

**Colac Otway  
SHIRE**

**AGENDA**

**SPECIAL COUNCIL MEETING  
OF THE  
COLAC-OTWAY SHIRE  
COUNCIL**

**15 APRIL 2009**

**at 5.00 pm**

**COPACC Meeting Room  
Rae Street, Colac**

An audio recording of this meeting is being made for the purpose of verifying the accuracy of the minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, subpoena or by any other law, such as the Freedom of Information Act 1982.'

**COLAC-OTWAY SHIRE COUNCIL MEETING**

**15 APRIL 2009**

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NOTICE is hereby given that the next **SPECIAL COUNCIL MEETING OF THE COLAC-OTWAY SHIRE COUNCIL** will be held in the COPACC Meeting Room, Rae Street, Colac on 15 April 2009 at 5.00 pm.

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## **AGENDA**

### **1. PRAYER**

*Almighty God, we seek your blessing and guidance in our deliberations on behalf of the people of the Colac Otway Shire. Enable this Council's decisions to be those that contribute to the true welfare and betterment of our community.*

**AMEN**

### **2. PRESENT**

### **3. APOLOGIES**

### **4. MAYORAL STATEMENT**

Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past and present and welcomes any descendents here today.

Colac Otway Shire encourages active community input and participation in Council decisions. Council meetings provide one of these opportunities as members of the community may ask questions relating to matters being considered by Council at the current meeting. Questions not related to current agenda items can be made in writing and will be addressed if received within two days of the Council meeting. Council meetings also enable Councillors to debate matters prior to decisions being taken.

I ask that we all show respect to each other and respect for the office of an elected representative.

An audio recording of this meeting is being made for the purpose of verifying the accuracy of the minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, subpoena or by any other law, such as the Freedom of Information Act 1982.'

Thank you, now question time. 30 minutes is allowed for questions from the floor

**5. QUESTION TIME**

**6. DECLARATION OF INTEREST**

**OFFICERS' REPORTS**

**Sustainable Planning and Development**

SC091504-1      PP116/08 AND PP117/08 - AMENDED PROPOSAL - USE AND DEVELOPMENT OF 210 PIERCES ROAD, BEEAC FOR A 640,000 BIRD CAPACITY BROILER FARM, ASSOCIATED BUILDING AND WORKS, INCLUDING ACCESS AND A DAM, TWO MANAGER'S RESIDENCES

**Jack Green**  
**Acting Chief Executive Officer**

**SC091504-1 PP116/08 AND PP117/08 - AMENDED PROPOSAL - USE AND DEVELOPMENT OF 210 PIERCES ROAD, BEEAC FOR A 640,000 BIRD CAPACITY BROILER FARM, ASSOCIATED BUILDING AND WORKS, INCLUDING ACCESS AND A DAM, TWO MANAGER'S RESIDENCES 9CA140, 141, 148, 149, 152 AND 153, PARISH OF ONDIT**

AUTHOR:	Anne Sorensen	ENDORSED:	Doug McNeill
DEPARTMENT:	Sustainable Planning and Development	FILE REF:	PP116/08 & PP117/08

<b>Location:</b>	<b>210 Pierces Road, Beeac (CA140, 141, 148, 149, 152 and 153, Parish of Ondit)</b>
<b>Applicant:</b>	<b>Focus Creative Development Solutions</b>
<b>Zoning:</b>	<b>Farming Zone</b>
<b>Overlays:</b>	<b>Land Subject to Inundation (Part)</b>
<b>Amendment:</b>	<b>Amendment C55 (Planning Scheme Review) does not propose any zone or overlay changes to the land</b>
<b>Abuts:</b>	<b>Land zoned Farming</b>
<b>Restrictive Covenants:</b>	<b>Nil</b>

**Reasons for Council consideration:**

Council is being asked to consider an amended proposal for a planning permit application that is scheduled to be heard by VCAT on 20 April 2009. This request is necessary as the next available Council Meeting is not scheduled until the 22 April 2009, two days after the commencement of the VCAT hearing.

At the March 2009 Planning Committee meeting, Council resolved not to support PP116/08 and PP117/08 for two 320,000 bird capacity broiler farms, known as A and B. Since the March 2009 meeting, Council Officers have been advised that an agreement has been reached between the applicant and objector representatives on a modified proposal for a single 640,000 bird capacity broiler farm on the subject site. Council needs to provide direction on its position in relation to the amended proposal and advise the Victorian and Civil Administrative Tribunal (VCAT) accordingly.

**Summary**

- At the March 2009 Planning Committee meeting, Council resolved not to support Broiler Farms A and B on a number of grounds at the forthcoming VCAT hearing commencing on 20 April 2009. Council also requested that legal representation be engaged to represent Council at the VCAT hearing.
- Since the March 2009 Planning Committee meeting, the applicant has lodged an amended proposal for a single 640,000 bird capacity broiler farm, comprising of 10 sheds, two dwellings and associated buildings and works including access and dams. The broiler farm complex is sited 200 metres from the southern boundary, otherwise centrally located on the land.

- Council Officers have been advised that the applicant and objector representatives have reached agreement on the amended proposal shortly after the March 2009 Planning Committee Meeting. Council was provided with a copy of the amended proposal and plans, with the exception of a revised Environment Risk Assessment on 30 March 2009.
- As the applicant has lodged an application for a review against Council's failure to determine planning applications PP116/08 and PP117/08 with the Victorian and Civil Administrative Tribunal (VCAT), Council cannot make a decision on the amended proposal, Council can only form a view on the amended proposal and advise VCAT at the hearing in April.
- The amended proposal must be assessed against the Victorian Code for Broiler Farms 2001. Under this code the broiler farm at 640,000 bird capacity falls into a "special class farm" and an Environmental Risk Assessment is required.
- An ERA was received by Council Officers on 8 April 2009.
- There has not been sufficient time for Council Officers to seek comments on the ERA from the Environment Protection Authority or seek a peer review from an independent expert.
- The purpose of the ERA is to ensure that the odour risk is acceptable and that the proposed boundary buffer and separation distances are adequate. As Council has no scope to have a peer review undertaken of the ERA prior to the review hearing, it is difficult for Council Officers to provide advice on the acceptability of the ERA.
- Given the circumstances surrounding the amended proposal it is considered that it would not be unreasonable for Council to provide conditional support for the amended proposal providing the Victorian and Civil Administrative Tribunal are satisfied with the findings of the ERA.
- It is recommended that Council advise VCAT at the review hearing on 20 April 2009 that Council provides conditional support for the amended proposal for a single 640,000 bird capacity broiler farm providing VCAT are satisfied with the findings of the ERA.
- If Council supports the recommendation then it is considered that it would be unnecessary to engage legal representation for the VCAT hearing.

