

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)  
SECTION 5

Director of Services Order No: 1820/2022

Reference Number: EX 61/2022

Name of Applicant: Ann McDonald C/O Farry Town Planning

Nature of Application: Section 5 Referral as to whether "The construction of 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow" is or is not exempted development.

Location of Subject Site: Lakeland, Roundwood, Co. Wicklow

Report from Solomon Aroboto EP & Suzanne White SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "The construction of 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, 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 under Section 5 Declaration on 13/10/22
- ii) Sections 2(1), 3(1), (4) (1) (a) of the Planning and Development Act 2000 (as amended)
- iii) Article 9(1) of the Planning and Development Regulations 2001(as amended)
- iv) Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- v) An Bord Pleanala Referral ABP 27.RL3205.

**Main Reasons with respect to Section 5 Declaration:**

The provision of a building for use as a dry goods agricultural store on the subject site would not come within the exemption provision set out under Part 3 of Schedule 2, Class 9 of the Planning & Development Regulations because,

- a) It cannot be determined based on the information available that the structure is to be used exclusively for agricultural purposes and forms part of an agricultural landholding.

- b) Insufficient information has been submitted to demonstrate that safe access could be provided to serve the structure. It cannot therefore be concluded that the proposed works, would not endanger public safety by reason of traffic hazard or obstruction of road users.

Note: Given the site is currently inaccessible, a separate planning application would be required to provide access in the development site and it is not clear if a safe access could be provided by the applicant.

#### Recommendation

The Planning Authority considers that "The construction of 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow" is development and is not exempted development as recommended in the planning reports.

Signed  Dated 8<sup>th</sup> day of November 2022

ORDER:

That a declaration to issue stating:

That "The construction of 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow" is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed:  
2022



Dated 8<sup>th</sup> day of November

Director of Services  
Planning Development & Environment



**Comhairle Contae Chill Mhantáin**  
**Wicklow County Council**

**Forbairt Pleanála agus Comhshaol**  
**Planning Development and Environment**

Áras An Chontae / County Buildings  
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Suíomh / Website: [www.wicklow.ie](http://www.wicklow.ie)

Ann McDonald  
C/O Farry Town Planning Ltd  
Suite 180,  
No. 28 South Frederick Street  
Dublin 1

8<sup>th</sup> November 2022

**RE: Declaration in accordance with Section 5  
of the Planning & Development Acts 2000 (As Amended)**

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

Exemption Ref. No: EX 61/2022

Applicant: Ann McDonald C/O Farry Town Planning

Nature of Application: "The construction of 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow"

Location: Lakeland, Roundwood, Co. Wicklow

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,

**ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT.**





**Comhairle Contae Chill Mhantáin**  
**Wicklow County Council**

**Forbairt Pleanála agus Comhshaol**  
**Planning Development and Environment**

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

**Applicant: Ann McDonald C/O Farry Town Planning**

**Location: Lakeland, Roundwood, Co. Wicklow**

**DIRECTOR OF SERVICES ORDER NO. 1820/2022**

A question has arisen as to whether "The construction of 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow" is or is not exempted development.

**Having regard to:**

- i) The details submitted under Section 5 Declaration on 13/10/22
- ii) Sections 2(1), 3(1), (4) (1) (a) of the Planning and Development Act 2000 (as amended)
- iii) Article 9(1) of the Planning and Development Regulations 2001(as amended)
- iv) Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- v) An Bord Pleanála Referral ABP 27.RL3205.

**Main Reasons with respect to Section 5 Declaration:**

The provision of a building for use as a dry goods agricultural store on the subject site would not come within the exemption provision set out under Part 3 of Schedule 2, Class 9 of the Planning & Development Regulations because,

- a) It cannot be determined based on the information available that the structure is to be used exclusively for agricultural purposes and forms part of an agricultural landholding.
- b) Insufficient information has been submitted to demonstrate that safe access could be provided to serve the structure. It cannot therefore be concluded that the proposed works, would not endanger public safety by reason of traffic hazard or obstruction of road users.

**Note:** Given the site is currently inaccessible, a separate planning application would be required to provide access in the development site and it is not clear if a safe access could be provided by the applicant.





# Comhairle Contae Chill Mhantáin Wicklow County Council

Áras An Chontae / County Buildings  
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## Forbairt Pleanála agus Comhshaol Planning Development and Environment

The Planning Authority considers that "The construction of 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow" is development and is not exempted development.

Signed:

ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 8<sup>th</sup> November 2022



## Report for – Section 5 declaration

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**File Reference:** Ex 61/2022  
**Applicant's Name:** Ann McDonald  
**Address:** Lakelands, Roundwood, Co, Wicklow.  
**Description:** Agricultural Store  
**Date of site visit** 30/08/21

### Section 5 Referral

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

The construction of 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow is or is not development and is or is not exempted development within the meaning of the Planning and Development Act, 2000 as amended.

### Planning History

None on file

### Relevant Legislations

#### ***Planning and Development Act 2000 as amended Section 2(1)***

*“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;*

*“Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*

*“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,*

#### ***Planning and Development Act 2000 as Amended Section 3(1) defined a development as follows: -***

*“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 Acts 2000 as amended Section 4(1) (a) - defined an Exempted development as follows: -***

(a) Development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;

**The Planning and Development Regulation 2001 as amended**

**Article 6**

*(3) Subject to article 9,..... development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.*

**Article 9**

1) 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—

(iii) Endanger public safety by reason of traffic hazard or obstruction of road users,

vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

**Planning and Development Regulations 2001 as amended**

**Schedule 2 Part 3, Class 9**

Description of Development	Limitations and Conditions
<p>Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.</p>	<p>1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.</p> <p>2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.</p> <p>3. No such structure shall be situated within 10 metres of any public road.</p> <p>4. No such structure within 100 metres of any public road shall exceed 8 metres in height.</p> <p>5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.</p> <p>6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</p>

## **Previous Relevant Board References**

### **RL 3205**

The provision of a shed a Carrigeenshinagh Lane, Lough Dan, Roundwood, County Wicklow is development and is not exempted development.

An Bord Pleanála concluded that –

- (a) the construction of the shed constitutes works, and therefore is development,
- (b) the referrer has not demonstrated that the shed is on lands used for agriculture.
- (c)(i) the referrer has not demonstrated that the shed is in agricultural use, and
- (ii) the shed in question has been used for purposes other than the purposes of agriculture and forestry;

Therefore the shed in question –

- (1) does not come within the scope of Section 4(1)(a) of the Planning and Development Act, 2000, as amended, and
- (2) does not comply with Condition and Limitation No. 1 of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

### **03. RL.2763**

That the retention and completion of a shed to be used for agricultural storage purposes at Ogonelloe, Scariff, County Clare is not exempted development.

An Bord Pleanála has concluded that -

- (a) the development would generally come within the scope of Class 9 of the Planning and Development Regulations, 2001, as amended, however, being within 100 metres of a dwellinghouse not within the ownership of the person providing the structure and without a letter of consent from the occupier thereof, does not comply with the Conditions and Limitations of that Class,
- (b) having regard to the access to the agricultural shed, being located on a sweeping bend of a regional road, at a point where there is a continuous white line along the centre of the road, and the additional traffic the development would generate in delivering goods to service the entire landholding, the development would endanger public safety by reason of traffic hazard, and
- (c) having regard to the height and bulk of the agricultural shed, which breaks the skyline in scenic views towards Lough Derg, the development interferes with the character of the landscape, the preservation of which is an objective in the current development plan for the area

## **Assessment**

The issue is to determine whether, the construction 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow is or is not development and is or is not



exempted development within the meaning of the Planning and Development Act, 2000 as amended.

The site is located along the R764 road outside the development boundary of Roundwood. The site is accessed via a gated entrance and a long driveway and existing on site is vegetation cover. The access driveway serves dwellings and commercial garage located on the landholding. There another entrance which appears to have been disused and has no defined driveway. The Vartry Reservoir is located to the northeast of the site. While the site is currently covered in vegetation there is no evidence of agricultural activity on site.

