



Comhairle Contae Chill Mhantáin Wicklow County Council

**Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development**

Áras An Chontae / County Buildings
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Guthán / Tel: (0404) 20148
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15th April 2025

Michał & Justyna Szpak,
56 Kirvin Hill,
Broomhall,
Rathnew,
Co. Wicklow.
A67 H523

RE: Declaration in accordance with Section 5 of the Planning & Development Acts
2000 (As Amended) – EX38/2025 – Michał & Justyna Szpak

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the Planning & Development Act 2000.

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

pp. Jeanne Byrne

**ADMINISTRATIVE OFFICER
PLANNING ECONOMIC & RURAL DEVELOPMENT**





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DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000 AS

AMENDED

Applicant: Michal & Justyna Szpak

Location: Within the curtilage of 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow.

Reference Number: EX38/2025

CHIEF EXECUTIVE ORDER NO. CE/PERD/2025/380

Section 5 Declaration as to whether "the erection of two structures within the curtilage of the existing dwelling" at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow constitutes exempted development within the meaning of the Planning and Development Act, 2000(as amended).

Having regard to:

- i) The details submitted with this Section 5 application.
- ii) Sections 2, 3 and 4 of the Planning and Development Act 2000(as amended)
- iii) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended).
- iv) Schedule 2: Part 1 : Class 3 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

- i) The erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow would be development having regard to the definition set out under Section 3 of the Planning and Development Act 2000 (as amended).
- ii) The steel shed would not, it is considered, come within the conditions and limitations of Class 3 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) due to its position to the side of the existing house and external finishes not conforming with those of the existing house.
- iii) The log cabin would not, it is considered, come within the conditions and limitations of Class 3 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) because insufficient information has been submitted to demonstrate that the cabin would meet the height restrictions applicable, given that no details of the roof covering have been submitted.
- iv) The steel shed and log cabin would not, in combination with the existing timber green house located within the curtilage of the dwelling, come within the conditions and limitations of Class 3 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) as the combined total area of the structures would exceed 25sqm.

The Planning Authority considers that "the erection of two structures within the curtilage of the existing dwelling" at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow "is development and is NOT exempted development" within the meaning of the Planning & Development Act 2000 (as amended).

Signed:



ADMINISTRATIVE OFFICER

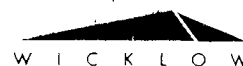
PLANNING ECONOMIC & RURAL DEVELOPMENT

Dated 15th April 2025



Ta an doiciméad seo ar fáil i bhformáid eile ar an bhfoinse.
This document is available in other digital formats on request.

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhíse, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
All correspondence should be addressed to the Director of Services, Planning, Economic and Rural Development



WICKLOW COUNTY COUNCIL
PLANNING & DEVELOPMENT ACTS 2000 (As Amended)

SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2025/380

Reference Number: EX38/2025

Name of Applicant: Michal & Justyna Szpak

Nature of Application: Section 5 Declaration request as to whether or not: -
"the erection of two structures within the curtilage of the existing dwelling" is or is not development and is or is not exempted development.

Location of Subject Site: 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow

Report from Suzanne White, SEP

With respect to the query under section 5 of the Planning & Development Act 2000 as to whether "the erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew Co. Wicklow is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Having regard to:

- i) The details submitted with this Section 5 application.
- ii) Sections 2, 3 and 4 of the Planning and Development Act 2000(as amended)
- iii) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended).
- iv) Schedule 2: Part 1 : Class 3 of the Planning and Development Regulations 2001 (as amended).

Main Reason with respect to Section 5 Declaration:

- i) The erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow would be development having regard to the definition set out under Section 3 of the Planning and Development Act 2000 (as amended).
- ii) The steel shed would not, it is considered, come within the conditions and limitations of Class 3 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) due to its position to the side of the existing house and external finishes not conforming with those of the existing house.
- iii) The log cabin would not, it is considered, come within the conditions and limitations of Class 3 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) because insufficient information has been submitted to demonstrate that the cabin would meet the height restrictions applicable, given that no details of the roof covering have been submitted.

- iv) The steel shed and log cabin would not, in combination with the existing timber green house located within the curtilage of the dwelling, come within the conditions and limitations of Class 3 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) as the combined total area of the structures would exceed 25sqm.

Recommendation:

The Planning Authority considers that "the erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow" is development and is NOT exempted development as recommended in the report by the SEP.

