

**SUBMISSION TO THE INDEPENDENT ASSESSOR**

**PLANNING  
FAR NORTH**

**Town Planning  
Consultants**

**11 CAVA CLOSE, BUNGALOW**

Liz Taylor  
EA, DU RP, MPA, LGT(DQ)

Bruce Hedley  
BRTP(Hons), MPA, LGT(DQ)

Chris Buckley  
BRTP(Hons), FPA, LGT(DQ)

Greg Vann  
BRTP(Hons), BEcon,  
FPA, LGT(DQ)

P.O. Box 7801  
Cairns Q 4870  
Tel: (07) 4051 0811  
Fax: (07) 4051 0866

Office – Level 12  
Cairns Corporate Tower  
15 Lake Street, Cairns

**PREPARED FOR**

**MR AART BRONS**

**PREPARED BY**

**PLANNING FAR NORTH**

**MAY, 2005**

Affiliated with  
Buckley Vann  
Town Planning  
Consultants  
Brisbane

Buckley Vann Taylor Hedley Pty Ltd  
ACN 064 730 678  
ABN 29 064 730 678  
Trading as  
Planning Far North

## 1.0 INTRODUCTION

The Cairns City Council has refused the Development Application for a Licensed Brothel under Section 64(1)(a)(ii) of the Prostitution Act, because the Council holds the view that the site of the proposed Brothel is within 200 metres of an existing Residential Building located at 150 – 172 McCoombe Street, Bungalow.

The definition of a “Residential Building” in the Prostitution Act specifically excludes a “Caretaker’s Residence on land in an industrial area” from the definition.

The building located on 150 – 172 McCoombe Street, Bungalow is not a “Residential Building” for the purposes of the Prostitution Act, because the building is a Caretaker’s Residence on land in an industrial area.

## 2.0 IN SUPPORT OF THIS VIEW

In support of this view the following information and observations are made:

- The residence at 150 – 172 McCoombe Street was approved under Consent Permit No 1630 in January 1977 as a “Residence to Replace An Existing Residence” on land zoned Heavy Industry and improved by an existing residence and sheds. A copy of Consent Permit No 1630 is attached as Appendix 1.

The new Residence was shown on a site plan, copy attached – Appendix 1, to be sited in the corner of the triangular site, allowing for the future redevelopment of the greater part of the site for industrial purposes.

- At no time was the Residence proposed to be excised from the parent parcel to be a stand-alone “Dwelling-house”.
- Under the 1971 Planning Scheme, (under which Consent Permit No 1630 was granted), a Dwelling-house was a defined land use term, a Caretaker’s Residence was not.

The approval of the building for residential purposes in 1977 was not granted for the defined land use under the 1971 Planning Scheme of “Dwelling-house: (which was a Consent use in the Heavy Industry zone at the time) it was specifically granted for ..... “a Residence to Replace an Existing Residence”.

- A Building Permit was issued for the Residence in July 1977 and construction was required to commence within 12 months, or the Building Permit would become void.

- In April 1979 a Consent Permit was issued for a Noxious Industry (Dry Rendering of Meat Products) on the same site. A copy of Consent Permit No 1831 is attached at Appendix 2.
- The Concept Plans attaching to Consent Permit No 1831 clearly identify the existing residence, built in accordance with Consent approval No 1630 and the Building Permit issued in July 1977 as an "Existing Managers Residence".
- In March 1980 Cairns City Council adopted a Local Planning Policy dealing with Residences in Industrial Zones, (under the 1971 Planning Scheme). The Policy stated:

*16(c) Residences in Industrial Zones*

- 1. Each application shall be dealt with on its merits.*
- 2. The erection of new single unit dwellings in developing industrial areas is considered to be undesirable, unless associated with an Industrial Use.*
- 3. The re-establishment of existing dwellings into areas largely developed for residential purposes may be approved if Council considers that the proposal is in keeping with the present development in the area.*
- 4. The Council recognises the necessity for security purposes of having a caretaker residing on the site of certain industrial uses and for this reason the erection of a Manager's Residence or Caretaker's Residence may be favourably considered.*
- 5. In all cases where a residence is approved in the industrial zone, the consent shall be accompanied by a statement that the normal protection built into the Town Planning Scheme for the amenity of residents does not apply in the industrial zone and the applicant builds the residence in the full knowledge of these facts.*
- 6. Due regard shall be given by the Council to whether the land is at any time in the future likely to become a residential area.*

(My emphasis).