The following are submitted,

- A Section 5 planning report
- A site location map
- Site layout plan
- Drawings, including, plans and elevations of the proposed structures
- Map showing site in red and the lands in family ownership outlined in blue.

The proposed building measures 298sqm in floor area and is 4m high. The proposed external finishes are green sheeting to roof and concrete wall. It is stated that the structure would be used for dry goods agricultural store.

It is stated that the overall property is used for a combination of tillage, crop production and animal husbandry, primarily involving cattle and sheep. The applicant's agent argues that the proposed structure comes under Section 4(1) (a) exemption provision of the Planning and Development Act 2000 (as amended).

The first question to be asked is whether the structure and works subject of this section 5 is or is not development.

Having regard to the description of the works proposed to be carried out on site, it is considered that the proposal comes within the definition of development as stated under Section 3 of the Planning and Development Act 2000 (as amended).

The next question therefore to ask is whether the development is or is not exempted development.

This is outlined in the checklist below,

**Schedule 2, Pt.3 Class 9 checklist**

<p>Do the works consist of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres..?</p>	<p>The works consists of the provision of roofed stand-alone agricultural store structure</p> <p>The gross floor space of the structure is 298sqm. The proposal does not include the provision of ancillary effluent storage.</p>
<p>Would the structure be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent?</p>	<p>It is proposed to use the structure for use as a dry goods agricultural store.</p>
<p>Would the gross floor space of such structure the structure together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.?</p>	<p>No. The gross floor area of the proposed structure is 298sqm and there are no other such structures situated within the subject site or within 100m of the site.</p> <p>Note- the site is not located with a farmyard.</p> <p><i>According to,</i></p> <p>a) <i>Oxford Dictionary – a farmyard is a yard surrounded by farm buildings.</i></p> <p>b) <i>Free Dictionary - farmyard – is an area adjacent to farm buildings. Farm - workplace consisting of farm buildings and cultivated land as a unit.</i></p> <p>While the subject site can be considered a pasture land, there are no farm buildings on it. From site inspection, the only activity not on the landholding is commercial mechanic workshop and residential structure.</p>
<p>Would the structure be situated, within 10 metres of any public road?</p>	<p>No effluent storage tank is proposed.</p>
<p>Would any such structure be located within 100 metres of any public road exceed 8 metres in height?</p>	<p>No, the structure is over 100m from the road and the height of the structure is below 8m.</p>

<p>Would such structure be situated, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.</p>	<p>The structure is not located within 100m of any house or other residential building or school, hospital, church or building used for public assembly.</p>
<p>Would any unpainted metal sheeting shall be used for roofing or on the external finish of the structure?</p>	<p>No. it is stated that building would have green coloured sheeting on the roof.</p>

Note, while Part 3: Schedule 2 and Class 9 of the Planning and Development Regulations 2001 (as amended), provides for Exempted Development Classes with respect to Rural Development, the Board, under RL3205, comments that to apply this exemption (it must be shown that the shed will be used for agriculture and is clearly part of an agricultural holding/ enterprise/ farm.

In this case, the site is an open field covered in grass and not part of a farm. In addition, while the building is intended to be used for agriculture, no particulars are submitted to show that site is part of an agricultural farm or that the applicant is involved in agriculture. In Addition, the details of the dry agricultural goods that would be stored in the structure are not given.

It is worth mentioning that in the day of site inspection, I note a commercial car repair workshop in proximity to the proposed site and on the landholding, and there was no evidence of any agricultural activity on site.

I note from examining landdirect.ie that the subject site, including the overall landholding delineated in blue is not in the applicant ownership.

In addition, it is considered that the restrictions set out under Article 9 of the Planning and Development Regulations would be applicable in this case as the access within the red line boundary does not have adequate sightlines and there is no evidence of suitable driveway to the site. In this regard the following is noted:

- It is not clear if a safe access could be provided by the applicant. It is therefore not possible to determine at this stage that the proposed development would not cause traffic hazard.

#### **Screening for AA and EIA**

Section 4(4) of the Act states that development shall not be exempted development if an environment impact assessment and appropriate assessment of the development is required.

## **AA**

Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the absence of any pathway linking the site to any Natura 2000 sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site and therefore a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## **EIA**

Having regard to the nature and scale of the proposed development and the nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **Conclusion**

On basis on the above assessment, it is considered that the construction 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow is development but is not exempted development.

## **Recommendation**

With respect to the query under Section 5 of the Planning and Development Act 2000 (as Amended), as to whether, the construction 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow is or is not development and is or is not exempted development within the meaning of the Planning and Development Act, 2000 as amended.

The Planning Authority considers that:

- The construction 298sqm building for use as a dry goods agricultural store at Lakeland, Roundwood, Co. Wicklow is development but is not exempted development.

## **Main Considerations with respect to Section 5 Declaration:**

- i) The details submitted under Section 5 Declaration on 13/10/22
- ii) Sections 2(1), 3(1), (4) (1) (a) of the Planning and Development Act 2000 (as amended)
- iii) Article 9(1) of the Planning and Development Regulations 2001(as amended)

iv) Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations 2001 (as amended).

v) An Bord Pleanála Referral ABP – ~~302612-18~~ 27.RL3205

**Main Reasons with respect to Section 5 Declaration:**

The provision of a building for ~~housing cattle~~ <sup>use as a dry goods agricultural store</sup> on the subject site would not come within the exemption provision set out under Part 3 of Schedule 2, Class ~~9~~ of the Planning and Development Regulations because,

- a) ~~The site is not located within a farmyard. It cannot be determined based on the information available that the structure is to be used exclusively for agricultural purposes and some part of an agricultural landholding.~~
- b) ~~Insufficient information has been submitted to confirm if a new entrance is required to serve this farm structure, the subject of this Section 5 Declaration as if this was required this would de-exempt the development by reference to Article 9 of the Planning and Development Regulations (as amended) demonstrate that safe access could be provided to serve the structure. It cannot therefore be concluded that the proposed works would not endanger public safety by reason of traffic hazard or destruction of road users.~~

Note: Given the site is currently inaccessible, a separate planning application would be required to provide access into the development site and it is not clear if a safe access could be provided by the applicant.

-----  
Solomon Aroboto E/P  
04/11/22

Agreed as amended  
White SEP  
8/11/22

Noted  
M. Jensen  
A/Pos.  
8/11/22













# MEMORANDUM

## WICKLOW COUNTY COUNCIL

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**TO: Solomon Aroboto  
Executive Planner**


**FROM: Crystal White  
Assistant Staff Officer**

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**RE:- EX 61/2022 - Declaration in accordance with Section 5 of the  
Planning & Development Acts 2000 (as amended)  
Construction of a building with a floorspace of 298 sq metres & max height  
of 4 metres for use as a dry goods agricultural store on land outside  
Roundwood Co Wicklow**

I enclose herewith for your attention application for Section 5 Declaration received 13<sup>th</sup> of October 2022.

The due date on this declaration is the 9<sup>th</sup> November 2022.



**Senior Staff Officer  
Planning Development & Environment**



**Comhairle Contae Chill Mhantáin  
Wicklow County Council**

**Forbairt Pleanála agus Comhshaol  
Planning Development and Environment**

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13/10/2022

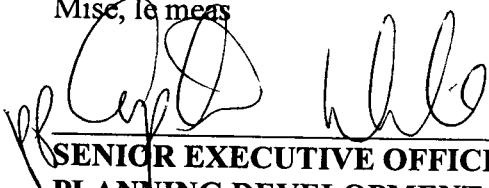
**Ann McDonald  
C/O Farry Town Planner  
Suite 180  
No. 28 South Fredrick St  
Dublin 1**

**RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). Ex 61/2022  
Construction of a building with a floorspace of 298 sq metres & max height of 4 metres for use as a dry goods agricultural store on land outside Roundwood Co Wicklow**

A Chara

I wish to acknowledge receipt on the 13<sup>th</sup> of October 2022 details supplied by you in respect of the above section 5 application. A decision is due in respect of this application by 09/11/2022.

