

Agenda item	7.1
Report no	PLN/070/18

THE HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 27 November 2018

Report Title: 17/04927/FUL Smithy Cottage, Ulbster, Lybster, KW2 6AA

Report By: Area Planning Manager – North

1. Purpose/Executive Summary

1.1 Applicant: A.M O'Brien

Description of development: Siting of 3 wood burners and 1 wood drying container (retrospective)

Ward: 03 – Wick and East Sutherland

Category: Local

Reasons Referred to Committee: More than 5 objections

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

2. Recommendation

2.1 Members are asked to agree the recommendation to grant as set out in section 11 of the report.

3. PROPOSED DEVELOPMENT

- 3.1 The application is for retrospective planning permission for the installation of 3 wood burners, each with an associated stack. The stacks measure 8m in height from the existing ground level. The application also includes 1 wood drying container. The drying container is located to the southern elevation of the applicant's existing agricultural building. During the processing of this application the proposal was amended to include an area used for storing logs which is located to the western boundary of the site. A lean-to structure on the existing agricultural building is also proposed to provide cover for the boilers and another area for drying the wood before using it as fuel. Regrettably the boilers, stacks and the container had all been installed prior to the submission of the planning application; this application seeks to regularise the planning position.
- 3.2 No pre-application advice was sought prior to the submission of the application.
- 3.3 No alterations are proposed to the existing drainage.
- 3.4 The application is supported by supplementary Biomass Boiler Information, a Management Plan and photos of the boilers and the container.
- 3.5 **Variations:** Amended Site Layout plans were submitted to include the site access, lean-to and the area for storing the logs. Revised plans were submitted on 29th November 2017, 1st February 2018, 14th March 2018 and 28th June 2018.

4. SITE DESCRIPTION

- 4.1 The site is located to the west of the A99 and comprises of an existing large agricultural building that the biomass boilers are located adjacent to. The boilers and the container are sited approximately 215m to the northwest of Smithy Cottage. The site is accessed from the main A99 trunk road, then a long private track to the top of the site where this development is located. The site is elevated and slopes down in an eastern direction towards the A99. The development is located to the south of the applicant's existing scrap metal/vehicle breakers yard and utilises the same access. Within the wider site there is a further agricultural building set on lower ground towards the the southern boundary of the developers' land ownership. The nearest residential properties (that are not within the applicant or their families' ownership) are approximately 234m to the south east of the biomass boilers and approximately 330m to the north east. The site is outwith any landscape or natural heritage designations and the topography of the area is generally that of a gently rolling landscape.

5. PLANNING HISTORY

- 5.1
- CA 1989 372 - Proposed scrap metal and vehicle breakers yard at Smithy Cottage, Ulbster. Permission Granted 13th February 1990.
 - CA 1994 22 - Erection of General Purpose Agricultural Building at Smithy Cottage, Ulbster (Prior Notification Form). Approval given 30th June 1994
 - 16/01533/PNO - General purpose agricultural use. Application withdrawn 15th April 2016
 - 16/01713/PNO - Erection of agricultural building. Prior Approval Not Required 16th May 2016

- 16/01714/FUL - Erection of steel framed mono pitch roofed building 18 x 9m (Use Class 5/6). Permission Granted 13th June 2016

6. PUBLIC PARTICIPATION

6.1 Advertised : Unknown Neighbour Advert Expired 17 November 2017

Representation deadline : 17 November 2017

Timeous representations : 11 Representations, 9 Households

Late representations : None

6.2 Material considerations raised are summarised as follows:

- Air pollution from the smoke and the possible health impacts on residents and visitors alike.
- No control over the direction of the smoke and how it is dispersed.
- The smoke observed is varied in colour and concentration between being very dense dark grey to light coloured and occasionally with a tinge of yellow.
- Nature of the materials being burned and that they may not be burning clean wood and would therefore have an adverse effect on public health.
- Smoke is a traffic hazard when it blows across the A99.
- Extent that existing development on wider site has gradually increased over the years and residents are already subjected to noise and litter pollution and now burning.

6.3 Letters were received from MP Jamie Stone, MSP Gail Ross and MSP John Finnie detailing some of the above concerns that were raised by their constituents.

6.4 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam. Access to computers can be made available via Planning and Development Service offices.

7. CONSULTATIONS

7.1 **Environmental Health:**

14.12.17 – EH screened the development using the tools recommended in the Local Air Quality Management Technical Guidance (LAQM.TG(16) to consider the likely impact upon the UK Air Quality Strategy Objectives (this does not assess nuisance from smoke or odour). The first screening is based on the stated emission concentration in the RHI test certificate for the boiler. This is based upon boilers being fuelled by either waste wood of moisture content 14-18% or mixed logs of moisture content up to 23%. If all three boilers are operated at rated capacity with what is considered to be an effective flue stack. This is calculated as having a height of 8m and the adjacent shed 5.2m resulting in an effective stack height of 4.7m. This screening indicates a possibility that the development as proposed could lead to an exceedance of the Fine particles (PM^{2.5}) UK Air Quality Strategy objective. It was therefore then screened using an assessment that considers the total emissions from the flues and relates to the distance to the nearest receptors. The development was

run through the screening tool using the same emission factors as the first screening and assuming that the emissions is at ground level (worst case). The nearest receptor is 234m from the point of emission then this second screening suggests that it would be unlikely that the development would result in pollutant concentrations in excess of the UK Air Quality Strategy Objectives.

Both these screenings assumes that the operation of the boilers is in line with the manufacturer's instructions and that the fuel complies with the quality specified in the RHI compliance test certificate. At the time of the visit the site operator had no system in place to check moisture content of the fuel being burned. If the boilers were managed and operated appropriately it is expected that the development could be undertaken without significant air quality impact (in terms of the UK Air Strategy Objectives). However even when operated in accordance with manufacturer's instructions and using appropriate fuel there would be the capacity for some visible smoke emission from the flues, for example at start up, and for there to a detectable odour downwind.

It was recommended that conditions in relation to fuel quality and the operation of the boilers would be appropriate should the development be granted permission.

