

**DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R24-28



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R24-28

Is the reroofing of the derelict building considered development and if so, is it exempted development?

AND WHEREAS, Owen Boyden has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) The details received by the Planning Authority.

And whereas Clare County Council has concluded:

- (a) Based on the provisions of Section 4 (1) (h) of the planning and Development Act 2000 as amended, the reroofing and associated works, of a derelict building would not materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures having regard to the matching external stone finish proposed.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of change of the reroofing of a derelict building at Kinelty, Liscannor, Co. Clare **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

5th April 2024



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Registered Post

**Owen Boyden
C/o Deirdre Foran
Lisdoonvarna
Co. Clare**

5th April 2024

Section 5 referral Reference R24-28 – Owen Boyden

Is the reroofing of the derelict building considered development and if so, is it exempted development?

A Chara,

I refer to your application received on 14th March 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie

Mise, le meas

**Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate**

**An Roinn Pleanála
An Stiúthóireacht Forbairt Gheilleagrach**

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department
Economic Development Directorate**

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



CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No:

23373

Reference Number:

R24-28

Date Referral Received:

14th March 2024

Name of Applicant:

Owen Boyden

Location of works in question:

Kinelty, Liscannor, Co. Clare

Section 5 referral Reference R24-28 – Owen Boyden

Is the reroofing of the derelict building considered development and if so, is it exempted development?

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) The details received by the Planning Authority.

AND WHEREAS Clare County Council has concluded:

- (a) Based on the provisions of Section 4 (1) (h) of the planning and Development Act 2000 as amended, the reroofing and associated works, of a derelict building would not materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures having regard to the matching external stone finish proposed.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Kieran O'Donnell, Administrative Officer, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Kieran O'Donnell, Administrative Officer, hereby declare that the reroofing of a derelict building at Kinelty, Liscannor, Co. Clare is considered development which is exempted development.

Signed:


KIERAN O'DONNELL
ADMINISTRATIVE OFFICER 

Date:

5th April 2024

**SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT**

FILE REF: 24/ 28
APPLICANT(S): Owen Boyden
REFERENCE: Whether the reroofing of a derelict building considered to be development and if so is or is not exempted development.
LOCATION: Kinelty , County Clare
DUE DATE: 10/04/24

Site Location

The derelict building is located in Kinelty cluster.

The building comprises stone flag and some concrete block above eaves level. There is a limited area of curtilage with building.

The building does not appear to be within the curtilage of a dwelling. (as per land registry maps) although situated proximate to two other dwellings.

Recent Planning History on site.

None

Recent Section 5s on site.

R23/ 82 Referral- Whether the reroofing of a derelict building considered to be development and if so is or is not exempted development
Decision- Clare County Council concluded that –

The reroofing and associated works, including the raising the wall plate level, of a derelict building would materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures.

The reroofing of a derelict building at Kinelty, Liscannor Co. Clare was considered development which was not exempted development.

It should be noted in this regard that the external materials comprised concrete block walls on top of existing stone walls and for this reason was considered to have an inconsistent appearance.

Unauthorised development history

23/ 11 A warning letter issued to Owen Boyden 26th May 23 for the creatin of a hard standing area, the creation of an entrance and removal of a shared boundary without the benefit of planning permission. This warning letter was returned to the Planning Authority on the 1st June and the 7th June.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Owen Boyden who claims to be the owner.

The applicant is seeking a Section 5 Declaration as to whether the reroofing of a derelict building and rebuilding walls which were damaged during works on adjacent property is or is not development and is or is not exempted development. However in this application it is proposed to complete the external walls in stone to match existing walls as per drawings received 14th March 24 and to change the roof from an 'A' pitch to a 'lean to' style roof more commonly found in the area .

Statutory Provisions

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

“structure” as any building, structure, excavation or other thing constructed or made on, in or under any land, or part of a structure so defined, and where the context so admits, includes the land on, in or under which the structure is situated

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.

Section 2 (1) ‘Works’ are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

“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.

S.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.