## Background

Council has considered PP116/08 and PP117/08 at the October 2008 and March 2009 Planning Committee Meetings.

At the Planning Committee meeting of 11 March 2009, Council considered planning applications PP116/08 and PP117/08 for two broiler farms of 320,000 bird capacity at 210 Pierces Road, Beeac and resolved not to support either proposal on the following grounds:

*"MOVED Cr Smith seconded Cr Stephen Hart that the Planning Committee advise the Victorian and Civil Administrative Tribunal that it would have determined to refuse a Planning Permit for PP117/08 for the use and development of 210 Pierces Road, Beeac (CA 141, 149, and 153, Parish of Ondit)(proposed Lots 1, 2 and 3) for the purposes of a Class B, Broiler Farm B, associated buildings and works, including access and a dam, and a Managers dwelling, if a review had not been lodged with the Tribunal on the following grounds:*

- 1. The proposal does not comply with the Victorian Code for Broiler Farms as it has the potential to impact on the amenity of sensitive uses in close proximity to the site.*
- 2. The risk of the cumulative impact of odour generated by two 320,000 Class B broiler farms near each other is unacceptable.*

3. *The Environmental Risk Assessment has not been based on an approved Environment Protection Authority methodology required by the Victorian Code for Broiler Farms.*

*And;*

*MOVED Cr Russell seconded Cr Stephen Hart that:*

1. *The Colac Otway Shire engage the services of appropriate legal representation to present Council's recommendations at the VCAT hearing on 20 April 2009.*
2. *The legal representation advise VCAT that Council would have rejected the application for a Broiler Farm on 210 Pierces Road (Farm A), on the following grounds:*

*The adverse effects on neighbouring properties including:*

- a) *Odour – the effect of both Farm A & B operating does increase the potential exposure of residents compared to when either farm is operating alone.*
  - b) *The additive effect of Farm A operating in addition to Farm B is a marginal increase in peak odour levels at the most exposed residences (4% - 50%).*
  - c) *Undue interference with the rights to neighbouring property owners to construct a home.*
  - d) *Excessive truck/vehicle movements including at night and the effects of this truck use on Weering School Road.*
3. *Whilst Council's preference is that the application for Farm A be refused, the draft conditions outlined in the agenda (1 – 41) should be used if VCAT directs a permit be issued."*

Since the March 2009 Planning Committee meeting, Council Officers have been advised that the Applicant and Objectors have reached a compromise agreement on an amended proposal.

The applicant submitted an amended proposal including plans to Council on 30 March 2009. The amended proposal comprises of a single 640,000 bird capacity broiler farm set back 200 metres from the southern boundary, otherwise centrally located within the subject land, on the 6 separate crown allotments.

Under the Victorian Code for Broiler Farms 2001, where a broiler farm exceeds a 320,000 bird capacity, it is classified as a "special class farm", requiring an Environmental Risk Assessment to be undertaken. The purpose of the ERA is to determine boundary buffers and separation distances. An ERA was received by Council Officers on 8 April 2009.

Since reporting planning applications PP116/08 and PP117/08, the revised draft Victorian Code for Broiler Farms 2009 has been released by the Department of Primary Industries for public comment.

**Amended Proposal**

On 30 March 2009, Focus Creative Development Solutions submitted an amended proposal to council officers based on a compromise agreement reached between the applicant and objectors. The amended proposal essentially consolidates the two separate 320,000 bird capacity broiler farms into a single 640,000 bird capacity broiler farm. Details of the layout of the proposal are shown in Appendix A.

The details of the consolidated farm proposal are summarised below:

- The two original 320,000 bird capacity broiler farms will be consolidated into one farm with a capacity of 640,000 birds;
- The total number of sheds will be reduced from 12 to 10 but the shed size will increase to 175m x 18m (previously 159m x 16.46m x 3.8m height to the ridgeline) and each shed will have a capacity of 64,000 birds (previously 53,333 bird capacity);
- There will be marginal increase in the overall floor area of the sheds. The floor area of each shed will be 3150m<sup>2</sup> (previously 2,614m<sup>2</sup>) and the combined floor area of the complex is 31,500m<sup>2</sup> (previously 31,368m<sup>2</sup>);
- Separation distance between sheds will be 10m (previously 15m);
- The sheds will run east-west, with the exhaust fans located at the western end. Therefore, the centroid of the shed complex will be between shed 5 and 6 at the western end;
- The shed complex is proposed to be situated 200m from the southern boundary (previously 260m);
- The shed complex will be located outside the area included in the Land Subject to Inundation Overlay;
- A 15m wide landscaping buffer is shown around the shed complex and all infrastructure associated with the sheds will be located within the landscaping buffer;
- A 10m wide landscape buffer will be provided along the full length of the southern property boundary and along the eastern property boundary for a distance of 600m from the southern boundary;
- Dead birds will be disposed of off-site and no used litter will be stored on-site;
- A 10ML lined and covered dam will be provided for the storage of mains water from the Barwon Water reticulation system by agreement. Flow rate and pressure control valves will be fitted to the supply system to ensure maintenance of supply to existing users;
- No change is proposed to the original access arrangements proposed from Weering School Road;
- Two dwellings are to be located on the property in the same locations as the original proposals.

The technology proposed and the design and operation of the broiler sheds is the same as previously proposed for Farms A and B (PP116/08 and PP117/08) as reported to Council in October 2008 and March 2009. Infrastructure requirements, water usage and vehicle generation will be the same as previously stated, but concentrated into one area. The main difference will be that there is a single growing cycle which will influence and concentrate traffic movements.



