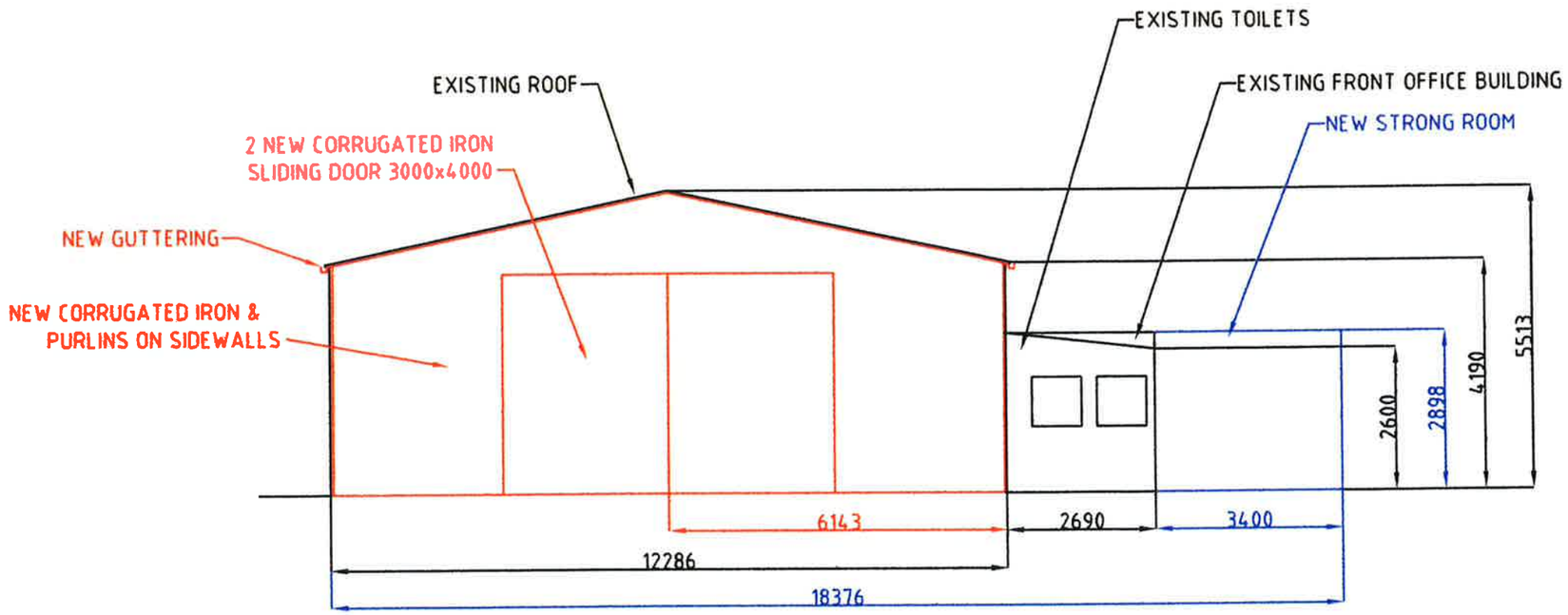
- could be like 1:300 ?

A/12

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED: .....



EXISTING BUILDING
NEW WORK STAGE 1
NEW WORK STAGE 2

NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166
SOUTHERN BUILDING, WESTERN ELEVATION

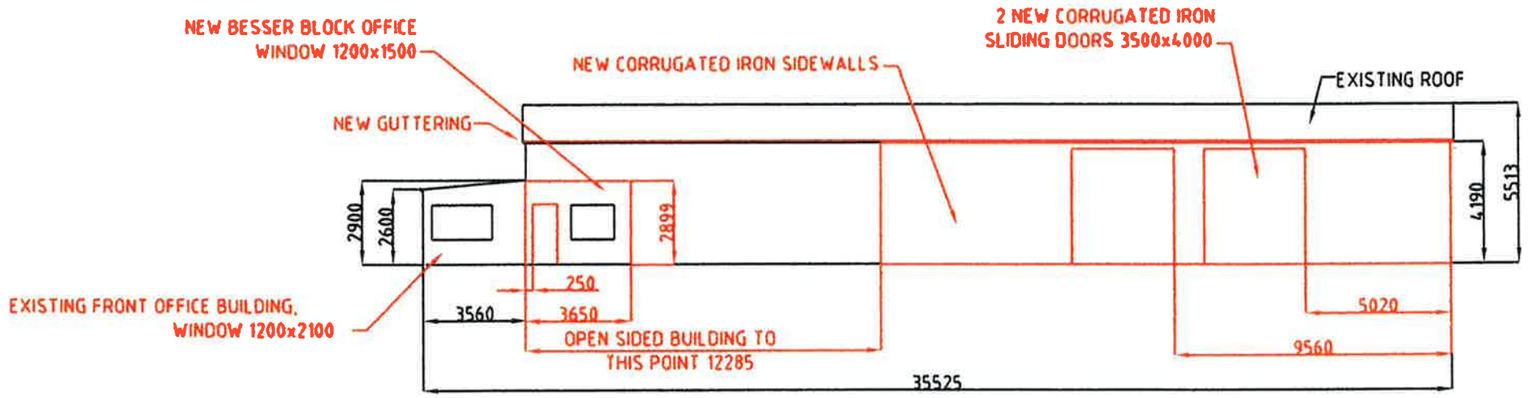
SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 012

A/13

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED:

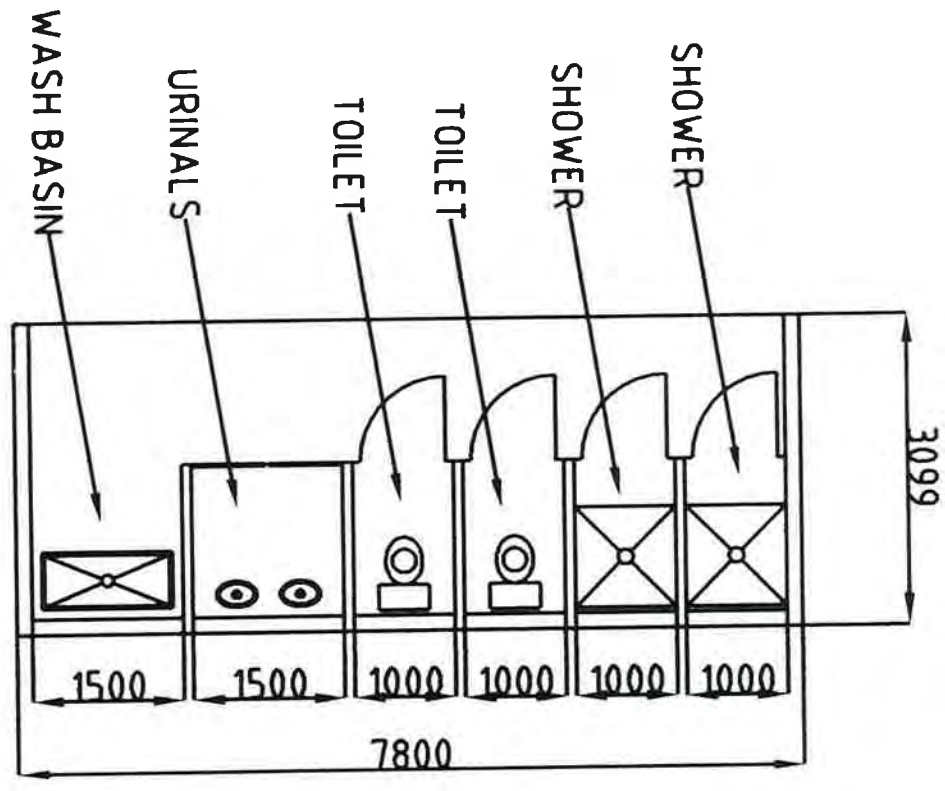


NAME: ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION, DP No 1002166 SOUTHERN BUILDING, NORTHERN ELEVATION

SCALE: 1/100
DATE: 10/10/06
DRAWING NO: 13

EXISTING BUILDING
NEW WORK STAGE 1
NEW WORK STAGE 2

A/14



ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT
APPLICATION FOR LOT 201 POTTSVILLE ROAD DP No 1002 166
NAME:TOILET BLOCK TOP VIEW DETAIL

NOTE: TO BE CONNECTED TO EXISTING
SEPTIC SYSTEM

SCALE: 1/50
DATE:11/10/06
PLAN No: 014

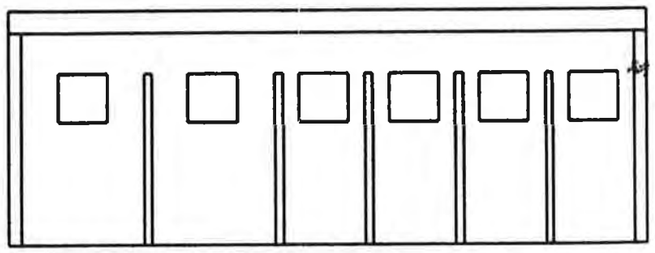
THIS IS THE PLAN REFERRED
TO IN THE DEVELOPMENT
CONSENT No DA06/127.5
- 1 MAY 2007
SIGNED:

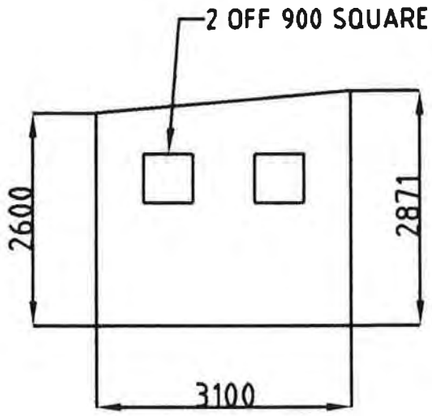
A/15

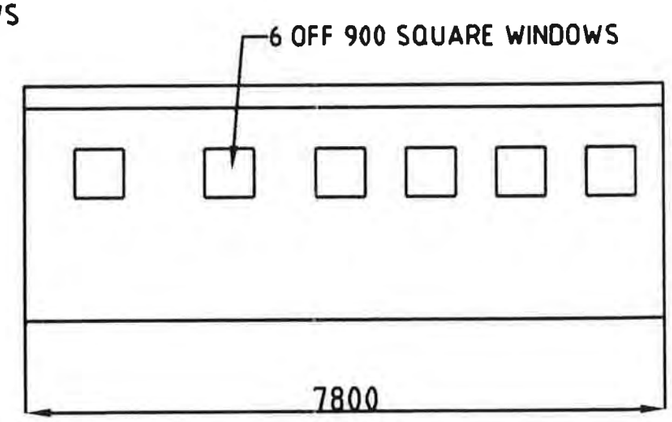
THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

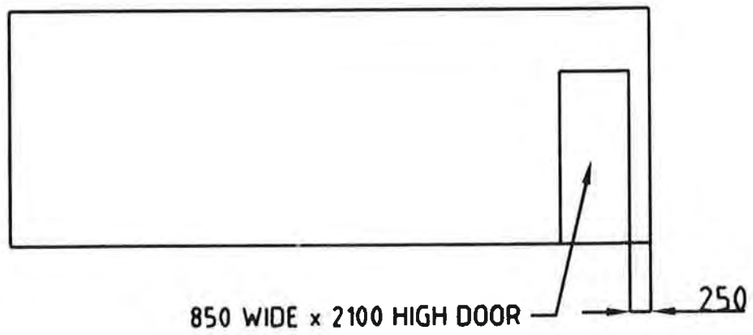
- 1 MAY 2007

SIGNED: .....









ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT APPLICATION
FOR LOT 201 POTTSVILLE ROAD DP No 1002 166
NAME: TOILET BLOCK

SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 15

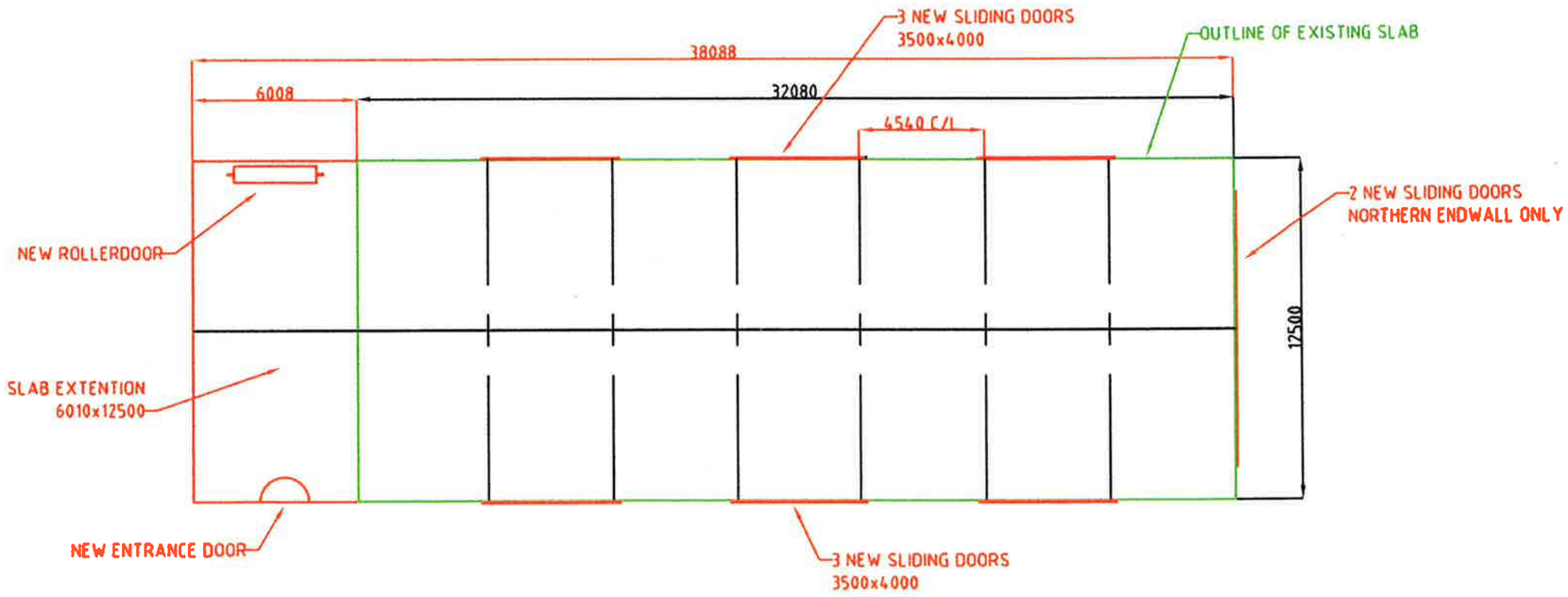
NOTE: TO BE CONNECTED TO EXISTING SEPTIC SYSTEM

A/1.6

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED: [signature]



476

EXISTING BUILDING
NEW WORK STAGE 1
OUTLINE OF OLD BUILDING

ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT
FOR LOT 201 POTTSVILLE ROAD DP1002166
NORTHERN BUILDING, TOP VIEW

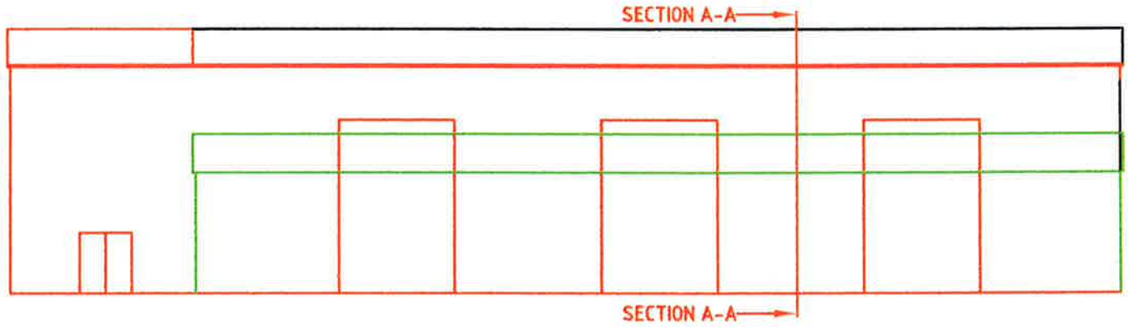
SCALE: 1/100
DATE: 10/10/06
DRAWING NO: 16

A/17

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED: .....