Misc, le meas

  
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**SENIOR EXECUTIVE OFFICER  
PLANNING DEVELOPMENT AND ENVIRONMENT**



Wicklow County Council • •  
County Buildings  
Wicklow  
0404-20100

13/10/2022 10 36 33

Receipt No L1/0/302966

FARRY TOWN PLANNING LTD  
SUITE 180,  
NO 28 SOUTH FREDERICK STREET DUBLIN

EXEMPTION CERTIFICATES	80 00
GOODS	80 00
VAT Exempt/Non-vatable	

Total 80 00 EUR

Tendered  
Cheque 80 00  
ANN MCDONALD

Change 0 00

Issued By Jessica McDonald  
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9. ana

Date Received \_\_\_\_\_

Fee Received \_\_\_\_\_

**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: Ann McDonald

Address of applicant: Lakelands, Roundwood, Co. Wicklow

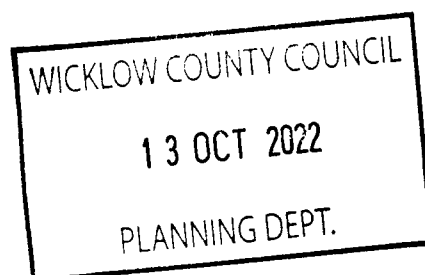
**2. Agents Details (Where Applicable)**

(b) Name of Agent (where applicable) Farry Town Planning Ltd.

Address of Agent: Suite 180, No. 28 South Frederick Street Dublin 1

**3. Declaration Details**

- i. Location of Development subject of Declaration: Roundwood Co. Wicklow (as illustrated in the attached town planning report)
- ii. Are you the owner and/or occupier of these lands at the location under i. above ?  
Yes
- iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier Not Applicable



- 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, on 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: Please see attached report
- v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration: Please refer to the attached report.
- vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure ( or proposed protected structure) ? No
- vii. List of Plans, Drawings submitted with this Declaration Application: Please see attached planning report along with drawing of proposed building.
- viii. Fee of € 80 Attached ? Yes

Signed : Valerie McQuinn Dated : 10 OCTOBER 2022  
(AGENT for  
Ann McQuinn)

# Farry Town Planning Ltd.

Suite 180  
28 South Frederick Street  
Dublin 2

Phone (01) 677 8180  
Mobile 087 288 7311  
vincentfarry@gmail.com

10 October 2022

Senior Executive Officer  
Planning Department  
Wicklow County Council  
County Hall  
Wicklow

## LAND AT ROUNDWOOD CO. WICKLOW

Dear Sir or Madam

We refer to the above and we act for Ms. Ann McDonald of Lakelands, Roundwood, Co. Wicklow.

We hereby lodge a referral pursuant to section 5 of the Planning and Development Act, 2000 in relation to a proposed development on this landholding, the details of which are set out hereunder.

We respectfully invite the Council to confirm that the proposal comprises exempted development.

Yours faithfully



**Farry Town Planning Ltd.**



# Farry Town Planning Ltd.

Suite 180  
28 South Frederick Street  
Dublin 2

Phone (01) 677 8180  
Mobile 087 288 7311  
vincentfarry a@gmail.com

## **REFERRAL REPORT ON A PROPOSED DEVELOPMENT ON LAND AT ROUNDWOOD CO. WICKLOW**

**REPORT PREPARED ON BEHALF OF THE REFERROR  
MS. ANN MCDONALD**

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- 6. Planning Submission**
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    - (b) Existing Structures
  - (iii) The Need for An Established Agricultural Holding
  - (iv) The Area of the Existing Structures
  - (v) Traffic Safety
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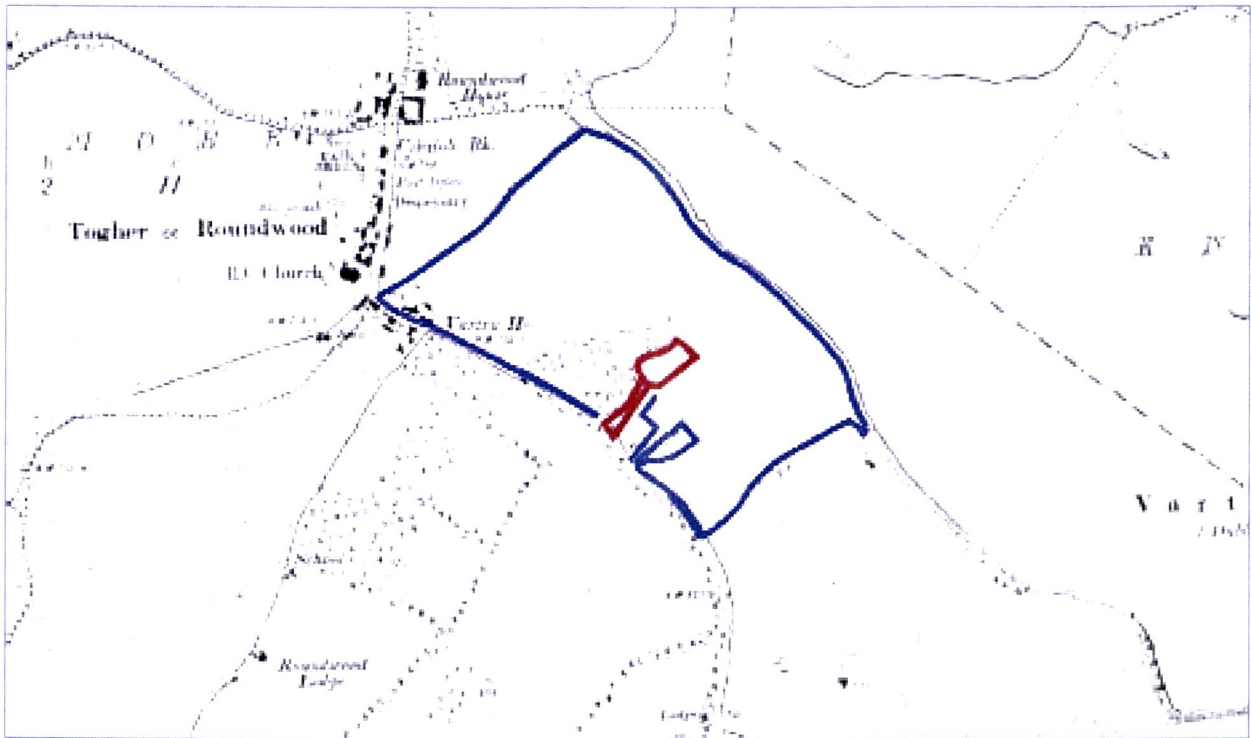
## 1. Introduction

This planning submission has been drafted on behalf of the owner of a tract of land at Roundwood, Co. Wicklow<sup>1</sup> and has been prepared for lodgement with Wicklow County Council in its capacity as the statutory planning authority for the area within which the subject site is situated. The document forms part of a referral under s.5 of the Planning and Development Act, 2000 (as amended) and seeks to show that the development to which this report relates is exempt from the need to obtain consent.

## 2. The Site and its Environs

The referral site covers an area of 0.5146 hectares (1.27 acres) and is located on the fringe of the built-up area which surrounds the village of Roundwood. Which is located in north-central Co. Wicklow.

This tract forms part of a larger landholding which itself covers a total area of 21.34ha. (52.7 acres), with the juxtaposition of the subject site with this overall property being illustrated in Map 1 below.



**Map 1: The position of the subject site within the overall McDonald farm**

This overall property is used for a combination of tillage, crop production and animal husbandry purposes, primarily involving cattle and sheep, with the precise use to which this land is put at different times being dependent on agricultural practices, market demands and other factors (such as financial considerations). Whilst part of this overall holding is relatively level, including the tract on which the proposed development is to be located, the holding generally falls from south-west to north-east, albeit at different gradients. The appearance of this overall farm is depicted in photographs 1 & 2 overleaf.