Vehicle movements

The applicant has advised that it is anticipated that there will be up to 206 semi-trailer and B-double truck visits per batch, and with 5.6 batches per annum it is anticipated that there will be:

Type	Per Batch	Total
Delivery of day old chickens in delivery vans	12	68
Gas Deliveries	4	24
Litter in and out	36	200
Feed Deliveries – B-double vehicles	64	358
Mature bird pick ups	102	572
Maintenance vehicles as required		
<b>Total</b>	<b>218</b>	<b>1200</b>

All vehicle movements will take place during the day except when mature birds are picked up from the sheds for delivery to the processor. Mature birds will be picked up between 8.30 pm and 7.00 am.

Location of development and separation distances

The broiler farm will be located towards the southern end of the property, setback 200 metres from the southern property boundary.

The 10 broiler sheds are proposed to house 64,000 birds each and will run in a east-west direction with the exhaust fans located at the western end of the sheds. The location of the exhaust fans between shed 5 and 6 becomes the centroid point upon which buffer and separation distances are measured.

The new farm centroid will be approximately:

- 950 metres from the nearest dwelling, which is located to the east of the site;
- 873 metres from Pierces Road, which is the nearest road;
- 335 metres from the nearest side boundary (southern);
- 860 metres from the eastern boundary; and;
- 735 metres from the western boundary.

Planning permit conditions

The applicant has also submitted a set of planning permit conditions, agreed to by the objectors. They are generally based on the conditions included in the previous reports to Council in October 2008 and March 2009. The proposed conditions are discussed later in the report.

**Consideration of the amended proposal**a) VCAT procedures

As an application for review has been lodged with VCAT, the applicant is required to comply with VCAT Practice Note No 1 – General Procedures (PNPE1), Section 11 – Amendment of Plans. PNPE1 – Section 11 requires the applicant to file with VCAT and serve on all other parties to the proceeding and the responsible authority, 20 days prior to the hearing date, a notice of application to amend plans together with supporting documentation. In accordance with Section 11, Part (a) (ii) unless the Tribunal otherwise orders, the applicant must serve on any objector to or person notified of the permit application who is not a party to the proceeding formal Notice of the Application to Amend Plan. This allows any objector who is not a party to the VCAT proceedings to be joined to the proceedings should they request so on the basis that the amendment will have a detrimental impact on them.

While the applicant forwarded details of the amended proposal including plans to Council Officers on 30 March 2009, a formal Notice of Application to Amend Plans was not received until 6 April 2009, 14 days prior to the hearing date of 20 April 2009.

As a Notice of application to amend plans has now been received, Council must file with the Tribunal, within 10 days of the receipt of the amendment notice, a written response to the amendment.

b) Victorian Code for Broiler Farms 2001

The proposed amendment must comply with the Victorian Code for Broiler Farms 2001.

Although a revised draft Victorian Code for Broiler Farms is currently out for public comment it has no legal status as it has not been incorporated into the planning scheme. As the revised draft Code could not be considered to be a 'seriously entertained' document, the Tribunal is unlikely to give any substantive weight to this document in considering the amended proposal.

Under the 2001 Broiler Code, the single 640,000 bird capacity broiler farm is classified as a "special class farm". Boundary buffer and separation distance requirements are established by an individual Environmental Risk Assessment including detailed modelling of odour, dust and noise impacts on neighbouring sensitive land uses.

Council Officers requested that an ERA be conducted for the single 640,000 bird broiler farm in line with the requirements of the 2001 Broiler Code. The ERA previously submitted to Council provided an odour impact assessment and environmental risk assessment for two separate 320,000 broiler farms at 210 Pierces Road Beeac. The report provided an environmental risk assessment of Farm B (nearest to Weering School Road) on its own as well as an environmental risk assessment on the cumulative impact of both Farm B and A when in operation. The ERA was based on two separate 320,000 bird capacity broiler farms separated by a distance of 500 metres. As the amended proposal is to establish a single 640,000 bird capacity broiler farm, the findings of the previous ERA cannot be relied upon given the substantial change to the intensity and concentration of the amended proposal.

As the purpose of the ERA for 'special class farms' is to establish boundary buffer and separation distances it is difficult to form a view on whether the proposed boundary buffers and separation distances on the amended proposal are adequate to address the potential for offensive odours, dust and noise impacts on neighbouring sensitive land uses.

The amended proposal reduces the setback by 60 metres from the southern property boundary from 260 metres to 200 metres. The land to the south does not contain any existing dwellings, however, under the 2001 Broiler Code, the proposal must satisfy separation distances where lots are vacant and may be used for the purposes of a dwelling. The Code requires Council to have regard to the potential for the development of a dwelling on the adjoining property 'as of right' (that is, without a planning permit). Where a site adjoining a proposed broiler farm is currently vacant, it should be assumed that an 'as of right' dwelling may be located centrally on the property (that is, the available separation distance will be calculated to the centre line of the adjoining allotment if that lot is currently vacant).

The applicant provided a locality plan with the original application that demonstrated that sites for new dwellings on adjoining properties were available that would be outside the separation distances required by the Broiler Code for a Class B Farm. With the complex now situated 200 metres from the southern property boundary the distances would effectively be reduced by 60 metres. The land most affected by the reduction in setback is the square shaped lot directly south of the subject site. The separation distance would be reduced to approximately 660 metres when measured to the centre of the lot. This would be less than the separation distance of 700 metres required under the 2001 Broiler Code for a Class B farm with a 320,000 bird capacity. Council Officers have received written advice from the landowner of this allotment stating that they have no objection to the amended proposal.

There are no 'as of right' dwelling entitlements on any of the lots abutting the subject land as all lots surrounding the proposed development site have areas less than 80 ha. The size of the lots generally range from 16 ha to 55 ha, with many of the lots in single ownership and farmed as a larger farming unit. A planning permit would be required to use and develop any of the lots adjacent to the land proposed for the broiler farm. Consideration of any such proposal would be given to the strategic and statutory provisions of the planning scheme including the current Broiler Code. The Code provides guidance on the consideration of applications for dwellings near a broiler farm and states that:

*"Councils should not support any application for a planning permit that would allow the possibility of a new dwelling to be built within the separation distance of an existing broiler farm."*

If the broiler farm is supported, the siting of any new dwelling on an adjoining property would need to be considered in light of the separation distances required to be met under the Broiler Code. New dwellings proposing to locate within the separation distances would be unlikely to be supported.