EXISTING BUILDING
NEW WORK STAGE 1
OUTLINE OF OLD BUILDING

ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT
FOR LOT 201 POTTSVILLE ROAD DP1002166
NORTHERN BUILDING, EASTERN ELEVATION
SHOWING SECTION LINES

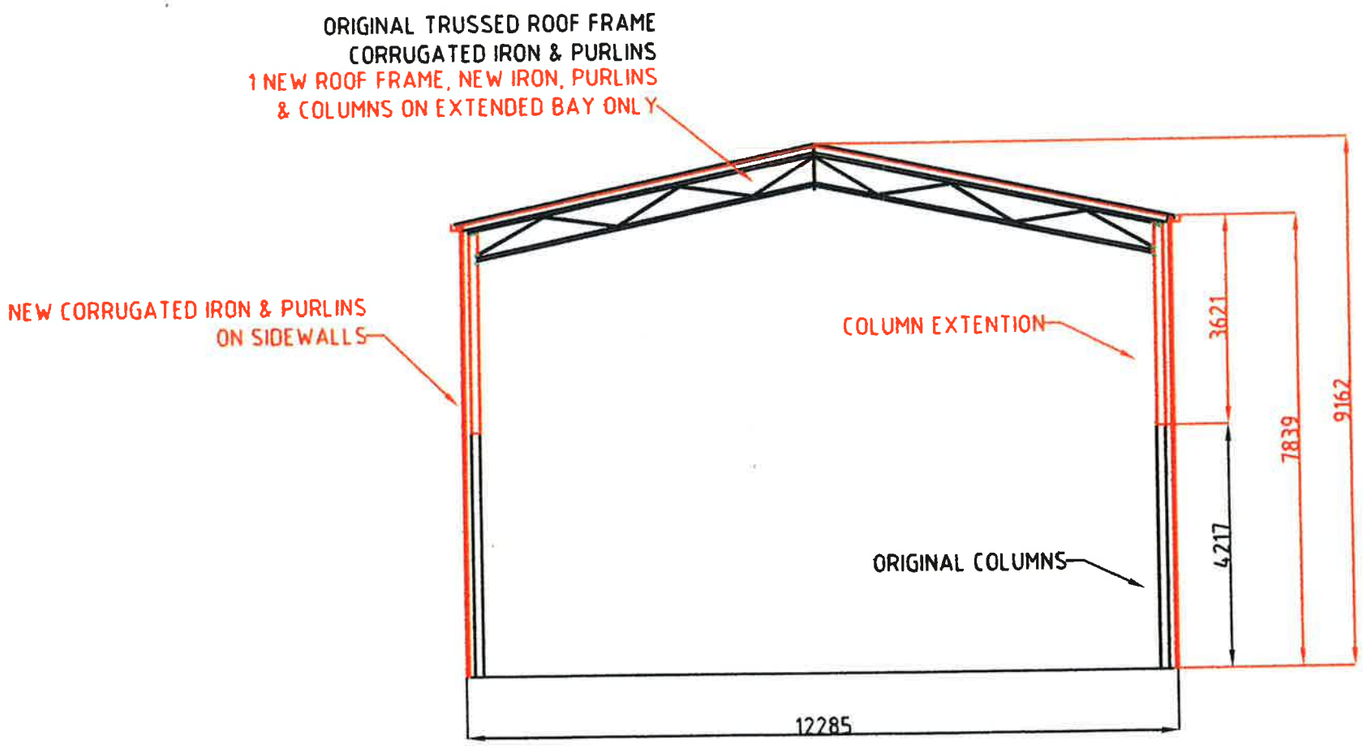
SCALE: 1/100
DATE: 10/10/06
DRAWING NO: 017

A/18

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED:

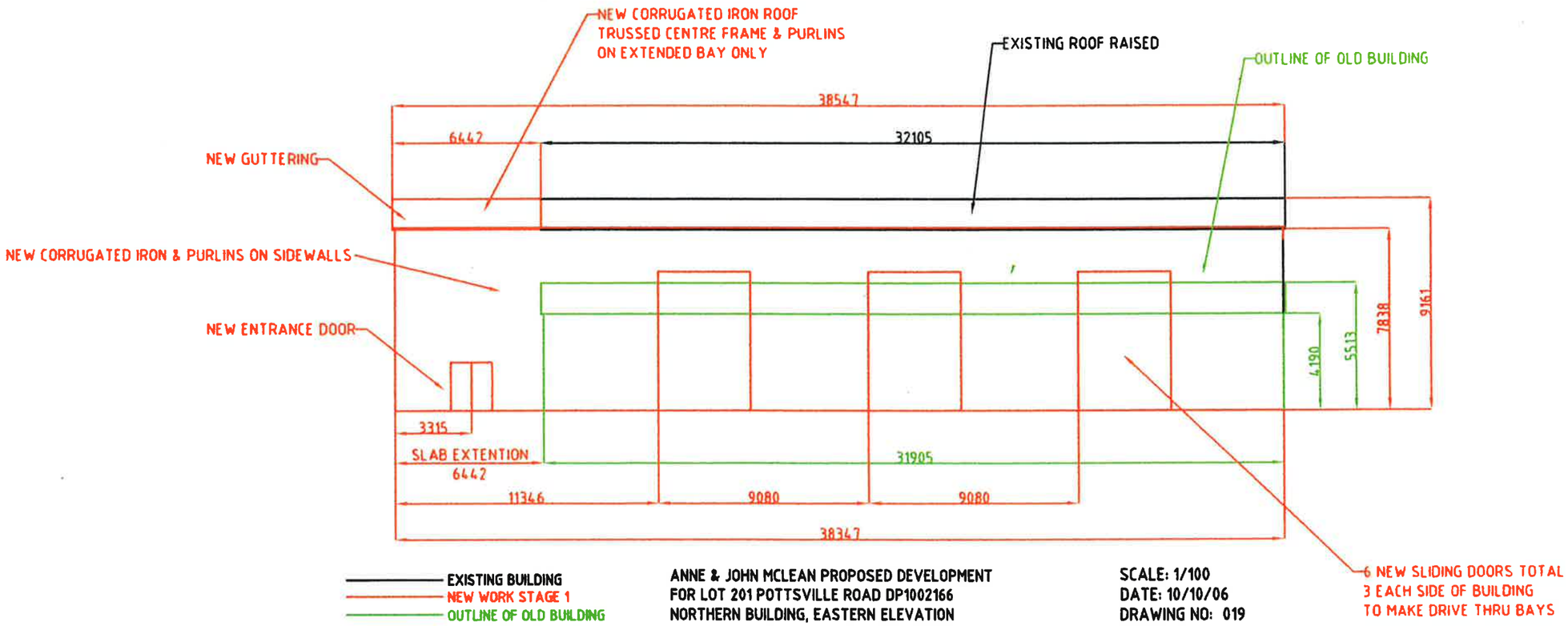


EXISTING BUILDING
NEW WORK STAGE 1

ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT
FOR LOT 201 POTTSVILLE ROAD DP1002166
NORTHERN BUILDING, SOUTHERN ELEVATION
SECTION VIEW A-A

SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 018

A/19



EXISTING BUILDING
NEW WORK STAGE 1
OUTLINE OF OLD BUILDING

ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT
FOR LOT 201 POTTSVILLE ROAD DP1002166
NORTHERN BUILDING, EASTERN ELEVATION

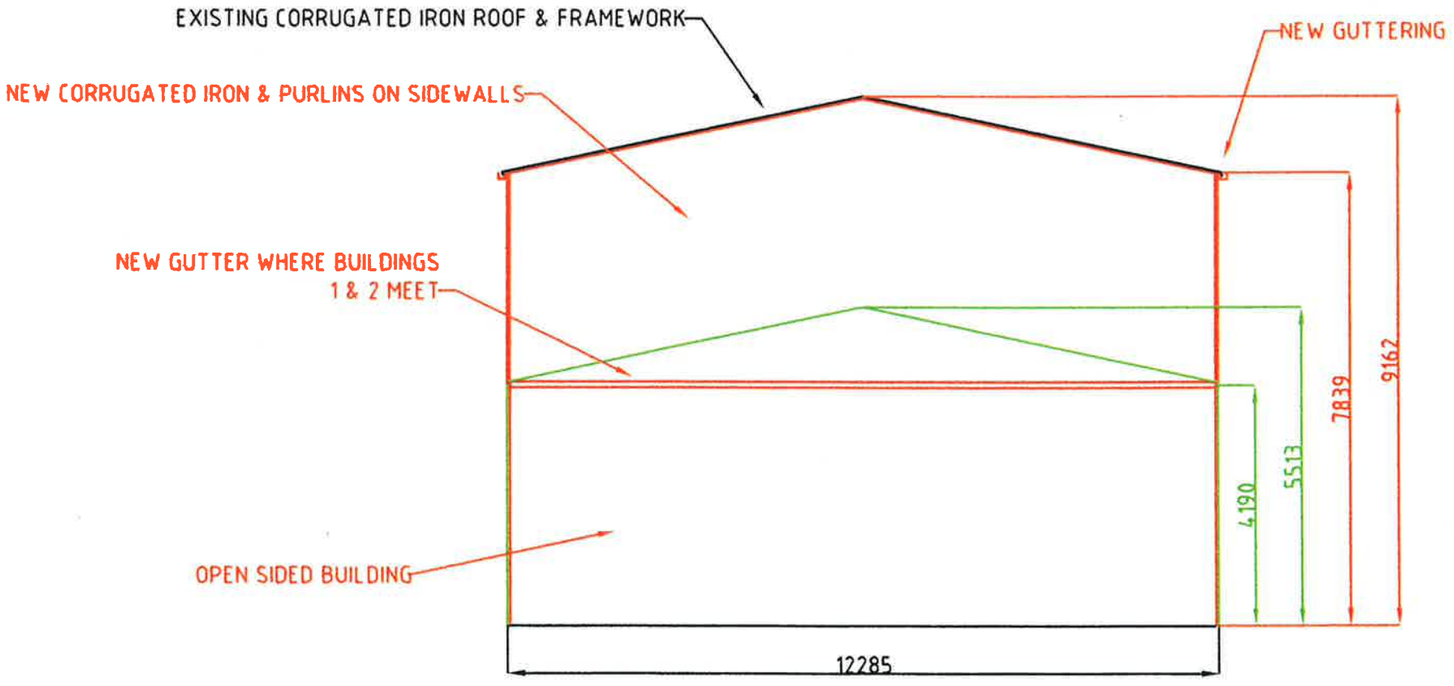
SCALE: 1/100
DATE: 10/10/06
DRAWING NO: 019

A/20

THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA06/1275

- 1 MAY 2007

SIGNED: .....

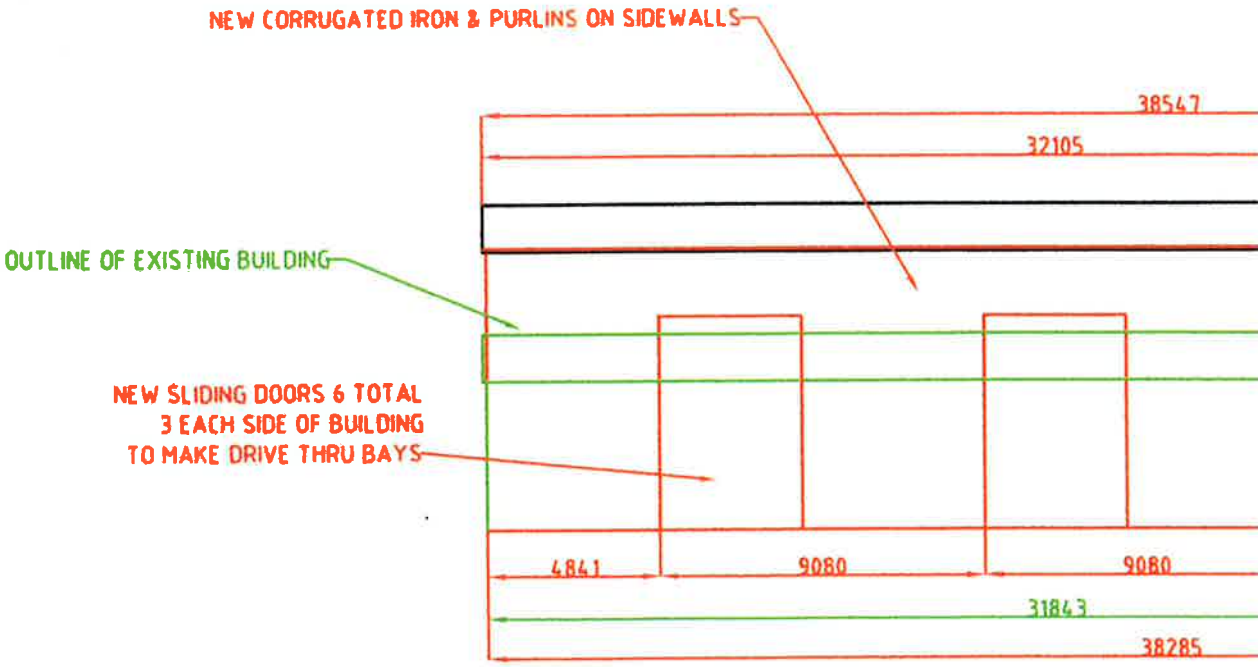


EXISTING BUILDING
NEW WORK STAGE 1
OUTLINE OF OLD BUILDING

ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT
FOR LOT 201 POTTSVILLE ROAD DP1002166
NORTHERN BUILDING, SOUTHERN ELEVATION