12.01.18 - As stated on 14.12.17 LAQM is a separate issue to the Statutory Nuisance provisions of the Environmental Protection Act 1990.

Environmental Health raised an objection in response to the number of complaints received from neighbouring residents about smoke and odour arising from the development. On investigation, it was concluded that the emissions constitute a Statutory Nuisance under the Environmental Protection Act 1990. There was no apparent defect with the equipment and it appeared that the problem was due to the equipment not being operated in accordance with manufacturer's instructions, particularly with regard to the type and quality of fuel being burned and the manner of burning which is resulting in an excessive amount of smoke being produced at times which is adversely affecting neighbouring residents.

The operator was given an opportunity to resolve the matter informally following advice from Environmental Health. However, the problem was not resolved and the operator was served with a Nuisance Abatement Notice which came into force on 13th November 2017. The Notice required the operator to abate the nuisance by ensuring the burners are used and fuelled in accordance with the manufacturer's instructions, or by any other means. Since the Notice came into effect (13.11.17- 12.01.18), EH received further complaints and there was little evidence of any improvement. The Abatement Notice was being breached on a regular basis.

EH therefore raised an objection on 12.01.18 until such time as the applicant was able to demonstrate, to the satisfaction of the Planning Authority that this development will be operated without causing a Statutory Nuisance or loss of amenity. EH recommended that the applicant submitted a method statement detailing how they intent to comply with the manufacturers operating requirements.

10.05.18 - EH continued to receive complaints regarding the smoke affecting nearby residential properties which would suggest the applicant is struggling to properly manage the biomass boilers without causing loss of amenity.

13.11.18 - In the past six months (since May 2018) only two phone calls have been made to report live events of burning or smoke problems on site. On these occasions EH officers visited the site within an hour of receiving these complaints however there was no evidence of excessive smoke from the biomass boilers or evidence of waste material being burned on site. EH confirmed that they had received a number of emails alleging that the applicant is still burning waste on site and that the biomass burners are producing excessive smoke. However the emails refer to historical events that have occurred days earlier meaning officers have been unable to corroborate these claims.

In addition to this, the photographs contained in more recent emails were not on the same scale as previous complaints reported in late 2017 which were prior to the manufacturers site visit to train the applicant in the proper use of the appliances.

In summary, the evidence presented to date by the applicant and the manufacturers suggests that the appliances can comply with the air quality objectives when operated correctly and when following the manufacturer's instructions. However due to the nature of the batch loading of fuel, these controls can be circumvented at any time to create excessive smoke and therefore relies heavily on the operator's diligence and willingness to ensure there is no detrimental impact to the surrounding nearby residents.

EH will continue to monitor the situation as regards to any statutory nuisance.

7.2 Tannach and District Community Council: Objection. The CC has received concerns from residents in the community objecting to the proposal. Concern highlighted impact on local homes, impact on air quality and impact on environment. Residents also highlighted apparent disregard of policies and procedures to date by applicant as a concern. Therefore the Community Council requested that the following points are noted as part of the retrospective planning process:

- siting of the biomass units should have no detrimental impact on service provision or the living conditions of the surrounding businesses or houses;
- that the biomass plant should comply with all relevant policies, procedures, regulations and acts that are in place;
- that consideration be given to the understanding natural and cultural heritage sites close to this area and that these areas are safeguarded.
- the applicant should observe and uphold all relevant policies and procedures with regard to the running of the Biomass unit at all times and that this be closely monitored by Environmental Health and SEPA.

7.3 SEPA: Initially objected (30.10.2017) due to insufficient information to make a full assessment. SEPA subsequently withdrew their objection (01.06.2018) following provision of further information.

7.4 Transport Scotland: No objection raised.

8. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

8.1 **Highland Wide Local Development Plan 2012**

28	Sustainable Design
29	Design Quality & Place-making
41	Business & Industrial Land
47	Safeguarding Inbye/Appportioned Croftland
58	Protected Species
64	Flood Risk
66	Surface Water Drainage
72	Pollution
73	Air Quality

8.2 **Caithness and Sutherland Local Development Plan 2018**

No Site Specific Policies

9. **OTHER MATERIAL CONSIDERATIONS**

9.2 **Highland Council Supplementary Planning Policy Guidance**

Sustainable Design Guide

9.3 **Scottish Government Planning Policy and Guidance**

Scottish Planning Policy (June 2014)

9.4 **Other**

Highland renewable energy strategy May 2006

10. **PLANNING APPRAISAL**

10.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

10.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application. In the absence of any site specific policies, this application requires to be assessed against the general policies of the Highland-wide Local Development Plan as listed in Section 8.1 and specifically those which require assessment of impact on local and residential amenity.

10.4 The development is within a wider site that has a mix of established uses including a scrap yard, car breakers yard, and agriculture. It is regrettable that the development commenced and that the plant was installed prior to the submission and consideration

of the application. The applicant claimed the manufactures advised him that planning permission was not required for the installation of the equipment. The principle of the applicant seeking to secure more renewable methods of generating electricity and heat is considered to be acceptable.

- 10.5 The proposed plant has the capacity to produce up to 220kW of electricity. This operation is under the Renewable Heat Initiative (RHI), which is a scheme operated by the Government where developers are guaranteed quarterly payments over 20 years for burning sustainable fuel. In this case the developer has been using the heat that the boilers produce to heat the agricultural building and for drying logs in the storage container for commercial sale.
- 10.6 The application has aroused considerable public concern. The consideration of the application has been complex due to the ongoing air quality issues and the technical assessment of these by SEPA and Environmental Health. This was exacerbated by the fact the plant had not been initially operated correctly by the developer and having no clear area for the storage of the wood. However, it is understood that the installer has now provided further training to the developer on the operation of the plant. The initial poor commissioning and operation of the plant may have been a significant factor in the concerns raised over air quality which are considered further below.
- 10.7 It is important to note that the remit and responsibilities of SEPA, Environmental Health and the Planning Service differ with regard to their respective roles and their consideration of the development within their own legislative remits. The issues associated with health concerns fall under the remit of both SEPA and Environmental legislation. The assessment of this application is restricted solely to relevant material planning considerations.
- 10.8 In relation to other scrap materials on the site, it was clear that the storage of materials etc had been undertaken outwith the originally approved area. In response to this the developer has been removing materials from the site or relocating them within the top area of the site approved under Planning Permission CA 1989 372. This has been beneficial in improving the overall visual appearance of the wider site and the Planning Authority will continue to review this.
- 10.9 Issues have been raised regarding non-compliance with the original Planning Permission (CA 1989 372) in relation to bunding and tree screening. The original report detailed that tree screening would not be solely acceptable as screening and both bunding and planting would be required. The bunding was noted on the original file as being completed along the southeast and southwest side of the storing area on 17th November 1998. It is noted that some tree planting has taken place, but this has not been very successful.
- 10.10 **Material Considerations**
- 10.11 **Air Quality/Emissions:** A development of this nature will generate smoke; the key policy text as set out in Policy 72 of the Development Plan is whether the development will result in significant pollution (including air). During the initial commissioning period when the plant was not being operated correctly it appears to have been producing higher levels of smoke. Environmental Health considered that a dispersion model was not required as they concluded that if the development is