Signed Shanne Byrne

Dated 14th day of April 2025

ORDER:

I HEREBY DECLARE THAT "the erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow" is development and is NOT exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Signed: Peggy O'Neil
Senior Engineer
Planning, Economic & Rural Development

Dated 15th day of April 2025

Section 5 Application EX 38/2025

Date : 11th April 2025

Applicant : Michal and Justyna Szpak

Address : 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow

Exemption Whether or not :

The erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow

constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

Planning History :

16/1133 – planning permission granted for housing development consisting of 50 two storey dwellings and one single storey creche facility all with connection to services and associated works including drainage, roads, footpaths, public lighting, open spaces, landscaping and boundary treatments

Relevant legislation :

Planning and Development Act 2000 (as amended)

"habitable house" means a house which—

- (a) is used as a dwelling,
- (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or
- (c) was provided for use as a dwelling but has not been occupied;

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

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and
- (b) in relation to a protected structure or proposed protected structure, includes—
 - (i) the interior of the structure,
 - (ii) the land lying within the curtilage of the structure,
 - (iii) any other structures lying within that curtilage and their interiors, and
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (iii)*;

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 :

3.—(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Planning and Development Regulations 2001(as amended).

Article 6

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

Article 9(1) Note see Regulations for full Article

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

(a) if the carrying out of such development would—

< See Regulations for List>

Schedule 2 : Part 1

<p><i>Development within the curtilage of a house</i></p> <p>CLASS 3 The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.</p>	<ol style="list-style-type: none"> 1. No such structure shall be constructed, erected or placed forward of the front wall of a house. 2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres. 3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres 4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house. 5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres. 6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.
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Assessment :

The Section 5 declaration application queries whether or not The erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow is or is not development, and is or is not exempted development.

- 1) Steel Shed. 2.44m x 4m with 2.1m side wall height and pitched roof. Surface area of 9.76sqm. Positioned to the side of the existing house, c. 20cm from the boundary fence. Max height stated to be less than 3m. Intended for storage purposes.
- 2) Log cabin. 5.9 x 5.9m with 2.2m side wall height (c. 3.1m at highest, relative to existing ground level). Surface area of 23.6sqm. Positioned to the rear of the dwelling, c. 40cm from the boundary fence. Intended for recreational purposes.

No elevation drawings or images of the proposed structures have been submitted and the number and position of any openings are not indicated on the site layout plan.

Existing rear garden area stated to be c. 200sqm.

It is noted that there are 3no. existing outbuildings indicated on the submitted site layout plan. The proposed site layout plan indicates that 2no. of these will be removed. The retained shed is labelled 'timber greenhouse' and has dimensions of 4.3m x 2.1m (c. 9.03sqm).

The first question to be asked is whether or not the erection of the 2no. additional structures to be used for storage, recreation and gardening is or is not development. The erection of the buildings comes within the definition of works under the Planning and Development Act 2000 (as amended), being works of construction, and as such the operations would come within the definition of development as set out under Section 3 of the Act.

Schedule 2, Part 1, Class 3 of the Planning and Development Regulations 2001(as amended) sets out the exemption for such structures. Class 3 is defined as :

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure

For this exemption to apply the development must comply with the limitations set out in the Exemption, considered below:

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.

Compliant.

- 2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.*

Not compliant – total gross floor area of c.42.39sqm.

- 3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.*

Compliant.

4. *The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.*

Not compliant – the steel shed would not conform with the external finishes of the house (brick, pebble dash & render)

5. *The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.*

Not compliant - The height of the steel shed is stated to be less than 3 metres. The height of the log cabin is stated to be less than 4 metres, though the roof treatment is not stated. Consequently, insufficient information has been submitted to demonstrate compliance with this limitation.

6. *The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.*

Compliant – the stated uses appear to be purposes incidental to the enjoyment of the house.

Conclusion

Having regard to the above assessment, due to the total floor area of the 3no. structures, the external finishes of the steel shed to be positioned to the side of the house and the lack of clarity with regard to the roof finish of the log cabin, it is considered that the proposed 2no. additional structures within the curtilage of the dwelling would be development and would not be exempted development.