SCALE: 1/50
DATE: 10/10/06
DRAWING NO: 20

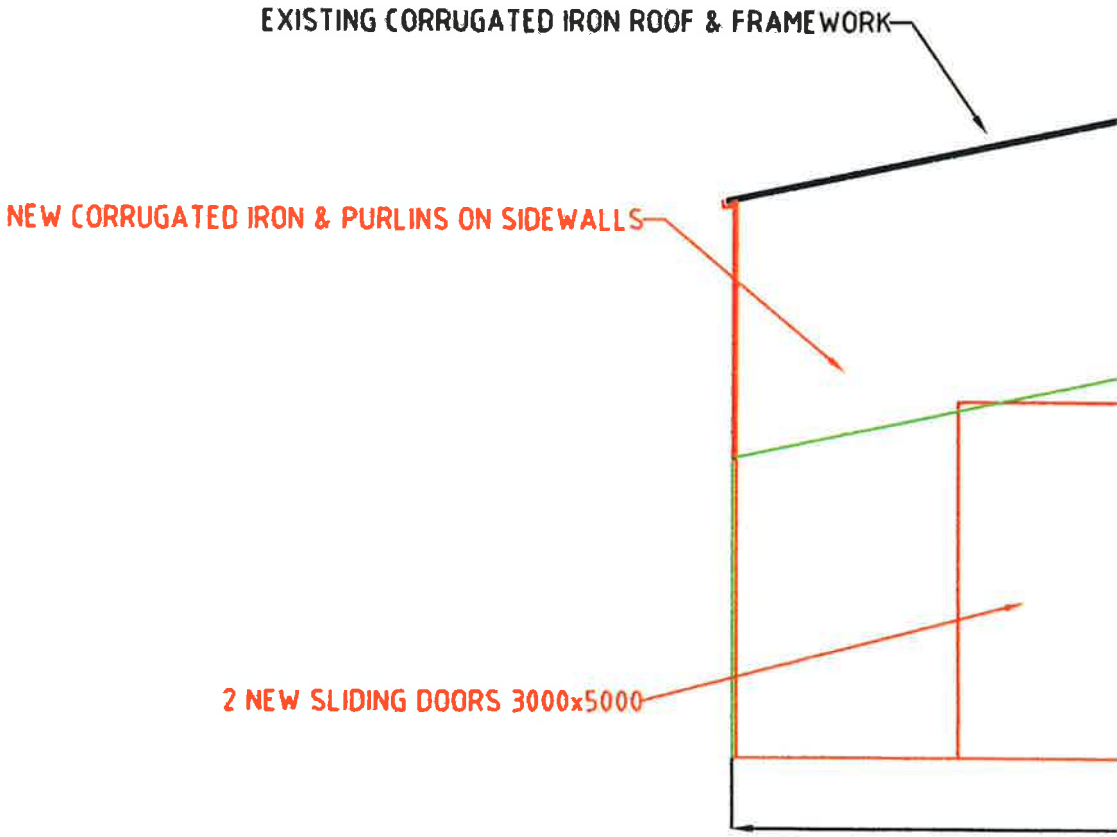
A/21



EXISTING BUILDING
NEW WORK STAGE 1
OUTLINE OF OLD BUILDING

ANNE & JOHN MCLEAN
FOR LOT 201 POTTSV
NORTHERN BUILDING,

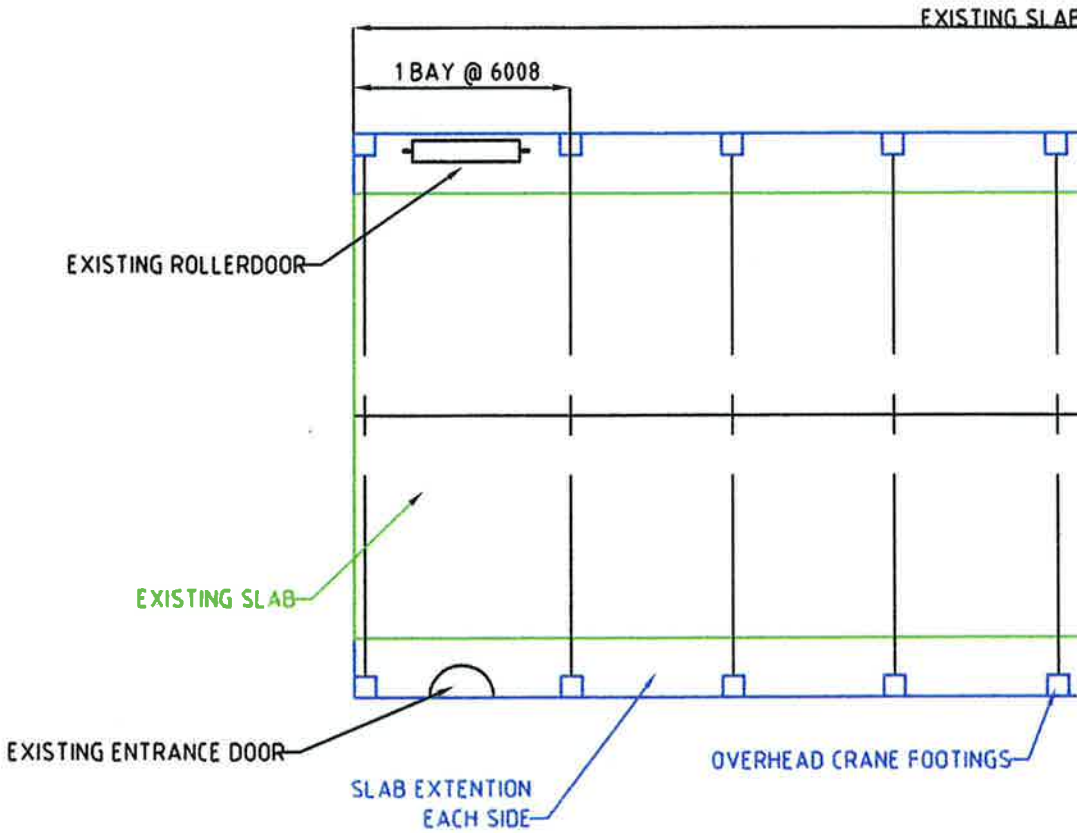
A/22



EXISTING BUILDING
NEW WORK STAGE 1
OUTLINE OF OLD BUILDING

ANNE & JOH
FOR LOT 201
NORTHERN B

A/23

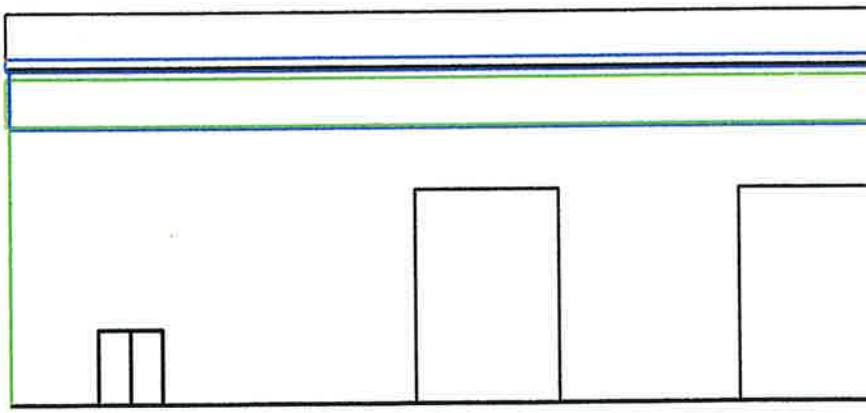


EXISTING BUILDING
NEW WORK STAGE 2
OUTLINE OF OLD BUILDING

ANNE & JOHN MCLE
FOR LOT 201 POTTS
NORTHERN BUILDIN

A/24

SECTION A-A

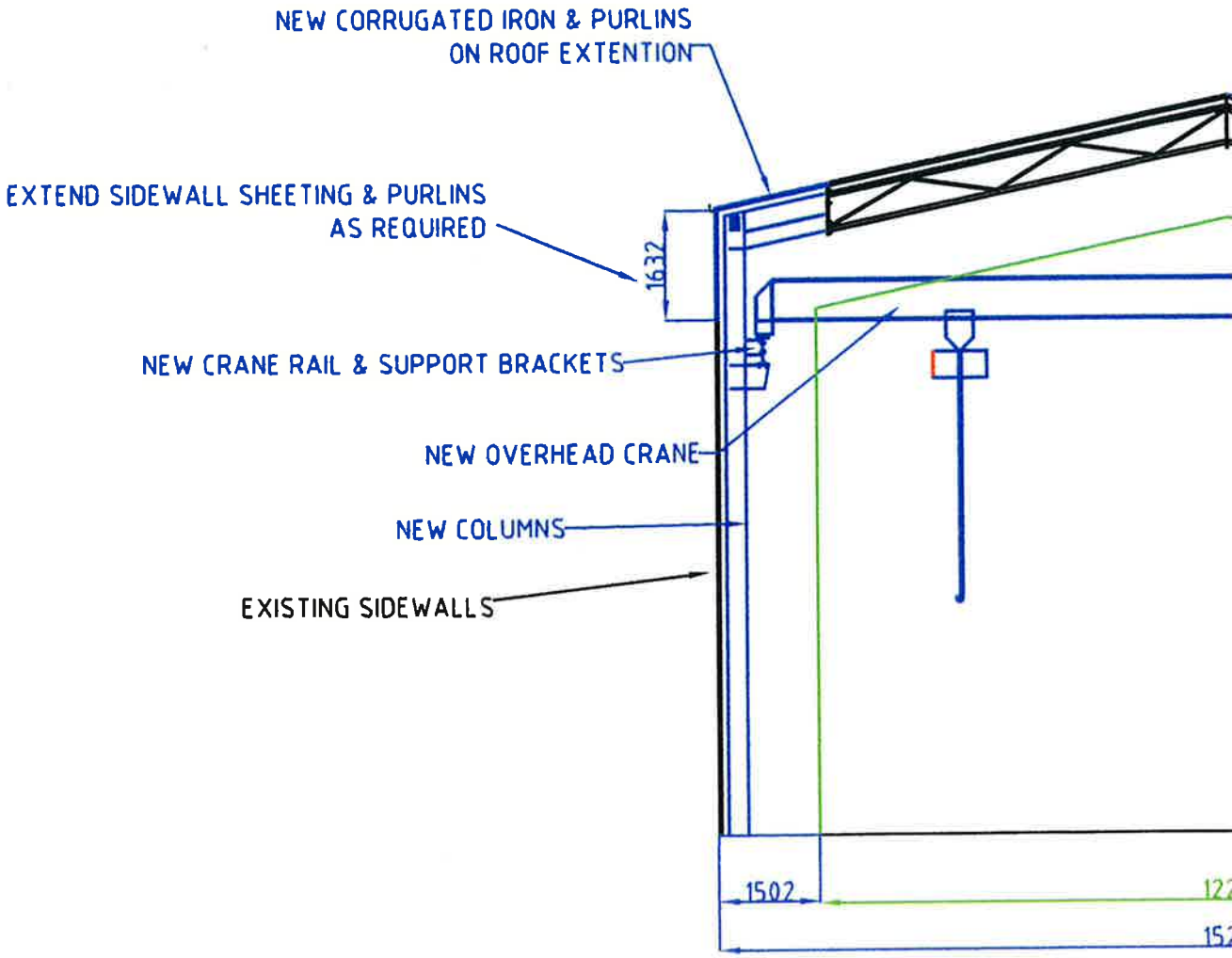


SECTION A-A

EXISTING BUILDING
NEW WORK STAGE 2
OUTLINE OF OLD BUILDING

ANNE & JOHN MCLEAN PROPOSED
FOR LOT 201 POTTSVILLE ROAD
NORTHERN BUILDING, SHOWING

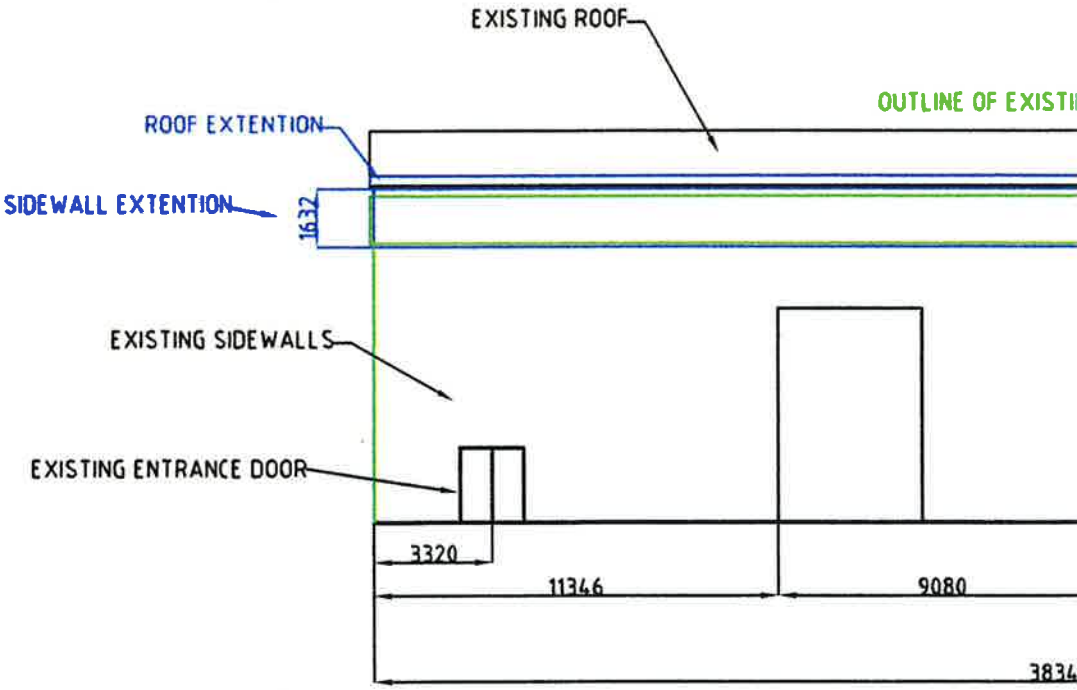
A-25



EXISTING BUILDING
NEW WORK STAGE 2
OUTLINE OF OLD BUILDING

ANNE & JOHN MCLE
FOR LOT 201 POTT
NORTHERN BUILDIN
SECTION VIEW A-A

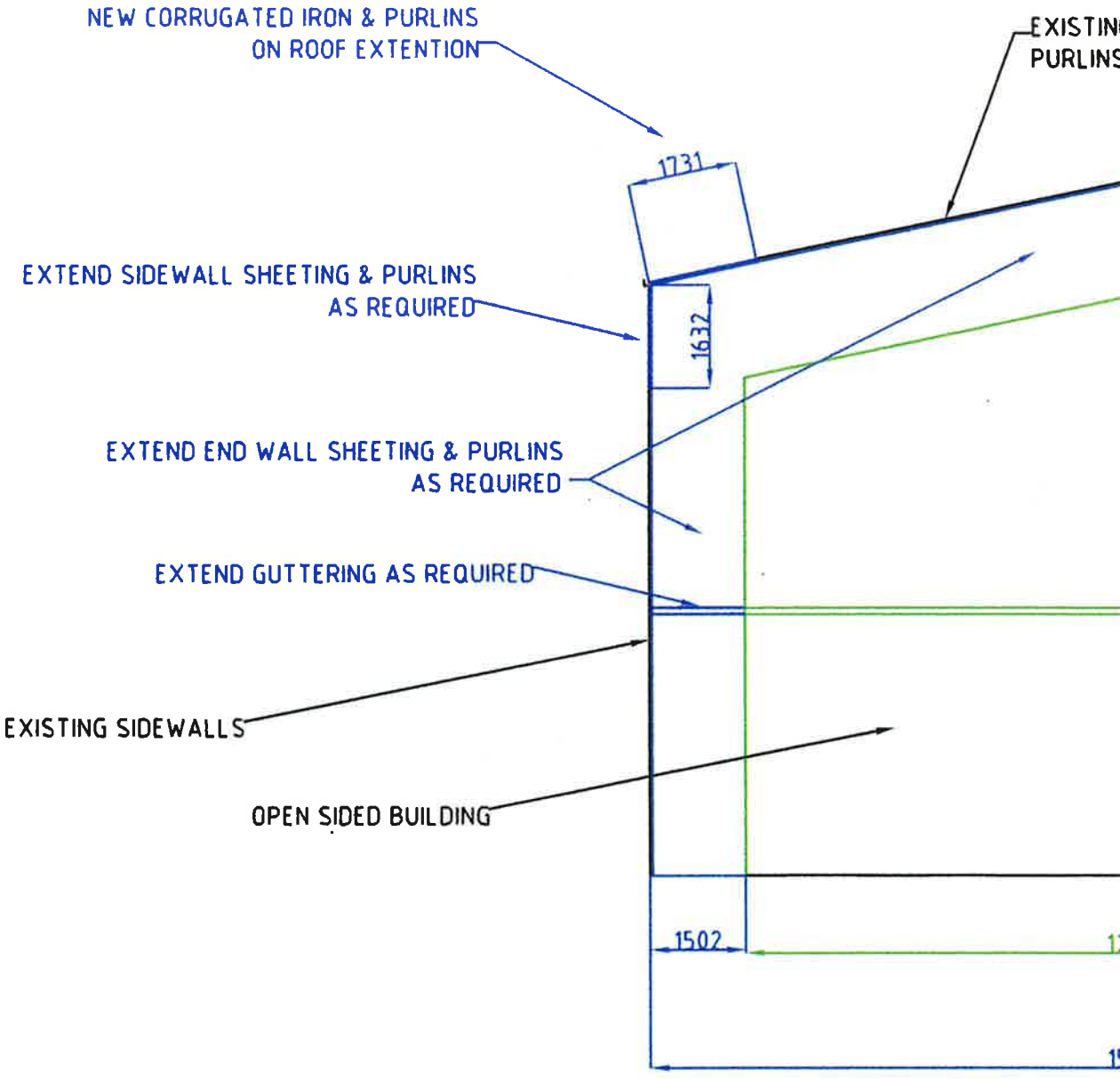
A/2.6



EXISTING BUILDING
NEW WORK STAGE 2
OUTLINE OF OLD BUILDING

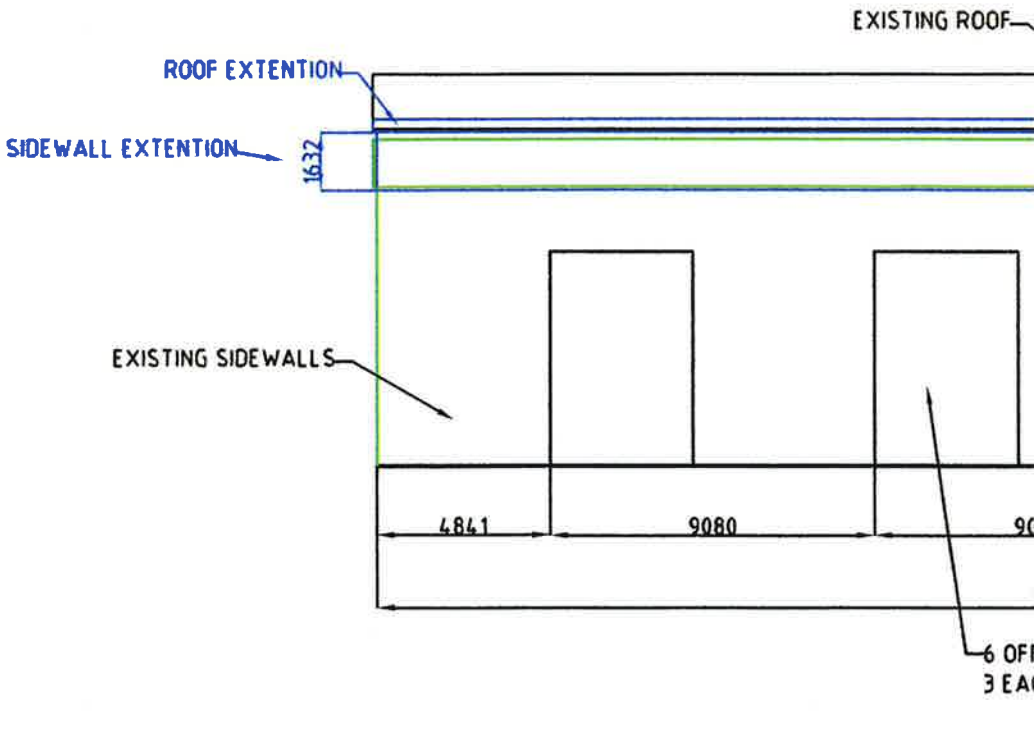
ANNE &
FOR LO
NORTH

A/27



ANNE &
FOR LO
NORTHE

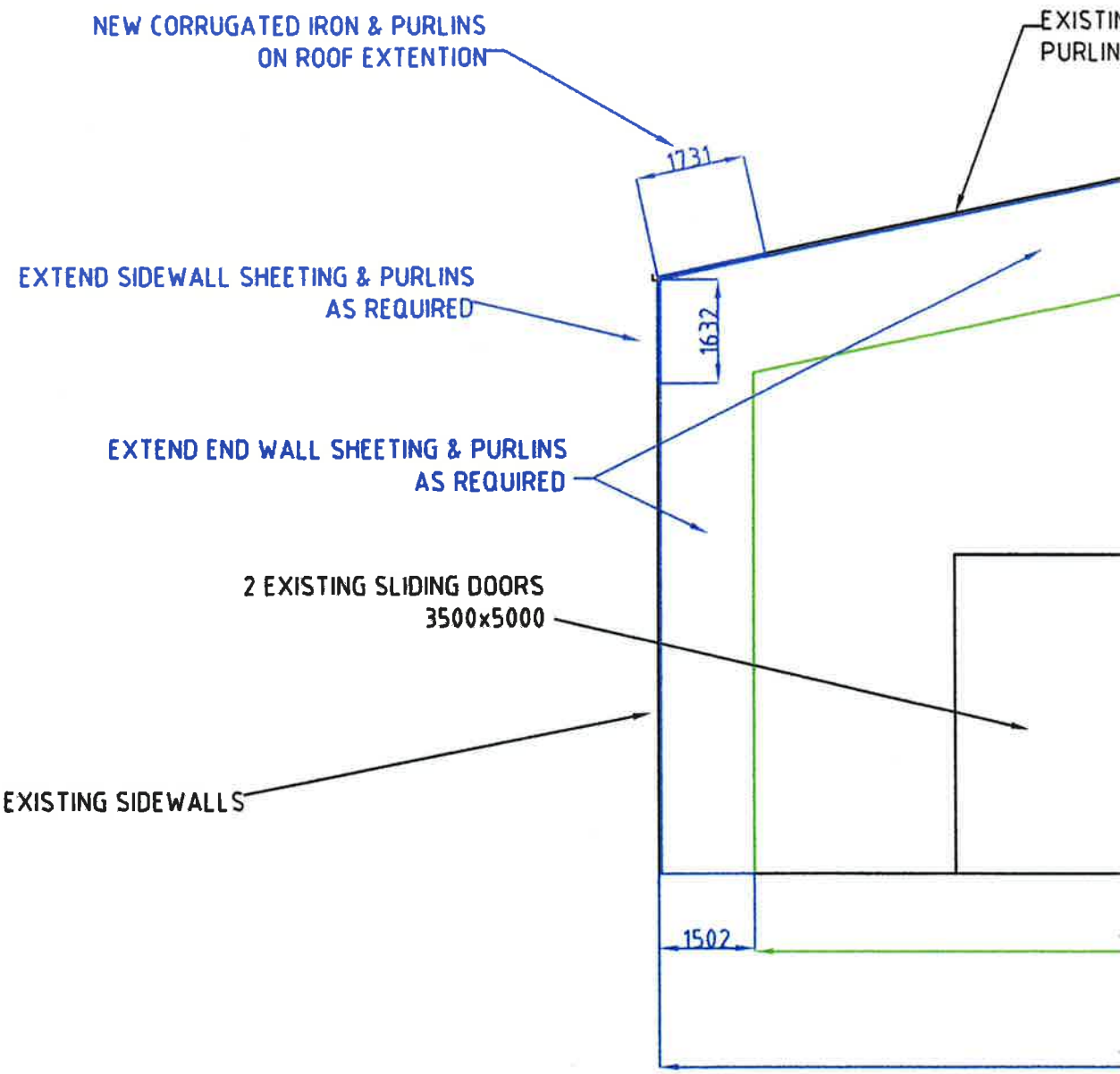
A/28



EXISTING BUILDING
NEW WORK STAGE 2
OUTLINE OF OLD BUILDING

ANNE &
FOR LO
NORTH

A/29



EXISTING BUILDING
NEW WORK STAGE 2
OUTLINE OF OLD BUILDING

ANNE
FOR L
NORT

LN: 42644

TWEED SHIRE COUNCIL
FILE No. DA06/1275 PT.1
Doc. No. 1602535
REC'D 18 MAY 2007
ASSIGNED TO: GALLE, D
HARD COPY ☑ IMAGE ☐

(12)

Elaine Jameson
7 Warwick Park Rd
Sleepy Hollow
NSW 2483

General Manager,
Tweed Shire Council,

- Attention: Ms. Galle

Subject: Development Application DA 06/1275 Sleepy Hollow

Lot 201 DP 1002166
Pottsville Road
Sleepy Hollow

Dear Sir,

-1591263

Thank you for your letter of 1 May 2007 conveying this decision and the right of appeal.