The consolidation of the two previously proposed broiler farms into a single 640,000 bird capacity broiler farm will allow for an increase in the boundary buffer and separation distances measured from the centroid of the shed complex, as follows:

- 950 metres (previously 745 m) from the nearest dwelling on School Weering Road, which is located to the east of the site;
- 1025 metres to the dwelling on Weering School Road, which is located to the north-east of the site;
- 1135 metres (previously 1010 m) from the dwelling on Pierces Road to the north-east of the site;
- 995 metres (previously 915 metres) from the dwelling on Pierces Road to the north of the site;

- 1380 metres (previously 1070 metres) from the dwelling on Pierces Road to the north-west of the site;
- 950 metres from the proposed dwelling site on the vacant lot abutting the site to the west;
- 873 metres (previously 680 m) from Pierces Road and 685 metres (previously 655 m) from Weering School Road;
- 335 metres (previously 340 m) from the nearest property boundary (southern);
- 860 metres from the eastern boundary; and;
- 735 metres from the western boundary.

In all cases the separation distances increase to varying degrees from existing dwellings surrounding the site.

The purpose of the ERA is to determine the boundary buffer and separation distances where a 'special class farm' is proposed. An ERA in support of the amended proposal was received on 8 April 2009 by Council Officers, 12 days prior to the VCAT review hearing scheduled on 20 April 2009.

There has not been sufficient time for Council Officers to review the ERA nor has there been sufficient time for Council Officers to seek a peer review, whether by the Environment Protection Authority (EPA) or any other independent expert in this field to confirm whether the odour risk is acceptable and the boundary buffer and separation distances are adequate and appropriate to protect the amenity of nearby sensitive uses.

Council has no in-house expertise to provide a peer review or advice on the ERA submitted in support of the amended proposal. While Council Officers can refer the ERA to the EPA for comment, given the timeframe it is unlikely that feedback would be received from the EPA in time for the 20 April 2009 VCAT hearing. Even if Council were to engage a Consultant at this stage to undertake a peer review, it is unlikely that a Consultant could provide advice and prepare a report in time for the review hearing.

Given the above, Council has the following options available to them in forming a view on the amended proposal:

1. Conditional support could be given to the amended proposal providing that VCAT was prepared to adjudicate on the ERA and make a decision on whether the boundary buffer and separation distances are adequate based on the findings of the ERA. If Council choose this option it is likely that VCAT would accept the evidence before them without further analysis if the evidence is not contested by any party at the hearing.
2. An adjournment could be sought as the applicant has not followed the procedures of VCAT Practice Note for amending plans, as a clear 20 days notice was not given to Council in respect to the amended proposal and insufficient time has been given to consider the ERA, which is a fundamental component of the amended proposal. Council could then seek advice from the EPA and/or an independent expert on whether the odour risk is acceptable and the boundary buffer and separation distances adequate for the single 640,000 bird capacity broiler farm.

In considering the above options it should be noted that Council Officers have been advised that the amended proposal is based on an agreement between the applicant and Network Planning Consultants as well as objector representatives who have advised Council Officers that they are acting on behalf of all objectors to the original proposals. Council Officers have been advised that all objectors have been provided with a copy of the amended proposal including plans and draft conditions; and that all objectors now have no objection to the granting of a planning permit based on the amended proposal. Council Officers have been advised that written evidence of support from each objector will be forwarded to Council in the next day or two.

Under the VCAT practice note, the applicant is required to serve a copy of the amended proposal on all parties to the review, any objectors and any persons who were notified under Section 52 of the Planning and Environment Act. Under this process provision is available for any party notified of the amended proposal to object to the Tribunal and be party to the review hearing. The matter of whether adequate notice has been given could be dealt with by the Tribunal as preliminary matters on the first day of the scheduled VCAT hearing.

c) PP115/08 – Planning permit proposal for re-subdivision of the land

Subject to support of the amended proposal for a single broiler farm, the applicant has verbally advised that they would no longer seek a re-subdivision of the land supported by Council through the issue of a Notice of Decision to Grant a Planning permit subject to conditions in October 2008. The applicant has lodged an application for a review against conditions contained in the NOD, in particular the requirement for the consolidation of all titles. In the Council report, Officers sought to impose a permit condition that would provide a guarantee that the integrity of the boundary buffer and separation distances would be protected given that the land comprised of six individual titles that could be on-sold independently of each other. Even though the amended proposal now consolidates the two separate broiler farms and sites the complex more centrally on the land, it is still considered important that there is a mechanism to ensure the boundary buffer and separation distances are protected. Therefore, a condition for a S173 Agreement will be sought to address this matter as part of the suite of draft conditions forwarded to the Tribunal.

d) Draft permit conditions

The applicant has forwarded to Council Officers a copy of draft conditions that have been agreed to by the objector representatives. These conditions are largely based on the conditions contained in the Council report presented to Council at the October 2008 and March 2009 Planning Committee meetings.

There are some minor changes to the wording of some conditions but overall the majority of the conditions are acceptable and could be supported. There are two exceptions to this.

Firstly, a condition should be included requiring a S173 Agreement to ensure the integrity of the boundary buffer and separation distances are protected. The conditions should prevent individual allotments within the property from being sold separately until such time as the use ceases to operate. Whilst applicants are often required to consolidate titles, a Section 173 Agreement would have the same outcome in this instance. Although Council could agree to end the 173 Agreement at any time, this would be unlikely to occur if it meant that buffers to the use could be compromised, and it would allow the lots to be sold separately at a later time if the broiler farm were to cease to operate.

Secondly, the applicant is proposing the deletion of the condition sought by VicRoads for upgrading works to be undertaken at the cost of the permit holder at the intersection of the Hamilton Highway and Barpinda-Poorneet Road. As this condition was sought by VicRoads.

Council Officers have had further discussions with representatives from VicRoads on this matter. The main concern that VicRoads has is ensuring that articulated vehicles and/or 25 metre long B-double vehicles have sufficient area to turn at the intersection of Hamilton Highway and Barpinda-Poorneet Road safely.

e) Legal representation

At the March 2009 Planning Committee meeting, Council resolved that legal representation should be engaged to represent Council at the forthcoming VCAT hearing. As Council Officers became aware shortly after that meeting that the objector representatives and the applicant were in negotiations that could arrive at a mutually agreeable position, Council Officers held off on engaging legal representation.