Clearly:

- the fact that the Council did not grant approval for a "Dwelling-house" under Consent Permit No 1630 in January 1977;
- the fact that the Council supported the establishment of a Noxious Industry on the site, with the new Residence clearly identified as an "Existing Managers Residence" on the Site Plan in April 1979; and

- the fact that the Council introduced a Local Planning Policy in March 1980 that clearly identified that the preferred form of Residences in Industrial zones are “Manager’s Residences” or “Caretaker’s Residences”,

supports the view that the Residence was never approved as a Dwelling-house but rather as a Manager’s Residence or Caretaker’s Residence, a use which continues to this day in association with a Building Contractors Depot operating on the site.

In further support of this view the following observations are made:

- the residence is located on a large Industrial site which is developed for Industrial purposes, and the residence is ancillary to the primary industrial use of the land and therefore has a Caretaker function;
- the residence is not and cannot in the future be subdivided from the Industrial parent parcel as a stand alone Dwelling-house; and
- there are many examples, in the Industrial area of Cairns where old houses exists on separate lots and are used solely as a Dwelling-house or Residential Building for the purposes of the Prostitution Act. However, in relation to the Residence at 150 – 172 McCoombe Street this is not the case.

**EXISTING STAND ALONE RESIDENTIAL BUILDING – DWELLING-HOUSE  
IN AN INDUSTRIAL AREA**



### **3.0 SITE INSPECTION**

A Site Inspection of 150 – 172 McCoombe Street was undertaken at 5.30 pm on Monday, 16 May 2005. Photographs of the site were taken and are attached at Appendix 3.

The Site Inspection revealed the following (which is supported/verified by the photographs in Appendix 3):

- the primary use of the site is a very large Building Contractors Depot;
- the residence is integrated with the Building Contractors Depot and includes a large office/administration area;
- a sign attached to the side of the Residence within the Depot, identifies the “site office” as being located within the Residence;
- at least 2 staff members work in the office. I spoke to Jackie, who confirmed to me that the business operated from the Residence and that she and the other lady present were administrative staff of the business.

The photographs clearly illustrate the primary function on this Industrial site as being the Building Contractors Depot with the Residence integrated with the industrial activities as an office and Caretaker’s/Manager’s Residence, in line with the intended function of the Residence approved under Consent Permits issued in 1977 and 1979.

### **4.0 CONCLUSION**

The site of the proposed Brothel is located within an Industrial Area and can satisfy all the requirements of the Prostitution Act and Regulations and the particular requirements of the Local Authority.

The conditions outlined in Council’s letter dated 17 May 2005 (refer Attachment 6) are acceptable to my client and could form the basis of an approval, if the Independent Assessor is persuaded to uphold the Appeal.

  
**E A TAYLOR**  
May, 2005

# **APPENDIX 1**



b/c: VALUER GENERAL'S DEPT  
TOWN PLANNING DEPT  
BUILDING DEPT

T1/1630  
KVV:LS

C O N S E N T

M/s. M. & E.A. Sales  
172 McCoombe Street  
CAIRNS Q.4870

1630

Relative to your application for the Consent of the Council to the erection and use of a building on and use of land described as Lot 2 on R.P. 30391

situated at 150/172 McCoombe Street, Bungalow for the purpose of the erection of A RESIDENCE TO REPLACE AN EXISTING RESIDENCE

