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## TOWN OF SIDNEY

### Report to Council

**TO:** Mayor and Council  
**FROM:** Alison Verhagen, Senior Manager of Current Planning  
**DATE:** July 31, 2019 File No. 2320 Harbour Road (Land)  
**SUBJECT:** Zoning Amendment Application No. RZ1000101  
Development Permit Application No. DP100794  
2257, 2281, 2289, 2295, and 2317 Harbour Road

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#### PURPOSE:

The purpose of this report is to address the **Zoning Amendment Application** and **Development Permit Application** for the properties located at **2257, 2281, 2289, 2295, and 2317 Harbour Road** (*aerial photo attached as Appendix A*).

#### REPORT SUMMARY:

- The proposal is for a text amendment to the Neighbourhood Marine Industrial (W1.2) zone to legalize the placement of 9 shipping containers on the subject property.
- While the proposal is supported in a limited way by the objective contained within the Official Community Plan to support marine-oriented industrial and commercial development, the placement of shipping containers on the property largely fails to meet most other objectives and policies of the Harbour Road Marine Development Permit Area.
- Staff are of the opinion that shipping containers are not a satisfactory alternative to purpose-built buildings and recommend that the application be denied.

#### BACKGROUND:

The construction of the marine dry storage facility on this site was approved by Council on August 10, 2009, via Development Permit No. DP100410. This Development Permit also approved the construction of two buildings on the site: one smaller building of 118 m<sup>2</sup> (1,270 ft<sup>2</sup>) to house a groundwater treatment facility, marine storage, and workshop space, which was constructed along the Harbour Road frontage of the property in conjunction with the development of the dry storage facility; and one larger building of 1,850.5 m<sup>2</sup> (19,919 ft<sup>2</sup>) in the area along the west end of the site to be used for boat repair and maintenance. The building also included a small retail space fronting on Harbour Road. This building has not been constructed (*see Appendix E – DP100410 site plan and building elevations*).

The plans for the original proposal for the site show the outdoor yard area as a “dry storage yard” and the larger building as “marine repair and maintenance” with large overhead doors to allow boats to enter for repairs. Instead, the larger building was never constructed, and boat repair and maintenance work is taking place in the unenclosed storage yard area, supplemented by the storage and office space provided by the shipping containers.

#### DESCRIPTION OF PROPOSED DEVELOPMENT:

The applicant is proposing to amend the text of the Neighbourhood Marine Industrial (W1.2) zone to allow “shipping container” as a permitted use on the subject properties in order to legalize the placement of 9 shipping containers already on the properties. The applicant has indicated that four of the shipping containers are being used to provide storage for Van Isle Marina’s business operations related to yacht

repair, maintenance, and improvement on the site, while the remaining five containers are owned by three different local marine-related businesses who have rented yard space from Van Isle Marina for the purpose of storing the containers (*see Appendix B – letter of rationale*).

Six of the shipping containers are located toward the west end of the site, along the south lot line adjacent to the residential neighbourhood. The remaining three shipping containers are located toward the east end of the site, within designated vehicle parking spaces (*see Appendix C – site plan and Appendix D – photos*)

**LOCATION:**

The subject properties are located on the south side of Harbour Road, west of Bowden Road and across Harbour Road from Van Isle Marina’s other properties which are occupied with an office building, parking lot, and other marine-related buildings as well as access to the marina docks and boathouses. The subject properties are currently occupied by a boat storage and maintenance/repair yard, with one building in the north-east portion of the site.

The following table outlines the Official Community Plan and Zoning designations of the surrounding properties, as well as their current uses:

**Table 1: Surrounding Land Use, Zoning and OCP Designations**

	<b>OCP Designation</b>	<b>Zoning Designation</b>	<b>Current Land Use(s)</b>
North	HRM (Harbour Road Marine)	W1 – Marine Industrial	Van Isle Marina, parking lot and buildings
East	RES-1 (Neighbourhood Residential)	R1 – Single- Family Low-Density Residential	1-2 storey single-family residential buildings
South	RES-1 (Neighbourhood Residential)	R2 – Single- and Two-Family Residential	1-2 storey single- and two-family residential buildings
West	HRM (Harbour Road Marine)	W1.2 (Neighbourhood Marine Industrial)	Parking lot (Parks Canada)

**OFFICIAL COMMUNITY PLAN BYLAW 1920:**

The subject properties are designated as Harbour Road Marine in the Town of Sidney Official Community Plan (OCP). The objectives of this OCP designation are as follows:

- 25.1.1 To encourage a stimulating urban environment through the balance of architectural diversity and compatibility;*
- 25.1.2 To promote and expand the unique marine industrial, commercial and residential character of the area;*
- 25.1.3 To encourage the creation of an area on the south side of Harbour Road that is complementary to the marine industrial, commercial and residential uses on the north side of the road, while being sensitive to the surrounding residential development in the area as a whole;*
- 25.1.4 To control and improve the interaction between marine industrial, marine commercial and residential uses in the area;*
- 25.1.5 To maintain and encourage the pedestrian orientation of development in the area*

While the OCP designation for this area supports the maintenance and growth of the area as a “working harbour”, it also strives to ensure that uses on both the north and south sides of Harbour Road are compatible and that development on the south side of Harbour Road provides an adequate transition area to mitigate impact to the residential area to the south.