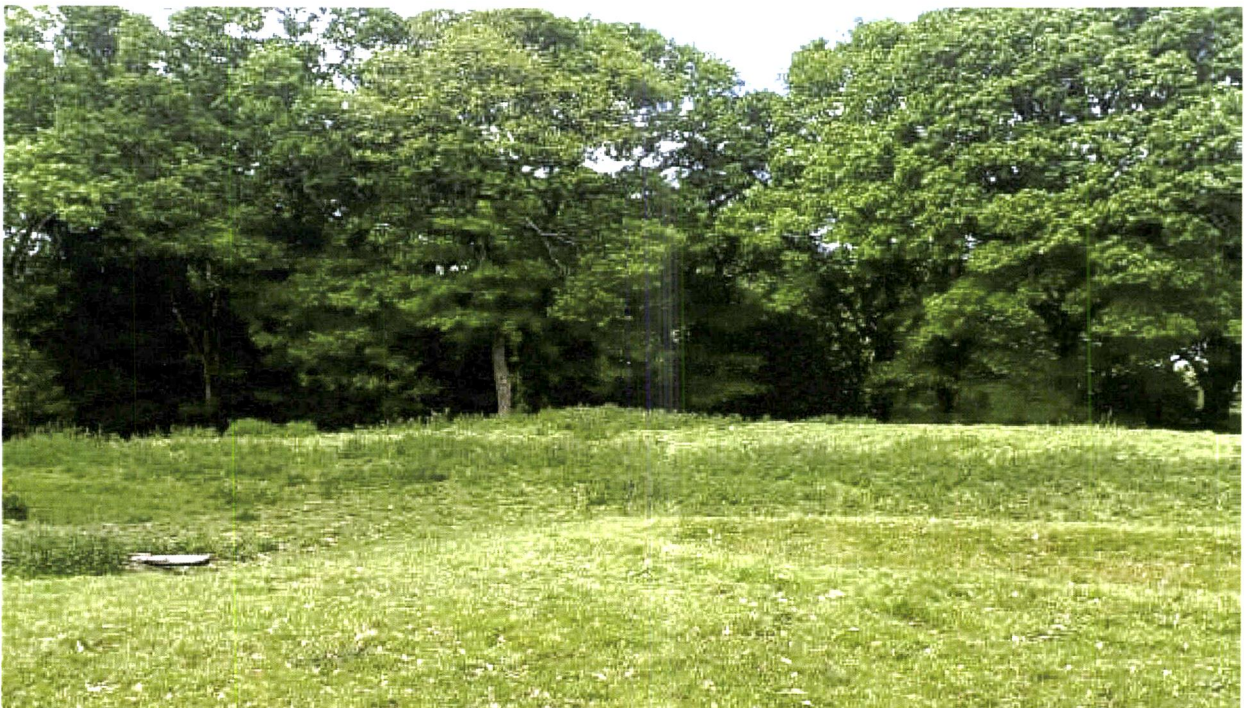
## 3. Select Planning History

The Council's Planning Register contains no entries for the land on which the proposed development is to take place and we reproduce an extract from this record on page 6 below, for ease of reference.

<sup>1</sup> The subject site is owned by the referrer.



**Photographs 1 & 2: The character and appearance of the referror's farm.**

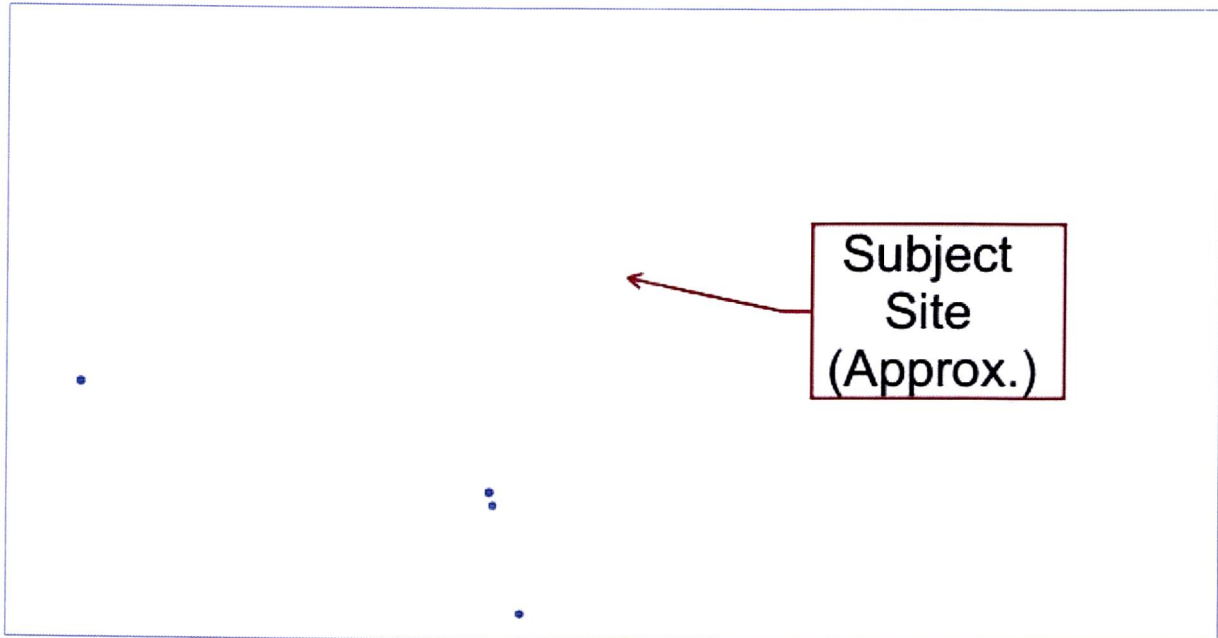


#### **4. Referral Question**

We take this opportunity to pose the following referral question for the Council's consideration:

*'Whether the construction of a building with a floorspace of 298 sq. metres and a maximum height of 4 metres, on land outside Roundwood Co. Wicklow for use as a dry goods agricultural store (not for the provision of accommodation for animals), comprises development and / or exempted development'.*

The proposed development is as illustrated on architectural drawings which form part of this referral.



**Map 2: Extract from the County Council's Planning Register for this site**

## **5. Planning Law**

### **(i) Statutory Provisions**

The definition of 'agriculture' in the Planning and Development Act, 2000 (as amended) includes:

*'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds'*

Section 4(1) of the Planning and Development Act, 2000 (as amended) is reproduced as follows:

*'The following shall be exempted development for the purposes this Act-*  
*(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used'.*

### **(ii) Regulatory Provisions**

Class 6 in Part 3 of the Second Schedule to the Planning and Development Regulations 2001 covers:

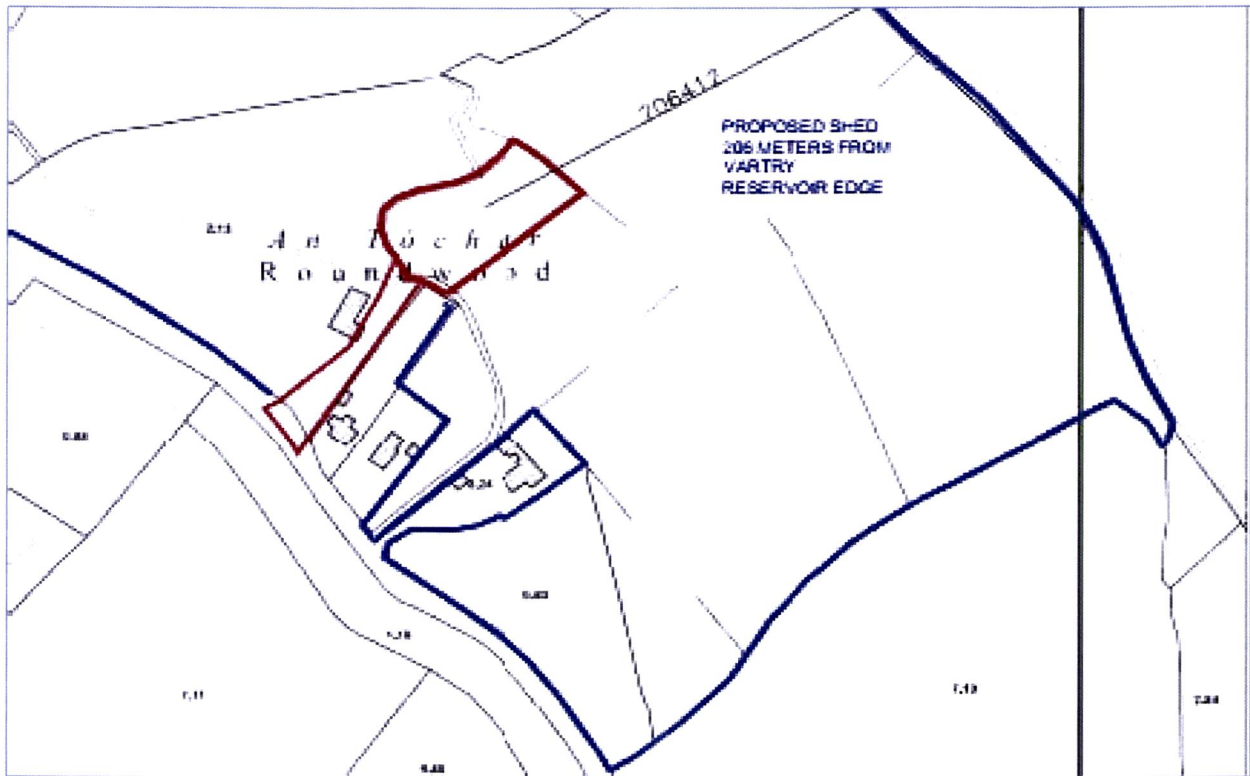
*'Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not be extension of an existing structure) or any ancillary provision for effluent storage'.*

Class 8 in Part 3 of the Second Schedule to the Planning and Development Regulations 2001 concerns:

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

Class 9 in Part 3 of the Second Schedule to the Planning and Development Regulations, 2001 states:

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



**Map 3: The land to which the present referral relates.**

Class 10 in Part 3 of the Second Schedule to the Planning and Development Regulations 2001 covers:

*'The erection of an unroofed fenced area for the exercising or training of horses or ponies, together with a drainage bed or soft surface material to provide an all-weather surface'.*

Article 6(3) of the Planning and Development Regulations, 2001 (as amended) states that the provisions in the Second Schedule can comprise exempted development, in the following locations:

*'...in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985).'*

Section 19(1) of the Planning and Development Act, 2000 (as amended) is reproduced as follows:

*'(a) A local area plan may be prepared in respect of any area, including a Gaeltacht area, or an existing suburb of an urban area, which the planning authority considers suitable and, in particular, for those areas which require economic, physical and social renewal and for areas likely to be subject to large scale development within the lifetime of the plan.*

*(b) A local area plan shall be made in respect of an area which—*

- (i) is designated as a town in the most recent census of population, other than a town designated as a suburb or environs in that census,*
- (ii) has a population in excess of 5000, and*
- (iii) is situated within the functional area of a planning authority which is a county council.*

The 'excluded areas' which are defined in section 9 of the Local Government (Reorganisation) Act, 1985 are located in Dublin City and County and none of these locations are within County Wicklow. Article 6(3) of the Planning and Development Regulations, 2001 (as amended) also states as follows:

*'development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1'.*



**Aerial Image 1: The referrer's holding is located outside Roundwood, Co. Wicklow.**

## **6. Submission**

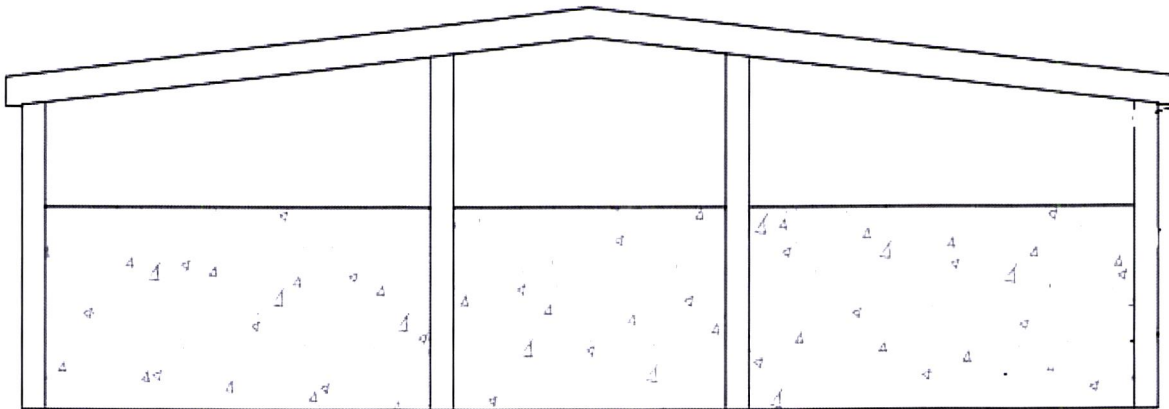
### **(i) Introduction**

The land is currently used for agricultural purposes and we draw attention to s. 4 of the Planning and Development Act, 2000 which categorises the 'use of land for the purpose of agriculture' as 'exempted development'. As 'the breeding and keeping of livestock...the training of horses and the rearing of bloodstock' forms part of 'agriculture', this site can be used for tillage, crop production and animal husbandry regardless of whether permission is granted for this proposal. In this regard, we invite Wicklow County Council to acknowledge that this overall use of the holding beside the referral site for farming purposes is ongoing and to accept that such activities do not require consent.

As statutory provisions cannot be changed by inferior instruments, we note how the restrictions which are contained within article 9 of the Planning and Development Regulations, 2001 (as amended) do not affect the entitlements under section 4(1)(h) of the Planning and Development Act, 2000 (as amended), so as to disentitle the referrer from the right to use this land for farming purposes without consent. In this regard, it is a principle of statutory interpretation that an act of the Oireachtas cannot be amended by secondary legislation such as a regulatory instrument and if it had been the intention of the legislature to restrict the privileges in s.4(1)(h) to locations which were entirely lawful, having been undertaken in accordance with a permission, this would have been expressly stated in the Act.

In ref. 06F.RL.2162, the Board concluded that rooflights at 37 Rathbeale Road Swords fell under s.4 of the Act of 2000 and did not need consent by reason of the fact that the proposal breached art. 9:

*'the rooflights would appear to be exempted development therefore, by virtue of 4(1)(h) of the 2000 Act...The Planning Authority states however that the development is not exempted development by virtue of Article 9...In response, the referrer states however that an act of the Oireachtas cannot be amended by secondary legislation and therefore any benefits conferred under Section 4 of the 2000 Act cannot be withdrawn...While the primary legislation therefore provides for an expansion of classes of exempted development over and above those described at Section 4(1)(a)-(l)...it does not...provide for any amendment to the exempted development provisions of the Act by way of subsequent regulation...it is quite clear from the text of Article 9(1)...that the de-exemption referred to therein relates only to development specified at Article 6 namely "development of a class specified in Column 1 of Part 1 of Schedule 2" and does not apply to exempted development set out at Section 4(1) of the Act. I therefore consider that, as in the current case, where development is considered to be exempted development under Section 4(1) of the 2000 Act, that de-exemption cannot be effected by way of regulation and I consider therefore that the referrer's submission in this case is correct'.*



**Drawing 1: The façade of the proposed dry goods agricultural store.**

In ref. RL17.RL2748, the Board considered whether works to an unlawful building could comprise exempted development. The Report of the Inspector stated that the Council concluded otherwise on the basis that, as the house did not have consent, *'the proposed works did not constitute exempted development'* as such operations are not within *'either (i) within the scope of section 4(1)(h) of the Planning and Development Act 2000 or (ii) within the exempted development provisions of ...the Planning and Development Regulations 2001'*. However, this Board analysis concluded differently:

*'I would concur with...the referrer and consider that the planning authority misinterpreted the legislation in this instance. While the secondary legislation provides for an expansion of classes of exempted development over and above those described in Section 4(1) (a)-(l) of the Act, it does not provide, as the referrer correctly points out, for any amendment to the exempted development provisions of the Act by way of subsequent regulation. I acknowledge that this point was also made in the Inspectors report of RL2162 in relation to a development in Swords, Co. Dublin. In addition, I concur with the referrer's assertion that it is clear from the text of Article 9(1) of the Regulations that the de-exemption referred to therein relates to development to which Article 6 relates, namely development of a class specified in Column 1 of Part 1 of Schedule 2 and does not apply to exempted development as set out in Section 4(1) of the Act, as amended'.*

We respectfully invite the County Council to candidly accept that the referrer's family landholding at Roundwood Co. Wicklow is used for agricultural activities and that such operations are wholly lawful.