In this context we will need to know:-

1. Whether the Council itself specifically gave this approval or whether this was delegated to the General Manager. The Minutes use the term "to determine", which presumably means "to make a ruling on" (approve/reject and/or set conditions), but they give no indication of the reasons for the approval.

2. Whether the former approval of the site as a 'depot' was the main justification or Or precedent for approving its use as a substantial industrial complex, of which a Depot is only a part.

3. Whether a factory manufacturing heavy industrial equipment for haulage and cane Cutting contractors can be classified as 'light' industry permitted as a secondary activity in zone Rural 1A

4. Whether the approval is for a fixed 12 month term or flexible, given the obsecure condition in the Notice: 'The consent to lapse on 1 May 2008 unless commenced prior to that date'. What does this mean?

5. Whether the alleged lack of a convenient industrial estate (with the implication that a green Tweed rural amenity would indeed be suitable) was tested – both for its accuracy and for the land usage and precedent principles involved.

I am sure you will appreciate our need for this information to pursue any appeal, and we would therefore be grateful for your assistance.

Yours truly,

E. Jameson

Mrs. Elaine Jameson for and on behalf of the residents of Sleepy Hollow.

COMPLAINTS
LN: 42644

ACCESS TO INFO

R

73 Warwick Park Road,
Mooball. NSW. 2483.
June 27, 2007.

Mr Neil Baldwin,
Governance Officer - Public Officer,
Tweed Shire Council.
Box 816, Murwillumbah, NSW. 2484.

Dear Sir,

Lot 201 DP1002166 PIVILLE ROAD

DEVELOPMENT APPLICATION DA06/1275, SLEEPY HOLLOW .

Now that the dust has settled somewhat on the above matter, and I have found time to study the documents, I write to express my profound dismay at the way this matter appears to have been handled.

In brief, the application was processed by Council's Planning Department in the usual way, submitted to the Planning Committee recommending rejection on numerous environmental grounds, voted on by the Administrators then passed back to the General Manager for determination under certain conditions. In the event, it was apparently determined, not by the General Manager, but by the Director of Planning, on terms inconsistent with the Administrator's directions.

My concern is related to the following 4 specific aspects, and I should appreciate your advice regarding each of them, namely:

(1) The Minute submitted to the Planning Committee on April 17, 2007 gave a well-reasoned assessment of the application, recommending rejection on numerous grounds. However it had a significant flaw. Under SITE HISTORY, it implied that the subject of the application, Lot 201 of DP1002 166 ("the site") had a development approval dating back to 1982 - for a truck depot and for vehicle maintenance. My request for a copy of this approval was parried; the reason now apparent : that no such approval existed for Lot 201.

The reality is that a much larger parcel of land, of some 20-or-so hectares, formerly owned by Tunfall P/L (Lot number 608 495 ?), was apparently acquired by the RTA, around 1999, in connection with the proposed Yelgun/Chinderah freeway. The highway absorbed most of it, and a leftover area (?), of about 3 hectares, became Lot 201. It is inconceivable that any prior development approval for the Tunfall land would be automatically valid for the much smaller Lot 201, regardless of the impact of the adjacent new highway. In other words, if any prior DA did not automatically lapse, it would surely need to be reaffirmed by Council, with any conditions warranted by the size, shape, etc., of the new lot.

This flawed statement about a valid prior approval was apparently fundamental in persuading the Planning Committee not to endorse Council's recommendations to reject the application, and to direct an alternative approach. This vital question should clearly be re-examined.

(2) Planning Committees, Councillors, etc., would surely expect that all Minutes submitted to them would have the full endorsement of the relevant Council executives (General Manager, Planning Director, etc). However, at the Planning Committee meeting re Lot 201, it was revealed that the Director of Planning was diametrically opposed to the recommendations in the Minute. In the Minute there was no mention of this opposition, or the grounds for it, although it would have surely have become known in the Planning Section during the many months that the application was being processed.

Significantly, one hears that, in the event, the case was determined, not by the General Manager, as directed by the Administrators, but by the Director of Planning. This procedure was apparently permitted in spite of the Director's known opposition to the well-argued recommendations to the Planning Committee, and in spite of the Administrator's specific direction to the General Manager, which did not provide for delegation.

Objectors, and others attending the Planning Committee meeting, might be forgiven for believing that, at that vital stage, they had been victims of an ambush.

In the interests of good governance it should surely be established whether this vital information was purposely omitted from the Minute, why, and at whose behest. Also the precise circumstances of the introduction of the 2 "recommendations" into the Minute, voted on by the Administrators immediately after the Planning Committee hearing. Your findings on this significant

aspect would be appreciated.

(3) It is apparent that DA06/1275 regarding Lot 201 was determined essentially on the basis of the abovementioned 1982 precedent - which, as I have explained, is, in itself, a very dubious precedent. DA06/1275 was basically for a manufacturing facility, and storage of earthmoving equipment in the off-season.

Even if the precedent of a truck-storage, etc, facility was valid for Lot 201, it could have been of little use to the applicant unless it was expanded to embrace his proposed storage and servicing of heavy (earthmoving) equipment, with or without additional conditions. There seems to have been no logic whatever in using the 1982 precedent to add the manufacturing of 12-tonne cane tractors to any existing storage/maintenance rights, in order to impose conditions. This addition may, in effect, and for no valid reason whatever, establish a completely undesirable precedent for a rural area, in a time of strong environmental consciousness and rehabilitation.

Clearly, if DA06/1275 had been rejected in accordance with the strong recommendation to the Planning Committee, the applicant would have had to seriously look for an industrial site for manufacturing cane transporter-tractors, etc., and Council could have applied appropriate conditions.

The argument about imposing conditions has limited cogency anyway, as all storage, servicing, manufacturing and other facilities and activities are automatically subject all current State and Federal statutes regarding noxious substances, emissions, OHS, hours of operation, and so on.

This aspect of the case should also be properly re-examined, as it will surely resurface if the applicant presents a new DA before the DA06/1275 approval lapses on May 1,2008 .

[I requested a copy of the formal document on which the application was subsequently determined, as this presumably sets out the particular grounds on which the initial recommendations for rejection were set aside, and the DA approved. This request was also parried, on the strange grounds that, although the Planning Committee Minute, designed to set out the facts as well as to resolve the case, was a public document, the decisive document was deemed to be a confidential one.]

(4) There seems to be a gross inconsistency between (a) the directions of the Administrators in relation to the Planning Committee Minute, (and confirmed in the official "Tweed Link") and (b) the wording on page 14 of the letter to McLeans conveying consent .

The Minute, etc says that any approval is to be for a maximum of 12 months. The letter of consent seems to say that the approval lapses after 12 months, but only if work (on the DA) has not commenced meanwhile. ("The consent to lapse on 1 May 2008 unless commenced prior to that date".) These two points are worlds apart. The wording of the letter on this point is decidedly in the applicant's favour, and seems to be phrased to ensure that the approval would eventually become permanent.

I should appreciate your advice whether the terms of the letter of approval are, in fact, deemed to be consistent with the directions of the Planning Committee and the Administrators. Also what opportunities exist meanwhile for local residents to ensure that, after the 12-months approval lapses, the site is only used for environmentally-friendly purposes.

I have studied the available documents carefully, and find no answers to my above concerns. I trust that, in your role as Council's Governance Officer, and presumably concerned with proper form and procedures, legal correctness, probity, transparency, and so on, you will look into these 4 aspects, and advise me in relation to each of them. Alternatively could you please let me know where I should address my concerns.

The outcome so far is a completely unjustified, and effective conversion of what was a storage site in a rural area, into an industrial site. Meanwhile, designated industrial sites in the Shire go begging. This has resulted in the further degradation of the Sleepy Hollow environment and a serious diminution of its attractiveness to visitors to the region. One needs no reminder that these visitors are now vital to the economic wellbeing of Murwillumbah and the Tweed.

I should also appreciate receiving a copy of the formal document on which the case was determined, which I mention in item 3.

Sincerely,

George B Zegelin.

73 Warwick Park Road,
Mooball. NSW. 2483.
August 3, 2007.

Mr Neil Baldwin,
Governance Officer - Public Officer,
Tweed Shire Council.
Box 816, Murwillumbah, NSW. 2484.

- Fax (02) 6670 2429.

Greetings,

LOT 201 DP 1002166 POTTSVILLE RD

DEVELOPMENT APPLICATION DA06/1275, SLEEPY HOLLOW .

Many thanks for your letter of 20th July (ref 1626408), in reply to my enquiries of 27 June regarding the above. In my letter I asked for a copy of the document on which the DA was formally determined by the Director of Planning - and which presumably outlines the considerations, other than those contained in the Council Minute of 17th April, which led to the final decision.

This document did not accompany your letter, and I should be glad if you would let me have a copy, as soon as convenient.

Sincerely,

George B Zegelin.

ACCESS TO INFO.
GN: 42644

TWEED SHIRE COUNCIL
FILE No. DA06/1275 Pt1
Doc. No. 1645080
REC'D - 3 AUG 2007
ASSIGNED TO: BRACK, P
HARD COPY ✓ IMAGE

Rel Doc: 1626408.

RECEIVED
- 3 AUG 2007
TWEED SHIRE COUNCIL
COPY TO:

POLLUTION - NOISE
LN: 42644

The General Manager
Tweed Shire Council
P.O. Box 816
Murwillumbah NSW 2484

18 August 2007

Dear Sir

Subject: Development Application DA 06/1275 Sleepy Hollow.

Attention: Manager Risk & Human Resources/ Public Officer.

With reference to the conditions imposed by Council on this Factory it might be useful for you to have on record our concern at the exceedingly loud noise emanating from the Factory between 9am and 10am on Tuesday, 14 August 07.

We live about half a kilometre in a direct line from the Factory and have never before experienced such a high pitched & penetrating mechanical cutting-type din in this rural area. In fact, it was so unusual that we drove especially to confirm that the Factory was the source, noting at the same time a sort of dust pall above the roof line.

If this acceptable to you we propose to record similar episodes if they re-occur.

Yours faithfully

for LH & MF Border
542 Pottsville Road
Sleepy Hollow 2483

POTTSVILLE ROAD SLEEPY HOLLOW
LOT 201 DP 1002165

Noted. As this is a single incident, no response unless a pattern emerges requiring further action. checked with M. Longbottom EHO. 22/8/07.

The General Manager,
Tweed Shire Council,
P.O. BOX 816,
MURWILLUMBAH NSW 2484

7 Warwick Park Road,
SLEEPY HOLLOW NSW

29.08.2008

Dear Sir,

We would like to bring your attention to a noise problem coming from the Cane Bin Manufacturing at Sleepy Hollow. We did put in an objection to the factory being allowed to operate. However they were given 12 months to operate before it would be reviewed.

On Tuesday 14th August,2007 the noise coming from the factory was quite horrific and there was also some kind of emission coming out at the same time. I phoned the council to see if someone could come out, but after waiting for quite a length of time I was disconnected.

Then again on Wednesday 22nd August, 2007 and again on Tuesday 28th August, 2007, there was extremely loud banging coming from the factory. Please note we are not intending to write to you each and every time we experience this kind of noise but we will certainly document each episode.

It is very un-settling when trying to have a rest
(due to health condition) and this infernal bang – bang – bang just keeps going on.

Our concern is that once the twelve months are up, they will be free to make as much noise as they want, on a daily basis.

Thanking You,

E. Jameson
Elaine Jameson

J. Jameson
John Jameson

COMPLAINT
POLLUTION - NOISE
LN: 42644

TWEED SHIRE COUNCIL
FILE No. DA06/1275 PT.1
Doc. No. 1658148
REC'D 30 AUG 2007
ASSIGNED TO: GALLE, D.
SCANNED COPY ☑ IMAGE ☐

Lot 201 DP 1002166
Pottsville Road, Sleepy Hollow

42644

The General Manager,
Tweed Shire Council,
P.O. Box 816,
MURWILLUMBAH 2484

20TH August, 2007

Dear Sir,

With reference to the Development Application DA06/1275 Sleepy Hollow, I would like to express my concern about the noise coming from the factory on Tuesday 14th.

I am a beauty therapist and it is very difficult to work with the dreadful noise they were making last week.

I am hoping he is not just keeping a low profile during his "probation" period and then intending to go on with this type of noise in the future.

I respectfully ask council to make note of this incident.

Lot 201 Dp1002166
Pottsville Road
Sleepy Hollow

Yours sincerely,

/Terri-Anne Slater
41 Warwick Park Road,
SLEEPY HOLLOW NSW 2483

T. Slater

Noted. Same incident reported by other neighbour.
3/9

Gayle Usher

From: Karen Border [kborder@qldnet.com.au]
Sent: Tuesday, 1 April 2008 8:09 PM
To: Corporate Email
Subject: DA Sleepy Hollow follow up

0805 42644

The General Manager

Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

02 April 2008

Attention: Manager Development Assessment
(Council letter 5 September 2007)

Reference: Development Application DA06/1275. Sleepy Hollow.

Lot 201 DP 1002166

Dear Sir

Local opposition to this DA - the manufacture of cane bins, food containers etc. - was based on several concerns, mainly:

- the establishment in our rural setting of medium to heavy industry, as distinct from the 'light industry' permissible in this rural zone;

- with specific approval given in 1982 the site has been used for storage and maintenance of the then owners' vehicles. There was no reference at all to manufacturing in the 1982 approval, yet this was quoted as relevant to the above D.A.;

- the threat to a rural amenity through the precedent set for industrial expansion in the area, even though facilities for industrial activities were available elsewhere;

- doubts about assurances in the DA on noise and dust pollution, traffic flows, entrance and adjacent roadworks, & so on.

In approving the DA, Council took these concerns into account. It set strict conditions and, importantly, limited the activity to 1 year, ending this month. ***(Tweed Link, 24 April 2007)***

This timetable gives us the opportunity to recall our continuing concerns, with the following request.

The signage on the premises now in use combined with the firm's current entry on Trailers in the Yellow Pages (p.928) clearly imply an ongoing activity there. We would therefore appreciate your assurance that the timetable is to be observed, and that our

community will be kept informed and involved if and when any variations are sought to the DA's terms and conditions, especially regarding termination.

We remain convinced that it is in the Shire's best interest to continue to protect its rural attractions and pursuits from industrial intervention.

Yours faithfully

LH & MF Border

Sleepy Ridge
542 Pottsville Road
Mooball NSW 2489

LN: 42644

73 Warwick Park Road,
Mooball, NSW. 2483.
April 2, 2008.

General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484

Attention - Manager, Development Services.

Fax No. (02) 6670 2429.

Greetings,

DEVELOPMENT APPLICATION/CONSENT DA06/1275, SLEEPY HOLLOW.

In connection with the above DA, it is noted that Condition 89 calls for the surrender of an earlier Development Consent T4/1762 (of 1982) prior to the commencement of "use". As the Consent clearly moved to the "use" stage many months ago, I should appreciate your assurance that the 1982 Consent has in fact been surrendered, or annulled (or whatever is appropriate) to conform to this Condition.

Sincerely,

George B Zegelin

POTTSVILLE RD SLEEPY HOLLOW
LOT 201 DP 1002166

73 Warwick Park Road,
Mooball, NSW. 2483.
April 5, 2008.

General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484
For Neil Baldwin - Public Officer.
Fax No. (02) 6670 2429.

Greetings,

DEVELOPMENT APPLICATION DA06/1275, SLEEPY HOLLOW.

Objectors to the above Development Application/Consent are concerned about procedures which would be followed by Council in processing any future application to modify the terms of this Approval. We were assured by your letter of 20/7/2007 (Page 2 - Specific Aspect 3) that, in such an event, "all issues must be further assessed".

Apart from those concerns already brought to Council's notice by nearby residents, I would like to place on record that we have a number of more significant concerns, going to the heart of the matter, which call for serious consideration in advance of any "further assessment" process.

Prompt advice of any application to modify the terms of DA06/1275 would be appreciated.

Sincerely,

George B Zegelin.

DA01
LN: 42644

TWEED SHIRE COUNCIL
FILE No. DA06/1275 Pt2
DOC. No. 1795779
RECD - 4 APR 2008
ASSIGNED TO BALDWIN N
HARD COPY ✓ IMAGE

POTSVILLE RD
SLEEPY HOLLOW
LOT 201 DP1002166

RECEIVED
- 4 APR 2008
TWEED SHIRE COUNCIL
COPY TO

Patricia Baldwin Plan/Reg.

From: Karen Border [kborder@qldnet.com.au]
Sent: Monday, 2 June 2008 9:39 AM
To: Corporate Email
Subject: Attention: Denise Galle S96 Application DA06/1275.01 printed for rego by trish
Importance: High

The General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW
2484

542 Pottsville Road

Sleepy Hollow 2483

2 June 2008

Reference: S96 Application No. DA06/1275.01 – Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow

Attention: Denise Galle

Dear Sir

Having read the DGP submission we return to the question, why did Council impose a time limit on this project in the first place? Presumably:-

(i) to give the Applicant a reasonable period to set up the business as proposed, including its important upgrading;
(ii) to test the constancy of community opposition, in the operational circumstances.

On the first count, it is apparent that the Applicant has not made any effort to upgrade the facility as proposed. Claiming the time frame unreasonable he wants now to delete the upgrading altogether, thus rendering unnecessary the strict conditions imposed by Council. One is left wondering whether the upgrade was included just to buttress the DA itself, being dismissed now as not integral.

What this boils down to is that the Applicant wants the removal of a time frame not on the integrated development with its integral upgrading, but on a substantially reduced activity with similar intent but a different character and quality.

This calls for a new DA, rather than an amendment or modification procedure.

On the second count, the Applicant seems to think that good noise management (with at least one significant exception) and neat parking spaces should allay the concerns of the local community. This is wrong because these issues – although pertinent – were never the core issues of the opposition. These were the preservation of the rural zone amenity, the avoidance of an unfortunate precedent, and the availability of appropriate industrial sites elsewhere. These are matters of principle, which underpin local objections and have lost none of their force and community concern.

It should be noted that the DGP submission makes no attempt to address the nature and strength of the principles underlying community opposition.

In these circumstances we maintain our original concerns and ask Council not to remove its time frame imposed for the project.

Yours faithfully

LH & MF Border

Lewis & Margaret.