If used for the purpose for which they were created (i.e. a modular shipment container) the use of shipping containers may seem like a suitable fit in a marine industrial area; however, used as a cheaper

replacement for purpose-built maintenance or storage buildings, they fail to achieve the OCP objectives of architectural diversity and compatibility, unique marine industrial character, sensitivity to the surrounding residential area and pedestrian orientation of the area. The potential safety and aesthetic impacts on the residential neighbourhood directly to the south of the subject properties is a particular concern.

As referred to above, boat maintenance work is currently taking place outside (e.g. grinding, sanding and spray painting of boats) where it was not originally proposed to be carried out; i.e. inside the larger building which was never built.

### **ZONING BYLAW 2015:**

In Section 4.1 General Use Regulations: All Zones, Zoning Bylaw No. 2015 contains the following prohibition:

*Except as otherwise provided for in this Bylaw, shipping containers shall not be permitted, but nothing herein contained shall be deemed to prevent the temporary placement of a container on a lot for the storage of building materials stored temporarily for use in construction of improvements, with a valid Building Permit or Development Permit, on the said lot.*

The intent of this section of the bylaw is to prevent the widespread use of shipping containers as cheap storage buildings within the Town of Sidney, recognizing that their low cost (compared to new building construction), durability and ease of transport would lead to their proliferation, despite the fact that they are generally not aesthetically pleasing and do not meet the same life safety, architectural and interior standards required for purpose-built buildings.

The subject properties are currently zoned Neighbourhood Marine Industrial (W1.2), the intent of which is to provide for an area of transition between marine industrial uses on Harbour Road and neighbouring residential areas. The proposed use of "shipping containers" is not listed as a permitted use in the W1.2 zone. Consequently, an amendment to the text of the Zoning Bylaw would be necessary to allow this use on the subject properties. Staff are of the opinion that if Council sees merit in the proposed amendment, the use would be added as a site-specific conditional permitted use, with a condition listing the maximum number of containers to be permitted on the site.

All other uses on the subject properties comply with the Zoning Bylaw.

### **OFF-STREET PARKING AND LOADING BYLAW NO. 2140**

When DP100410 was reviewed by staff in 2009, parking required for the dry storage facility and two buildings was calculated based solely on the uses in the two proposed buildings to be constructed on the subject properties, since the Off-Street Parking and Loading Bylaw does not contain a parking requirement for outdoor storage of boats in a dedicated outdoor boat storage facility.

A total of two parking spaces are required for the building that was constructed on the site, based on its use as marine storage, workshop and water treatment facility. 13 designated vehicle spaces are located at the east end of the site, accessed from a gate at the corner of Bowden Road and Harbour Road. The addition of shipping containers to the site would not increase the parking requirement for the marine dry storage facility currently in operation on the site. Three of the shipping containers are located in designated parking spaces and would need to be moved to different locations if they are to be retained on the site. The layout of the yard accommodates additional vehicle parking on an informal basis throughout the storage area, in the vicinity of each of the boats stored there.

### **HARBOUR ROAD MARINE DEVELOPMENT PERMIT GUIDELINES:**

As the property is located within an area designated under the OCP as Harbour Road Marine, the site is subject to the Harbour Road Marine Development Permit Area Guidelines. The purpose of these

guidelines is to address the form and character of the proposed development, including landscaping and the siting, exterior design and finish of the building.

Staff would undertake a comprehensive review of the Development Permit Guidelines in relation to the proposed development if the application proceeds to the Advisory Planning Commission for review and comment. At this point in the process, staff would like to highlight the following guidelines to which the proposed legalization of shipping containers on the site does not comply:

***Building Treatment – Land Abutting Residential Areas***

- 25.3.18 Developments which abut an area designated in Schedule "B" for residential use or are adjacent to a street containing residential uses shall meet the following additional guidelines:
- a. The scale, size, massing, shape, siting, roofline and exterior finish of buildings should be compatible with the areas designated for residential use.
  - c. Garbage containers, garbage compounds and parking, loading, unloading and storage areas will, where feasible, be oriented and located away from the areas designated for residential use.

Staff are of the opinion that the shipping containers are not compatible with the adjacent areas designated for residential use in terms of scale, size, massing, shape, siting, roofline or exterior finishes, nor are they oriented and located away from the residential neighbourhood to the south. Rather, they are currently located along the southern-most edge of the dry storage facility, adjacent to the south lot line of the subject properties, with a landscape buffer approximately 3.75m (12.3 ft.) in width and a fence separating them from the rear yards of the adjacent single and two-family dwellings.

**DEVELOPMENT REVIEW COMMITTEE:**

At the inter-departmental development review committee meeting held on July 18, 2019, staff had the following comments regarding the proposed development:

- Storage of materials in shipping containers is more hazardous than in conventionally constructed accessory buildings due to the air-tight nature of the containers. Fire Department staff have concerns with the safety of storing materials related to boat maintenance and repair in shipping containers, especially as the contents of the containers are unknown and some items may be flammable or electrical.
- The proximity of the shipping containers to the adjacent residential neighbourhood may pose a significant safety concern due to unknown materials stored within them by the different owners of the containers, who may not be aware of what others are storing in their various containers.