Council Officers have explored the potential to engage legal representation for the review hearing on 20 April 2009 and legal representation could be engaged in time to represent Council at the forthcoming appeal, subject to Council's further endorsement. However, it is considered that the need for legal representation is diminished to a considerable degree if Council supports either option 1 or 2 as discussed earlier in this report.

### **Conclusion**

The amended proposal has come about through negotiations between the applicant and objector representatives, and appears to have the support of all objectors to the original broiler farm applications.

Council has the responsibility to ensure that the amended proposal complies with the existing planning provisions, including the Victorian Code for Broiler Farms 2001. Council needs to satisfy itself, irrespective of that fact that an agreement has been struck between the above parties, that the amended proposal should now be supported and that no material detriment could arise as part of the amendment.

The ERA plays an important role in determining whether the odour risk is acceptable and whether the proposed boundary buffer and separation distances are adequate. It is difficult for Council Officers to provide advice on the ERA, as Council has no in-house expertise nor has there been time to obtain any peer review of the ERA, to guide Council's decision making in this matter.

In light of the above, it is considered that it would not be unreasonable for Council's position at the forthcoming VCAT hearing to be one of conditional support for the amended proposal providing VCAT were satisfied that the findings of the ERA demonstrated that the odour risk was acceptable and that the boundary buffer and separation distances were adequate.

Should Council support the recommendation of conditional support for the amended proposal then it is considered unnecessary to engage legal representation for the VCAT hearing.

### **Attachments**

Appendix A – Amended Proposal

**Recommendation****That Council:**

- A. Advise the Victorian and Civil Administrative Tribunal at the review hearing on 20 April 2009, that Council provides conditional support for the amended proposal for a single 640,000 bird capacity broiler farm subject to the Victorian and Civil Administrative Tribunal being satisfied that the Environmental Risk Assessment demonstrates that the odour risk is acceptable and the boundary buffer and separation distances are adequate to protect the amenity of the nearby sensitive uses.**
- B. Advise the Victorian and Civil Administrative Tribunal that should the Tribunal determine that a planning permit should be granted for a single 620,000 bird capacity broiler farm at 210 Pierces Road, Beeac (CA140, 141, 148, 149, 152 and 153, Parish of Ondit) then Council submits that the permit should be subject to the following conditions:**
- 1. Before the use and development commences, the following documents to the satisfaction of the Responsible Authority must be submitted to the Responsible Authority for approval and be approved by the Responsible Authority:**
    - 1.1 Amended plans which must be drawn to scale and with dimensions. Three copies must be provided and the plans must be generally in accordance with the plans submitted with the application but modified to show:**
      - 1.1.1 A single 620,000 bird capacity broiler farm complex, comprising of 10 sheds located 200 metres from the southern boundary, otherwise centrally located on the six crown allotments;**
      - 1.1.2. The access road must be set 12 metres north of the southern common property boundary;**
      - 1.1.3 The type, specifications and location of all external flood and security lighting to be used including provision for light baffling to ensure all light is contained within the property boundary;**
      - 1.1.4 Deletion of the spent litter pads;**
      - 1.1.5 Stormwater wetland treatment pond and other drainage;**
      - 1.1.6 Location, dimensions and specifications of any dams to be constructed on site.**
    - 2.2 Environmental Management Plan (EMP) which is site specific;**
    - 2.3 Water Use and Re-use Plan addressing stormwater, rainwater and reticulated water use and re-use issues including a plan for the management of areas from which water is proposed to be harvested. The plan must also detail arrangements for the provision on site of an emergency water supply;**

**2.4 Amended Landscape Plan which must be site specific and have due regard to the visual impact of the sheds and other buildings, including consideration of bunding and mounding. The Landscape Plan must show the location and type of all proposed screen and other plantings and landscaping, anticipated tree or shrub height and width at maturity, timetables for plantings and arrangements for maintenance of the landscaped areas. All trees and shrubs included in the Landscape Plan must be indigenous to the locality. The Landscape Plan must show:**

**2.4.1 A 10 metre wide landscaping buffer along the southern common property boundary between the Weering School Road frontage to the western property boundary;**

**2.4.2 A 10 metre wide landscaping buffer along the Weering School Road frontage from the southern common property boundary for a distance of 600 metres.**

**2.4.3 A 15 metre wide landscaping buffer around the perimeter of the broiler shed complex with dams and silos inside the landscape buffer.**

**2.4.4 The landscaping buffers must contain a mixture of canopy trees and shrubs to ensure effective screening.**

**When approved, the Landscape Plan will be endorsed by the Responsible Authority and will then form part of this permit.**

**2.5 Earthworks Plan must be submitted that shows the extent of the earthworks to be undertaken including details on the amount of fill required for the construction of the development. The earthworks plan will be referred to the CCMA for comment.**

**3. The use and development approved by this permit must at all times be conducted in accordance with the requirements of:**

**3.1 The Victorian Code for Broiler Farms, September 2001, as amended;**

**3.2 The Code for Accepted Farming Practice for the Welfare of Poultry, December 2003, as amended;**

**3.3 Environmental Management Plan,**

**3.4 Each of the Permit Documents.**

**to the satisfaction of the Responsible Authority.**

**4. The layout of the site and size of the buildings and works, as shown on the endorsed plans, must not be altered or modified without the consent in writing of the Responsible Authority.**

**5. Prior to the commencement of the use, the owner must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987 stating that:**



- 5.1** *If the land is used and developed as a 620,000 bird capacity broiler farm on CA 140, 141, 148, 149, 152 and 153, Parish of Ondit, none of the aforesaid crown allotments may be disposed of separately to ensure the protection of the boundary buffer and separation distances required for a 'special class farm' in accordance with the Victorian code for Broiler Farms;*
- 5.2** *Other than a single dwelling on both CA152 and CA153 no further dwellings will be permitted on any crown allotment while the land is used in accordance with 5.1.*
- 5.3** *The Responsible Authority would only agree to remove the S173 Agreement should the planning permit expire and the land not be used and developed for a broiler farm or, if the use is established, the use of the land for a broiler farm ceases.*

*Evidence of lodging of this agreement in accordance with Section 181 of the Planning and Environment Act 1987 must be submitted to the Responsible Authority. All costs associated with the agreement will be met by the permit holder.*