Exempted Development

4.—(1) *The following shall be exempted developments for the purposes of this Act—*

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Assessment

The agent has advised the following in the documents submitted:

Particulars of the Development

The applicant has submitted the following information:

- Site location map 1:500 with site outlined in red.
- Site layout plan 1:250 with site outlined in red.
- Description of works: Reroofing the existing building and rebuilding walls which were damaged during works on the adjacent property. The proposals also involves fitting of a 'lean- to' style roof rather than a pitched 'A' style roof.

Planning Exemption Assessment

Under Section 4 (1) (h) of the Planning and Development Act 2000 as amended, works for maintenance and repair as well as works which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures are generally considered to constitute exempted development. Having regard to the information received to date it is considered that the works will not be inconsistent with the character of the structure or neighbouring structures and as such complies with the provisions of Section 4 (1) (h) of the Planning and Development Act 2000 as amended. In this regard it should be noted that Kinelty is noted for its Liscannor flag outbuildings and sheds which are normally found within the curtilages of farmyards and dwellings. The subject structure does not fall within the curtilage or ownership associated with nearby dwellings. Therefore exempted development Regulations Schedule 2, Article 6, Part 1, Class 1- Development within the curtilage of a house is not applicable (Planning and Development Regulations 2001 as amended refers). It is further noted that the

building does not fall within a farm yard complex and as such does not fall within part 3 Article 6 , Exempted Development – Rural.

Recommendation

WHEREAS a question has arisen as to whether the reroofing of a derelict building , including the rebuilding walls which were previously damaged is or is not development and is or is not exempted development.

AND WHEREAS Clare County Council in considering this referral, had regard particularly to -

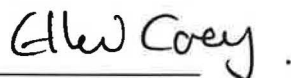
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) the details received by the Planning Authority.

AND WHEREAS Clare County Council has concluded that –

Based on the provisions of Section 4 (1) (h) of the planning and Development Act 2000 as amended, The reroofing and associated works, of a derelict building would not materially affect the external appearance of the building so as to render it inconsistent with the character of the building itself and of the neighbouring structures having regard to the matching external stone finish proposed.

NOW THEREFORE Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, hereby decides:

The reroofing of a derelict building at Kinelty, Liscannor Co. Clare is considered development which is exempted development.



Ellen Carey
Executive Planner
Date: 28/03/24



Garreth Ruane
Senior Executive Planner
28/03/24

Appropriate Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	R24/ 28
(b) Brief description of the project or plan:	Reroofing of a derelict building at Kinelt
(c) Brief description of site characteristics:	Derelict Stone building with curtilage
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
(e) Response to consultation:	None

STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.				
European Site (code)	List of Qualifying Interest/Special Conservation Interest ¹	Distance from proposed development ² (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
Cliffs of Moher SPA	Fulmar (Fulmarus glacialis) [A009] Kittiwake (Rissa tridactyla) [A188] Guillemot (Uria aalge) [A199] Razorbill (Alca torda) [A200] Puffin (Fratercula	1km as the Chough flies.	None	No

arctica) [A204]			
Chough (Pyrrhocorax pyrrhocorax) [A346]			

¹ Short paraphrasing and/or cross reference to NPWS is acceptable – it is not necessary to reproduce the full text on the QI/SCI.
² If the site or part thereof is within the European site or adjacent to the European site, state here.

STEP 3. Assessment of Likely Significant Effects	
(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:	
Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
Construction phase e.g. <ul style="list-style-type: none"> • Vegetation clearance • Demolition • Surface water runoff from soil excavation/infill/landscaping (including borrow pits) • Dust, noise, vibration • Lighting disturbance • Impact on groundwater/dewatering • Storage of excavated/construction materials • Access to site • Pests 	None
Operational phase e.g. <ul style="list-style-type: none"> • Direct emission to air and water • Surface water runoff containing contaminant or sediment • Lighting disturbance • Noise/vibration • Changes to water/groundwater due to drainage 	None

<ul style="list-style-type: none"> • or abstraction • Presence of people, vehicles and activities • Physical presence of structures (e.g. collision risks) • Potential for accidents or incidents 	
In-combination/Other	None

(b) Describe any likely changes to the European site:

<p>Examples of the type of changes to give consideration to include:</p> <ul style="list-style-type: none"> • Reduction or fragmentation of habitat area • Disturbance to QI species • Habitat or species fragmentation • Reduction or fragmentation in species density • Changes in key indicators of conservation status value (water or air quality etc.) • Changes to areas of sensitivity or threats to QI • Interference with the key relationships that define the structure or ecological function of the site 	None
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(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?