**DISCUSSION:**

The original DP (DP100410) approved for this marine dry storage facility included a large building along the west end of the site, designed specifically for boat repair, maintenance and storage of related materials. This building would have been constructed to meet BC Building Code requirements including ventilation and safe egress for occupants. The design of the building also was reviewed for compliance with the Design Guidelines for the Harbour Road Marine Development Permit Area. The shipping containers meet neither the Building Code nor the DP Area Design Guidelines.

Staff are of the opinion that storage needs and operating spaces related to boat repair, maintenance, and improvement on the site would be most safely and aesthetically accommodated by the property owner removing the noncompliant shipping containers from the site and either constructing the originally approved building as per DP100410 or applying for a new Development Permit to construct a different purpose-built structure on the site. The applicant's letter indicates a number of benefits from the placement of shipping containers on the property; staff note that all of these claims can be made for a purpose-built building as well, arguably to a greater degree than temporary shipping containers.

## STAFF RECOMMENDATION

1. That Zoning Amendment Application No. RZ100101 and Development Permit Application No. DP100794 (2257, 2281, 2289, 2295, and 2317 Harbour Road) be denied; and
2. That all shipping containers be removed from the property.

Respectfully submitted,

I concur,



for: Alison Verhagen MCIP, RPP  
Senior Manager of Current Planning



Randy Humble MCIP, RPP  
Chief Administrative Officer

AV:am

Attachments: Appendix A: Aerial photo of subject property  
Appendix B: Letter of Rationale  
Appendix C: Site plan  
Appendix D: Photos of containers and surrounding neighbourhood  
Appendix E: DP100410 site plan and building elevations

Presenter: Michael McGregor, Crease Harman LLP (Applicant)



**Appendix A: 2017 aerial photo of the subject properties (2257, 2281, 2289, 2295, and 2317 Harbour Road) outlined in blue, showing OCP (black) and Zoning (red) designations.**



## Schedule "A"

TOWN OF SIDNEY

The Owner of the Yacht Park property in question, Sidney Marina Co. Ltd. also owns and operates Van Isle Marina (the "Marina"), which Marina has operated continuously since 1955 on Harbour Road in Sidney. The Owner has been a long term Sidney property owner, tax contributor and successful business operator in Sidney for more than 60 years. The Yacht Park is an essential component of the Marina's long standing business and the shipping containers at issue in this application are necessary to the operations of its Yacht Park and to the third party marine related local businesses.

The Yacht Park is a fully fenced marine industrial working surrounded by boats in storage with one building which serves as the repair facility.

There are currently also 9 shipping containers on the property, 4 of which are owned by the Owner/Applicant herein and used to store safely and conveniently valuable spare parts and equipment essential to the Yacht repair, maintenance and improvement services rendered by the Owner on that site. The other five shipping containers are owned by three different, local, marine-related businesses who have various employees on site. The Owner/Applicant rents space to those third parties for their containers 5 containers. Attached hereto are current photographs of the containers taken from inside the Yacht Park (Schedule "B"). Also attached hereto are current photographs taken from outside of the Yacht Park looking in (Schedule "C").

On or about March 7<sup>th</sup>, 2019, a By-Law officer visited the Yacht Park and subsequently issued a letter of the same date citing use of the shipping containers as a violation of the Town of Sidney Zoning By-law No. 2015, demanding removal. The letter referred to 6 containers but there are 9 containers.

The Owner has invested tens of thousands of dollars in its shipping containers *and in the improvement of same* (custom doors, lighting, electrical, fire safety etc.) which are integral to its ongoing operations. It would be substantively detrimental to the Owners operations if it was unable to continue using the containers on the property in question. It would also mean likely the loss of the value of the Owners investment in its containers. The value of the items stored in the Owner/Applicants containers is about \$ 180, 000.00. The containers provide secure and safe storage of these items which would otherwise be at high risk for theft and weather deterioration.

Prior to 2010 when the Yacht Park was opened on the south side of Harbour Road, the Owner/Applicant had shipping containers on its property on the north side of Harbour Road for about 20 years without any complaint from the Town of Sidney. Shipping containers have been present in the Owner' Marina operations on Harbour Road for nearly the past 30 years.

The loss of use of the containers on the property would also be detrimental to the operations of the third party businesses on site and might well cause the loss of good jobs and livelihoods. It might detrimentally affect the viability of these local businesses.

The Shipping Containers were recently inspected by the Sidney Fire Department (February 2019) and have been fully approved as they do not contain any flammable liquids and fire extinguishers have been installed in each.

Zoning needs to be consistent with the applicable Official Community Plan (“OCP”), to the extent that zoning is inconsistent with an applicable OCP it ought to be amended.

The use of these containers is consistent with key objectives of the Sidney’s current OCP (to be reviewed later this year), in particular, the use of the containers on this property:

- 1) promotes economic development;
- 2) directly supports employment; and,
- 3) maximizes the efficient use of available land ( there is little undeveloped land in Sidney left so infill or maximizing use of existing land is a key OCP objective); and,
- 4) respecting the rights of the property owner/applicant to determine how best to use its property to succeed in business.