**(ii) Class 9 Considerations**

In this regard, we invite the Planning Authority to take account of the Board's approach in referral ref. PL23.RL3147 (*'Whether the construction of a Class 9 agricultural shed 256 sq.m is or is not development or is or is not exempted development'*) in which the Report of the Inspector stated that:

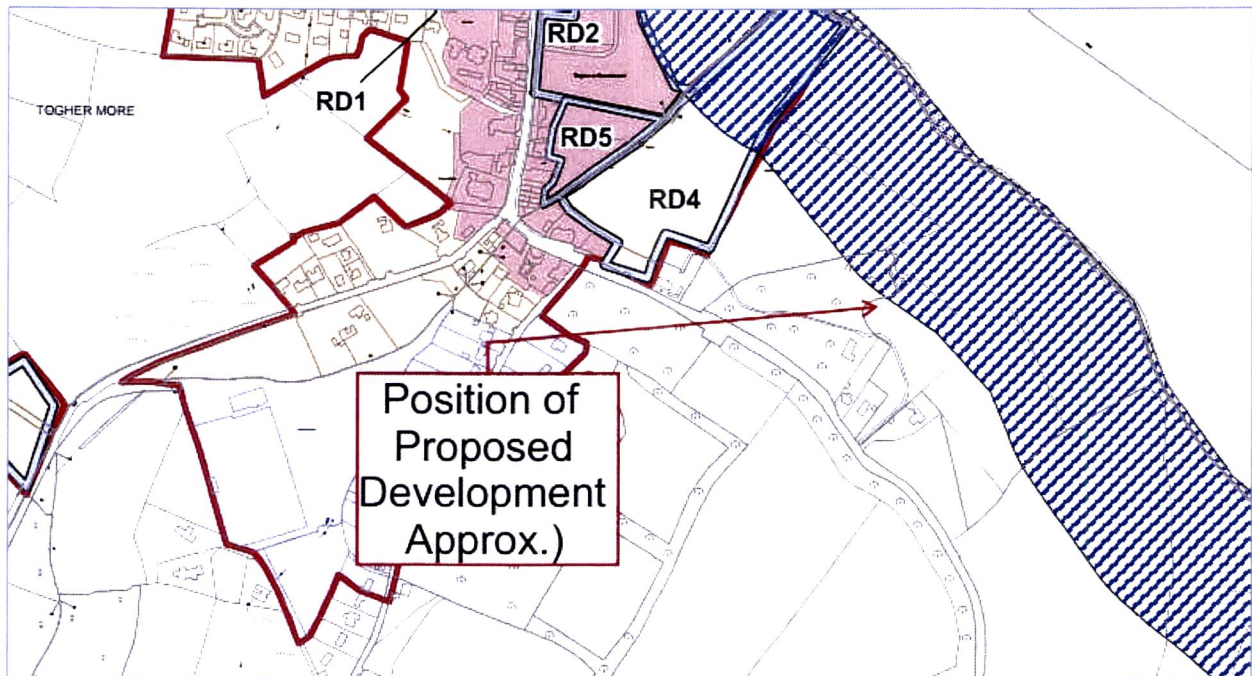


*'The Planners Report concludes that the work constitutes development within the meaning of the Act...the shed would appear to satisfy the conditions and limitations set out in Class 9 of Article 6(3)...The structure in question according to the information contained on file, will be used for the purposes of agriculture, and is below the 300 sq. m. threshold for exemption...'*

It is our opinion that this land can accommodate the proposed small-scale development without the need for permission, especially given the historical use of this overall property for farming purposes.

### (iii) The Rural Location of the Land

Although the subject site is near Roundwood Village, we note that it is located outside the formal boundary, as identified in the Roundwood Settlement Plan which forms part of the *Wicklow County Development Plan 2016-2022* and which currently applies within this particular area. We reproduce an extract from this document, on which we have marked the approximate position of the structure.



**Map 4: The referral site is outside the settlement boundary which surrounds Roundwood.**

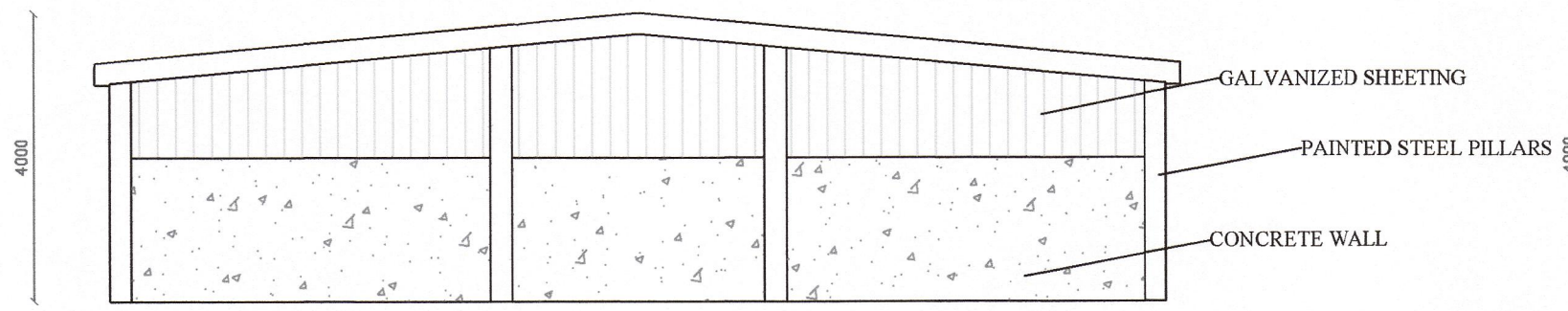
## 7. Concluding Comment

Planning law does not unduly restrict the type of development which can occur without consent and envisages flexibility in its provisions, so that in *Dublin Corporation v Moore* the Supreme Court rejected a claim that the parking of commercial ice cream vans in a domestic driveway constituted a material change of use. Indeed, the law prescribes few circumstances where permission is needed with s3 of the Planning and Development Act 2000 only stipulating that advertisements, van and tent storage and the deposit of vehicles, metal, mining or building and industrial waste, requires consent.