73 Warwick Park Road,
Mooball, NSW. 2483.
June 2, 2008.

LN: 42644

DACI

TWEED SHIRE COUNCIL
FILE No. DA06/1275 PT. 2
DOC. No. 1833240
RECD - 3 JUN 2008
ASSIGNED TO GALLEID.
BOARD COPY ✓ IMAGE ☐

General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484

Attention - Manager, Development Assessment.

Fax No. (02) 6670 2429.

DA06/1275.01

Greetings,

RE APPLICATION FOR SECTION 96 MODIFICATION.
DEVELOPMENT APPLICATION/CONSENT DA06/1275. SLEEPY HOLLOW.
FOR "STORAGE AND MAINTENANCE OF EARTHMOVING EQUIPMENT AND MANUFACTURE OF CANE TRAILERS, ETC."

Thank you for your letter of 22 May advising of a S96 application to amend the above Consent.

To consider the matter, I should appreciate advice on the following :

(1) Which specific elements of the approved plans were in fact undertaken during the construction phase, particularly construction works such as site works (Condition 30), imported fill (Condition 12), drains & site drainage (Condition 19), parking (Condition 10), roadworks (Conditions 2, 15. 16 & 29), water & sewerage (Conditions 24 & 31), and so on.

(NB.The list of proposed S96 deletions/amendments cannot be reconciled with the terms used in the DA Consent itself.)

(2) Whether the Consent conditions for each of the construction work items undertaken were met, particularly regarding Engineering and other Plans, and ultimately the issue of Compliance/Construction Certificates.

(3) Whether a Long-Term Site Management Plan relating to site contamination (Condition 90) has been approved.

(4) Whether Design Flood Levels have been provided against Conditions 13 & 14.

(5) The date on which the Occupation Certificate, allowing the project to move from the "construction" [or development] phase to the "use" phase, was issued.

Because of the short time frame allowed for considering this whole matter, your urgent advice would be appreciated.

Sincerely,

George B Zegelin.

Lot 201 DP1002166
Pottsville Rd, Sleepy Hollow

RECEIVED
- 3 JUN 2008
TWEED SHIRE COUNCIL
COPY TO

LOT 201 DP 1002166
PVILLE RD SLEEPY HOLLOW

73 Warwick Park Road,
Mooball, NSW. 2483.
June 11, 2008.

DAOI

General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484. Fax No. (02) 6670 2429.
Attention - Manager, Development Assessment.

Greetings,

OBJECTION TO PROPOSED SECTION 96 MODIFICATION.
DEVELOPMENT APPLICATION/CONSENT DA06/1275, SLEEPY HOLLOW.

Following expert advice, I must point out the following clause (Condition 7) in Consent DA06/1275:

"This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000"

As mentioned in my letter of June 6, 2008, to Council, it had an obligation to ensure that it is promptly surrendered. This Section 96 application does not negate Condition 7, nor can it have the effect of deferring the lapsing and surrender of the consent. It follows that it is now entirely incorrect for Council to consider a Section 96 application for the removal of the 12-month time limit imposed by Council - or, for that matter, to consider alterations to other Consent provisions.

The 12-months period for operation on the site allowed the applicant adequate time to relocate the operation elsewhere, preferably in a designated industrial site in the shire - something the applicant has again made no obvious effort to do.

On the contrary, it is now apparent from the Section 96 request that the applicant decided immediately upon receiving the Consent in May, 2007, to ignore its building provisions as well as its construction provisions , together with the conditions governing them, and to move immediately to the "use"/ manufacturing phase. He then deliberately waited until the very last day of the 12 months before lodging a Section 96 request for the deletion of the time limitation, etc. This was clearly in the hope that activity on the site could continue after the Consent had lapsed.

If the applicant wishes to continue operating on the site, a new Development Application, setting out clearly what development work, etc. he now proposes to do would be the appropriate course.

Any consequences flowing from the applicants actions on the site in contravention of the 2007 Consent, some of which are mentioned below, should be dealt with under that Consent.

Even if it were in order to consider a Section 96 application in relation to a lapsed Consent, there are numerous compelling grounds for its rejection which I will now outline .

The above Section 96 application, has four elements namely, (1) the removal of the time limit on the Consent (2) the removal of the building work provisions (3) the modification of the construction work provisions (parking, drainage and roadworks) (4) deletion of the provisions re a Construction Certificate [and by inference, the Occupation Certificate]

My objections to these S96 proposals come under the following headings:

(1) Grossly flawed initial Determination.
(2) Multiple breaches of 2007 Consent. (A) Certification, Plans, etc.
(B) Other breaches of Consent - Unauthorised activity, Commercial activity, Site drainage, Parking, Imported fill, Roadworks, Operational Health & Safety, Failure to surrender 1982 Consent.
(3) Visual pollution.
(4) Summary.

(1) GROSSLY FLAWED INITIAL DETERMINATION. The above DA was for:

The reconstruction of existing buildings, plus site modifications for the purpose of -

♦"establishing an agricultural equipment manufacturing business"[principally cane-trailers], and for the "storage and maintenance of plant and machinery, including earthmoving, construction and agricultural equipment".

A Minute from Council's Planning Section submitted to a Planning Committee meeting on 17 April, 2007, stated that Council Consent T4/1762 of 1982 already allowed the use of the site :

- "to establish a truck depot and vehicle maintenance area".

However it failed to mention a vital Condition (No. 2) of that Consent, namely:

" That only vehicles owned and used by the business are maintained on the premises"

The applicant had no "trucks" or earthmoving gear; trucks and earthmoving gear have very few things in common. As his application showed, he specialised in hydraulic equipment, which is a significant part of a cane-trailer; he was also engaged in the maintenance and sale of hydraulic pumps, cylinders, etc for earthmoving equipment owned by others. The 1982 Consent was unquestionably virtually useless to the applicant for the purposes proposed in his DA. In other words, if the DA had been rejected, as recommended by the Planning Section on at least 6 grounds, the applicant could not have used the site (a site which he did not then own) for his business; he would almost certainly have been obliged to move to an industrial estate where such activity belonged.

Nevertheless, the DA was subsequently determined in the applicants favour. The 1982 Consent was clearly a major deciding factor. This occurred in spite of the strong multiple recommendations in the Minute for rejection of the DA. (This Minute pointed out that the application failed virtually all of the tests imposed by Clause 8(2) of the Tweed LEP 2000. It was also considered to have failed the tests under Section 79C of the Environmental Planning and Assessment Act 1979.)

Interestingly, I had asked for a copy of the 1982 Consent in order to examine its terms, and was told, incorrectly, that it was not available, and that it had merely authorised "the storage and maintenance of trucks"; the fact that this 1982 approval only applied to trucks (equipment) owned by the applicant, and had other restrictive conditions, was not disclosed to me at that time.

I therefore submit that the 2007 determination, (largely because of the process followed) was seriously flawed. I submit also that, for this reason, as well as my item(2) immediately below, that this Section 96 amendment, if valid, should be subject to the same rigorous analysis as a new DA application, particularly the requirements of Clauses 8 and 11 of Local Environmental Plan 2000, and that it should be determined by Council itself, not under delegation.

I further submit that the 2007 determination should not be treated as a precedent in any future consideration of the use of the site.

At this point two important general observations need to be made.

(1) In his argumentation, applicant sometimes refers to the use of the site by the RTA/ABI Group during freeway construction, as a precedent. As far as is known this use was informal, and had no official sanction. Local residents did not raise objections as it was seen as a tolerable short-term use for the public good.

(2) The 2007 Consent is notable for the loose description of permitted activity. "Manufacture of agricultural equipment", by the applicant or his successors, could possibly allow for the production, without further ado, of massive machines such as cane harvesters or multi-gang ploughs, far beyond the capability of the infrastructure approved in the Consent.

(2) MULTIPLE BREACHES OF 2007 CONSENT. (A) CERTIFICATION, PLANS, ETC.

Because of the drastic changes proposed in the Section 96 application, it has been analysed in detail; the results are tabulated on the following page 2 A. The findings are astonishing, particularly regarding "earthworks", such as parking, drainage and road work.

Some items required the submission of Design Plans and other detail and for the approval of these Plans by an authorised body. Some required Construction Certificates and Certificates of Compliance either from Council or a Principal Certifying Authority; under Condition 8, long-service levies were payable before a Construction Certificate was issued. Above all, if any construction work was undertaken, a Construction Certificate as well as an Occupation Certificate was obligatory before the project moved to the "use" phase.

It is now rather obvious that a number of construction works have in fact been carried out, or are in the process of being carried out, such as parking and drainage, without complying with Consent conditions. Inspections by Council's Compliance Officers, and discussion with the PCA would confirm this. Also that the applicant entered the "use" phase before an Occupation Certificate was issued.

Astonishingly, the Applicant disingenuously, and with what one might consider verbal sleight-of-hand, now proposes dispensing with these overdue Construction Certificate and Occupation Certificates.

It seems that an important aim of the Section 96 application is to avoid oversight of

construction work required under the Consent, and to avoid paying fees, etc., for such things as the Long Service Levy (Condition 8), Section 94 contributions (C23) and Certificates of Compliance, and costs involved in preparing Engineering and other Plans.

Apparent significant breaches of such certification requirements relate to :

Parking & manoeuvring spaces - Condition 10.
Imported fill - Condition 12
Site drainage - Condition 19.
Roadworks - Conditions 2/11/17/ 29.

A Long-Term Site Management Plan was also required to be lodged against Condition 90, prior to commencement of "use".

(See following page - 3 A - for detailed analysis of Section 96 proposals)

2. (B) OTHER BREACHES OF CONSENT.

(a) Unauthorised Activity. Council will recall that the applicant was fined $600 by Council for commencing activity on the site long before his DA was determined.

(b) Commercial Activity. The Consent was based on the establishment of an "agricultural equipment manufacturing business" (+ storage depot and maintenance). Commerce and retail sales are prohibited in this zoning.

However, in the local Yellow Pages, which went to press before the DA was determined, the applicant advertised, from their Pottsville Road address, for what is clearly commercial sales activity. Details are:

Under Agricultural Machinery. "New and Secondhand Parts" & "A New Range of Agricultural Equipment"

Under Hydraulic Equipment & Supplies. "Truck Hoists, hoses & Fittings" & "Ext Range of New Equipment".

The applicant would have been well aware of this commerce prohibition, - the 1982 Consent specifically says so. This shows a premeditated disregard for this basic rule.

(c) Site Drainage. Under Conditions 19 & 69, the applicant was to rectify deficiencies in existing roof spouting and drainage, with disposal via an existing spoon drain on the Western side.

The S96 modification now proposes disposal (into the table drain on the public road reserve) via a new spoon drain on the Northern side of the buildings. Under Condition 19, this work appears to call for the preparation of a stormwater and drainage plan and PCA approval . This "connection to a public stormwater drain" also seems to trigger a need for an approval from Council. However substantial earthworks on the site in early May 2008 (i.e. after the Consent lapsed) seem to be geared to this floodwater problem, and have already resulted in the construction of this new Northern drain, presumably without a Drainage Plan or formal Council approval.

Condition 13 of the Consent also calls for a "Design Flood Level" (?) based on historical evidence, and Condition 14 requires it to ensure the flood-free storage of damage-susceptible goods. This site is not merely floodprone, but the adjacent road is blocked by floodwater once or twice every season; only built-up areas could be deemed flood-free. Yet the applicant now proposes that these two vital drainage conditions be deleted, and makes no reference to ensuring flood-free storage. Presumably this, once again, is to evade the need for Construction, Compliance and Occupation Certificates and the related design costs and Council fees.

(d) Parking. Condition 10 of the consent calls for Engineering Plans with full design detail for all parking, and for articulated vehicle manoeuvring areas, prior to the issue of a Construction Certificate. Special surfaces would no doubt be needed for the manoeuvring, maintenance and storage areas for heavy earthmoving equipment which was included in the Consent.

Applicant's Section 96 request now proposes a modification of the parking/manoeuvring provisions in Condition 10 merely on a basis discussed with a Council officer on 25/3/2008 - that is, without approved Engineering Plans. However, earthworks begun in early May 2008 (i.e. after the consent lapsed) in the streetside parking area, suggest that modifications are now being carried out.

The applicant's proposal on page 6, under "Conditions 10 & 50", to dispense with the prescribed Engineering Plans, etc. for such parking, and manoeuvring areas for heavy equipment, again seems designed to continue avoiding the basic requirement of a Construction Certificate and an Occupation Certificate, and to pay associated fees, etc.

ANALYSIS OF DA06/1275 CONSENT CONDITIONS & SECTION 96 PROPOSALS

Code- C = Condition No. Cert. = Certificates. Constr. = Construction. PCA = Principal Certifying Authority.

SERIAL.	CONDITION(C) & ITEM	PLANS & CERTS. REQUIRED	APPROVAL BY	FEES.	SECTION 96 PROPOSAL
BUILDINGS					
1.	C1. Office	) Applicant's plans	See Condition 25		Delete building
2.	C1. Southern (renovate)	) Nos 1-29			Delete work
3.	C1. Eastern (reconstruct)	)			Delete work
4.	C1. New office block	)			Delete building
5.	C1. New amenity block	)			Delete building
6.	C1. New strongroom	)			Delete building
EARTHWORKS					
7.	C8. Long-Service Levy	Before Constr. Cert	Council	Yes	Delete Constr Cert.
8.	C26. Appointment PCA	Before commencing	Council	---	Delete
9.	C19 Roof water	Stormwater plan	Council	---	Modify, no plan.
	Compliance -- ~ —	Construction Cert.	PCA	---	Delete Constr Cert.
10.	C69. Drainage - roofwater (via existing drains)	Drainage plan	PCA	---	Move drain, no plan.
11.	C21/30.Erosion+sediment.	Control Plan	Council	Yes	Delete
12.	C10.Parking+manoeuvring	Full design detail	PCA	---	Modify
	Compliance --	Construction Cert.	PCA	---	Delete Constr Cert.
13.	C12. Imported fill	Source+route detail	Council	---	?
14.	C15. Roadworks,	Traffic Control Plan	RTA delegate	---	?
15.	C2/11/17/29. Roadworks	Engineering Plans	Council	Yes	Major modification
	Compliance --	Construction Cert.	PCA	---	Delete Constr Cert.
16.	C23.Section 94 contribution	---	Council	$7,777	Delete Constr Cert. & contrib'n
17.	C82. Road Defect Bond	---	Council	Bond	?
18.	C24. Water+sewerage	Cert. of Compliance	Council	$310	Delete
19.	C13/14. Flood records.	Flood levels plan	PCA	---	Unclear
	Compliance --	Construction Cert.	PCA	---	Delete Constr Cert.
20.	C13/14.Flood compatibility. (earthmover storage)	Design detail Council	PCA	---	Unclear
	Compliance --	Construction Cert.	PCA	---	Delete Constr Cert.
SUNDRY.					
21.	C31. Water notification.	Before drawing	Council	---	?
22.	Construction Certificate	Before starting item.	PCA	---	Delete Constr Cert.
23.	Compliance Certificates	On finishing item.	Council/PCA	? ---	Delete
24.	Occupation Certificate	On finishing all works	PCA	---	Delete
25.	C89. 1982 Consent	Surrender before "use" phase. (Use phase began May 2007)	Council	---	Defer
26.	C7. 2007 Consent	Surrender on 1/5/2008	Council	---	Unclear

NOTES: There are statutary requirements for many "earthworks' items -Serial 7 to 20.
Section 96 request calls for deletion of Construction Certificate, which governs work standards. - deletion would leave no quality controls, or safeguards against site hazards - OHS.
Section 96 request calls for deletion of items requiring contributions & levies.
13 of the 26 items call for approval or monitoring by Council. (Column 4 above)

[After perusal of analysis, return to top of page 3 - Item 2 (B) Other Breaches of Consent]

[After perusal of Analysis - page 3A - return to to top of page 3 - item 2 (B) Other Breaches]

(e) Imported fill . Extensive earthworks and filling recently carried out on the site seem to have needed far more fill than that generated on site. Condition 12 calls for the approval of Council for the source, quality and haul route for imported fill, prior to the issue of a Construction Certificate. This again highlights the obligation of the applicant to obtain a Construction Certificate, and raises the question whether any imported fill was authorised by Council.

(f) Roadworks. Condition 17 requires that "The applicant shall provide a Basic Right Turn BAR treatment for a right turn movement from Pottsville-Mooball Road, etc.". The proper widening of the asphalt surface of the Pottsville-Mooball road will apparently also involve an extension of the culvert over the roadside table drain at the site entrance. A prerequisite is an Engineering Plan which must be approved by Tweed Shire Council.

On page 6 of the S96 the applicant makes two unsupported statements re roadworks -

(1) that these required road works are linked to the new building work.

The need for road works was surely linked to the arrival and departure of heavy vehicles involved in the proposed long-term use of the site for the "manufacture of agricultural equipment". They would be essential also for the entry and exit of heavy earthmoving equipment being stored or serviced.

(2) that there is no longer a requirement for a Construction Certificate (and by inference, no need for an Engineering Plan).

This is merely semantic manoeuvring. An Engineering Plan is obviously essential against Condition 2 and Condition 29, to ensure compliance with Section 138 of the Roads Act 1933.

In addition Condition 82 of the the Consent calls for the completion of these roadworks, and the posting of a Defect Liability bond before the issue of an Occupation Certificate.

As I have pointed out above, all of this manoeuvring seems to be designed to disguise the fact that, under the Consent, even the residual works on the project, (that is, the work not proposed for deletion) clearly call for Plans and Construction Certificates as well as an Occupation Certificate. So far, the applicant seems to have evaded obtaining these, and meeting the associated Council fees, etc. and obviously wishes to continue to do so. These are serious breaches.

(g) Operational Health and Safety. By 2007 the original flimsy main buildings constructed on the site against the 1982 Consent were rusty and dilapidated, possibly as a consequence of the various subsequent short-term leasing occupancies. There had also been significant vandalism of the facilities shortly before the 2007 DA was approved. Their reconstruction seemed essential, and an opportunity to rejuvenate them to meet present-day OH & S and other working standards. The applicant's decision, premeditated or otherwise, not to proceed with their reconstruction, except for a recent coat of paint, would have left them in the same parlous condition. In fact, it is hard to imagine that they could have been recommissioned without major reconstruction.

It is unclear what the likely effects are of the proposed abandonment of the renovation and reconstruction of existing old building structures, in relation to water supply, sewerage, electricity, staff amenities, flood impacts, fire hazards, work safety, and disposal of pollutant wastes, etc.