Conversely, there is no evidence that use of the shipping containers by the Owner in its Yacht Park has or will create any substantive issue:

- a) the containers, like all the Owner’s property on Harbour Road are scrupulously maintained;
- b) the Yacht Park is entirely bounded by cedar hedging such that the containers are essentially hidden from view outside of the Yacht Park (attached hereto are photographs taken from outside the Park);
- c) there have been no complaints about the shipping containers from any of the Owner/Applicant’s neighbors;
- d) there are no known health or safety concerns;; and,
- c) the Yacht Park is the *only* property in Sidney zoned W.1.2 so the effect of any amendment to the provisions of that zone will be limited to that property alone;

There are 4 types of “Marine” zones under the By-Law. Two of the four zones are “industrial” in nature, W1, “Marine Industrial” and W1.2, “Neighborhood Marine Industrial”. The Owner’s Yacht Park is the only property in Sidney currently zoned W.1.2, “Neighborhood Marine Industrial”.

The “Intent of the Zone” with respect to W.1.2 is stated as follows in the By-Law:



*“To provide an area of transition between marina industrial uses on Harbour Road and neighboring residential areas”*

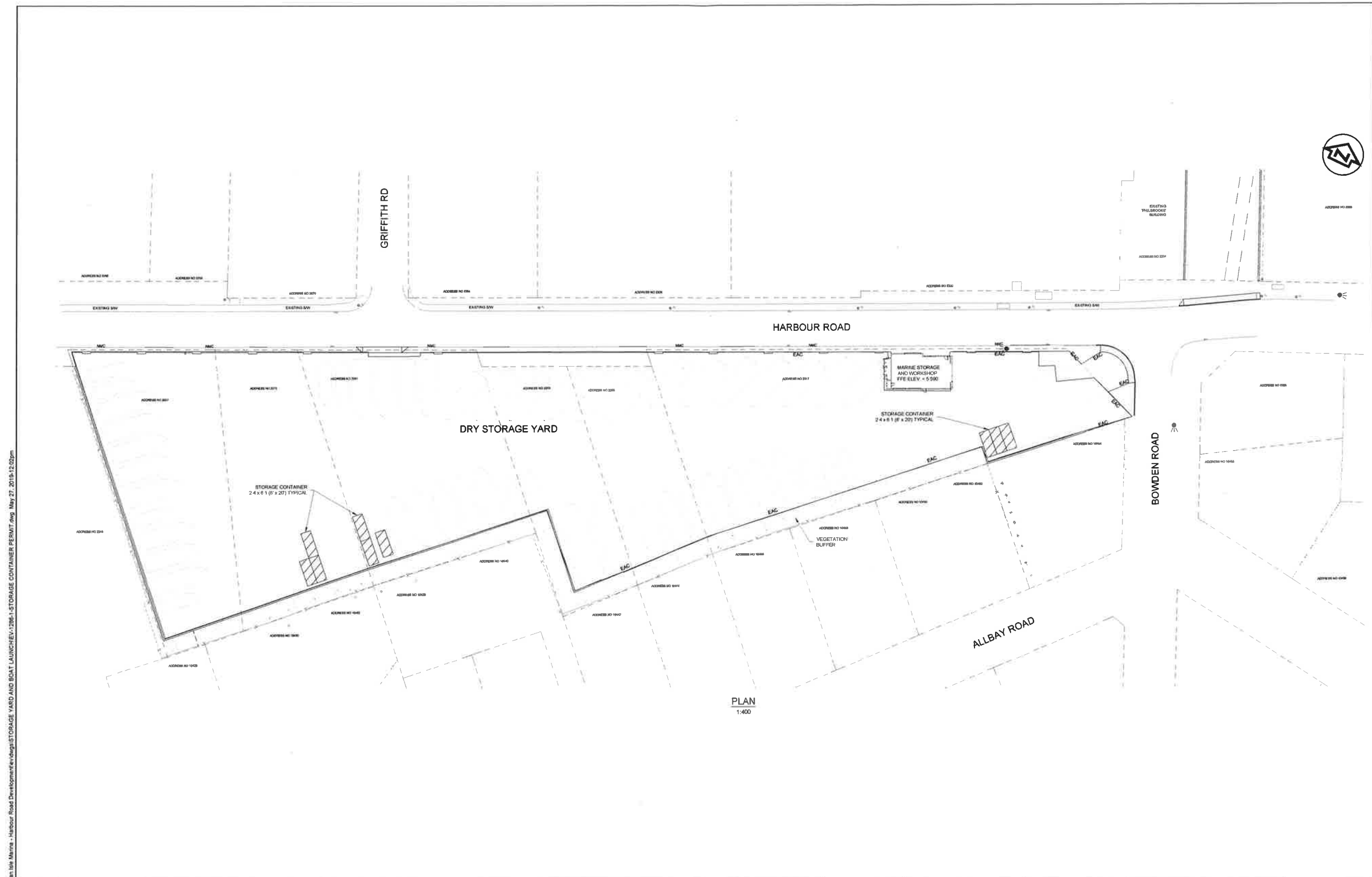
The “Intent of Zone” stated with respect to Marine Industrial is as follows:

*“To provide for a unique mix of industrial, commercial and marine uses to complement the marine nature of the area*

Currently, By-Law 2015 forbids the presence of Shipping Containers in any zone but for industrial zones, in which the rental of Shipping Containers is a fully permitted activity. The only other exception with respect to Shipping Containers is for their temporary use while building or developing under a permit. There is nothing in the By-Law which explains the why the use of Shipping Containers in the “Industrial” zone is fully permissible but not in “Marine Industrial” or “Neighborhood Marine Industrial” zones. All three zones share the “industrial” quality with shipping containers quite commonly associated with Marine industry. The rationale for the distinction is not at all clear. Moreover, the use of the containers is consistent with the OCP and the W.1.2. zone, the Owner/Applicant says respectfully, ought to be amended to also allow the use of Shipping Containers in this zone, W.1.2.