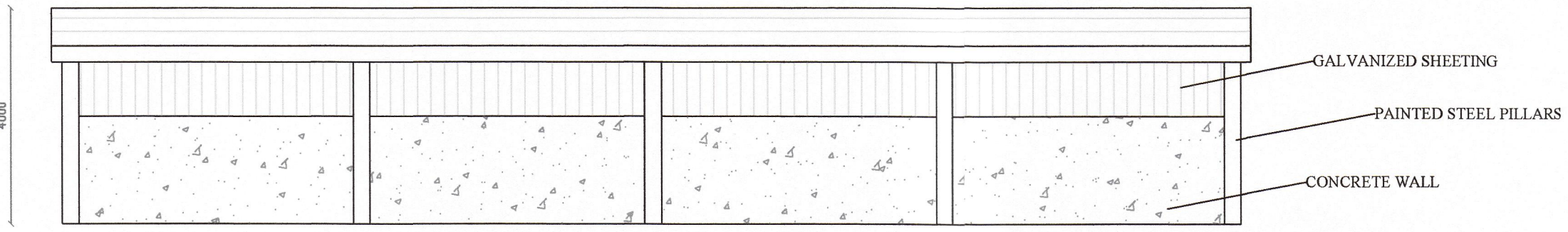
The law otherwise allows a range of developments to be undertaken without permission, including the erection of agricultural structures in the countryside. It is our opinion that the proposed building does not need consent and we respectfully invite Wicklow County Council to confirm that this is the case.

  
**Farry Town Planning Ltd.**

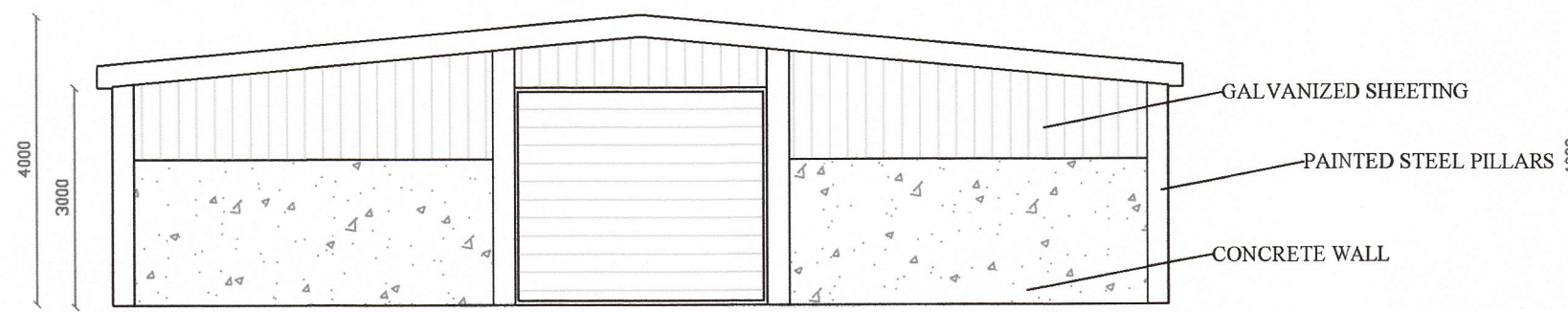
GREEN PROFILED GALVANISED SHEETING TO SIDES AND ROOF, PAINTED STEEL PILLARS AS REQUIRED.