Recommendation :

With respect to the query under Section 5 of the Planning and Development Act 2000, as to:

Whether or not :

The erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow

constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

The Planning Authority considers that:

The erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow

is development and is **NOT exempted development**

Main Considerations with respect to Section 5 Declaration:

- i) The details submitted with this Section 5 application.
- ii) Sections 2, 3 and 4 of the Planning and Development Act 2000(as amended)
- iii) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended).
- iv) Schedule 2: Part 1 : Class 3 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

- i) The erection of two structures within the curtilage of the existing dwelling at 56 Kirvin Hill, Broomhall, Rathnew, Co. Wicklow would be development having regard to the definition set out under Section 3 of the Planning and Development Act 2000 (as amended).
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- iii) The log cabin would not, it is considered, come within the conditions and limitations of Class 3 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) because insufficient information has been submitted to demonstrate that the cabin would meet the height restrictions applicable, given that no details of the roof covering have been submitted.
- iv) The steel shed and log cabin would not, in combination with the existing timber green house located within the curtilage of the dwelling, come within the conditions and limitations of Class 3 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) as the combined total area of the structures would exceed 25sqm.

I recommend that the applicant be informed accordingly.



Suzanne White
Senior Executive Planner
11/04/2025

*Issue declaration as recommended
15/04/25*



Comhairle Contae Chill Mhantáin Wicklow County Council

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MEMORANDUM

WICKLOW COUNTY COUNCIL

TO: Suzanne White
Senior Executive Planner

FROM: Nicola Fleming
Staff Officer

**RE:- Application for Certificate of Exemption under Section 5 of the
Planning and Development Acts 2000 (as amended).
EX38/2025**

I enclose herewith application for Section 5 Declaration received completed on 28/03/2025.

The due date on this declaration is 24th April 2025.

Staff Officer
Planning, Economic & Rural Development





Comhairle Contae Chill Mhantáin Wicklow County Council

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**Michel & Justyna Szpak
56 Kirwin Hill
Broomhall
Rathnew
Co. Wicklow
A67 H523**

31st March 2025

**RE: Application for Certificate of Exemption under Section 5 of the Planning and
Development Acts 2000 (as amended). – EX38/2025**

A Chara

I wish to acknowledge receipt on 28/03/2025 details supplied by you in respect of the above
Section 5 application. A decision is due in respect of this application by 24/04/2025.

Mise, le meas

**Nicola Fleming
Staff Officer
Planning, Economic & Rural Development**



Wicklow / County Council
County Buildings
Wicklow
0404 20100

28/03/2025 11:52:14

Receipt No L1/0/342994

MICHAL SZPAK
56 KIRVIN HILL
BROOMHALL
RATHNEW
CO WICKLOW

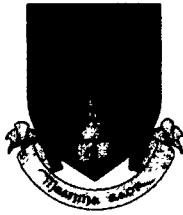
EXEMPTION CERTIFICATES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total	80.00 EUR
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Tendered	
Credit Card	80.00

Change	0.00
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RECEIVED
28 MAR 2025

**APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000(AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

- (a) Name of applicant: **Michal and Justyna Szpak**
- Address of applicant: **56 Kirvin Hill, Broomhall, Rathnew, Co Wicklow, A67 H523**

Note Phone number and email to be filled in on separate page.

2. Agents Details (Where Applicable)

- (b) Name of Agent (where applicable): **N/A**
- Address of Agent: **N/A**

Note Phone number and email to be filled in on separate page.

3. Declaration Details

- i. Location of Development subject of Declaration:
- Proposed development is to be undertaken within the curtilage of 56 Kirvin Hill Estate, Broomhall, Rathnew, County Wicklow, A67 H523.**
- ii. Are you the owner and/or occupier of these lands at the location under i. above ?
Yes/ No.
- Yes, proponents are the sole owner-occupiers of the property where proposed development is proposed to be undertaken.**

- iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier:

N/A

- iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, an payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration:

We seek clarification whether erection of two structures:

- 1) steel shed - 2.44 m x 4.00 m with 2.10 m side wall height and a pitched roof, surface area 9.76 m², placed approx 20 cm from the boundary fence.
- 2) log cabin, single floor, no partitions - 5.90 m x 4.00 m with 2.20 m side wall height and a pitched roof, 2.60 m ridge height, surface area 23.60 m², placed approx 40 cm from the boundary fence.

falls under CLASS 3 exempted development given that combined surface area of these structures exceeds 25 m² and that steel she is partially positioned to the side of the house. The height of proposed structures is below 3.00 m (steel shed) and 4.00 m (log cabin). The approximate surface area of the garden area, including to the side of the house, is ca 200 m² therefore structures will not result in the availability of open spaced falling below 25 m². Steel shed is intended for storage only and log cabin is intended for recreational purposes only.