**MICHAEL A. MCGREGOR**  
Barrister & Solicitor  
**CREASE HARMAN LLP**  
800 - 1070 Douglas Street  
Victoria, BC V8W 2S8



PLAN  
1:400

DELCAN Version: L:\EV\206 - Van Isle Marina - Harbour Road Development\ev\206-1-Storage Container Permit.dwg, May 27, 2019, 12:02pm

<b>LEGEND</b> - Existing services shown hollow - Abandoned shown dashed										DESIGN: DR DRAWN: PFB CHECKED: APPROVED: DATE: MAY 2019 SCALE: 1:400		VAN ISLE MARINA CO. LTD. MARINE STORAGE AND MAINTENANCE FACILITIES		SHEET No <b>C1</b>			
DITCH	BOTTOM BANK	TREE	CAP	WATER	TOP BANK	SILT TRAP	VALVE	STORAGE CONTAINERS ADDED AS PER CLIENT REQUEST 27 MAY 2019 DR				© PARSONS INC. ALL RIGHTS RESERVED. NO PART OF THIS DRAWING MAY BE REPRODUCED IN WHOLE OR IN PART BY ANY MEANS WITHOUT THE EXPRESS WRITTEN PERMISSION OF PARSONS INC.				SHEET OF REV	
STORM DRAIN	FENCE LINE	MANHOLE	FLUSH VALVE													DRAWING No EV-1286-1-C1	
GAS	SIDEWALK	CLEANOUT	HYDRANT														
SEWER	HYDRO POLE	CATCHBASIN	REDUCER														

**Schedule "B"**

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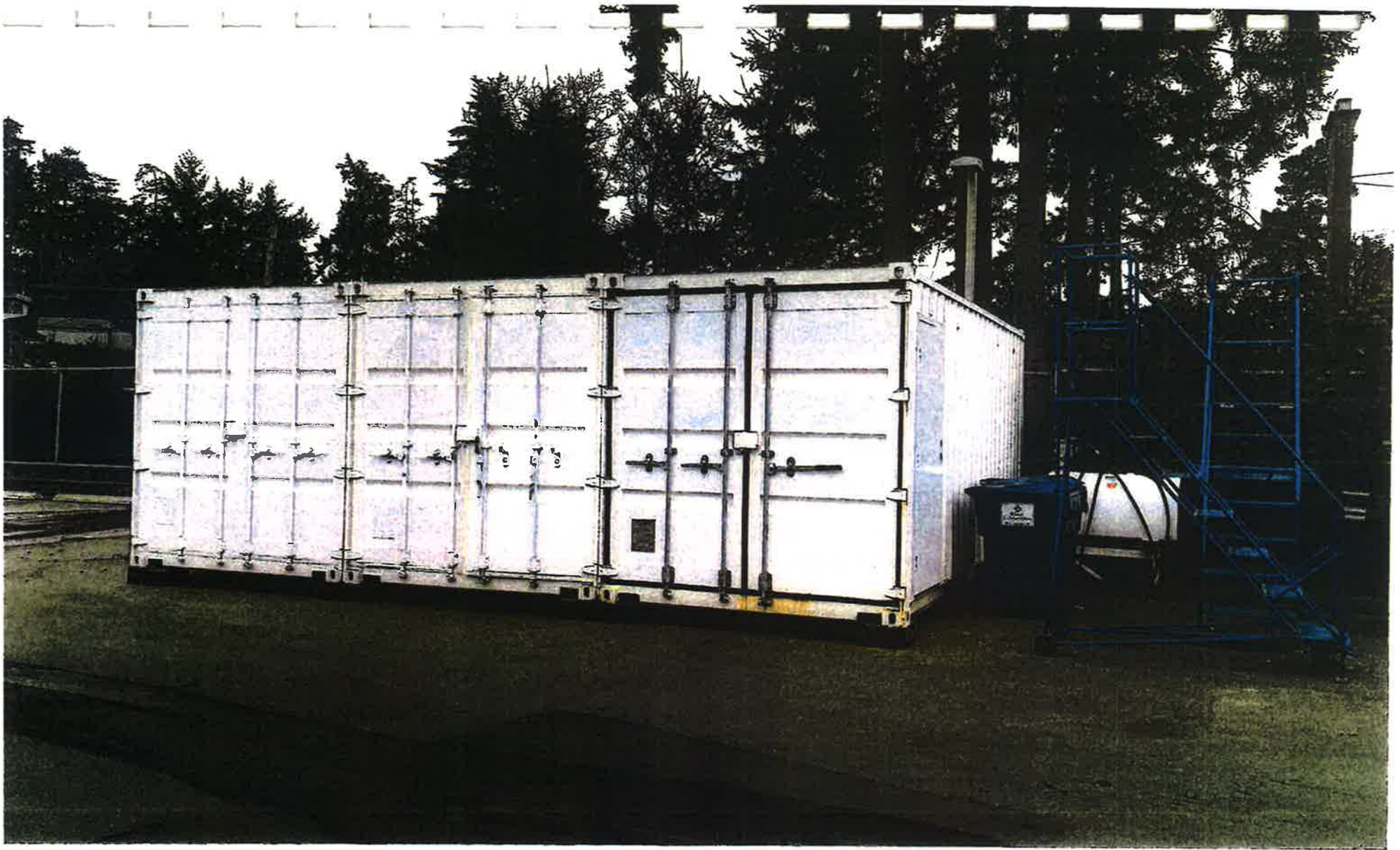