operated correctly it would not have a negative impact. As set out in section 7 of the report there has been extensive review and monitoring of the site by Environmental Health. They have investigated the complaints but have not found any evidence of illegal burning of materials on site or extensive smoke being omitted from the stacks within the past 6 months.

10.12 After monitoring and visits Environmental Health have advised that they are now satisfied that the proposal should operate without detriment to the amenity of adjacent residents. That is not to say that residents may not experience some smoke or odour but that the level experienced is not sufficient to warrant an objection or represent a statutory nuisance under the Environmental Protection Act 1990. They consider that there has been discernible improvement and that they no longer object to the current application. Environmental Health however have powers to investigate and pursue complaints further should they arise in the future.

10.13 **Road Impact:** It is considered unlikely that this development would have an impact on the road and would not create any hazard if operated correctly. The fuel will be sourced from a sustainable source and due to the small scale of this development and the existing machinery that uses the site it is not considered that the proposal would significantly intensify the level of vehicular traffic at the site.

10.14 **Visual Impact:** The application concerns use of an existing building with the biomass boilers positioned so they are not visible from the public realm. They are sited on the rear of the building, well back in an elevated location to the west of the A99. Public views are limited when traveling along the A99 and only for a short section of road. The equipment can however be viewed from a number of properties in the adjoining area but is partially screened by the existing building. Within this context, given the position of the structure, the screening afforded by the existing building, its setting, and considering the sensitivity of the landscape and visual receptors, the overall significance in its wider setting is considered to be low, and the significance of the visual effect low to moderate. This is a result of operating the boilers correctly and more efficiently. It is considered that there are no receptors that are adversely affected in terms of visual amenity as the stack is appropriately located away from such receptors, on the western side of the agricultural building.

It is noted that the A99 is the main tourist route that passes the site, however the site is only visible for a short time when travelling north by vehicle. The site is viewable for an even shorter time from the public realm when traveling south. It is not considered that the proposal will adversely affect the wider landscape setting

There were concerns over the impact this development would have on historic sites such as the Cairn of Get, however taking into consideration the other land uses within the area it is not considered that this development would have a significant impact visually.

10.16 **Other Considerations – not material**

- Allegations of burning waste materials within the wider site
- Breathing smoke from ‘virgin timber’ can’t be good idea.
- Building is sited relatively close to houses.

- Unable to hang washing out.
- Rubbish and scrap around site.
- Erection of wind turbines not permitted due 5000 year old Pictish remains on their ground.

10.17 **Matters to be secured by Section 75 Agreement**

None

11. **CONCLUSION**

11.1 This application has aroused considerable public concern. Although the applicants claim they were poorly advised by the manufacturers, the situation has not been assisted by the installation of the equipment ahead of planning permission being obtained. Notwithstanding this, investigation and monitoring has occurred since. Over this period of time from when the original complaints were received there has been a discernible and significant improvement in the situation which has allowed colleagues in Environmental Health to withdraw their objection and allow the application to be supported. In planning terms, subject to compliance with the manufactures operational requirements, the proposal is considered acceptable. Environmental Health however have powers to investigate and pursue any further complaints should they arise in the future. All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

12. **IMPLICATIONS**

12.1 Resource – Not applicable

12.2 Legal –Not applicable

12.3 Community (Equality, Poverty and Rural) –Not applicable

12.4 Climate Change/Carbon Clever –Not applicable

12.5 Risk – Not applicable

12.6 Gaelic – Not applicable

13. **RECOMMENDATION**

Action required before decision issued	N
Notification to Scottish Ministers	N
Notification to Historic Scotland	N
Conclusion of Section 75 Agreement	N
Revocation of previous permission	N

Subject to the above, it is recommended the application be **Granted** subject to the following conditions and reasons / notes to applicant:

1. The development shall be operated in strict accordance with the approved details including the approved boiler specifications.

Reason : In the interest of amenity and to safeguard air quality.

REASON FOR DECISION

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

TIME LIMITS

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

FOOTNOTE TO APPLICANT

Accordance with Approved Plans and Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.

Designation: Area Planning Manager - North
Author: Claire Farmer
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 – Site Layout Plan
Plan 2 – Elevation Plan
Plan 3 – Elevation Plan – Container
Supporting Information – Management Plan

O'Brien Recycling Limited

Haulage & Skip Hire

Braehead, Ulbster

Caithness

KW2 6AA

Tel: 01955 651315

Email: braehead2@btinternet.com

VAT Reg: 274 5732 81

23rd May 2018

The Highland Council
Area Planning & Development Control Office
Development & Infrastructure
Caithness House
Wick

For the attention of Claire Farmer

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997 PLANNING REFERENCE: 17/074927/FUL

Further to your letter of the 22nd May, I hereby clarify the following points as requested:-

- ***How the fuel source will be stored/protected from the elements to ensure the moisture content is kept to a minimum (previously the material was stored outside and uncovered)***

The material will be stored alongside the shed either under cover or covered with a tarpaulin.

Moisture will be checked prior to burning using an electronic moisture meter.