Log cabin elevation and height considerations. Log cabin is proposed to be positioned against the southern boundary fence. The land is sloping at the proposed construction site, and development is to employ block and pad foundation support structure without any ground levelling excavations to avoid creation of depressions that can act as water sink. Cumulative (diagonal, from the highest point to the lowest) sloping gradient is 0.90 m with a lateral component of 0.50 m (along 4.00 m side wall) and horizontal component is 0.40 m (along 5.90 m back wall). Maximum elevation of the cabin back wall will therefore reach 3.10 m (0.90 m + 2.20 m) and maximum elevation of the roof will reach 3.50 m (0.90 m + 2.60 m). Both dimensions fall below 4.00 m threshold for tiled/slatted roof.

Additional details may be submitted by way of separate submission.

- v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration

Schedule 2, Article 6, Part 1, pages 156-157 – Exempted Development.

Additional details may be submitted by way of separate submission.

- vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure) ?

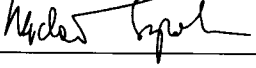
N/A

- vii. List of Plans, Drawings submitted with this Declaration Application

- 1) **PDF document with site location map and existing layout.**
- 2) **PDF document with site location map and proposed new site layout.**

- viii. Fee of € 80 Attached?

YES, paid directly via WCC Cash Desk over the phone, receipt sent to Planning Office

Signed :  Dated : 28/03/2025

Additional Notes :

As a guide the minimum information requirements for the most common types of referrals under Section 5 are listed below:

A. Extension to dwelling - Class 1 Part 1 of Schedule 2

- Site Location Map
- Floor area of structure in question - whether proposed or existing.
- Floor area of all relevant structures e.g. previous extensions.
- Floor plans and elevations of relevant structures.
- Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation -

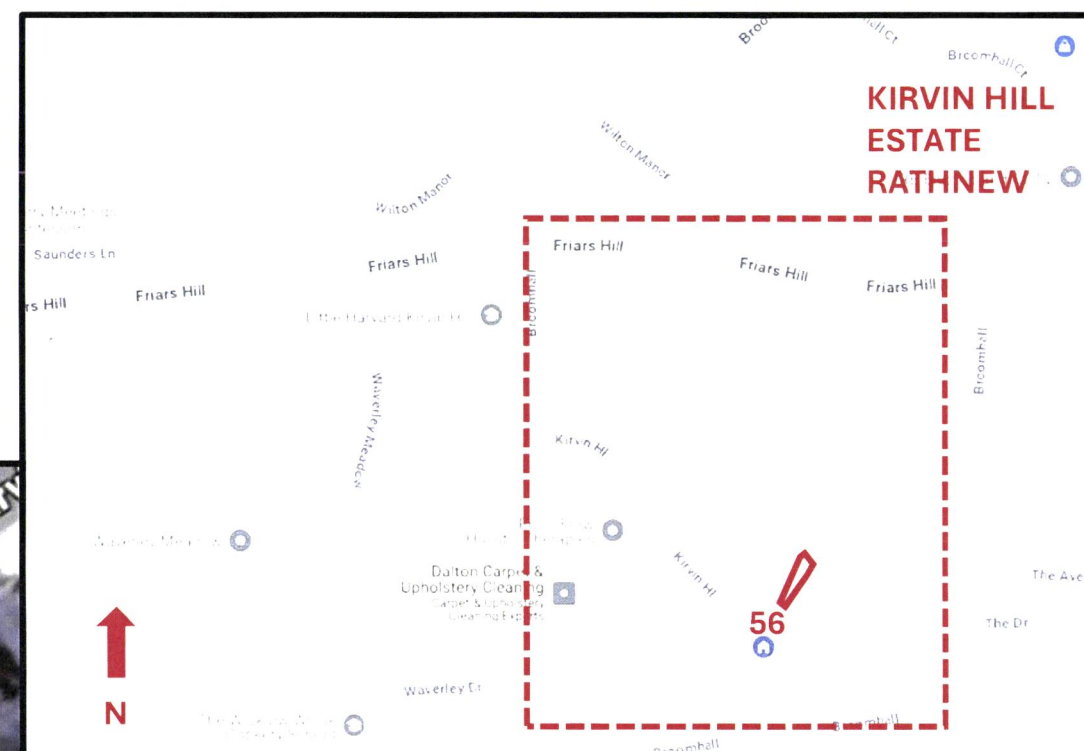
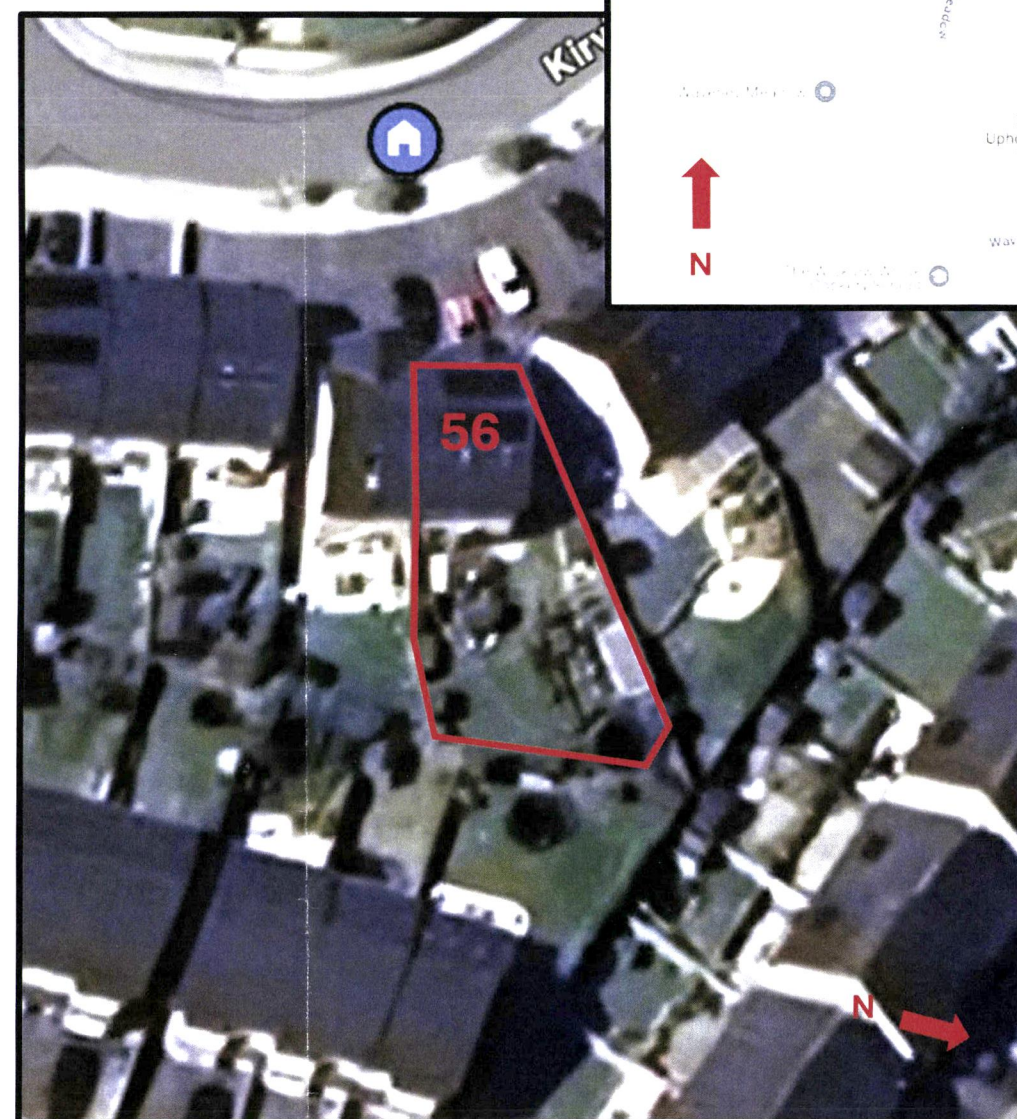