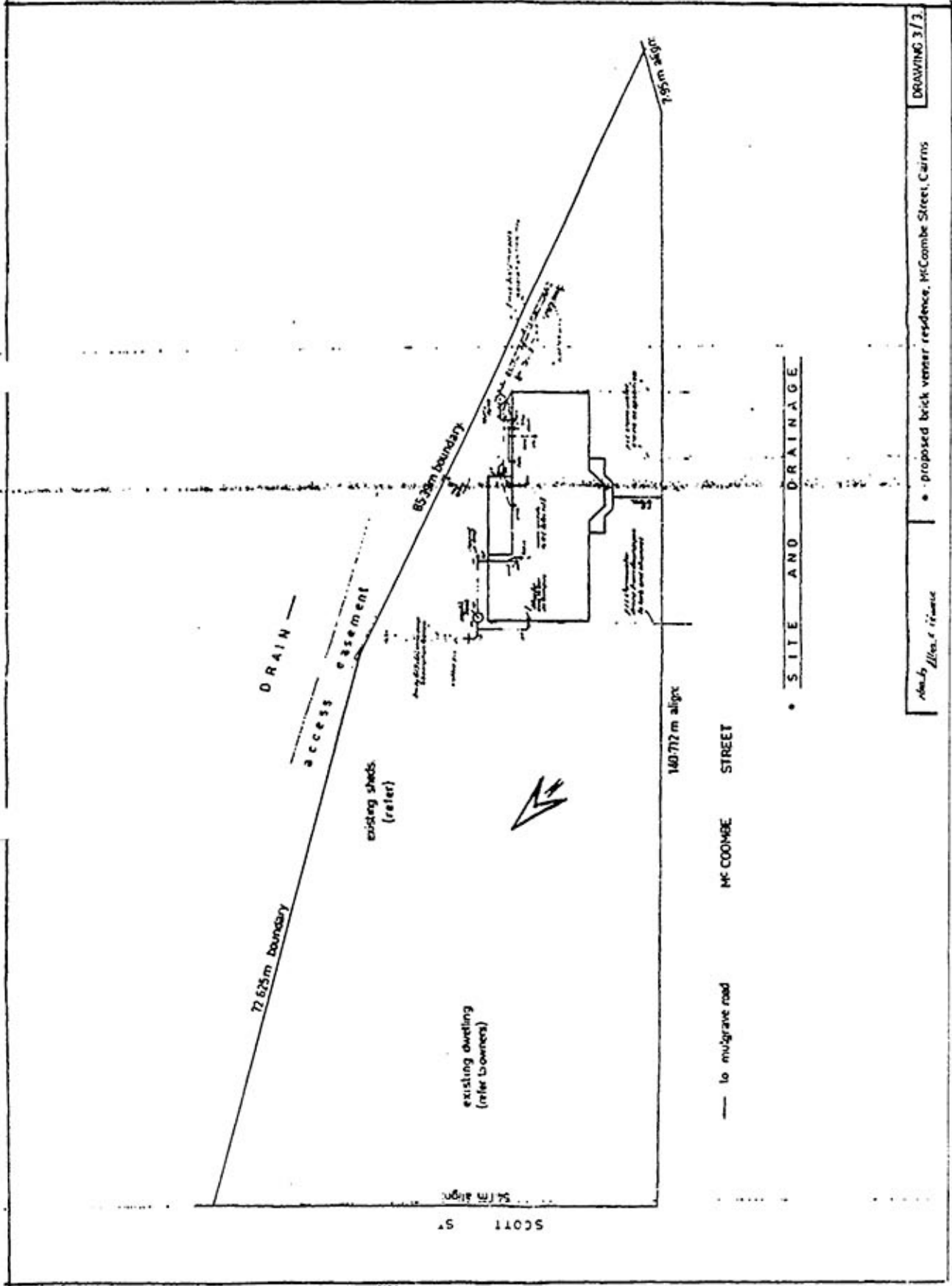
CONSENT has been given by the Council to the use of such land and the erection and use of a building or buildings subject to the following conditions:

- a. The erection and use and occupation shall at all times comply with the conditions laid down and provided for in the Town Planning Scheme from time to time.
- b. The provisions of The Local Government Acts, the Building Act 1975 and of the Bylaws of the Council from time to time shall at all times be observed and performed in relation to the land, the building and the use and occupation thereof.
- c. It shall be a further condition that the building or buildings shall be erected in every particular in accordance with the plans and specifications approved by the Council and thereafter used and or occupied in accordance with this Consent.
- d. The issue of this Consent in no way implies approval, either in principle or in detail, of any plans of the proposed development which may have been submitted and approval of such plans shall be the subject of a separate application in accordance with the Council's Bylaws.
- e. Unless within a period of 2 years from the date of this Notice of Consent substantial progress has been made in erecting the building or other structure or the land is substantially used accordingly, as the case may be, of the purpose for which Consent has been granted, such Consent shall lapse and cease to have force and effect.