- ***How the biomass boilers will be operated***

The boilers will be operated in accordance with the instructions supplied by Glenfarrow. Training has been given on the loading, starting and operating of the burners.

- ***Training for operators***

Training has been given to our site operatives on the loading, starting and operating of the burners by Glenfarrow. Council representatives attended site when this training was being given.

- ***Controls to minimise any odours and smoke emitted from the facility***

By following the operating procedures given and by selecting suitable wood the odours and emissions have been greatly reduced.

- ***Clarification on the proposals for the use or disposal of ash.***

Any waste ash will be disposed of to the waste management site for landfill.

- ***Clarification as to whether the burners produce aqueous discharges and if so the proposals for use or disposal***

The burners do not produce any aqueous waste.

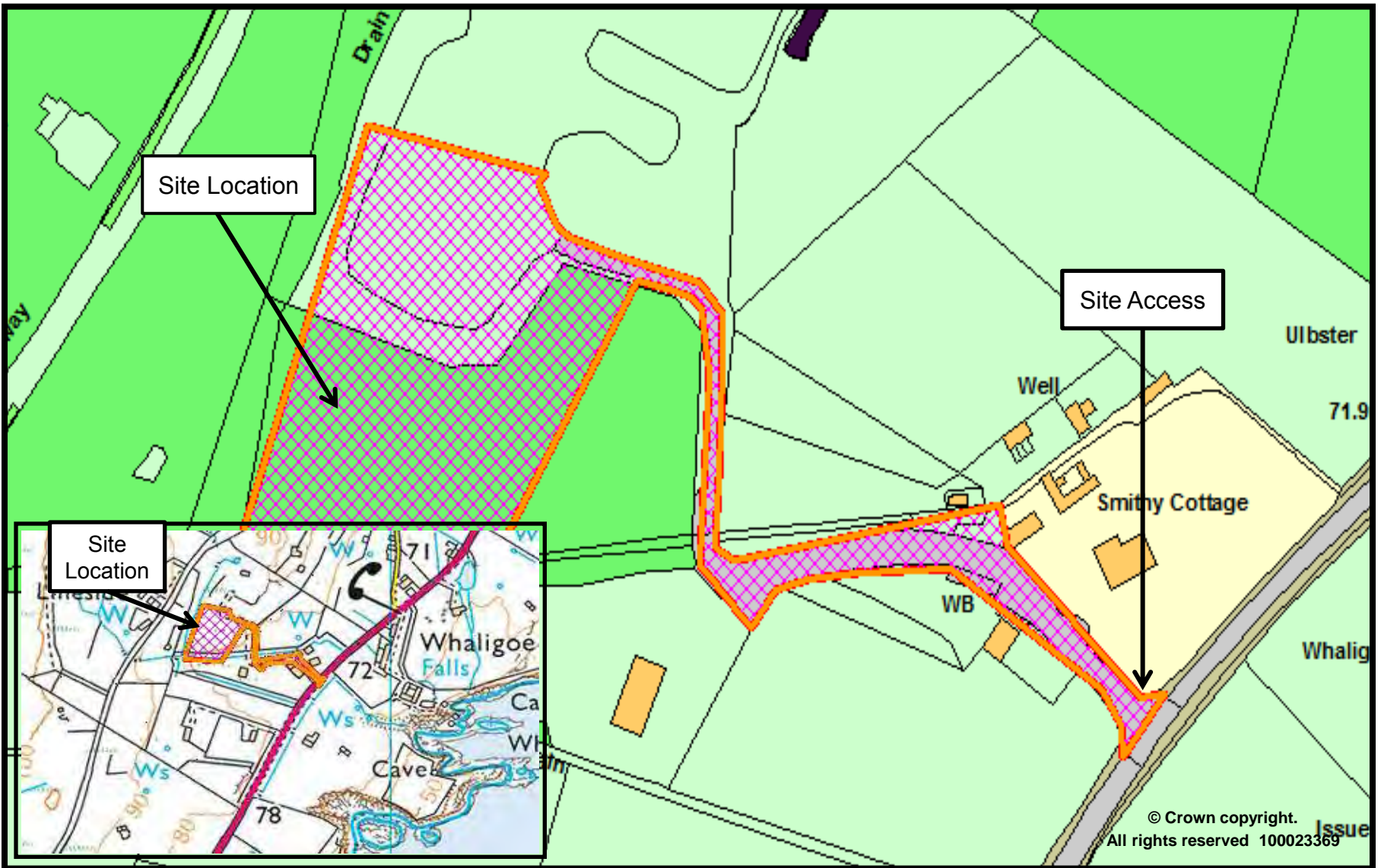
- ***Provide an amended plan that clearly shows the fuel storage area at least 10m from the top of the bank of the watercourse.***

The storage area has been moved to ensure that the material maintains >10m from the watercourse. The site plan has been updated.

I trust this provides you with sufficient information/clarification of the points you requested.