One presumes that Council had satisfied itself that the premises were not, in fact, renovated, and also that, without renovation, they conformed to current OHS, and other regulations as well as good practice.

(h) Failure to surrender 1982 Consent.

Condition 89 of the 2007 Consent required the applicant to surrender the earlier 1982 Consent before the development enters into the "use" phase. According to page 3 of applicant's S96 request, "The business has been operating since May 2007". This confirms that the applicant had an obligation from early May, 2007, to surrender the 1982 Consent, and Council then also had an obligation to recall or annul it. To date this has apparently not been done. Astonishingly, 12 months after the surrender obligation unequivocally entered into force, the applicant states on page 8 of his S96 request that "Condition 89 is considered unreasonable".

More astonishingly, he then sets down demands:

"The applicant is prepared to surrender the [1982] development consent upon approval of this [Section 96] application and provided that the Council does not impose any further conditions limiting the time period in which this approval remains valid".

I wrote to Council in the matter on 2nd April, and again on 7th May, 2008, saying in conclusion :

"" The condition [No 89] was a clear and unequivocal obligation, not an option, and was binding on all parties including the Council since at least last September. It is certainly not something which may be ignored or negotiated away 6 months after the event. If I may say so, Council has been in breach of its obligation to ensure that this straightforward basic condition was met, and the applicant has been similarly in breach of the Consent.

I ask that you ensure that Council does not persist with this untenable "opinion", [of deferring surrender] and now takes the required steps to fulfil its obligations under Condition 89 for the "surrender" of the 1982 Consent, as from the date the project entered the "use" phase, regardless of any intentions of the developer to apply for a S96 modification. ""

I have had no reply to these letters. However I have independent advice that Council is "out of order" if it considers this particular matter in relation to this S96 application. Condition 89 is clear, and precise, and was actually binding from early May 2007. The applicant himself fulfilled the "condition precedent" for triggering the surrender/annulment, by entering the "use" stage immediately on receipt of the consent, and in breach of many of its conditions.

(i) Failure to surrender the 2007 Consent (DA06/1275).

After receiving independent advice in the matter, I wrote to Council on June 6, 2008, pointing out that the Consent lapsed on May 1st according to Condition 7, and the applicant had an unquestionable obligation to surrender it to the Council by that date. Also, if they had not done so, Council had an obligation to demand the surrender of the Consent immediately, or effectively annul it.

A reply to this letter is pending.

(4) VISUAL POLLUTION.

Perhaps the most immediate and objectionable aspect of the development is the visual pollution which has resulted. We were given to understand that storage would be mainly in the existing Southern building. In the event, items of all kinds are scattered willy-nilly over the grounds, so that they have the appearance of a Third World junkyard or a wrecker's site, particularly from the Southern approach. Unsightly heaps of spoil from earthworks and fill dot the front of the site, and the perimeter grounds generally seem to have suffered utter neglect. Based on the appearance of the Byron Bay and other premises formerly occupied by the applicant, this outcome was expected by objectors from the outset,; it was mentioned in our initial objections.

One of the first actions of the applicant on receiving the Consent was to remove the only tree fronting the site. Nothing was subsequently done about "softening the visual appearance" from the road, as proposed on page 20 of the Development Application.

It is still incomprehensible that such a visual pollution outcome is possible in a Shire which has an increasing consciousness of, and increasingly devotes ratepayer resources to environmental matters for the benefit of both our valuable tourism industry and residents. Nothing in the present Section 96 application would overcome the probability of a continuing eyesore.

(5) SUMMARY.

The history of the project includes numerous breaches of the Consent terms, and multiple efforts by the applicant to evade essential provisions of the Consent - with a resultant loss of Council revenue. The outcome is an unkempt junkyard in a prominent rural location. By his actions, and much inaction, the applicant has clearly forfeited any entitlement to special consideration, and destroyed any possible expectation of future improvement.

It reinforces the case for insisting that such industrial enterprises be confined to industrial estates specially designated for that purpose, with their appropriate rules for proper governance. Other local cane-trailer fabricators are located in such estates. The applicant moved his gear to the site in December 2006/January 2007, and if his Section 96 application is factual, virtually no expense on building or reconstruction work has been incurred there since.

In effect, it would be a travesty, particularly having regard for the initial flawed approval process, if any modification of the DA 06/1275 Consent was agreed to. Total rejection of the application is strongly recommended.

Sincerely,

George B Zegelin.

73 Warwick Park Road,
Mooball, NSW. 2483.
June 6, 2008.

426444

0001

General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484

Attention - Manager, Development Assessment.

Fax No. (02) 6670 2429.

Greetings,

RE APPLICATION FOR SECTION 96 MODIFICATION.
DEVELOPMENT APPLICATION/CONSENT DA06/1275, SLEEPY HOLLOW.
FOR "STORAGE AND MAINTENANCE OF EARTHMOVING EQUIPMENT AND
MANUFACTURE OF CANE TRAILERS, ETC."

PYLLE RD SLEEPY HOLLOW - LOT 201 DP1002166

Closer examination of this matter in the light of the applicant's Section 96 request reveals astonishing facts.

(1) The Consent provided for the construction/renovation of buildings and the carrying out of earthworks, such as drainage, parking and roadworks. A Construction Certificate was prescribed for both of these components, for environmental, OHS, regulatory and other reasons. An Occupation Certificate was to be issued before the project entered the "use" phase.

The Section 96 reveals that the applicant ignored virtually all of the significant Consent conditions, including the requirement to obtain these two certificates, and moved immediately to the "use" phase. By any reasoning, virtually all work done in the premises by McLeans, including the manufacture of cane-trailers, was thus illegal.

To tidy up this illegality, the applicant now proposes that such conditions, and the statutory requirements, etc. they embody, be deleted.

(2) As the Consent lapsed on May 1, 2008, all construction work on the site as well as manufacturing work should have ceased - pending determination of the Section 96 application. Nevertheless the applicant seems to have commenced earthworks (drainage into the road reserve and filling/construction of parking/manoeuvring areas) on about 2nd May, i.e. after the Consent lapsed, and obviously without the necessary approvals and certificates; these works continue.

It will be recalled that the applicant was fined $600 for operating on the site before his DA was approved.

I submit that these breaches of Consent DA06/1275, coupled with the applicants previous offence, are so serious and blatant that the Council should demand the immediate surrender of Consent DA06 1275 against Condition 89, together with cessation of all further work on the site. The question of penalties for these breaches also arises.

I will be preparing a Letter of Objection to the Section 96 application, outlining many other breaches of the Consent, and other anomalies.

Sincerely,

George B Zegelin.

P O Box 5028
South Murwillumbah.
NSW 2484

10th June, 2008

Lot 201 Dp1002166
PIVILLE RD, SLEEPY HOLLOW

Tweed Shire Council,
P O Box 816
Murwillumbah. NSW 2484

REGISTER
LN: 42644

TWEED SHIRE COUNCIL
FILE No. DA06/1275 PT.2
Doc. No. 1838116
REC'D 12 JUN 2008
ASSIGNED TO: GALLE, D
HARD COPY ✓ IMAGE

Attention Denise Galle

DAOI

Dear Madam,

As owners of a beef cattle property know as "Brendan Park" Pottsville-Mooball Road, Sleepy Hollow, we refer to Application DA06/1275.01 96 1A, amendment to Development consent.

We believe the Applicants Mr J Mclean and Ms A Mclean have not adhered to the regulations put on them by the council. A lot of the regulations specified by Council have not been done in the past 12 months.

We are very concerned about the drainage which has now been dug and water runs into the main road drain which in turn runs through our cattle property. As we are Cattle Care and MSA accredited by Australia Meat Authority, it concerns us as this site was known to have contaminated soil and now water runs off this site into the drain along the road.

We do not believe this business should be allowed to continue on the present site and should be moved some 5 klm to the proposed Industrial site situated in the Cudgera area.

Yours faithfully,

B.P. & M E Quinn

11 JUN 2008

Facsimile Transmission

ENVIRONMENTAL DEFENDER'S OFFICE LTD

ABN 72 002 880 864

1/71 Molesworth Street, PO Box 212, Lismore NSW 2480.
Tel: 1300 369 791 Fax: (02) 6621 3355
Email: edonsw@edo.org.au Website: www.nsw.edo.org.au

To:	Mr Lindsay McGavin Tweed Shire Council	**Date:**	12 June, 2008
Fax:	6670 2429	**Pages:**	**3** (including this cover sheet)
From:	Sue Higginson Solicitor	**Originals to follow:**	Nil

Subject: Submission to s96 Modification Application to DA06/1275 at Sleepy Hollow LN: 42644

Our Ref: SH: CLSIS:32377
Your Ref: DA06/1275.01 DA06/1275

DAOI

TWEED SHIRE COUNCIL
FILE No. DA06/1275 Pt.2
Doc. No. 1838576
REC'D 12 JUN 2008
ASSIGNED TO: GALLE, D.
HARD COPY ✓ IMAGE

Dear Sir,

Please find attached a brief submission regarding the above s96 Modification Application.

Regards,
Environmental Defenders Office Ltd

Sue Higginson
Solicitor

CUSTOMERS: Environ Def off Ltd

+

George Zegelin
73 Warwick PK Rd

RECEIVED
12 JUN 2008
TWEED SHIRE COUNCIL
COPY TO

ABN: 72 002 880 864

Environmental Defender's Office Ltd

Office 1 Level 1
71 Molesworth Street
PO Box 212
Lismore NSW 2480
Tel: 1300 369 791
Fax: (61 2) 6621 3355

1/89 York Street
Sydney NSW 2000
Tel: (61 2) 9262 6989
Fax: (61 2) 9262 6998

email: edonsw@edo.org.au
web: www.nsw.edo.org.au

Our Ref: SH: CLSIS:32377
Your Ref: DA06/1275.01 DA06/1275

12 June 2008

Mr Lindsay McGavin
Acting Manager Development Assessment
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

By Facsimile only: 6670 2483

Dear Sir,

S96 Application DA06/1275.01 Amendment to Development Consent DA06/1275 for Manufacturing Premises, Sheds Depot, Office and Storage at Lot 201 DP1002166 Pottsville - Mooball Road Sleepy Hollow

1. We act for Mr George Zegelin, who is a resident of Sleepy Hollow. We understand that Council is in receipt of the above s96 application to modify development consent DA06/1275 (the consent) which was granted on 1 May 2007 for manufacturing premises, sheds depot, office and storage at Lot 201 DP1002166 Pottsville - Mooball Road, Sleepy Hollow.

2. Mr Zegelin has asked us to raise the following matters for your consideration.

Lapsing of Consent

3. The Applicants are seeking to delete condition 7 of the consent which is a lapsing condition. The application seeks to have no time limitation whatsoever imposed on the Development Consent. Condition 7 states:

   This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with section 80A(5) of the Environmental Planning and Assessment Act 1979 and clause 97 of the Environmental Planning and Assessment Regulation 2000.

4. It is our view that Council does not have the requisite power to grant such an application. Section 95(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) states:

   (1) A development consent lapses 5 years after the date from which it operates.

5. Clearly all development consents at law have a life span within which they are to be commenced or else they will lapse.

6. The consent, at condition 7, has specified a lesser period within which the consent will lapse to that provided in section 95(1) of the EP&A Act. In accordance with the EP&A, Act if the applicants wish an extension of time within which to commence the consent then they must make an application for an extension of lapsing period for 1 year in accordance with s95A of the EP&A Act which states:

   (1) If, in granting a development consent, the consent authority reduces the period after which the consent lapses to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.

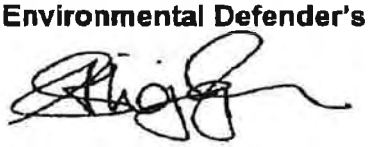
   (2) The consent authority may grant the extension if satisfied that the applicant has shown good cause.

7. It would seem that the applicants have not made a correct application to Council before 1 May 2008 and have arguably lost any right to apply for the benefit of an extension of 1 year to the lapsing period. If Council is minded to consider the s96 application an application for an extension of the lapsing period for 1 year, it has a legal obligation to be satisfied that the applicants have shown good cause.

8. Taking the above matters into account, before purporting to grant any modification in accordance with the applicant's request, Council may wish to obtain its own legal advice as to whether it has the power to do so. In our view, any such consent would be invalid and works carried out in reliance on such consent would be illegal.

We thank you for your attention to this brief submission.

Yours sincerely
Environmental Defender's Office (Northern Rivers) Ltd



Sue Higginson
Solicitor

MaryBeth Harrison

From: Denise Galle
Sent: Monday, 16 June 2008 3:32 PM
To: Records Management Section
Subject: FW: Re Objection to DA 06/1275

LN: 42644

DAOI

TWEED SHIRE COUNCIL
FILE No. DA06/1275 PT.2
DOC. No. 1840510
REC'D 16 JUN 2008
ASSIGNED TO GALLE, D.
HARD COPY ☑ IMAGE ☐

Please register

From: JULIA FRANZOS [mailto:stones-throw@bigpond.com]
Sent: Monday, 16 June 2008 2:37 PM
To: Denise Galle
Subject: Re Objection to DA 06/1275

157 Warwick Park Road
Mooball NSW 2483

Ms Denise Galle
Tweed Shire Council
Murwillumbah 2484

Lot 201 Dp 1002166
Pottsville Rd, Sleepy Hollow

12th June 2008

RE: DA 06/1275 Sleepy Hollow

I am objecting to the following application to turn this rural property into a highly developed Machinery Storage and Maintenance of plant.

This will turn most likely turn into a sales shed for unwanted Machinery.
It is already an unsightly dumping ground for rusty looking agricultural and industrial machines.

This section of roadway Mooball /Pottsville Road
has enough traffic on it at the moment as a gateway to the Pacific Highway from the Mooball, Burringbar and Crabbes Creek residents.

Please do not allow this non rural business in this area it will create a precedence.

Yours faithfully

Julia Franzos

DA01

LN: 42644

73 Warwick Park Road,
Mooball, NSW. 2483.
July 8, 2008.

General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484

Attention - Denise Galle, Senior Town Planner, Development Services

Fax No. (02) 6670 2429.

Greetings,

RE APPLICATION FOR SECTION 96 MODIFICATION.
DEVELOPMENT APPLICATION/CONSENT DA06/1275, SLEEPY HOLLOW."

1836479 LOT 201 DP1002166 POTTSVILLE ROAD "

I refer to my letter of June 6 seeking information relevant to my objection to this Section 96 application, and to your advice on June 11 that my objection should be lodged within the set time-frame, pending your reply. I now understand that my questions were referred to McLeans, and that you are waiting on McLeans comments .

As my queries related essentially to work done on the site for which Council, not a Principal Certifying Authority, was the "approving" authority for detailed plans and for completed work, (see my analysis of June 11, page 3A) the information would assuredly be readily availble from Council's own records. It would also be necessary for your analysis of the S96 application. My interest in each of these was whether the consent conditions were met particularly regarding the provision of Engineering and suchlike Plans and the granting afterwards, by Council, of prescribed approval for the item/activity. They related to :

Condition 9. Stormwater,
Condition 11. Erosion/sediment,
Condition 13. Imported fill,
Condition 15. Roadworks.
Condition 24. Water & sewage
Condition 90. Long-Term Site Management Plan
Conditions 13/14. Design Flood Levels

Regarding my request for the date of issue of the Occupation Certificate, which allowed the project to move from the "construction" [or development] phase to the "use" phase, (condition 77) I presume you could readily obtain this from the PCA engaged by the applicant.

I look forward to having your early advice.

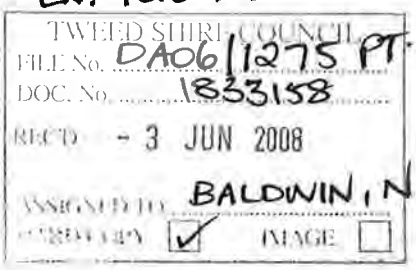
Sincerely,

George B Zegelin.

Lot 201 DP1002166
Pottsville Rd, Sleepy Hollow

73 Warwick Park Road,
Mooball, NSW. 2483.
June 2, 2008.

LN: 42644



General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484

Attention - Mr. Neil Baldwin, Governance Officer.

Fax No. (02) 6670 2429.

Greetings,

Decision-making Procedures.

Last year a Development Application was received and processed by Council and a Minute, with it's recommendations for rejection on numerous grounds was submitted, apparently by the Planning Section, for consideration by a Planning Committee (comprising 2 Administrators). This Minute was made available to objectors beforehand, and one of them addressed the Committee meeting. As the Minute referred in many instances to "Council Assessment", the Minute was assumed to not only contain all necessary information needed by the Committee, and by objectors, but to have the full endorsement of the Council executives concerned.

At the Committee meeting, the then Director of Planning revealed, to the astonishment of all objectors present, that he was totally opposed to the recommendations for rejection. He argued that an existing Consent allowed the Applicant to conduct his business on the site, and that the new DA would allow the imposition of conditions lacking in the 1982 Consent. The Planning Committee thereupon recommended to Council that the case be referred to the General Manager for determination, with appropriate conditions - but including a 12-months time limit for any consent. This recommendation was approved by Council. In the event, the matter was then determined, not by the General Manager as directed, by the then Director of Planning, under delegation.

A few days ago the applicant lodged a Section 96 application for modification of this 2007 Consent - Consent DA06/1275, Sleepy Hollow.

The purpose of this letter is to point out that the process followed was flawed in two very significant ways. This flawed process resulted in the setting aside of the well-argued Planning Section case for rejection of the application as it did not meet any of the tests called for under Clause 8(2) of the Tweed LEP 2000, or some tests under Section 79C of the Environmental Planning and Assessment Act 1979.).

Firstly, a Planning Committee could surely expect that, in such significant cases, Minutes prepared for their consideration would be "signed off" by the Director concerned, if not by the General Manager himself. In other words, expect that the case as argued, and the recommendations, were endorsed by the appropriate senior officers, or their contrary views clearly spelled out in the Minute. To finally reveal to the Committee, and to objectors, in the course of the meeting, that the most senior operations officer had diametrically opposing views seems unconscionable, and contrary to good practice in public administration. (Interestingly, I have since been officially advised that there is no particular requirement to disclose such significant matters in these Minutes)

Secondly, in arguing that the earlier 1982 Consent already allowed the applicant to conduct his proposed business on the site, the then Director of Planning was completely mistaken, in that

- The 1982 Consent authorised only the "storage and maintenance of trucks owned by the then applicant".
- The 2007 application was for " the storage and maintenance of earthmoving equipment," [equipment owned by other parties] and the "manufacture of agricultural equipment", mainly cane trailers.