- 6.** *The poultry shed must be designed and constructed using a tunnel-vented exhaust system or such other alternative technology which complies with the requirement of the Broiler Code, to the satisfaction of the Responsible Authority.*
- 7.** *All trees and shrubs included in the endorsed Landscape Plan must be planted prior to the completion of the development and the commencement of the use and must thereafter be maintained to the satisfaction of the Responsible Authority. In the circumstance where there are seasonal conditions that would be unfavourable to the establishment of the landscaping, the permit holder may apply in writing to the Responsible Authority for an extension of time to complete the landscaping.*
- 8.** *Prior to the commencement of any works pursuant to this permit the permit holder must lodge a landscape performance bond with the Responsible Authority. The bond can be either a monetary contribution or an irrevocable bank guarantee in favour of the Responsible Authority. The bond is to be based on the endorsed Landscape Plan with additional details to be provided to the satisfaction of the Responsible Authority incorporating:*
- 8.1** *An estimate of the quantity and type of materials, watering equipment, plants, etc. required; and*
- 8.2** *A quotation from a reputable nursery supplier for the implementation of the Landscape Plan identifying the cost for materials, plants and labour. The quotation is to be independently verified to Responsible Authority's satisfaction.*

*The bond is to comprise the verified quotation plus a 10% margin for unforeseen costs. When the landscape works are complete to the satisfaction of the Responsible Authority, 85% of the bond will be released. The balance is to be retained as a maintenance bond for a period of three (3) years following the date of release of the 85%. If the landscaping has not been maintained to the Responsible Authority's satisfaction at the end of the three years the maintenance bond is to be applied to upgrade the landscaping.*

9. ***Any dam shall be constructed by a suitably qualified and experienced contractor in accordance with Southern Rural Water's guidelines for dam construction and maintained to the satisfaction of the Responsible Authority.***
10. ***There shall be no stockpiling of litter on the site. No used litter may be spread or otherwise disposed on the site without the further written consent of the Responsible Authority. Used litter not proposed to be spread on the site (as soil fertiliser) must be removed from the site as soon as possible after it is removed from the sheds. All trucks removing litter from the site must have covered loads.***
11. ***The removal of dry bird litter from the sheds by use of machinery must occur between the hours of 7.00 am and 8.00 pm and no removal may be undertaken on Sundays and Public Holidays including Christmas Day and Good Friday.***
12. ***The permit holder must dispose of dead birds off site using a contractor specializing in this type of disposal or in an alternative manner to the satisfaction of the Responsible Authority. Pending collection for offsite disposal, dead birds must be held in sealed refrigerated containers or otherwise as approved by the Responsible Authority.***
13. ***The use authorized by this permit must be operated as a dry litter poultry operation only and the provision for the collection and disposal of solid wastes and for the collection, treatment and disposal of any liquid wastes to arise from the development and use hereby permitted must comply with all applicable laws and regulations.***
14. ***If the Responsible Authority determines that the amenity of nearby residents is adversely affected in the emission of an unreasonable level of odour from the site the permit holder must immediately and to the satisfaction of the Responsible Authority take such action as is required to prevent those emissions, which may include adjusting stocking density in the sheds, removing litter immediately, or any other actions reasonably required to rectify the emission of offensive odour.***
15. ***The poultry sheds and all feed stores must be vermin and bird proof to the satisfaction of the Responsible Authority.***
16. ***The manner of discharge of all water from the site must be to the satisfaction of the Responsible Authority and the CCMA.***
17. ***Other than the loading and placement of live birds, no deliveries to or removals from the site must take place after 8.00 pm or before 7.00 am on any day without the prior written approval of the Responsible Authority. The only exception to this is in emergency situations when vehicle or plant breakdown make it necessary for feed to be delivered outside these times.***
18. ***The permit holder shall require that all contractors and suppliers accessing the site from the Hamilton Highway do so by way of Weering School Road and Barpinda-Poorneet Road.***
19. ***The loading and unloading of vehicles and the delivery of goods to and from the premises must at all times be carried on entirely within the site.***
20. ***The surface of the car parking and loading areas and access lanes must be constructed and maintained to the satisfaction of the Responsible Authority to prevent dust and drainage run-off.***

- 21. Security lighting or external floodlighting (if required) must be installed in such a manner that it does not create amenity problems outside the site.**
- 22. All vehicles used in the delivery, pick-up and transportation of live birds must be fitted with high performance sound-reducing mufflers to the satisfaction of the Responsible Authority and the permit holder must use its best endeavours to ensure that such activities do not cause any unreasonable noise impact on the amenity of the surrounding area.**
- 23. The permit holder must use its best endeavours to avoid sanitizing sheds with odorous chemicals which give rise to offensive odours being detectable off site. Airborne sprays or chemical odours must not be transmitted beyond the site to the detriment of any person to the satisfaction of the Responsible Authority.**
- 24. All walls of the poultry sheds and other buildings hereby permitted which will be visible from beyond the site must be coloured or painted in non-reflective muted tones to the satisfaction of the Responsible Authority.**
- 25. All goods and materials must be stored out of view of so as not to be unsightly when viewed from nearby roads to the satisfaction of the Responsible Authority.**
- 26. Prior to the commencement of the use, the permit holder must enter into an agreement with Barwon Region Water Authority (Barwon Water). The agreement must provide for a centralised potable water storage facility to be established to serve the development authorised by this permit. The agreement shall provide for the taking of up to 50 ML per annum (or such other amount permitted by Barwon Water) during periods where the taking of water will not adversely impact the supply of water to other water users in the vicinity of the development. The agreement shall provide an appropriate mechanism for the operation and maintenance of the storage facility to provide for an equitable sharing of potable water by other water users in this area.**
- 27. An all waste septic tank disposal system is to be constructed concurrently with the new dwellings, such that all liquid waste must at all times be contained within the curtilage of the title. Such system must be designed and installed to the satisfaction of the Responsible Authority.**
- 28. A Permit to install an all waste septic tank system must be lodged and approved by the Responsible Authority prior to the commencement of works. Such system must be designed and installed to the satisfaction of the Responsible Authority before a Permit to Use the waste septic tank system can be issued.**
- 29. The proposed septic tank system must not be located within 60 metres of the bank of any surface waters, unless the liquid waste is treated to the satisfaction of the Responsible Authority. Any such reduction in distance to the surface waters will be at the discretion of the Responsible Authority.**
- 30. The floor of the managers dwelling must be constructed no lower than 118.0 metres Australian Height Datum.**
- 31. If any works will impact on a waterway or groundwater or will include the use of water for irrigation or commercial purposes from these resources or from a dam, soak or spring, it will be necessary for the land owner or permit holder to apply to Southern Rural Water for a licence in accordance with Section 51 or 67 Water Act 1989.**