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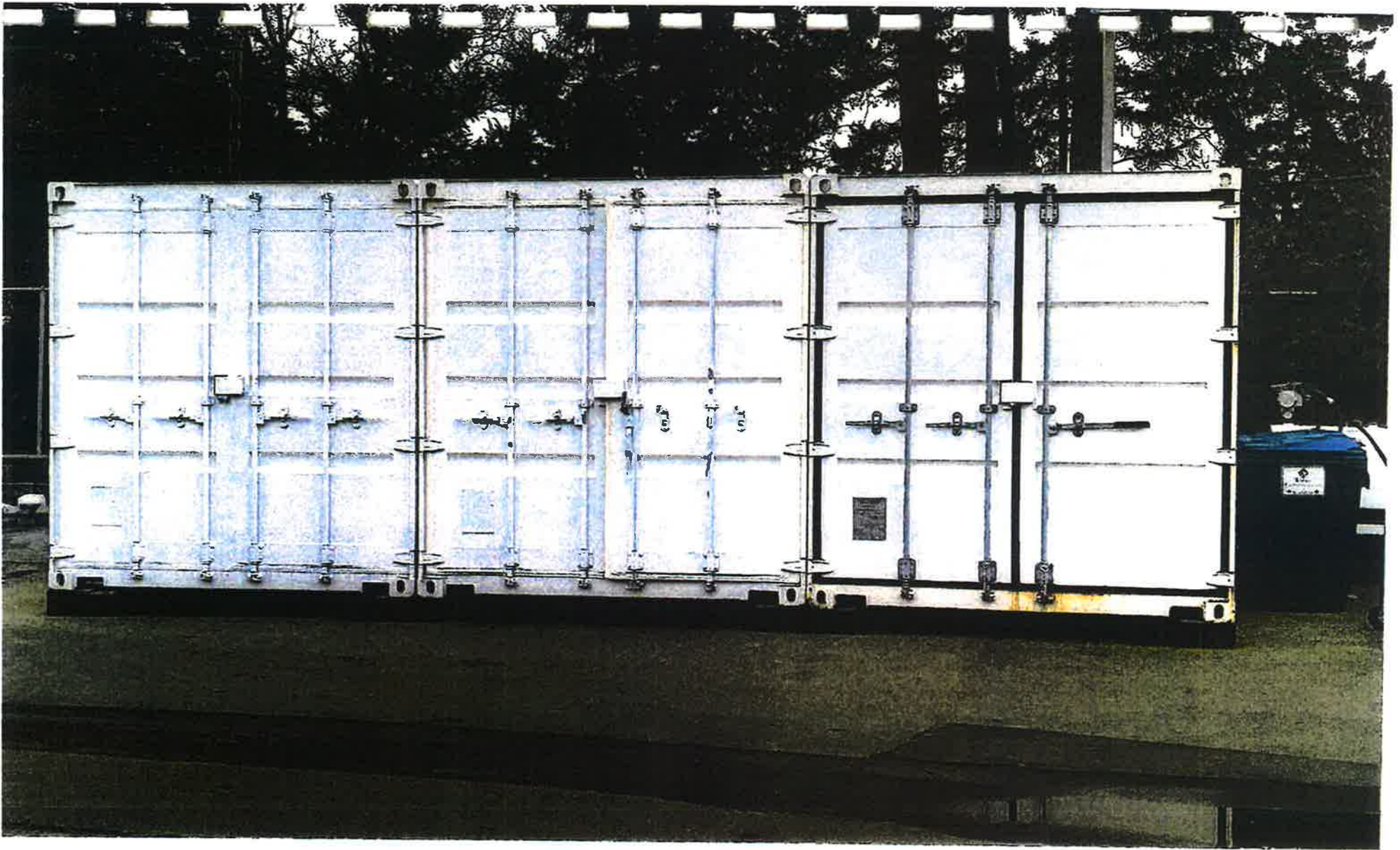