If there shall at any time be any breach of any of the above conditions this Consent to the use and or occupation of the building or buildings and or erection thereof becomes null and void and in such case the building or buildings or structure or structures shall be deemed to be an unlawful building and may be dealt with in accordance with the Local Government Act and the Bylaws of this Council.

DATED at CAIRNS this TENTH day of JANUARY, 1977

W.M. TRUNDLE,  
TOWN CLERK



• proposed brick veneer residence, McCombe Street, Cairns

sheds (refer to owners)



## **APPENDIX 2**

05.17.0139.

b/c: Valuer General's Dept  
 Town Planning Dept ✓  
 Building Dept  
 Health Dept.

6/13/4.24 (1831)

C O N S E N T

Mr. & Mrs. M. Eales  
 150/172 McCoombe Street  
 BUNGALOW Q.4870

Mr. Trunde

Relative to your application for the Consent of the Council to the erection and use of a building on and use of land described as Lot 2 on R.P. 30391 situated at 150/172 McCoombe Street, Bungalow for the purpose of Dry Rendering of Meat Products (Noxious Industry), CONSENT has been given by the Council to the use of such land and the erection and use of a building or buildings subject to the following conditions:

- a. The erection and use and occupation shall at all times comply with the conditions laid down and provided for in the Town Planning Scheme from time to time;
- b. The provisions of the Local Government Acts, the Building Act, all other relevant Acts and Regulations and of the Bylaws of the Council from time to time shall at all times be observed and performed in relation to the land, the building and the use and occupation thereof.
- c. It shall be a further condition that the building or buildings shall be erected in every particular in accordance with the plans and specifications approved by the Council and thereafter used and or occupied in accordance with this Consent.
- d. This Consent in no way implies approval, either in principle or in detail, of any plans of the proposed development which may have been submitted and approval of such plans shall be the subject of a separate application in accordance with the Council's Bylaws.
- e. Unless within a period of 2 years from the date of this Consent substantial progress has been made in erecting the building or other structure or the land is substantially used accordingly as the case may be of the purpose for which consent has been granted, such consent shall lapse and cease to have force and effect.
- f. The applicant shall produce to the Council prior to the issue of a building permit a licence from the Air Pollution Control Council indicating that all the requirements of that Council are being met in the plans being submitted.
- g. That suitable arrangements be made with the City Council for the discharge of wastes from the operation into the Council's sewers and that full agreement be reached on the conditions under which the Council will accept the wastes from the process prior to any building application being approved.

(Continued ....)

6/13/4.24 (1831)

1831

Page 2

Conditions f. and g. above are to be in accordance with the requirements of the Clean Air Act and Regulations and the Standard Water Supply and Sewerage Bylaws;