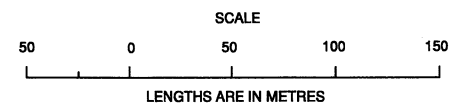
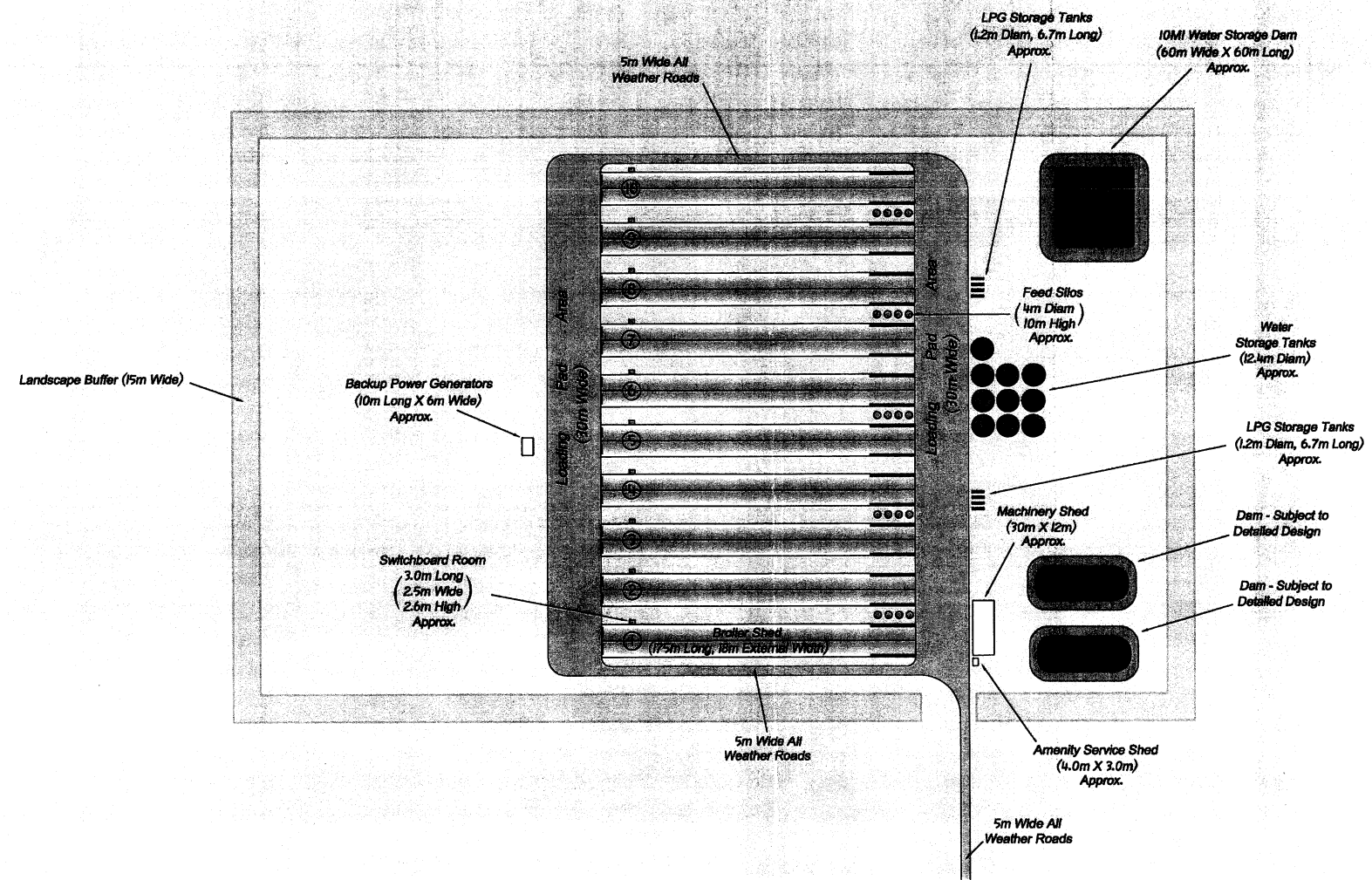
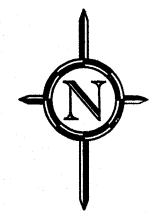
32. ***The permit holder must demonstrate that the Barpinda-Poorneet Road approach to the Hamilton Highway intersection is of sufficient standard to accommodate the turning path of articulated vehicles and/or 25 metre long B-double vehicles used in the operation of the Broiler Farm, to the satisfaction of VicRoads. If the standard of the intersection is insufficient to accommodate these vehicles, the permit holder shall be required to carry out widening of the approach to the Hamilton Highway intersection to accommodate these vehicles.***
33. ***Access off Pierces Road will only be permitted for the approved dwellings. No access will be permitted from Pierces Road to service the Broiler Farm Complex.***
34. ***Access onto Weering School Road must be constructed to the minimum standard for farm access in accordance with the requirements of VicRoads' Guidelines for Truck Access to Rural Properties, April 2006 and allow sufficient storage area to cater for a B-Double to be parked within the gateway area. i.e. 25 metres off the edge of the road to the gate into the property.***
35. ***Access points onto Weering School Road must be constructed with an asphalt overlay over Weering School Road for the length of the road abutting the access point as well as the sealing of the holding area required in Condition 35 to the satisfaction of the Responsible Authority.***
36. ***Any B-Double vehicles 25 metres in length or in excess of 50 tonnes must obtain written consent from the Responsible Authority and VicRoads to use Weering School Road and/or Barpinda-Poorneet Road.***
37. ***The permit holder must prepare and submit to the Responsible Authority a Fire Prevention Plan for approval by the Responsible Authority prior to the commencement of the use hereby permitted. Such a plan, when approved, shall be endorsed and form part of this permit.***
38. ***Prior to the construction of the access road, construction plans must be submitted showing the details of the standard of the access and any drainage requirements, to the satisfaction of the Responsible Authority.***
39. ***This permit will expire if one of the following circumstances applies:***
  - 39.1 ***The development is not started within two years of the date of this permit;***
  - 39.2 ***The development is not completed within four years of the date of this permit.***
  - 39.3 ***The use is not commenced within four years of the date of this permit.***