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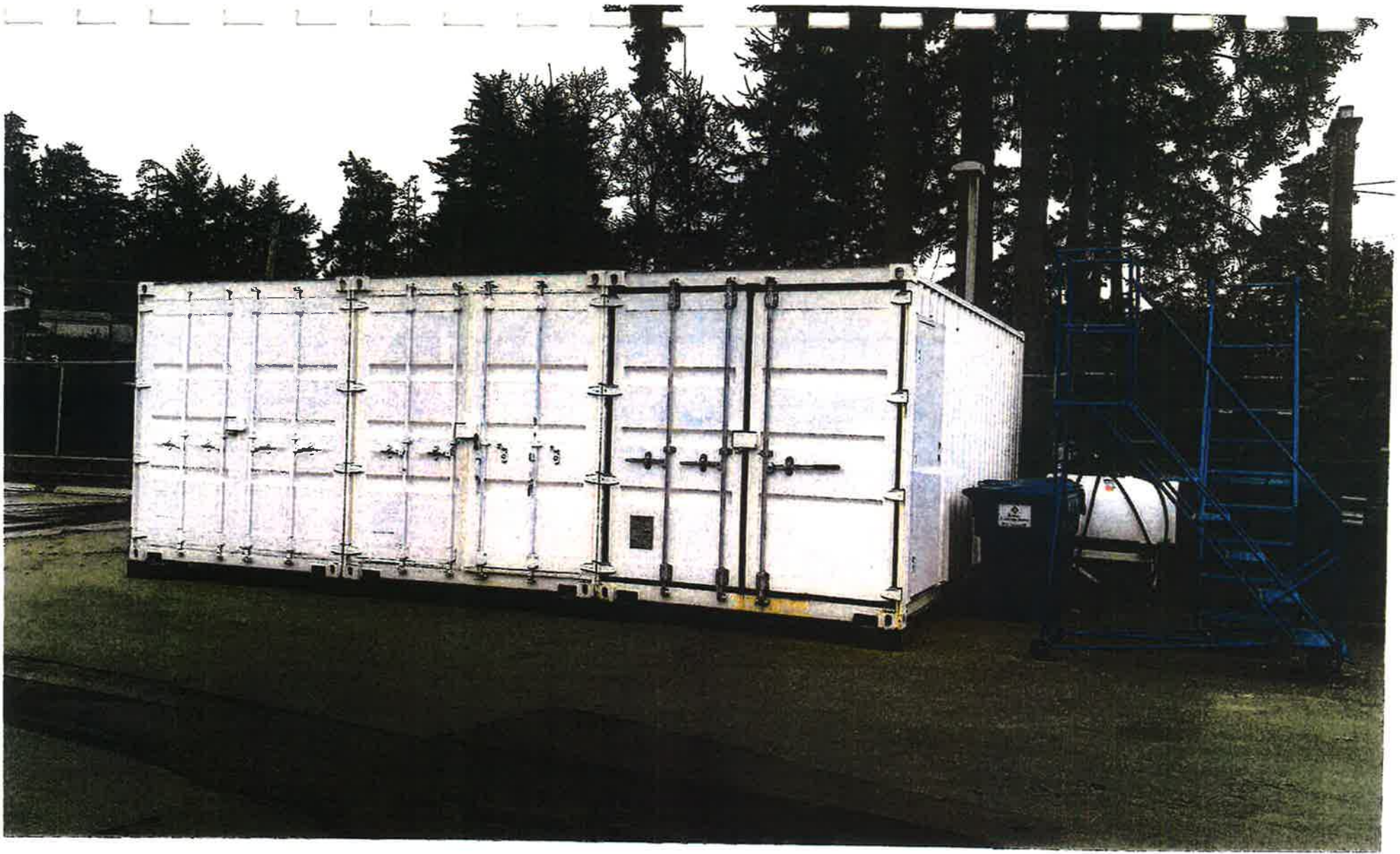




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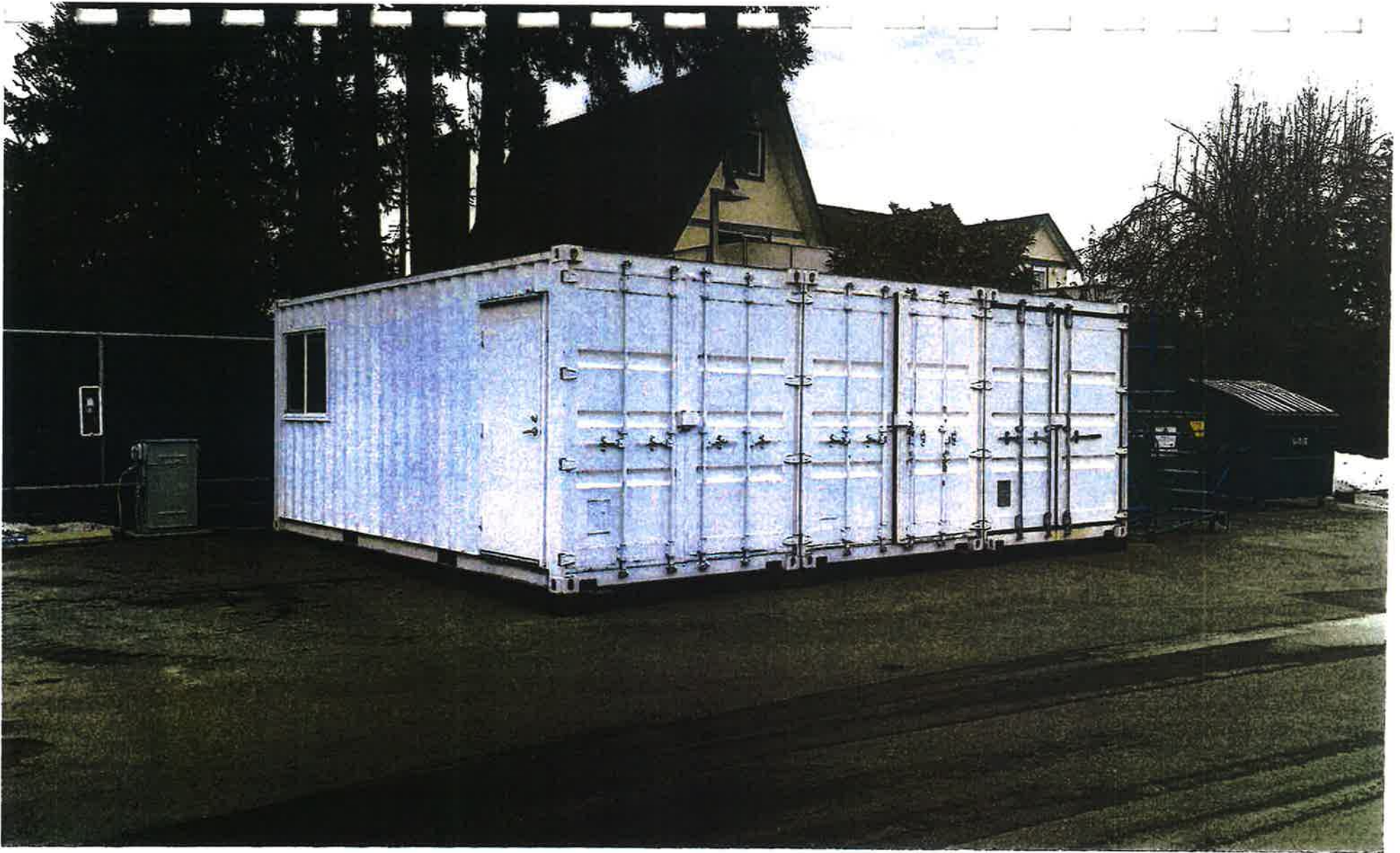