Yours sincerely

Mr A M O'Brien



The Highland Council
Comhairle na Gàidhealtachd

Planning and Development Service

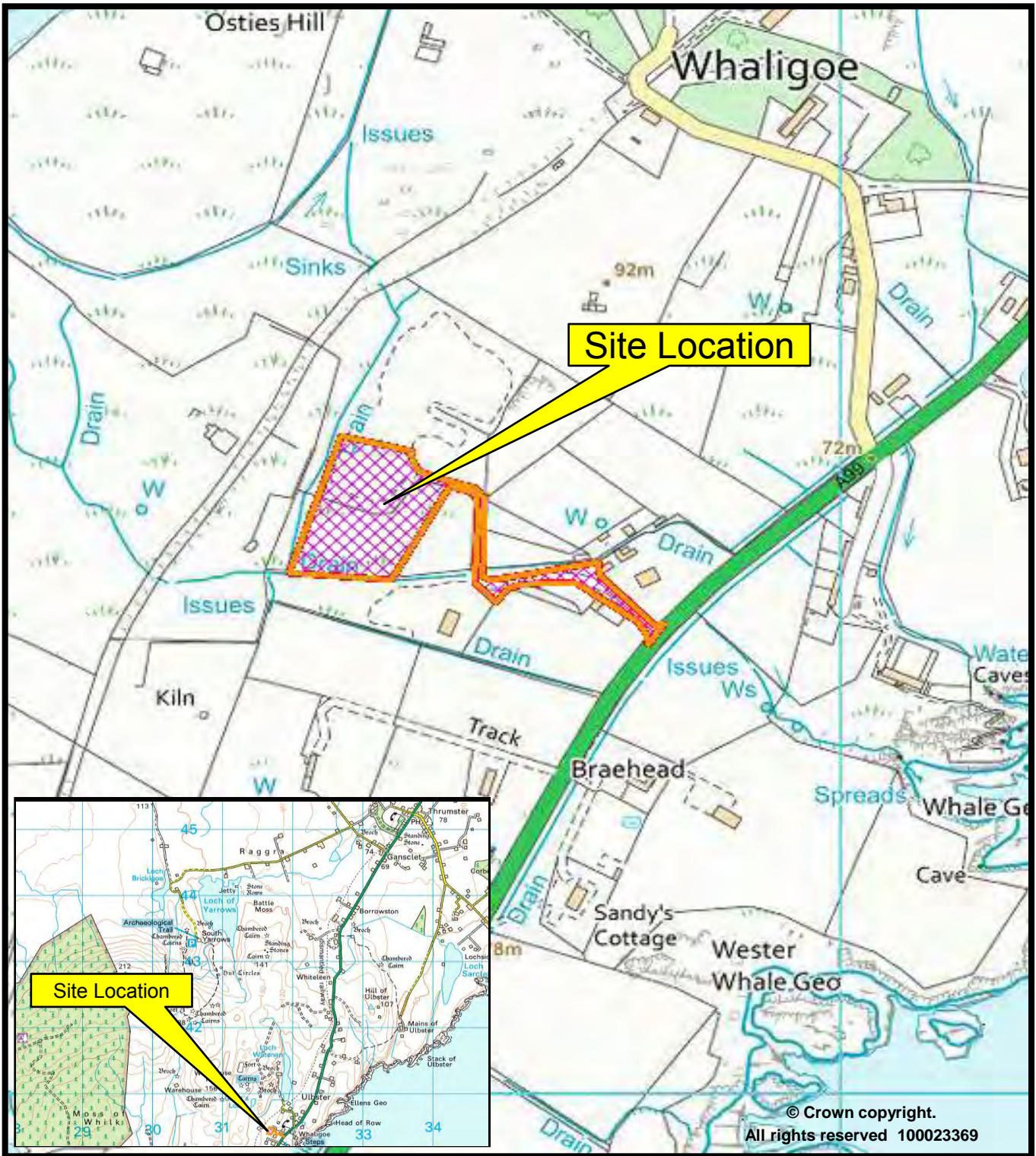
Plan: Location
Case No: 17/04927/FUL

Description: Siting of 3 wood burners and 1 wood drying container (retrospective)

Date: 27th November 2018



Scale:



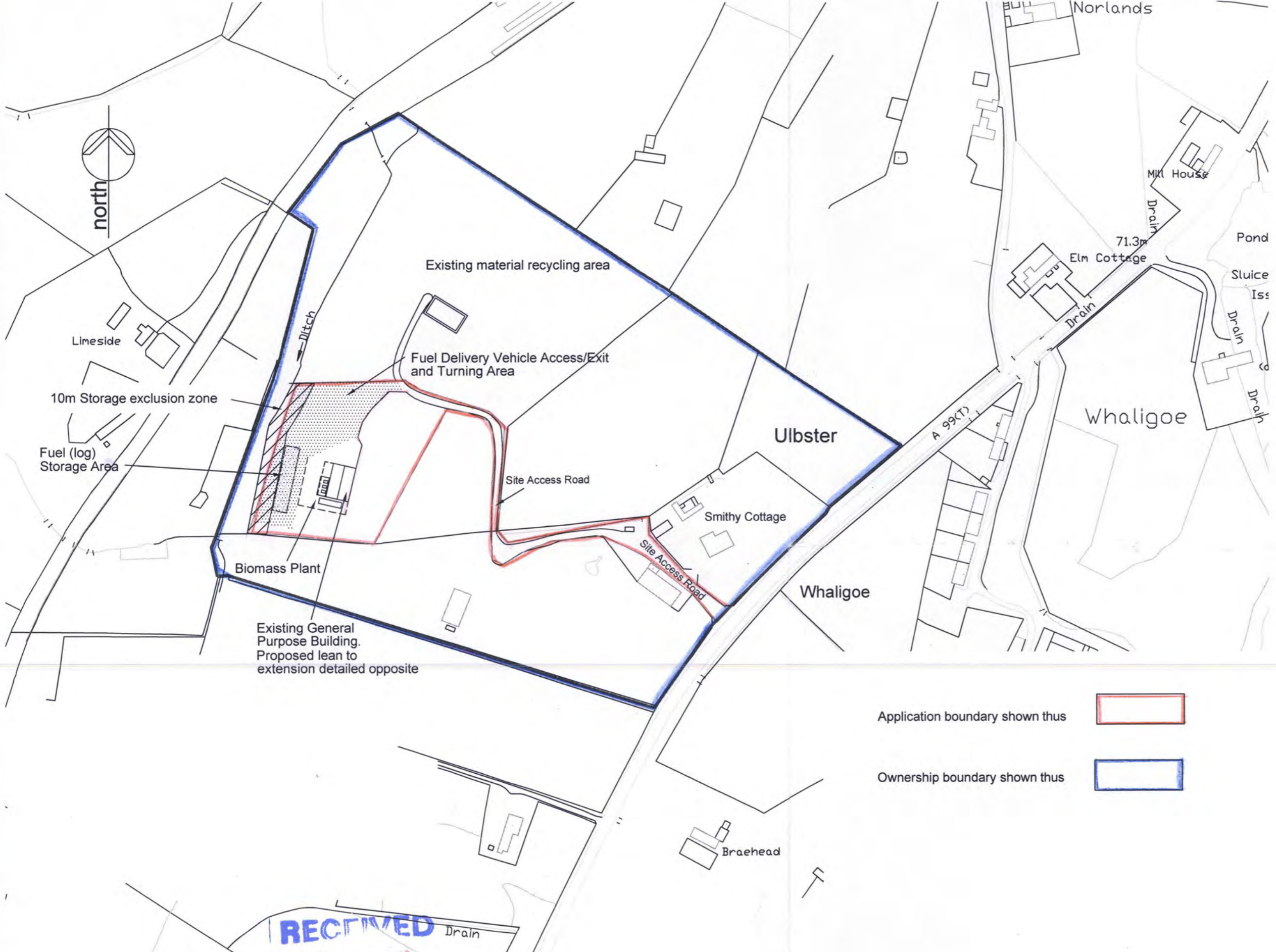
Development & Infrastructure
Service

17/04927/FUL


**Siting of 3 wood burners and 1 wood drying container
(retrospective) at Smithy Cottage, Ulbster.**

November 2018






Site Highways & eProcessing Centre
 Date Received:
28 JUN 2018


Application boundary shown thus 

Ownership boundary shown thus 

Project
Proposed Biomass Log Drier Plant at Smithy Cottage, Ulbster for Mr A.M.O'Brien
 Drawing
Location & Site Plan


 Ian Giles
 Consulting Engineer
 Civil
 Building
 Agricultural
 Environmental
 Stoneybank, Thrumster, WICK, Caithness, KW1 5TQ
 Tel: 01955 651257
 Email: iangiles01@btinternet.com

RECEIVED
 28 JUN 2018

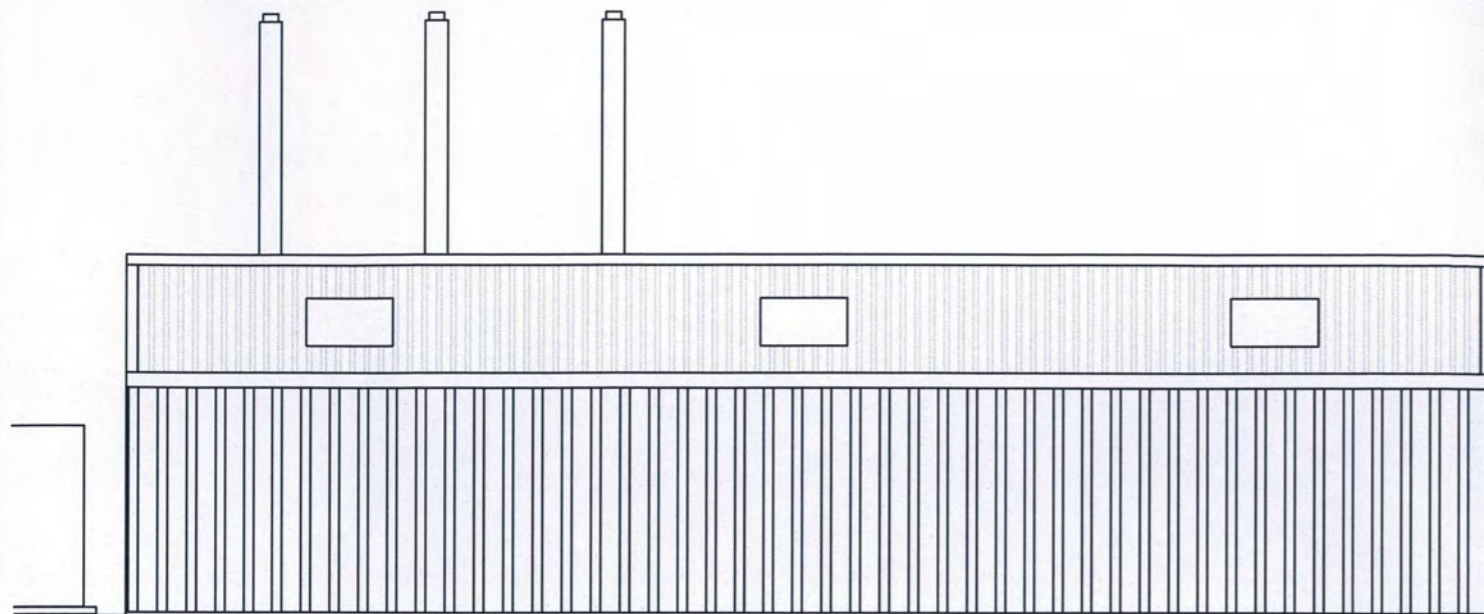
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 SCALE 1:2000

Location / Site Plan

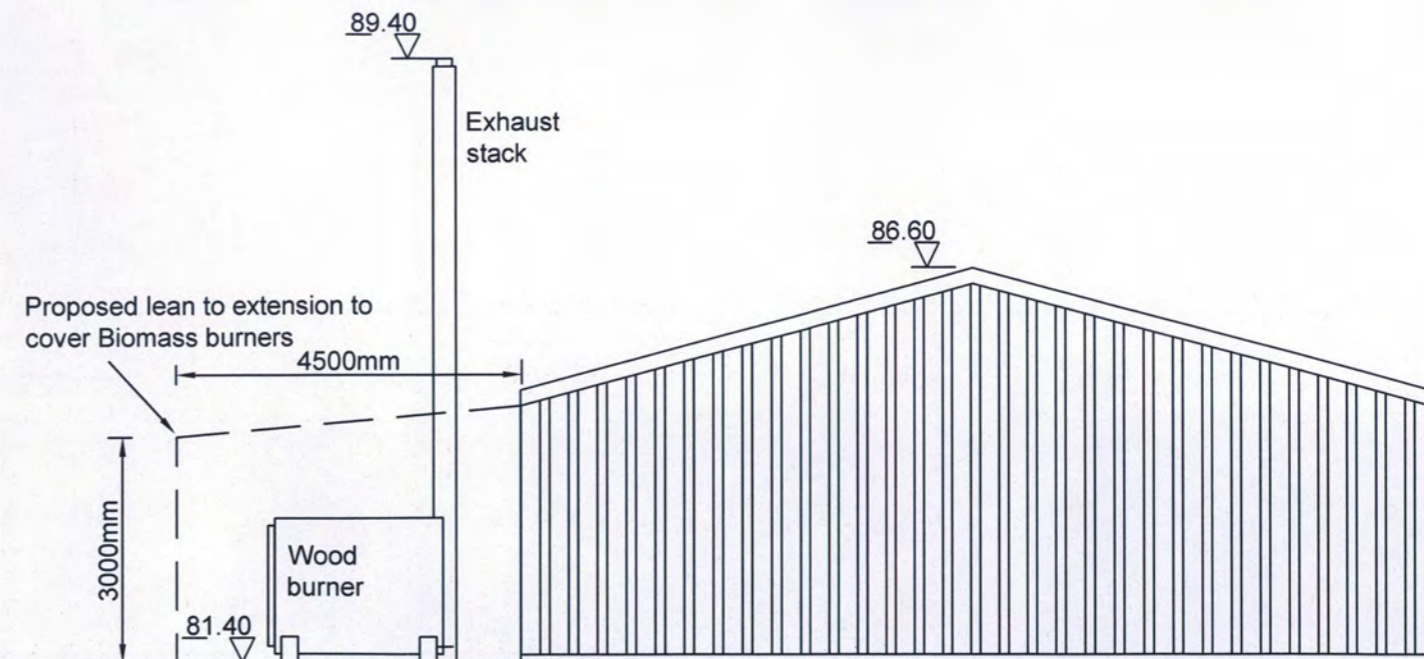
Revision 'B' - Storage exclusion zone between ditch and wood storage area added shown per SEPA requirement 20/6/18
 Revision 'A' - Application boundary extended to include additional works 28/1/18