***The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months thereafter.***

- C. ***Delegate the decision to the Chief Executive Officer, to determine whether legal representation is required for the VCAT hearing on the 20 April 2009.***

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**NOTE:**  
 WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALED DIMENSIONS.  
 ANY CHANGES MADE BY THE CONTRACTOR SHALL BE DOCUMENTED AND FORWARDED TO THE SUPERINTENDANT FOR APPROVAL.  
 CONTRACTORS SHALL VERIFY ALL CRITICAL DIMENSIONS ON SITE AND NOTIFY THE SUPERINTENDANT IMMEDIATELY OF ANY DISCREPANCIES.

**FOCUS**  
 creative development solutions  
 town planners/project managers  
 environmental consultants/development consultants

9-10 Garden Court, Narre Warren, Victoria 3805  
 Ph: 03 8794 8911 Fax: 03 8794 9822 Mob: 0418 103 182  
 jkraan@focuscds.com.au

**PROJECT:**  
 Proposed Farm  
 Pierces Road  
 Beeac

**CLIENT:**  
 Lemic Investments Pty Ltd

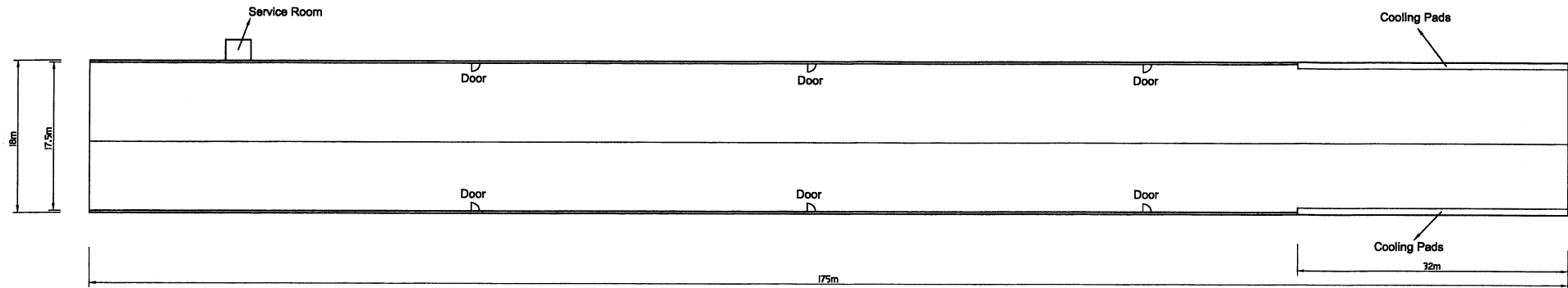
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 Figure 4  
 Proposed Farm Layout

**SCALE:**  
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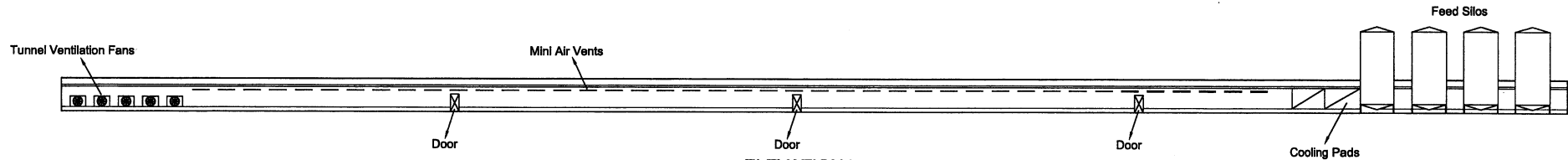
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**DRAWING No:**  
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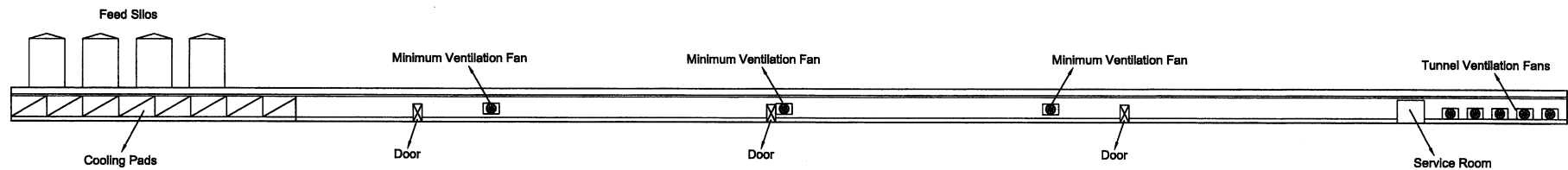




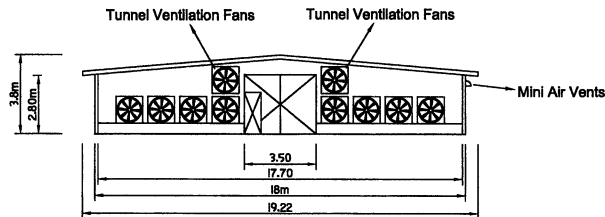
**FLOOR PLAN**  
Scale 1:500



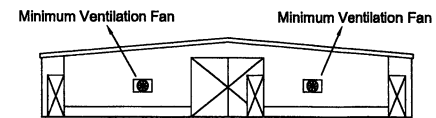
**ELEVATION 1**  
Scale 1:500



**ELEVATION 2**  
Scale 1:500



**WEST ELEVATION**  
Scale 1:250



**EAST ELEVATION**  
Scale 1:250

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jraan@focuscds.com.au

**PROJECT:**  
Proposed Farm  
Pierces Road  
**Beeac**  
**CLIENT:**  
Lemic Investments Pty Ltd

**DRAWING TITLE:**  
Figure 5 - FLOOR PLAN  
& ELEVATIONS  
BROILER SHED

**SCALE:**  
1:500 @ A3  
**REVISION:**  
B 18-03-2009  
**DRAWING No:**  
4423 Farm B001