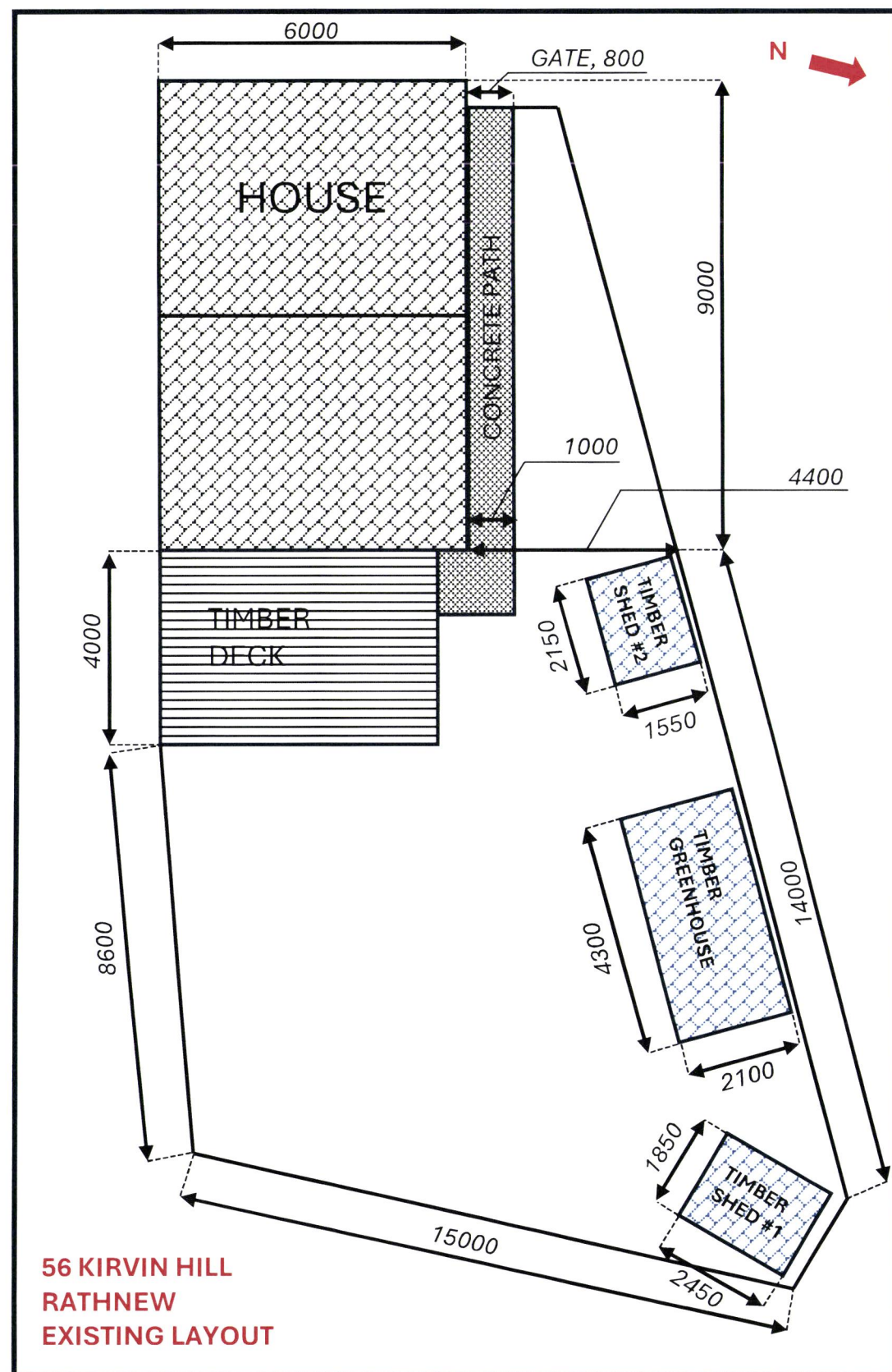
The provisions of Article 8 of the Planning and Development Regulations 2001 (as