The 2007 applicant had no "trucks"; also trucks and earthmoving gear are entirely different things. He specialised in hydraulic equipment, which is a significant part of cane-trailer manufacture, and also in the maintenance and sale of hydraulic pumps, cylinders, etc for earthmoving equipment.

The 1982 Consent was unquestionably virtually useless to the applicant.

Furthermore, based on fact and reason, it provided no basis at all for disregarding the strong recommendations in the Planning Committee Minute for rejection of the application. (Interestingly, I had asked for a copy of the 1982 Consent in order to examine its terms, and was told, incorrectly, that it merely authorised "the storage and maintenance of trucks"; the fact that this approval only applied to trucks (equipment) owned by the applicant was not disclosed to me either.)

I therefore urge that our concerns on these questions of process be taken into account when the abovementioned Section 96 request for "modification" of Consent DA06/1275 (which seeks the removal, *inter alia* of the 12 months time limit directed by Council) is processed and determined. In essence, we ask that the Section 96 request be rigourously examined, that any Minutes submitted by a Planning Committee be "signed off" by the Director concerned, if not by the General Manager, that the matters be considered by Council itself (or Administrators) who directed that a 12-month time limit be imposed [ie. not under delegation].

Also that, because of the abovementioned circumstances, that the DA06/1275 Consent not be treated as a precedent now or in the future.

I should appreciate a prompt assurance in the matter.

I will be lodging separately an objection to the Section 96 request for modification of the 2007 Consent.

In view of the need to examine many elements now involved in the Section 96 application, I also request that the period for inspection of the application, and for the lodgement of submissions, be extended by two weeks, i.e. until June 26.

Sincerely,

George B Zegelin.

LN:42644

73 Warwick Park Road,
Mooball, NSW. 2483.

May 31, 2008.

General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484. Fax No. (02) 6670 2429.

Attention - Neil Baldwin, Governance Officer.

Greetings,

DEVELOPMENT APPLICATION/CONSENT DA06/1275, SLEEPY HOLLOW.
(Lot 201, DP 1002166) Pottsville Road,
1816543

On May 7th, 2007 I faxed you in the following terms :

" I should appreciate your intervention in the following matter.

Under Condition 89 of the above Consent, a 1982 Consent (T41762) was required to be surrendered by the applicant (or equivalent steps for its annulment/invalidation by Council ?) prior to the entry of the development into the "use" phase. Sometime prior to September 2007 the project had clearly moved to the "use" phase, and the Condition should clearly have been invoked by Council at that time.

In a letter to Council on 2 April, I asked for an assurance that the 1982 Consent had been surrendered and was advised by the Manager, Development Assessment, : "It is Council's opinion that this issue is best addressed and investigated upon receipt of the (anticipated) S96 modification".

With respect, I must reject entirely this "opinion" of Council.

The condition was a clear and unequivocal obligation, not an option, and was binding on all parties including the Council since at least last September. It is certainly not something which may be ignored or negotiated away 6 months after the event. If I may say so, Council has been in breach of its obligation to ensure that this straightforward basic Condition was met, and the applicant has been similarly in breach of the Consent.

I ask that you ensure that Council does not persist with this untenable "opinion", and now takes the required steps to fulfil its obligations under Condition 89 for the "surrender" of the 1982 Consent, as from the date the project entered the "use" phase, regardless of any intentions of the developer to apply for a S96 modification. "

An early assurance in this matter would be appreciated.

Sincerely,

George B Zegelin.

73 Warwick Park Road,
Mooball, NSW. 2483.

May 7, 2008. W. 42644

General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484. Fax No. (02) 6670 2429.

Attention - Neil Baldwin, Governance Officer.

Greetings,

DEVELOPMENT APPLICATION/CONSENT DA06/1275, SLEEPY HOLLOW, (Lot 201, DP 1002166) POTTSVILLE RD.

I should appreciate your intervention in the following matter.

Under Condition 89 of the above Consent, a 1982 Consent (T41762) was required to be surrendered by the applicant (or equivalent steps for its annulment/invalidation by Council ?) prior to the entry of the development into the "use" phase. Sometime prior to September 2007 the project had clearly moved to the "use" phase, and the Condition should clearly have been invoked by Council at that time.

In a letter to Council on 2 April, I asked for an assurance that the 1982 Consent had been surrendered and was advised by the Manager, Development Assessment, : "It is Council's opinion that this issue is best addressed and investigated upon receipt of the (anticipated) S96 modification".

With respect, I must reject entirely this "opinion" of Council.

The condition was a clear and unequivocal obligation, not an option, and was binding on all parties including the Council since at least last September. It is certainly not something which may be ignored or negotiated away 6 months after the event. If I may say so, Council has been in breach of its obligation to ensure that this straightforward basic Condition was met, and the applicant has been similarly in breach of the Consent.

I ask that you ensure that Council does not persist with this untenable "opinion" , and now takes the required steps to fulfil its obligations under Condition 89 for the "surrender" of the 1982 Consent, as from the date the project entered the "use" phase, regardless of any intentions of the developer to apply for a S96 modification.

Sincerely,

George B Zegelin

The General Manager
Tweed Shire Council
P O Box 816
Murwilumbah 2484

LN: 42644
DA06/1275 PT.2
1895555
DAOI
RECD 16 SEP 2008
ASSIGNED TO: GALLE, D.
HARD COPY ✓

542 Pottsville Road
Sleepy Hollow 2483

14 September 2008

Attention: Denise Galle, Development Assessment.

Section 96 Modification to DA Consent DA/061275, Sleepy Hollow.

Lot 201 DP 1002166
Pottsville Road, Sleepy Hollow

Dear Sir/Madam, 1832698

On the basis of our letter to you of 30 May 2008 (copy attached) we would like to comment on your letter DA06/1275.01 DA06/1275 of 3 Sept 08 which neighbours have brought to our notice.

In general, the DGP response to your questions is an attempt to assure Council that all is in order at the manufacturing sheds – or soon will be. While obscure in parts, it confirms that several health and safety requirements (sewerage, site management, soil inspection) are yet to be satisfied, and that certain Council conditions no longer apply in cases where work programmes are abandoned without explanation.

The applicant seems to be saying: ***because I am not proceeding with certain upgrading plans promised in my original application, the associated Consent Conditions no longer apply, and therefore I am entitled to carry on the same business, on a reduced scale, indefinitely.***

The logic of this is hard to find. What this means is that he has not only evaded compliance but has also failed to present positive and well founded reasons to justify his request.

The current situation is unsatisfactory, even tenuous, for these reasons:-

(I) It is now clear that the applicant has virtually ignored the conditions of Council Consent, making only cosmetic 'improvements' (paint work and parking spaces).

(II) The specific time limit has been used as an excuse for inaction on several fronts, yet the applicant wants it dropped so that he can go ahead with what is a radically reduced operation. This is a new ball game, requiring a Council reappraisal of the enterprise and relevant conditions.

(III)It is also evident that the business is not "light" but a medium-size industry, outside the compass of this rural zone. The size and weight of the manufactured products, and storage and traffic capacity, attest to this.

(IV) Questions remain about the status and surrender of the Consents of 1982 and 2007 now that the factory is in use, and time has expired.

(V) Most importantly, nothing has happened in the meantime to allay the concerns of the local community regarding:

location - agricultural land is for primary production, and industrial complexes are for industry;

precedent - the way has been opened for similar industrial applications which could undermine the surrounding rural pursuits.

If the applicant judged that his scaled-down manufacturing business would be more appropriate to the location, and more acceptable to his neighbours, he is sadly mistaken.

Opposition is as firm as ever.

In sum, this is a case of **inappropriate land use** in a Shire noted for its concern to protect and preserve its natural beauty, by establishing complexes specifically designed for industry and designating regions for rural pursuit – in our case, cattle and cane, horticulture and horses.

We therefore urge Council:

1. To reject the request in the light of evasions and breaches of compliance, and of the failure to present a logical case to support the removal of the time limit;
2. To ensure that the incoming Councillors are fully briefed not only on the community's ongoing concern about the intrusion of this factory on our quality rural landscape, but also on the original rejection recommendation of Council planning officers.

Yours faithfully

(LH & MF Border)

157 Warwick Park Road Mooball NSW 2483

The General Manager
Tweed Shire Council
P O Box 816
Murwillumbah 2484

Lot 201 DP 1002166
Pottsville Road, Sleepy Hollow

16 September 2008

Attention: Denise Galle, Development Assessment.

S 96 Modification to DA Consent DA/061275, Sleepy Hollow.

Dear Sir/Madam,

I was of the understanding that this application had a time limit on it of one year and no final outcome was made.

Furthermore the owner of the property has now changed his original application.

I cannot see why Council should change its time limitations on this factory's manufacturing of bulky steel products simply because the owner has abandoned the plans to upgrade the business which were part of his original application and intention.

I sympathize fully with the neighbouring farmers who see this secondary industry as the odd man out in their land of produce, whose rightful place is in an industrial complex.

A slimmer factory is still the same enterprise, and downgrading it weakens, rather than supports the case for retention.

Yours faithfully

Julia Franzos

73 Warwick Park Road,
Mooball, NSW. 2483.
September 16, 2008.

LN: 42644

DAOI

General Manager,
Tweed Shire Council,
P O Box 816,
Murwillumbah. NSW. 2484. Fax No. (02) 6670 2429.

Attention - Denise Galle, Senior Town Planner, Development Services

Greetings, lot 201 DP 1002166 - Pottsville Road

RE APPLICATION FOR SECTION 96 MODIFICATION.
DEVELOPMENT APPLICATION/CONSENT DA06/1275, SLEEPY HOLLOW."

Thank you for your letter of 3rd September inviting comments on the material supplied by McLeans, also your fax of 10th September enclosing Council Correspondence with them. The latter indicates that the McLean material was mainly in response to my queries of 6th June about the proposed S96 modifications, not, as I had assumed, to later formal objections lodged by myself and others concerned.

My comments, after again viewing the site, are on the attachment; I would like to draw particular attention to those I make about item 5 (1) b. FILL, and about CONSTRUCTION CERTIFICATE, as they expose verbal sleight-of-hand or thimble-and-pea work by McLeans. Their statements about construction work are incorrect to the point of being alarming !! My comments about OPERATIONAL HEALTH AND SAFETY will also be of particular interest to you.

In Council's own interests, and to fulfil its "Duty of Care" obligations, a close examination of the site is certainly warranted. It would indeed be interesting if Council demanded, as a first step, "Work-as-Executed Plans" like those mentioned in Condition 83 of the consent, listing in proper detail all work done on the existing sheds, (vide my CONSTRUCTION CERTIFICATE and OPERATIONAL HEALTH & SAFETY comments in the attachment) and elsewhere on the site (vide my comments above and in my "objection" letter of June 11th). Acceptance of their glib references to re-cladding, new doors, "an alternative hoist system has been implemented" (page 8 of S96 application), and bland references to discussions with Council officers,etc., would surely not good enough, and would leave Council dangerously exposed.

The picture continually presented by McLeans is of cavalier disregard for obligations and an absence of good faith - plus a complete disregard for environmental considerations. They now offer fuzzy, patently-spurious and untenable rationalisations to cover their delinquencies, and challenge Council's right to impose or enforce consent conditions.

Of the 99 carefully-crafted conditions in the consent it is difficult to identify any which have been properly addressed by the applicant, or to identify any payment of fees and levies. On the contrary, the applicant admits that numerous conditions, including Statutory ones, have been breached.

Much of their argumentation hinges on whether the wording of the consent calls for a Construction Certificate for non-building work required to be carried out (or actualy carried out without specific approvals) -including fill, drainage, roadworks, parking, and design flood levels. It hinges also on their incorrect assertions that virtually no work has been done.

If any of the Consent conditions were considered to be unreasonable or onerous the proper time for objection was shortly after the consent was issued, not after the project had been operating for 12 months - and the day before the consent lapsed. Moving immediately to the "Use" phase surely can only be deemed to be acceptance of the terms of the consent.

Let me reiterate that in our view the correct legal course for handling this matter is also the simplest one : for Council to carry out its obligation to demand the surrender of this lapsed 2007 consent. This is something for which I am now pressing through other channels. At a stroke this would dispose of much of the present tangle of controversy about breaches, obligations, etc.. It should also lead to clarifity about the future use of the site.

Whatever the outcome of this sorry saga, I hope that steps are taken to ensure that the area loses its present decrepit and unkempt appearance, with mounds of spoil and dangerous gutters on the site as well as on public space, equipment scattered willy-nilly, etc and that it recovers much of its former pleasant rural appearance.

I trust you find my comments helpful. They may be deemed to be part of my formal objection - delayed because it took McLeans 2 months to address my queries.

Sincerely,

George B Zegelin.

PS While I am on the line may I suggest, for the longer-term :-

(1) The nature of McLeans defence indicates that the structure and terminology of such consents may need sharpening up to more clearly reflect Council's intentions.

(2) Monitoring arrangements for such consents seem to need better monitoring and oversight insofar as Council's interests are concerned - commencement, Construction /Compliance/Occupation certificates, entry into use, etc. - to obviate such debacles in future.

(3) The description of approved activity on consents seems to need sharpening up also : the term "agricultural machinery" seemingly would not prevent the site being eventually used for making equipment of the size and on the mammoth scale of International Harvester, Napier Brothers, Bundaberg Foundry, Shearers and the like.

GBZ.

RE APPLICATION FOR SECTION 96 MODIFICATION.
DEVELOPMENT APPLICATION/CONSENT DA06/1275, SLEEPY HOLLOW.

Comments on the "points" in DPG Darren Gibson Planning letter of 15 August :-

Re (1) & (4) OSSME. Condition 24, by any logical interpretation, does not exempt the applicant from obtaining a Certificate of Compliance or payment of Section 64 Contributions, even if no Construction Certificate is issued for whatever reason.

Re (2) NOISE ATTENUATION - someone is joking!! The report is dated Friday July 18 but the tests were done on Saturday 19th. It is not clear whether the manufacturing operation was functioning at all on that Saturday, because (a) the cane-trailer" manufacturing season virtually ceases in June, when harvesting starts (b) with only 4 "cane-trailers" built in 12 months, manufacturing and manufacturing processes and use of machinery are highly intermittent - one visitor on a July 2008 weekday, advised us that there was no-one available on the site to discuss a particular matter and no work was in progress and, most-significantly, (c) the three Craig-Hill monitoring stations were located up-wind from the site, ("wind blowing towards the highway") further guaranteeing low or "Not audible" readings.

Re (3) SITE MANAGEMENT PLAN - no comment, except that it is overdue by 16 months !

Re (5) LETTERS OF OBJECTION - POINT 1. The applicant's comments pretend that the questions posed (in my letter of 6 June) are geared only to building work, and to the need or otherwise for a Construction Certificate; they were not, nor were the queries in my letter to you of 8th July. They were geared to work apparently carried out for which Council, not a PCA, should have given some form of approval, and which clearly had not been obtained.

He pretends also that all of the Conditions regarding site works not directly involved in building construction and the related Construction Certificate are not binding, as the approved building did not proceed. With respect, let me say that if this is so, this consent, and others with similar terminology, is a farce.

5 (1) (a) EROSION AND SEDIMENTATION CONTROL. Condition 30 refers to "work on the site" not to building works only, and therefore applied to non-building work also.

5 (1) (b) FILL - Condition 12. Having regard for the action outlined in the original Development Application for the removal of arsenic-contaminated fill already on the site, and the first sentence in Condition 12 ("All imported fill material shall be from an approved source."), the applicant's argument that prior Council approval was only needed for imported fill connected with "new" building work is clearly specious.

The DA estimated that up to 100 M3 of arsenic-contaminated material would have to be removed from the site and replaced; additional fill for building up a "platform", has clearly been added subsequently. An over-the-fence viewing of recent fill, allegedly from the Pottsville quarry, reveals no material which could have come from that source. Council may wish to establish the facts through testing, or in direct consultation with the Pottsville Quarry and the transport company used, as to whether Gibsons have been correctly informed about the source of all of the imported fill, and whether any dangerous fill has, after all, been imported.

Council will be aware from other objectors that the site is directly upstream from an licensed MSA (export ?) cattle property. There are many closed cattle-dip sites in the shire anxious to get rid of their arsenic-contaminated soil; this matter is too serious to leave to airy hearsay by DGP.

5 (1)(c) DRAINAGE. Conditions 19/20/21. Clauses 20 & 21 do not appear to be limited to building works at all. The Consent provided for certain spoon drain work. The applicant has dug a deep gutter, more than a metre deep - not merely a spoon drain - in another location, for drainage of overland flow, etc., into a public drain and ultimately into Sheens Creek, seemingly without any approvals. Eroded sediment from this gutter is already building up against the road culvert inlet.

5 (1)(d) PARKING & MANOEUVRING AREAS. Condition 10. This is not building works, but clearly was to be undertaken as part of the consent. Some work seems to have been done on this, without the submision of Design Detail, etc.

5 (1)(e) ROADWORKS. Conditions 2, 15, 16, 17. Under condition 17 (a) the consent

mandates a Basic Right Turn BAR based on Engineering Plans, which required Council approval under an RTA (?) delegation. As the provision is clearly related to manufacturing/storage operations, not to building work, the applicant has clearly been in breach of his Statutory obligations from the outset. Although the condition is also under your heading of "Prior to the Issue of a Construction Certificate", here the applicant abandons his untenable Construction Certificate argument. If the "reasonableness" of the conditions was to be questioned it should have been addressed at the outset, not 16 months later.

5 (1)(f) WATER & SEWERAGE. Conditions 24 & 31. The required Certificate of Compliance relates "to the development", not to building work, so the Construction Certificate argument again has no validity. Applicant's comment re C 31 deserves no response !

5 (2) COMPLIANCE/CONSTRUCTION CERTIFICATES. As noted above, and dealt with more fully below.

5 (3) LONG-TERM SITE MANAGEMENT PLAN. Condition 90. This was due before use, that is, before embarking on manufacturing and storage. Applicant now says, 2 months after your request, and 16 months after it was due, that it will be provided "on completion" with no indication of when that is likely to be !

5 (4) DESIGN FLOOD LEVELS. Conditions 13 & 14. Another untenable argument related to the Construction Certificate, particularly as the "new building works" did not call for any change in the floor levels of the existing stuctures.