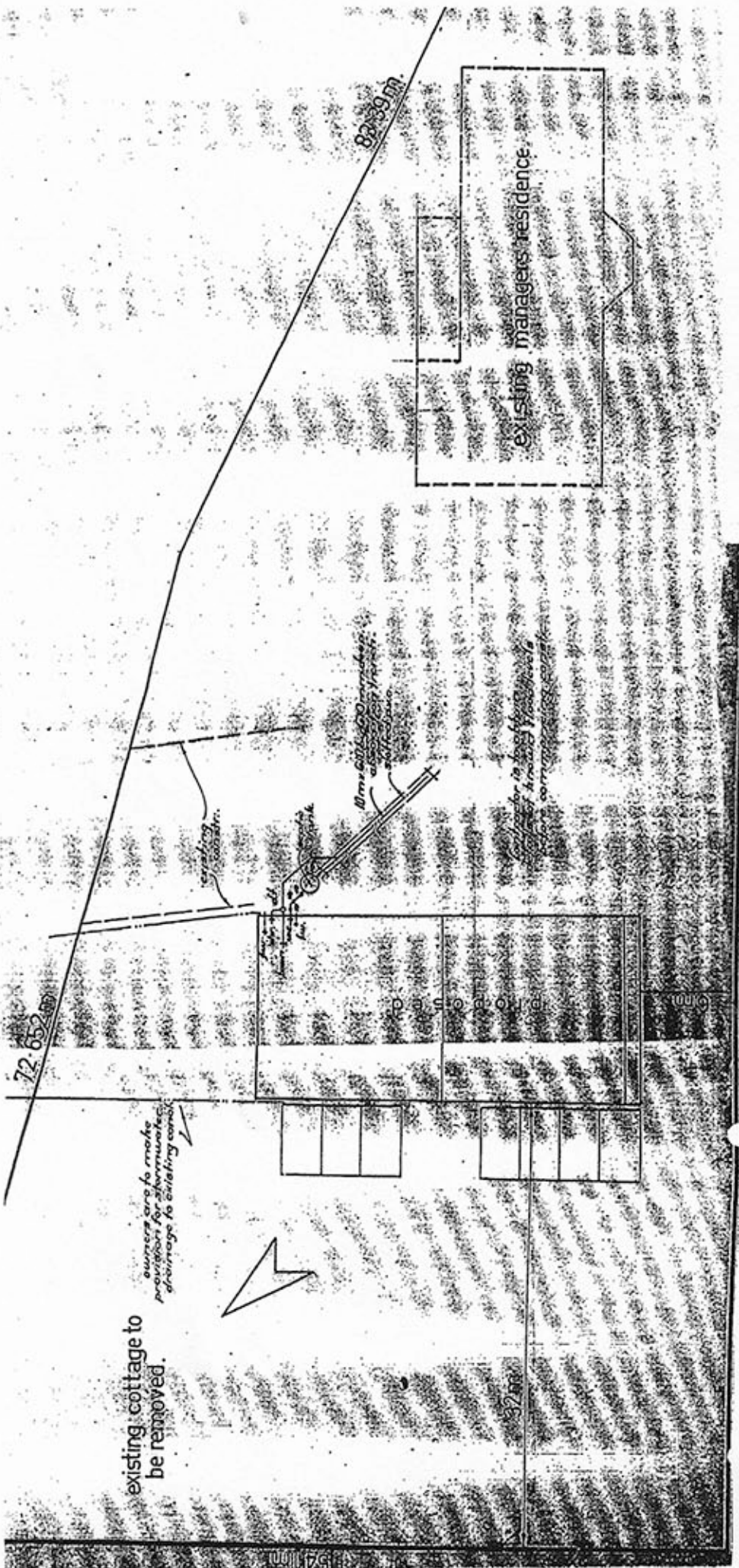
- h. That a certificate be obtained from the appropriate health authority certifying that the method of storage of materials both before and after processing is in accordance with the requirements of that authority prior to the issue of any building permit.

If there shall at any time be any breach of any of the above conditions, this Consent to the use and or occupation of the building or buildings and or erection thereof becomes null and void and in such case the building or buildings or structure or structures shall be deemed to be an unlawful building and may be dealt with in accordance with the Local Government Act and the Bylaws of the Council.

DATED at CAIRNS this NINETEENTH day of APRIL, 1979.