amended) now applies to land reclamation, other than works to wetlands which are still governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000(as amended) there is a certification process with respect to land reclamation works as set out under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011. You should therefore seek advice from the Department of Agriculture, Fisheries and Food.

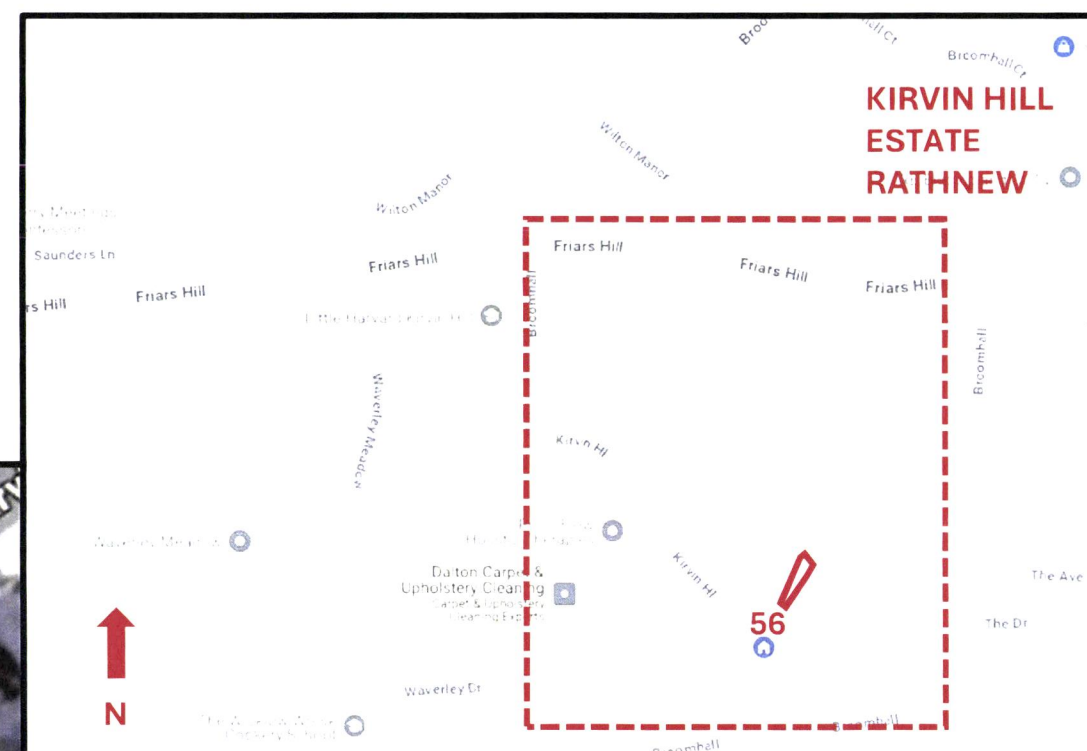