Scale as shown		
Drawn by IRG	Date 19/11/17	
Project 017.01	Drawing 1	Rev. B

Original size A3

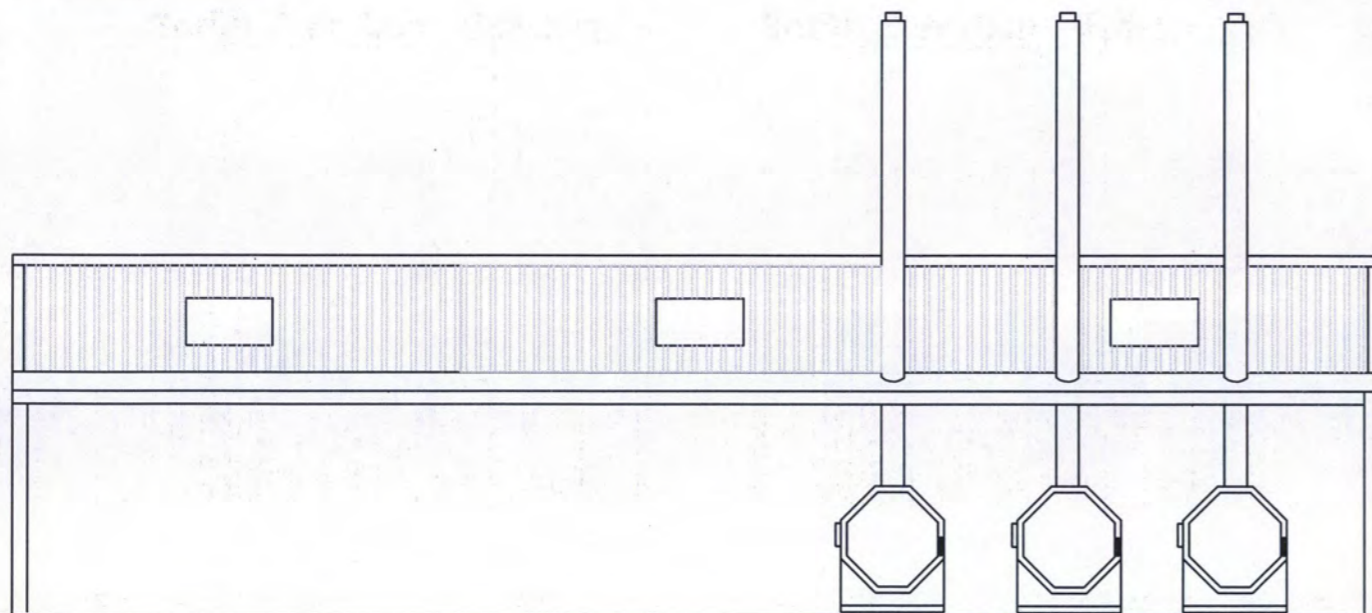


East Elevation



Existing General Purpose Building - 30.0 x 12.0m span steel portal frame building with single 3.4 x 3.5m roller door access to North Elevation. No other openings to building and no fan assisted intakes.

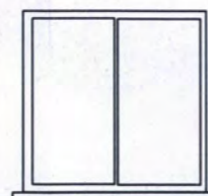
South Elevation (Existing)



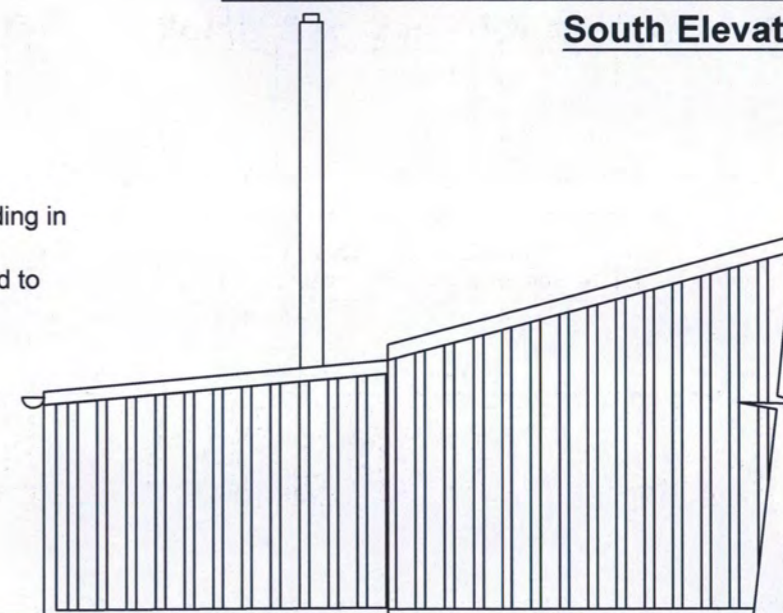
West Elevation

Lean- to extension full length of building in structural steelwork framing. Frame clad at ends and roof only and to match existing building.