W.M. TRUNDLE,  
TOWN CLERK



PROPOSED WAREHOUSE FOR THE  
 BUCKINGHAM SHOPS PROJECT  
 10/10/2010

## **APPENDIX 3**



**One of the Industrial Sheds  
on the Depot Site**

**Outside Storage**

**Second Access  
to Depot**

**McCoombe Street**





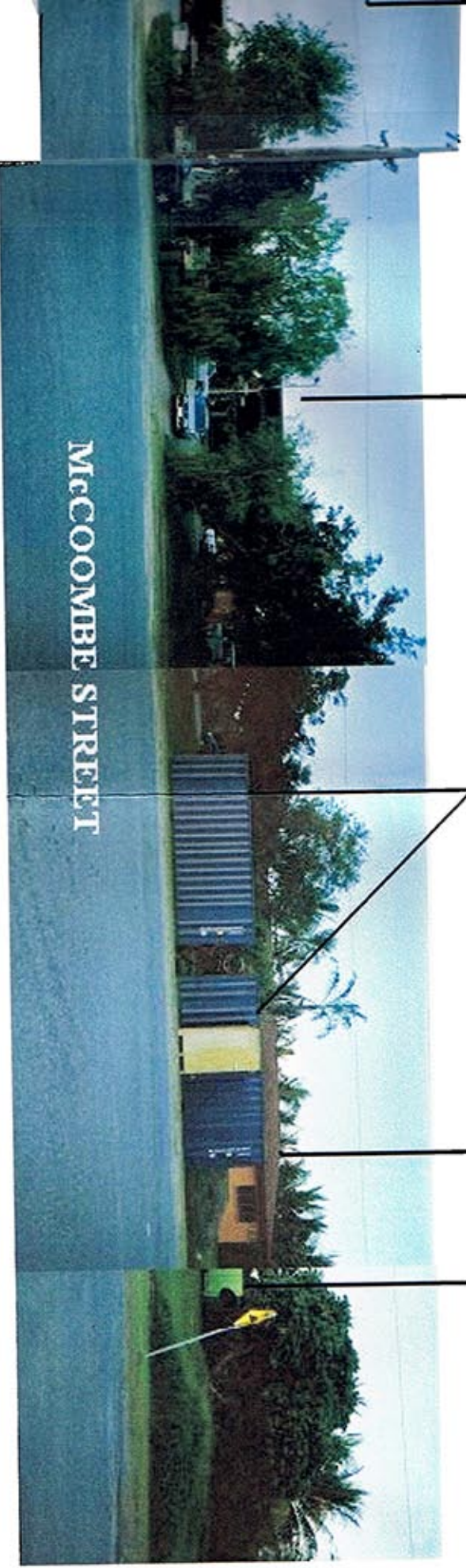
Access

One Access  
to Depot

Shipping Containers

Residence

Shipping Container



MCCOOMBE STREET

**Outdoor Storage**

**Industrial Shed**

**Residence**



**Access to Depot from Scott Street**





**Integration of the Residence with the Industrial Depot**





Authorized  
Personnel  
**ONLY**



**OFFICE**



**EMPLOYEE ONLY**

**RICHARDSON'S BUILDING SERVICE**  
CITY & CO. 7034  
**SITE ENTRY RULES**  
**ALL PERSONS TO REPORT TO THE FOREMAN**

1. All persons entering the site must be accompanied by a member of the site staff or a member of the Richardson's Building Service staff.

2. All persons entering the site must wear a hard hat and safety glasses at all times.

3. All persons entering the site must wear a high-visibility vest or safety vest at all times.

4. All persons entering the site must wear safety shoes at all times.

5. All persons entering the site must follow the instructions of the site foreman at all times.

6. All persons entering the site must not drink alcohol or use drugs while on the site.

7. All persons entering the site must not use mobile phones while on the site.

8. All persons entering the site must not use tools or equipment unless they are trained to do so.

9. All persons entering the site must not enter restricted areas without permission.

10. All persons entering the site must not touch or move any equipment or materials without permission.

11. All persons entering the site must not use the site as a parking area for their own vehicles.

12. All persons entering the site must not use the site as a storage area for their own belongings.

13. All persons entering the site must not use the site as a toilet.

14. All persons entering the site must not use the site as a place to eat or drink.

15. All persons entering the site must not use the site as a place to sleep.

16. All persons entering the site must not use the site as a place to store their own tools or equipment.

17. All persons entering the site must not use the site as a place to store their own materials.

18. All persons entering the site must not use the site as a place to store their own vehicles.

19. All persons entering the site must not use the site as a place to store their own belongings.

20. All persons entering the site must not use the site as a place to store their own tools or equipment.

Site Office incorporated into the Residence

Mercury