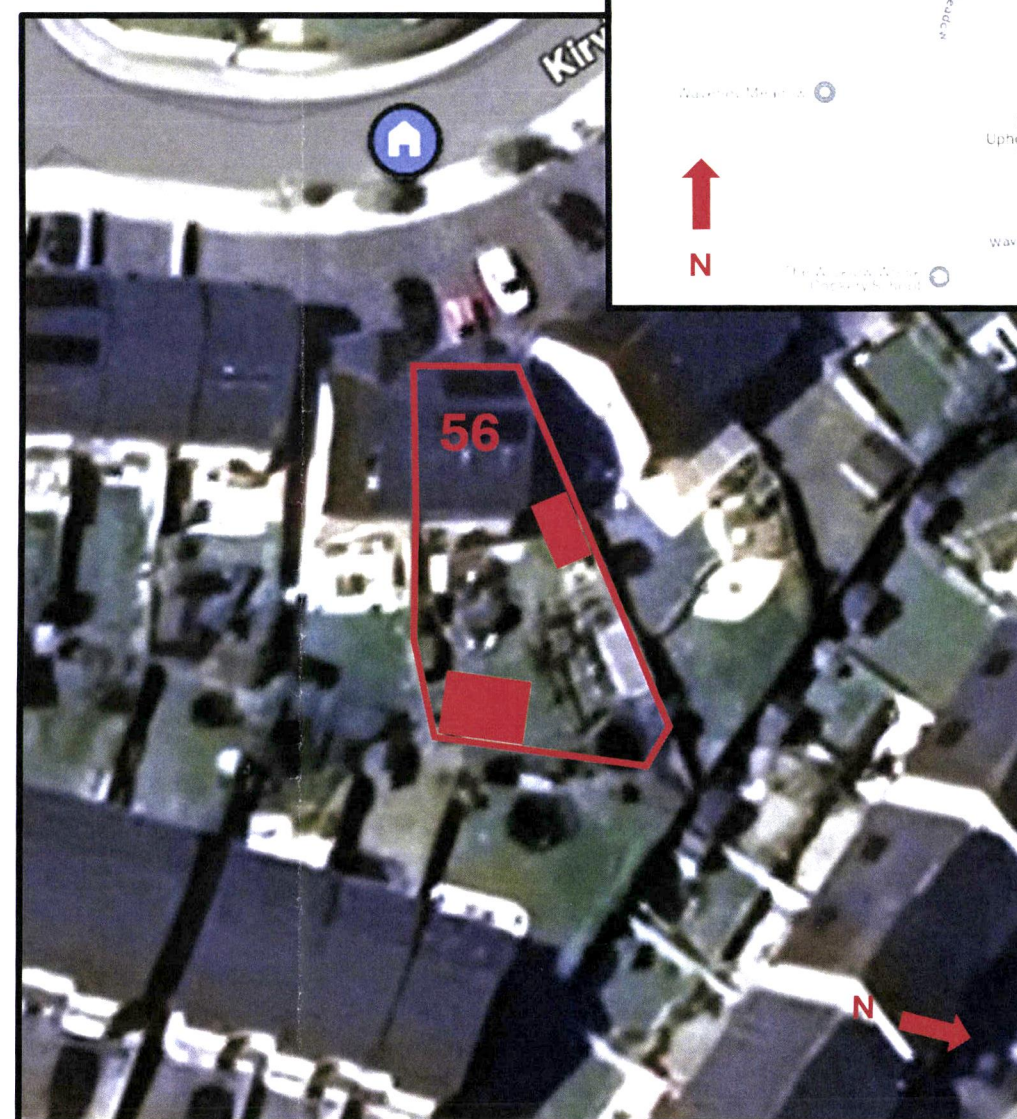
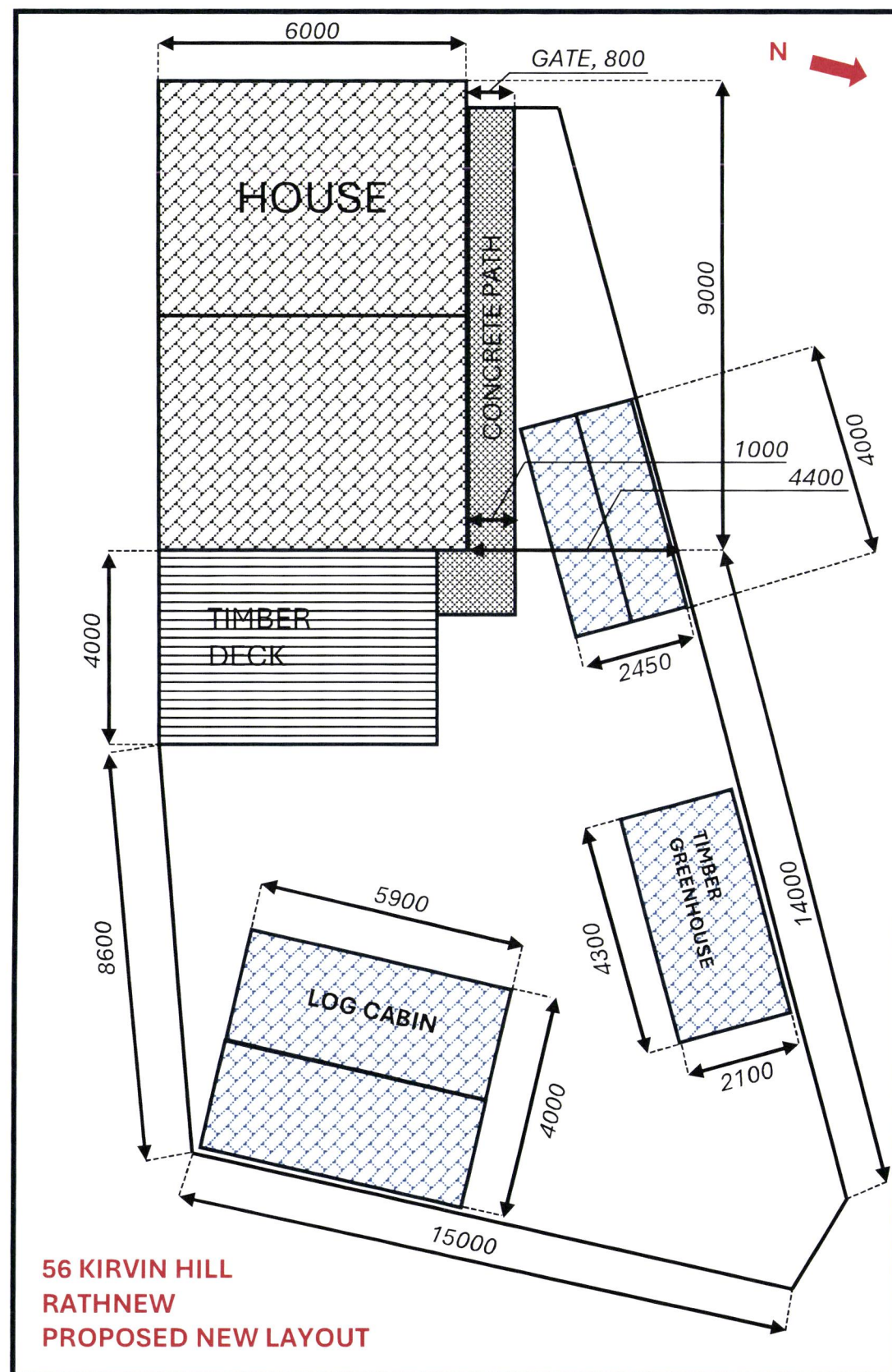
Any Section 5 Declaration should include a location map delineating the location of and exact area of lands to be reclaimed, and an indication of the character of the land.

C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure
- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.



**EXISTING LAYOUT
56 KIRVIN HILL**



PROPOSED NEW
LAYOUT
56 KIRVIN HILL