<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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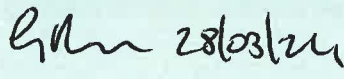
Step 4. Screening Determination Statement

The assessment of significance of effects:
Describe how the proposed development (alone or in-combination) is/is **not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

The proposed development relates to repair of an existing structure outside the SPA. No direct or indirect effects are envisaged on the qualifying interests of the SPA.

Conclusion: The proposed development is not likely to have significant effects on European site(s) in view of its conservation objectives.

	Tick as	Recommendation:
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	Appropriate:	
(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is uncertain whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
(iii) Significant effects are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
Signature and Date of Recommending Officer:	27/03/ 24	 Name: Ellen Carey E.P.
Signature and Date of the Decision Maker:		



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Owen Boyden
C/o Deirdre Foran
Lisdoonvarna
Co. Clare

15/03/2024

Section 5 referral Reference R24-28 – Owen Boyden

Is the reroofing of the derelict building considered development and if so, is it exempted development?

A Chara,

I refer to your application received on 14th March 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

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

Mise, le meas

Brian Fahy
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúirthóireacht Forbairt Gheilleagrach

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate

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



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



15/03/2024 14:49:50

Receipt No. : L1CASH/0/361957
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OWEN BOYDEN
C/O DEIRDRE FORAN
LISDOONVARNA
CO CLARE
R24/28

COMHAIRLE
CONTAE

AN CHLÁIR

SECTION 5 REFERENCES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total : 80.00 EUR

Tendered :
CHEQUES 80.00

Change : 0.00

Issued By : LTCASH- Nollin Hayes
From : MAIN CASH OFFICE LODGEMENT AF
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P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
V95DXP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie



R24-28

**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))**

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	OWEN BOYDEN <hr/> C/O DFORANDESIGN <hr/> LISDOONVARNA, <hr/> CO CLARE <hr/>
(b) Telephone No.:	---
(c) Email Address:	---
(d) Agent's Name and address:	DEIRDRE FORAN <hr/> LISDOONVARNA <hr/> CO CLARE <hr/>

2. DETAILS REGARDING DECLARATION BEING SOUGHT

(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT
Note: only works listed and described under this section will be assessed.

Sample Question: *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

**IS THE REROOFING OF THE DERELICT BUILDING CONSIDERED
DEVELOPMENT AND IF SO IS IT EXEMPTED DEVELOPMENT**

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

**REROOFING THE EXISTING BUILDING AND REBUILDING WALLS WHICH WERE
DAMAGED DURING WORKS ON THE ADJACENT PROPERTY**

(c) List of plans, drawings etc. submitted with this request for a declaration:
(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

**PICTURE OF BUILDING, SITE LOCATION MAP; SITE LAYOUT PLAN
PLANS, VIEWS**

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	KINIELTY, LISCANNOR CO CLARE
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	OWEN BOYDEN OWNS THE BUILDING AND SITE
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	YES
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	NO
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	NO
(h) Date on which 'works' in question were completed/are likely to take place:	AS SOON AS POSSIBLE TO PREVENT FURTHER DAMAGE TO THE BUILDING

SIGNED: Denise Foran
AGENT

DATE: 07-03-2024

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

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

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

FOR OFFICE USE ONLY

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

Land Registry Compliant Map

CENTRE COORDINATES:
ITM 503363,699457

PUBLISHED: 05/02/2023
ORDER NO.: 50315818_1

MAP SERIES: 1:5,000
MAP SHEETS: 4081

*Folio CE 28998F
OWEN BOYDEN
KINIELTY
LISCANNOR
V1000 DRAIN!*

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LEGEND:
<http://www.osi.ie>;
search 'Large Scale Legend'