3 No. Glen Farrow log burners - refer to manufacturer's literature for details.



40ft ISO container for log drying.

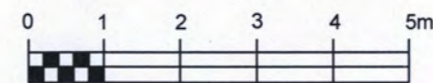


South Elevation

The Highland Council
eProcessing Centre
Date Received:

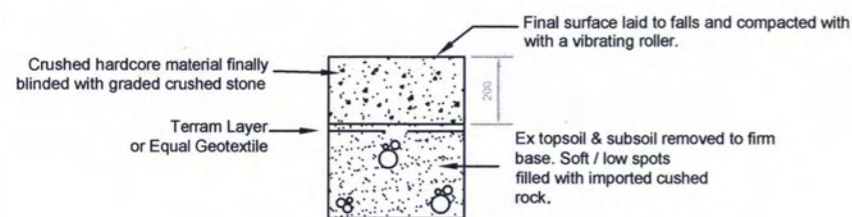
14 MAR 2017

Project
Proposed Biomass Log Drier Plant at Smithy Cottage, Uibster for Mr A.M.O'Brien
Drawing
Building & Plant Elevations



Scale 1:100

All levels are relative to Ordnance Datum



Internal Site Access Road and Standing Areas Construction Detail

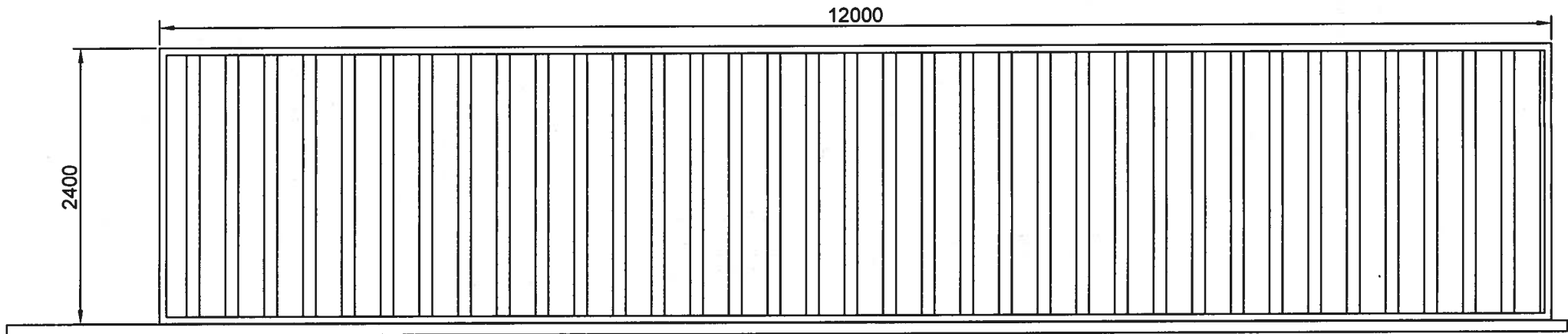
NOTE - surface is permeable for drainage of surface water.

Project
Proposed Biomass Log Drier Plant at Smithy Cottage, Uibster for Mr A.M.O'Brien
Drawing
Building & Plant Elevations

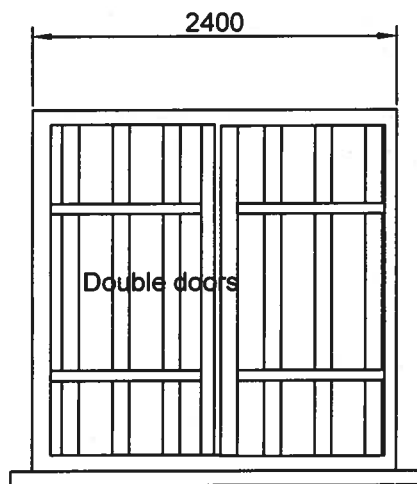
Stoneybank, Thrumster, WICK, Caithness, KW1 5TQ
Tel: 01955 651257
Email: iangiles01@btinternet.com

Scale as shown		
Drawn by IRG	Date 19/11/17	Rev.
Project 017.01	Drawing 2	Rev. A

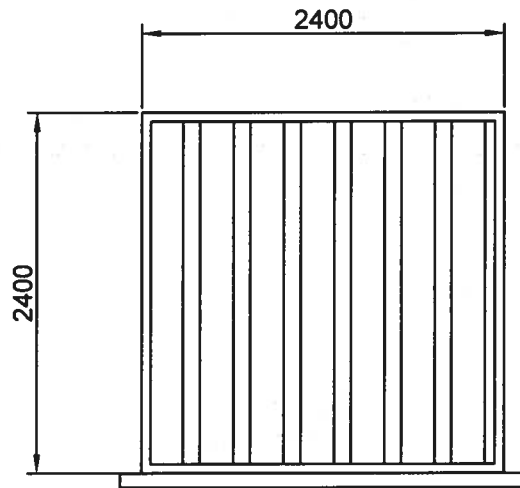
Revision 'A' - Amended to show building elevations and lean-to extension. 9/3/18



South Elevation (North Elevation same)



West Elevation



East Elevation

Standard ISO Shipping / Storage
Container - profiled steel panel
construction.

The Highland Council
eProcessing Centre
Date Received:
12 NOV 2018

Project
**Proposed Biomass Log Drier
Plant at Smithy Cottage,
Ulbster for Mr A.M.O'Brien**

Drawing
40 ft ISO Container Elevations

Civil
Building
Agricultural
Environmental

Ian Giles

Consulting Engineer

Stoneybank, Thrumster, WICK, Caithness, KW1 5TQ
Tel: 01955 651257
Email: iangiles01@btinternet.com

Scale 1 : 50	
Drawn by IRG	Date 8/11/17

Project 017.01	Drawing 3	Rev.
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