5 (5) OCCUPATION CERTIFICATE. No particular comment except that one might assume that, before occupation and use, the site and all of its works would have to be formally passed as meeting current Operational Health & Safety rules affecting all users of these facilities, constructed about 1982.

CONSTRUCTION CERTIFICATE. Most of McLeans argumentation revolves around the Construction Certificate/Occupation Certificate question, with the assertion that "No construction work has been carried out on the site". This appears to be entirely false. I had visited the site on several occasions, firstly before McLeans acquired the property and again when their DA was being considered. Since 1987 at least, the two structures were largely open drive-in sheds, designed for the parking/storage of trucks and their minor maintenance. I again visited the site several days ago, with an astounding outcome, namely:-

The DA plans show that a significant part of Stage 1 of the development was to fully enclose the 2 existing flimsy, half-open sheds, presumably to secure, against theft and vandalism, the major items of fixed equipment to be installed for the proposed manufacturing activity - lathe, drill press, compressor, drop saw, hydraulic press, MIG welder, and so on. Both sheds are now fully enclosed, almost certainly involving major structural work, etc. The Southern shed has a large gantry, and so on. The space between the office and the Southern shed also seems to have been fully developed in accordance with the Stage 1 plan. In effect, the only Stage 1 building work not already completed seems to be the new amenities building !!

OPERATIONAL HEALTH AND SAFETY. Presumably McLeans acted as "owner-builder" for virtually all of the work obviously carried out on the two sheds. This would range from concrete floor slabs (the floors, I believe, were not previously concreted), a substantial concrete bed for the gantry, major reconstruction of the steel frameworks to support massive new doors and cladding, and perhaps the gantry, installation of industrial machinery (involving higher-capacity electricals - for weldimg, etc), individual beds for lathes and other heavy items, venting etc., for certain machine processes, fire precautions, safety exits, and so on. All this surely calls for expert and authorised outside supervision and some official certification.

A major item would be the gantry; I believe current types of cane-trailers weigh about 12 tonnes - of which the massive bin could represent at least half. On installation, these lifting structures usually need official certificates about Safe Working Loads, and also periodic re-certification.

Council will be well aware of the explosive implications of unsafe developments for which it has monitoring responsibilities. Also the need for proper supervision of Operational Health and Safety aspects of projects, whether it be via Construction Certificates, Occupation Certificates or other means.

The applicant now attempts to airbrush this large-scale building reconstruction work away with semantics and glib statements, with misleading references to "recladding" "new doors", etc. ; he then offers the opinion that no Certificates were required, because " no new building work was undertaken", also "No building has been undertaken that would necessitate the issue of a construction certificate" and "there has been no construction work carried out..... that would generate therequirement for a Compliance/Construction Certificate", that. If so, the obvious question is : " If no Certificates or oversight were necessary, why was this major reconstruction of the two sheds included in the DA " ?

In Council's own interests, and to fulfil its "Duty of Care" obligations, a close examination of the site is certainly warranted. It would be indeed interesting if Council demanded, as a first step, "Work as executed plans" mentioned in Condition 83 of the consent, including a listing in proper detail all work done on the existing sheds, (vide my CONSTRUCTION CERTIFICATE and OPERATIONAL HEALTH & SAFETY comments above) and elsewhere on the site (vide my comments above and in my "objection" letter of June 11th). Their glib references to re-cladding, new doors, and discussions with Council officers,etc., are surely not good enough and would leave Council dangerously exposed.

16/9/2008.

ABN: 72 002 880 864

Environmental Defender's Office Ltd

Our Ref: CLSIS 32377
Your Ref: DA06/1275

Office 1 Level 1
71 Molesworth Street
PO Box 212
Lismore NSW 2480
Tel: 1300 369 791
Fax: (61 2) 6621 3355

1/89 York Street
Sydney NSW 2000
Tel: (61 2) 9262 6989
Fax: (61 2) 9262 6998

email: edonsw@edo.org.au
web: www.nsw.edo.org.au

14 October 2009

Mr Mike Rayner
General Manager
Tweed Shire Council
Civic & Cultural Centre
Tumbulgum Road
Murwillumbah NSW 2484

By fax: 6670 2429

Dear Sir,

Sleepy Hollow Agricultural Machinery Manufacturing Operation Lot 201 DP1002166 Pottsville - Mooball Road, Sleepy Hollow DA 06/1275

1. We act for members of the Sleepy Hollow Community, who have instructed us to write to you regarding the above mentioned development.

2. We also refer to our last letter to Council regarding this matter dated 12 June 2008.

3. We are instructed that there is some confusion about Council's handling of the existing operation on the relevant site, previous development consent and the pending s96 modification application.

4. We understand that conditional development consent was granted for the subject development on 1 May 2007. Condition 7 of that consent stated:

   This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with section 80A(5) of the Environmental Planning and Assessment Act 1979 and clause 97 of the Environmental Planning and Assessment Regulation 2000.

5. We are instructed that the particular condition of consent meant that the proponent could operate its manufacturing plant on the said land for a period of 12 months. Upon the expiration of the 12 month period, namely 1 May 2008, the consent was to end and the proponent was required to surrender that consent.

6. We are instructed that the manufacturing plant has continued to operate unabated since 1 May 2008 and in fact is still operating.

7. We understand that a s96 modification application was lodged with Council one day prior to the expiration of the consent and that application is currently pending determination. We are further instructed that members of the community have been informed by Council staff that the matter is likely to go before Council for determination sometime in November.

8. We are informed that Council may have obtained legal advice regarding the legality of such an application and the parameters of Council's power in relation to the determination of the application in the circumstances.

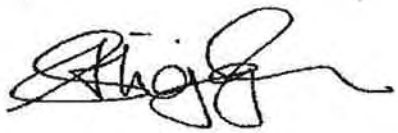
9. The only reasonable inference from the continued and unabated operation of the manufacturing plant is that Council considers the operation of the plant lawful notwithstanding the condition of consent referred to above.

10. Could you please confirm whether the above inference is correct and if so upon what basis Council relies for such opinion?

11. Could you also confirm whether Council obtained legal advice on the matter and if so could it be provided to us, so that we can properly and accurately advise the concerned members of the community about Council's position?

12. We thank you for your attention to this matter and would appreciate your prompt response. Should you wish to discuss the matter please do not hesitate to contact the writer on 6622 7381 or 0428 227 363.

Yours sincerely
Environmental Defender's Office (Northern Rivers) Ltd



Sue Higginson
A/Principal Solicitor

RECEIVED
- 9 FEB 2007

DARRYL ANDERSON CONSULTING PTY LTD
TOWN PLANNING & DEVELOPMENT CONSULTANTS

ROADSIDE STALLS.
LN: 20289

8 February 2007

Our Ref GUI 06/162

TWEED SHIRE COUNCIL
FILE No. PF2970/790 Pt1
Doc No .....
RECD - 9 FEB 2007
ASSIGNED TO BISHOPS
HARD COPY [✓] IMAGE [ ]

Your Ref PF 2970/790 Pt 1

General Manager
Tweed Shire Council
P O Box 816
Murwillumbah NSW 2484

Attention Steve Bishop

C27

Dear Sir

Roadside Stall – Part Lot 101 BP 755702, Kyogle Road (Mr Tony Guinea)

Thank you for your letter of 13 November 2006 As requested by Council, we enclose herewith an opinion from Mr Tim Robertson SC dated 1 February 2007 confirming that

"Mr Guinea enjoys existing use rights to continue the use of the land for a roadside stall In my opinion, his use is not controlled by the conditions of the development consent, and there is nothing in Section 107 (2)(d) which detracts from his rights "

In light of Mr Robertson's advice and having regard to our submission to Council dated 12 October 2006, it is our view that the existing roadside stall is lawful and Council's confirmation of this position would be greatly appreciated

Please do not hesitate to contact Darryl Anderson should you require any further information

Your faithfully
Darryl Anderson Consulting Pty Ltd

Darryl Anderson
Director

Encl

cc Mr Tony Guinea

SUITE 7
CORPORATE HOUSE
8 CORPORATION CIRCUIT
TWEED HEADS SOUTH NSW 2486

ABN 22 093 157 165

PHONE 07 55 233 611
FACSIMILE 07 55 233 612
MOBILE 0438 233 611
EMAIL admin@daconsulting.com.au

TONY GUINEA & TWEED SHIRE COUNCIL
ROADSIDE STALLS - KYOGLE ROAD, DUM DUM

MEMORANDUM OF ADVICE

---

1. On 11 December 1996, Tweed Shire Council granted development consent to Tony Guinea for a roadside stall at part Lot 101, DP 755702 Kyogle Road, Dum Dum. The first condition of consent was as follows:

> "*This approval is limited to a period of five years from the date of consent*".

The development was only permissible because former Tweed LEP 1987 authorised a roadside stall in that location provided that a development consent for it "is for no longer period than five years": cl.53, sch.6, Tweed LEP 1987. On 7 April 2000, LEP 1987 was repealed and replaced by Tweed LEP 2000. Under its provisions, the subject land was zoned 7(L) Environmental Protection (Habitat), in which development for the purposes of a roadside stall was prohibited. After 11 December 2001, Condition 1 took effect. However, Mr Guinea has continued to use the subject land for a roadside stall.

2. Section 106 of the *Environmental Planning and Assessment Act 1979* ("the EPA Act") relevantly provides:

> "*... 'existing use' means:*
>
> *(a) the use of a building or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would ... have the effect of prohibiting that use*".

LEP 2000 was such an instrument. When it commenced, Mr Guinea was using his land lawfully, in accordance with the 1996 consent. On any view, he then acquired an existing use right.

3. On 31 July 2006, Council requested Mr Guinea to cease using the land for a roadside stall. On 12 October 2006, Darryl Anderson of DA Consulting advised Council that the stall enjoyed existing use rights under ss.106 and 107 of the EPA Act and hence was not unlawful. On 13 November 2006, Council questioned whether s.107(2)(d) jeopardised the existing use because it was continuing in breach of Condition 1 of the development consent. It noted that it would be of assistance if Mr Anderson could provide a legal opinion "as to how this section of the Act may be lawfully satisfied". I have been briefed to provide that opinion.

4. Section 107 of the EPA Act relevantly provides:

> "*(1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
>
> *(2) Nothing in sub-section (1) authorises:*
> ...
>
> *(d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A(1)(b) ...."*

5. Council has assumed that the continuance of the use is in breach of Condition 1 of the development consent. This assumption is, with respect, incorrect, as I shall demonstrate below. If it is correct, however, s.107(2)(d) would deprive Mr Guinea of the right to continue that use today in reliance upon the existing use rights which arose when the 2000 LEP prohibited it. However, the problem could be cured by modifying the consent. A consent may be modified even after the expiry of the time within which development authorised by it may be carried out (*Kendall Street Developments v Byron Shire Council* (2004) 138 LGERA 360), unless it has earlier lapsed (*Coalcliff Community Association Inc v Minister for Planning* (1999) 106 LGERA 243), and even though at the time it is modified the development is prohibited (*Consumo Pty Ltd v Fairfield City Council* 126 LGERA 103).

6. Whether the continuance of the use is in breach of the consent depends on the meaning and operation of condition 1 of the development consent.

7. The only source of power for Condition 1 is now contained in s.80A(1)(d), which authorises the imposition of a condition limiting the period during which development may be carried out in accordance with the consent. However, Condition 1 is not so expressed. It refers to "this approval" which, presumably, is a reference to the development consent rather than to the carrying out of development. The distinction is important, and in this case critical to its meaning.

8. In *Kendall Street Developments Pty Ltd v Byron Shire Council* [2004] NSWLEC 227, Council imposed condition D2 on a development consent which provided that "the consent" shall cease if the erosion of escarpment came within 50 metres of the building. It was argued that the condition was not authorised by the Act because:

> "*... the sub-sections do not authorise the cessation of a development* consent *or limit the period during which a development* consent *may operate: they only authorise a condition to require* the development *to cease or limit the period during which* the development *may be carried out. It is submitted that condition D2, however, purports to limit the development* consent, *so that the development* consent *shall cease upon the happening of the particular event, which is beyond the power in [former] s.91(3) to impose conditions*" [11].

The Court declined to read the condition literally, and in order to save its validity read it down so that the reference to development consent was taken as a reference to carrying out the development.

> "*... if necessary to give effect to the condition, I am prepared to read it in the way that the Act allows. The condition obviously requires that* the development *which is the subject of a consent must cease upon the happening of the particular event. This is what is clearly intended by the condition. A reading of the condition in this way does not, however, assist the applicant. The effect is the same as if the development consent were to cease. If a condition requires* the development *which is the*

> *subject of a consent to cease, then the continued carrying out of that development is unlawful and thus outside the definition of existing use*" [13].

9. In Mr Guinea's case, the condition does not require development to cease, but is expressed to limit "the approval". Approaching the construction of the condition in a practical way in order to save its validity, it is necessary to read it as if it limited the carrying out of the development to that period.

10. The issue was considered again by Lloyd J in the second *Kendall Street Developments* case (2004) 138 LGERA 360. The applicant posed two questions for the Court to answer. Could Condition D2 be modified and if so, did the modification have a retrospective effect such that it rendered lawful the use of a land at the relevant date for the purposes of s.106 of the EPA Act? Lloyd J described the effect of his previous decision thus:

> "*16. Accordingly, condition D2 places a temporal limitation on the* development, *but upon a proper construction of the EPA Act, does not impose such a limitation on a development* consent. *In my earlier decision it had the same practical effect as if the development consent were to cease, but not the same legal effect. The continued carrying out of the* development *constituted an unlawful use, but the* development consent *continued to exist.*
>
> ...
>
> *Since the development consent continues to exist in the current circumstances, it follows that the development consent may be the subject of an application for modification, notwithstanding that the development itself has become unlawful. It also follows from the continuing operation of a development consent, that the applicant is entitled to act upon the consent in applying for modification of condition D2 of the development consent.*" [18]

It is clear that there is no power to impose a condition which provides for a consent to lapse or cease to exist once it has been commenced in accordance with s.95. Lapsing of a consent only occurs by force of the Act itself: *Kinder v Sydney City Council* (2005) 143 LGERA 237 at [32], [38]. Subject to a condition requiring the surrender of the consent, it is

indestructible. A condition which required the consent to lapse, cease to exist or terminate is beyond power: *Hilltop Planners Pty Ltd v Great Lakes Council* [2003] NSW LEC 214 at [48]-[50]. Equally, a consent under which development is limited to a period remains in force after the expiry of that period, and may be modified or enforced.

11. Section 107(2)(d) raises two questions:

a. Is the development consent "in force" in relation to the existing use?

b. If so, is the continuance of the use a breach of the consent or a breach of any condition of that consent (there is no obligation to surrender the consent or an existing use right imposed by s.80A(1)(b))?

The answer to both questions must be affirmative for s.107(2)(d) to restrict the existing use, which otherwise may be continued by dint of s.107(1).

12. For the reasons discussed above, the development consent is "in force", even though, on a literal reading of Condition 1, the consent ceased to exist after the expiry of five years. As Lloyd J said in *Kendall*, "for all practical purposes the development consent is no longer effective, but for legal purposes it continues to exist and may therefore be the subject of an application for modification". If the consent may be modified, it is clearly in force for the purposes of s.107. The answer to the first question is yes.

13. The next question is whether the continuance of the stall is in breach of a consent or a condition of it. There was no condition other than Condition 1 which purported to prohibit the use of land for the purposes of a roadside stall. It is therefore of critical significance to understand the operation of condition 1. That condition does not prohibit or require the cessation of the use of the land once the period has expired. It does not impose any obligation to remove buildings or works or to take other steps to shut down the development. All it requires, on its proper construction, is that the carrying out of development for a roadside stall is only approved for a period

of five years from the date of the consent. The effect of such a provision is that the consent ceases to provide legal authority for the carrying out of that development five years after its grant. It does not prohibit the carrying out of that development once that period has expired. The development may be continued pursuant to a fresh consent (if permissible) or pursuant to existing use rights (at the date of grant of the consent, it was uncertain whether, when the new LEP was eventually made, this use would in that particular zone on that land be prohibited).

14. In my opinion, the continuance of the use beyond the five year period limited in the consent did not breach Condition 1 of the consent, or the consent itself. All that the condition did was to ensure that the consent was not a source of lawful authority for the continuance of the use once the right to carry out development for that use had expired. As it did not purport to prohibit the use thereafter, the continuance of the use, if it was a breach of anything, would have been a breach of the Act and not the consent.

15. As the continuance of the use is not in breach of the development consent, the question then arises whether some other source of authority for its continuance exists. Under s.106, an existing use will arise upon the prohibition of a use of land for a lawful purpose. The consent establishes the lawful purpose for the use. Upon the commencement of the 2000 LEP, Mr Guinea acquired an existing use right and s.107(1) of the Act provided the authority for its continuance. It is, however, the use and not the consent which is saved by the application of existing use provisions: *Currency Corporation Pty Ltd v Wyong Shire Council* [2006] NSWLEC 693 at [38]. Once the 2000 LEP was made, the lawfulness of the roadside stall depended on ss.106 and 107 and not the development consent: *Currency Corporation* at [56]. However, the consent was relevant because s.107(2)(d) provided that the use could not be continued in breach of its provisions. The consent, while it had practical effect (before the expiry) controlled the existing use by dint of s.107(2)(d). However, it ceased to have practical

effect (as Lloyd J described it in the second *Kendall* case) when the five year period expired, even though it remained in legal force thereafter. Nor was the continuance of the stall after the expiry of the authority conferred by the consent for its use in breach of s.76B of the Act. This provision is subject to the existing use provisions of the Act: s.76C.

16. Once Mr Guinea acquired his existing use right in 2000, s.107(1) authorised him to continue that use. Until the cessation of development under the consent, he was obliged to comply with its conditions: s.107(2)(d). Once the consent ceased to provide authority for the carrying out of the development, it no longer controlled the use and Mr Guinea's use of the land continued in reliance upon s.107(1) to excuse what would otherwise be a breach of s.76B of the Act. At no time was he in breach of the consent or in breach of the Act.

17. Mr Guinea enjoys existing use rights to continue the use of the land for a roadside stall. In my opinion, his use is not controlled by the conditions of the development consent, and there is nothing in s.107(2)(d) which detracts from his rights.

T F ROBERTSON SC

Frederick Jordan Chambers
Phone: 9229 7337
Fax: 9221 5747

1 February 2007