503246
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*C i o n n E i l t e
K i n e i l t y*

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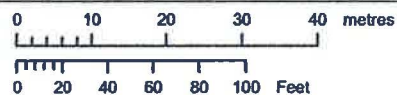
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Shingaunagh North



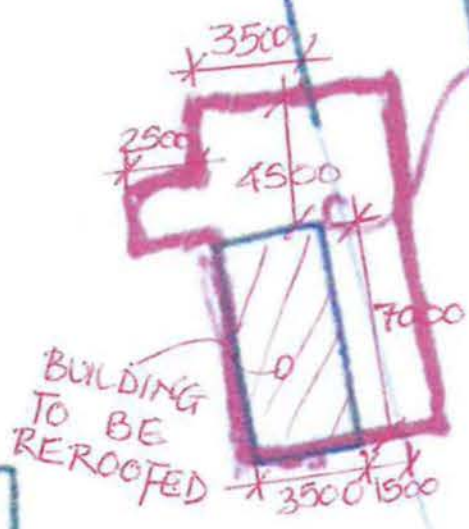
OUTPUT SCALE: 1:1,000

CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'

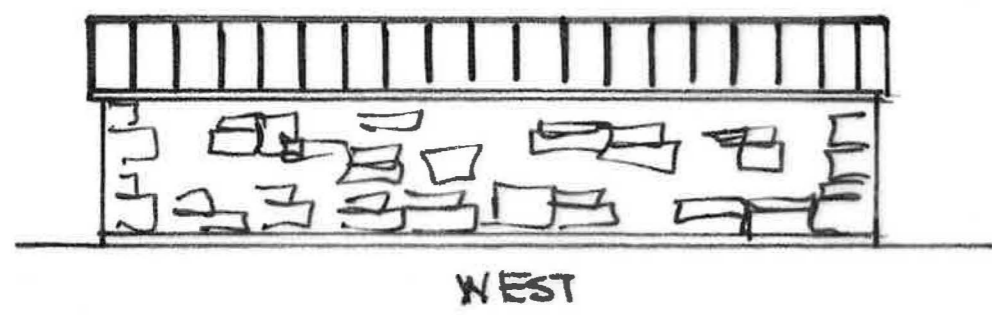
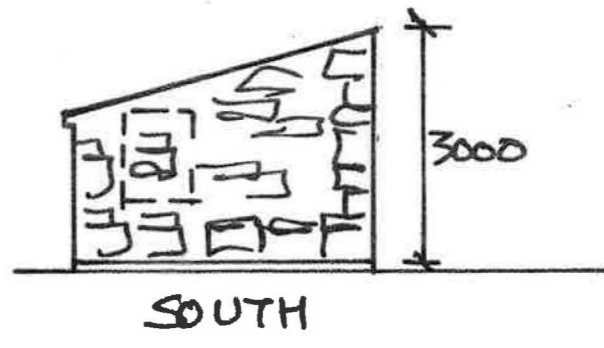
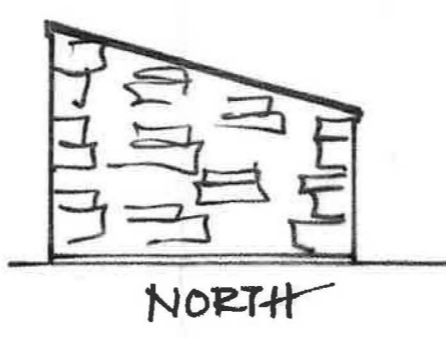
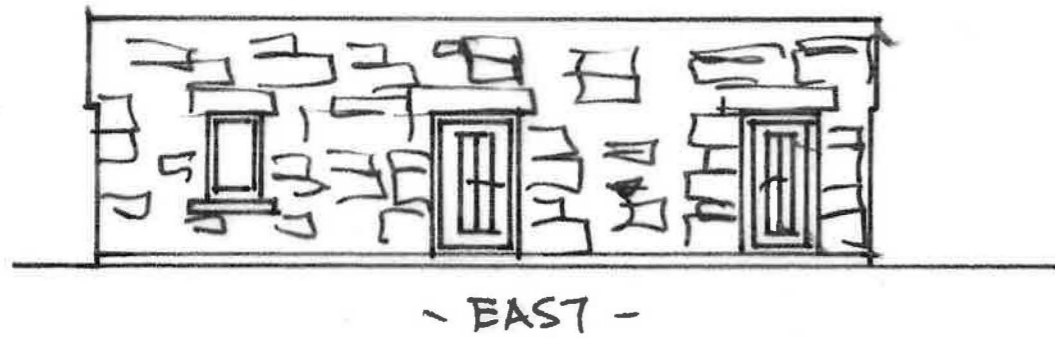
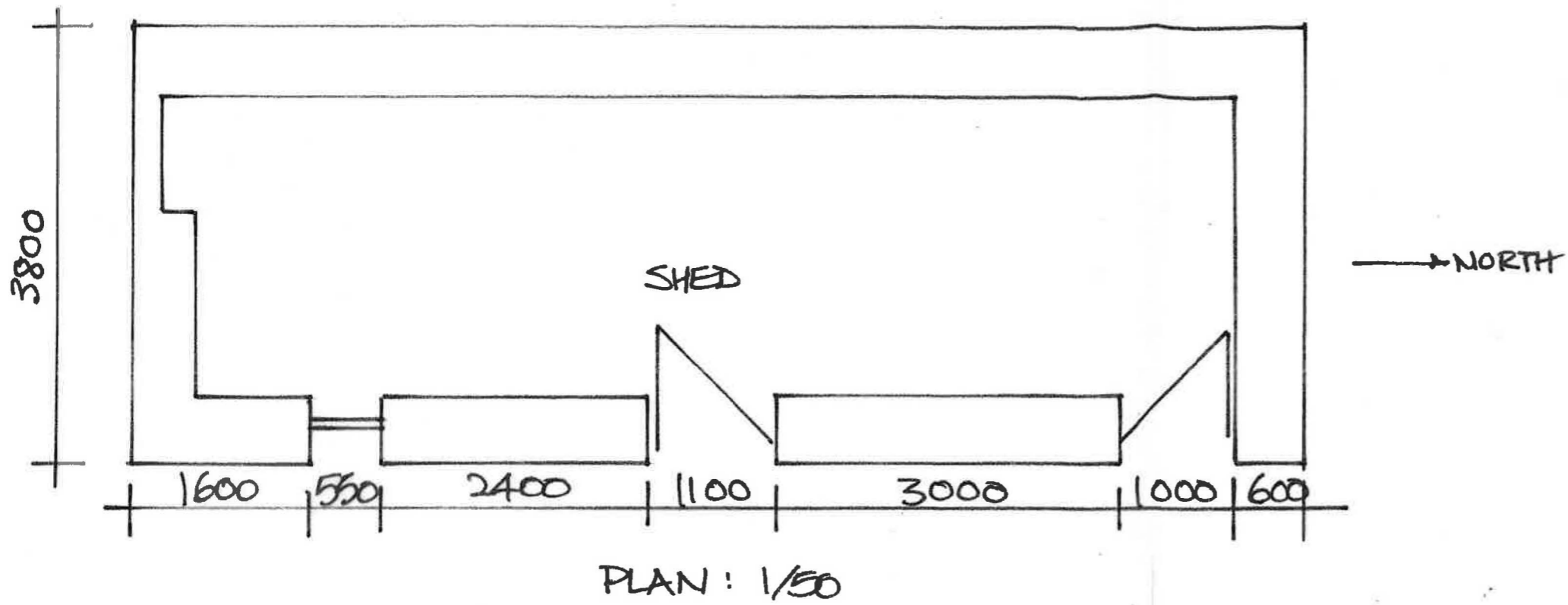




SITE



OWEN BOYDEN
KINIELTY
LISCANNOR
1/250
SITE LAYOUT PLAN
AREA = 0.0075HA



VIEWS: 1/100

OWEN BOYDEN
 KINIELTY LISCONNOR
 PLAN & VIEWS
 1/50 1/100
 D. FORAN B.ENG 07.03.24