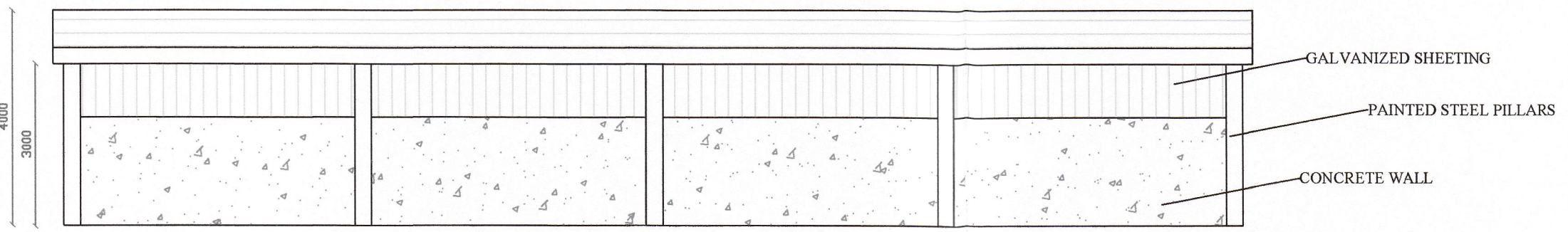
REAR ELEVATION  
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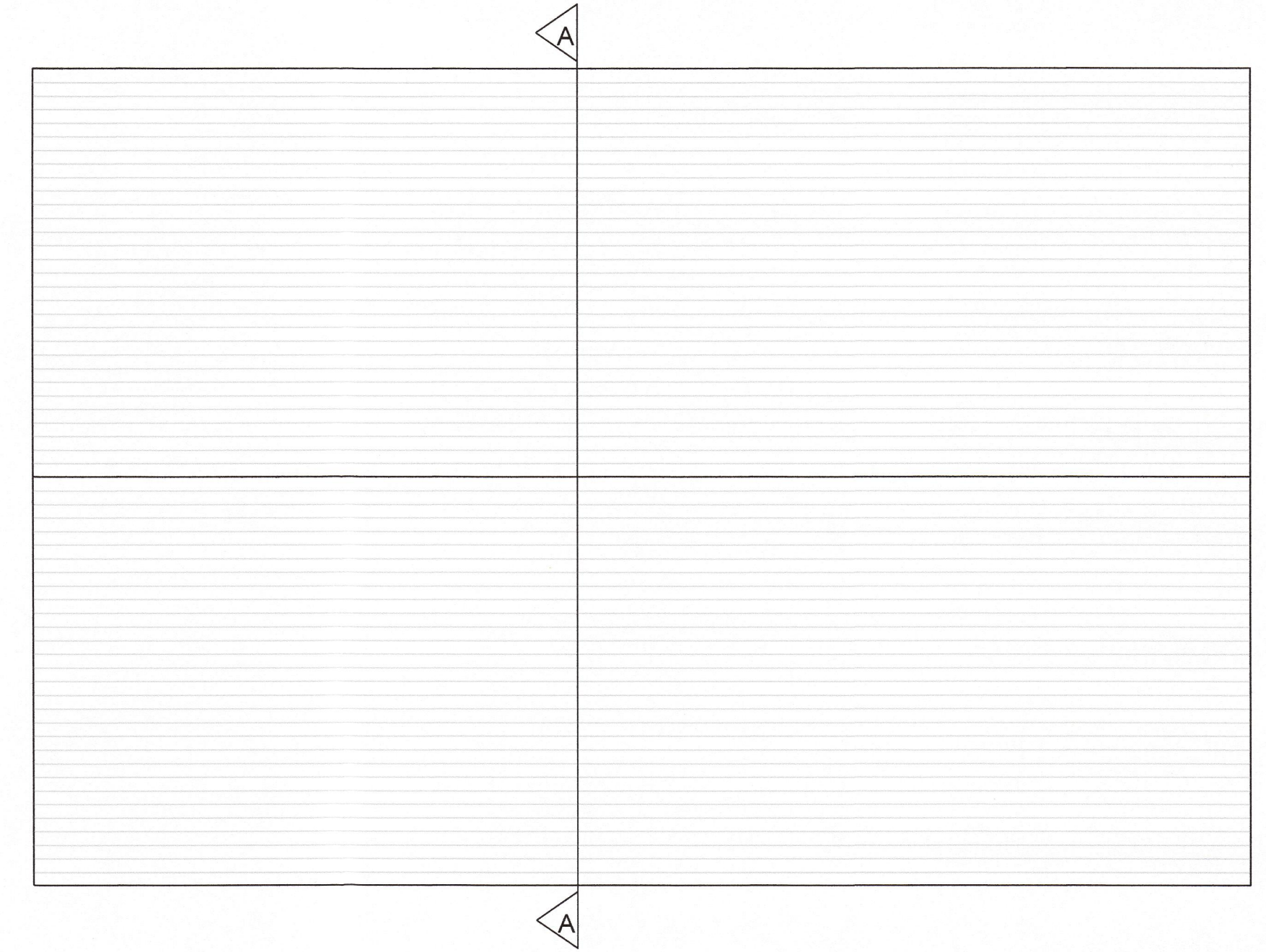
SIDE ELEVATION  
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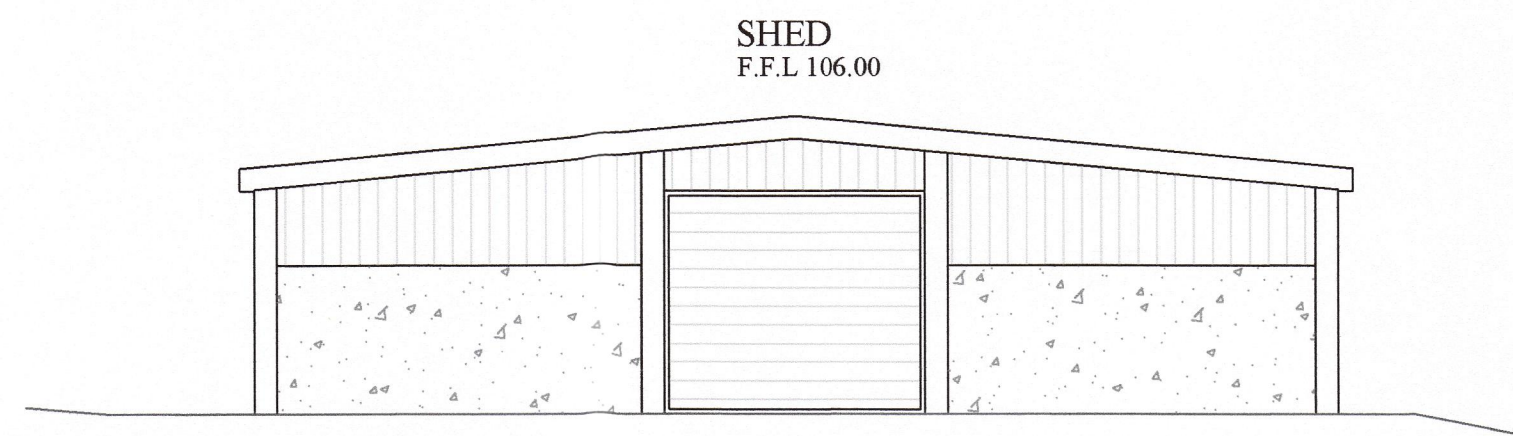
FRONT ELEVATION  
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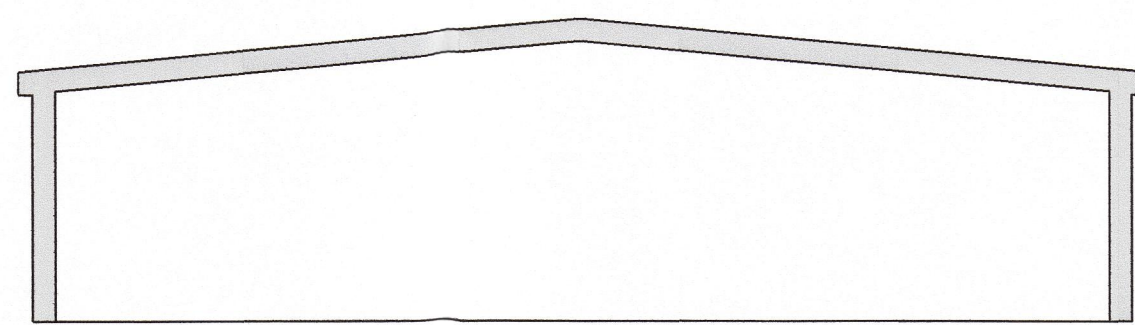
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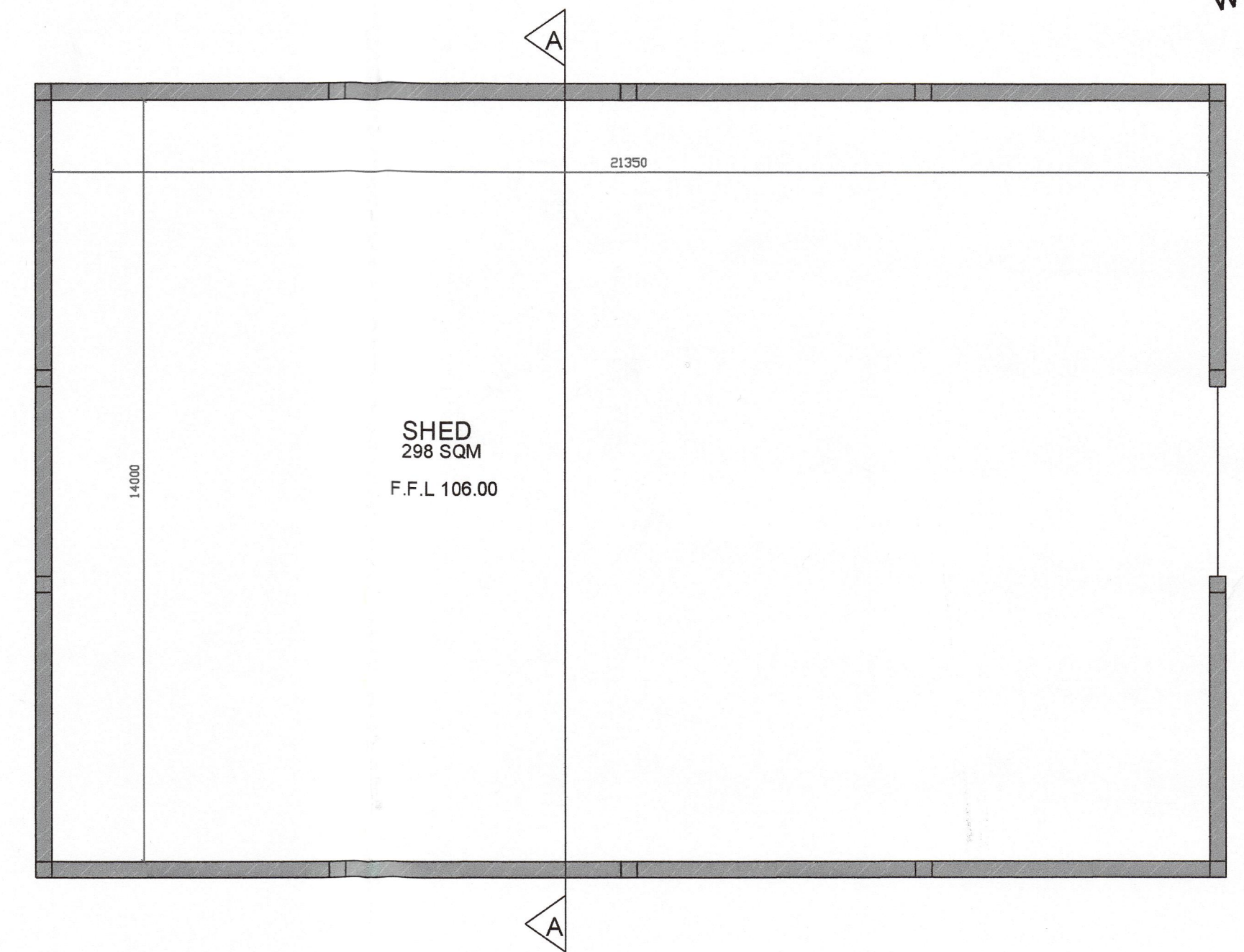
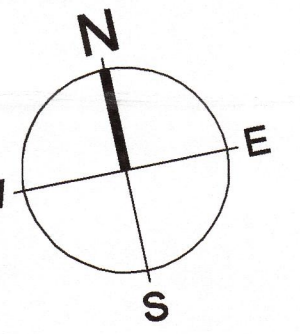
PROPOSED ROOF PLAN  
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PROPOSED SITE SECTION  
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SECTION A-A  
SCALE 1:100



PROPOSED FLOOR PLAN  
SCALE 1 : 100

DRAWING BY:  
LIAM KENNA

DRAWING:  
PROPOSED SHED AND  
SECTION  
SCALE 1 : 100

PROJECT:  
JOSEPH McDONNELL,  
DIAMOND HILL,  
ROUNDWOOD,  
CO. WICKLOW

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