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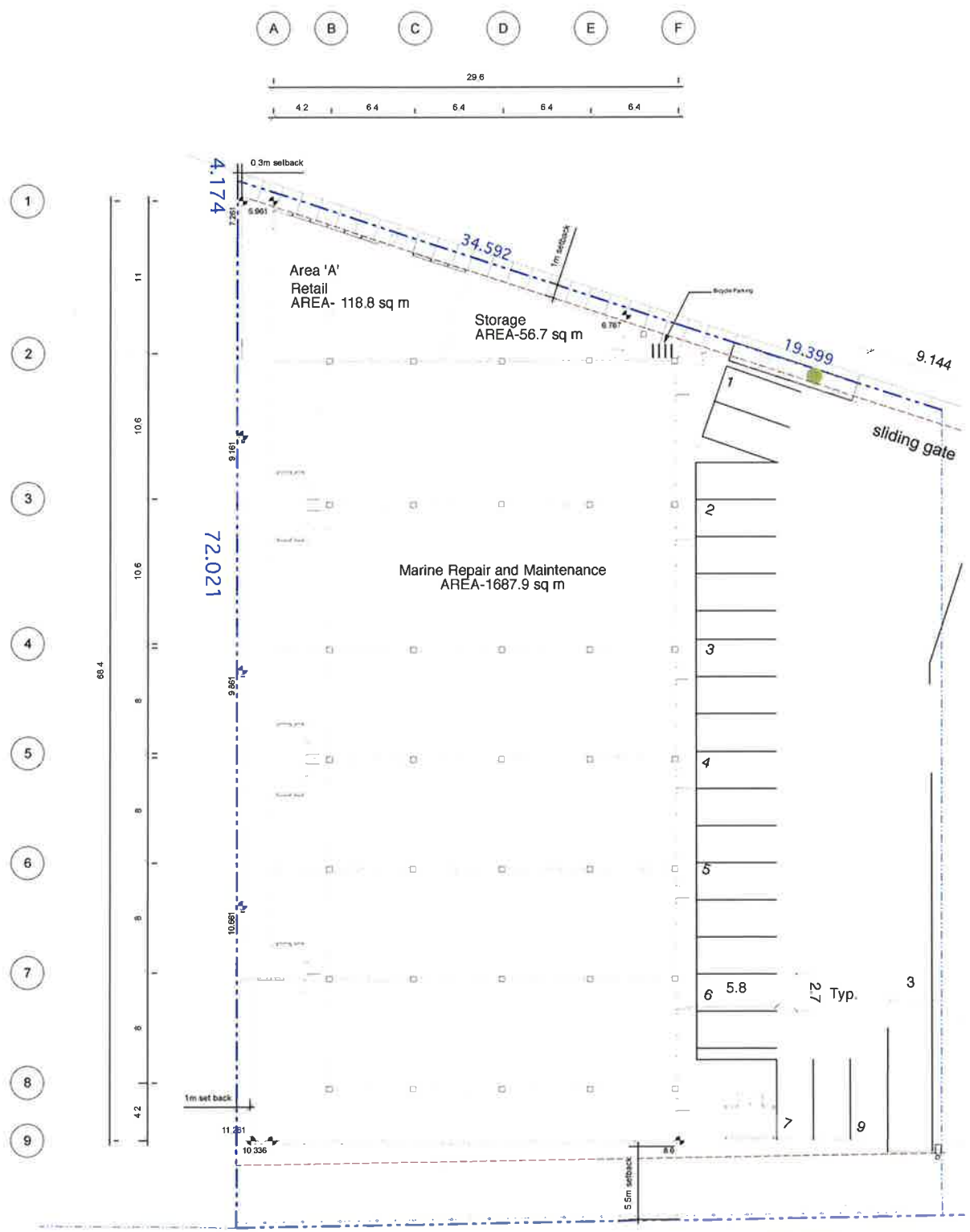


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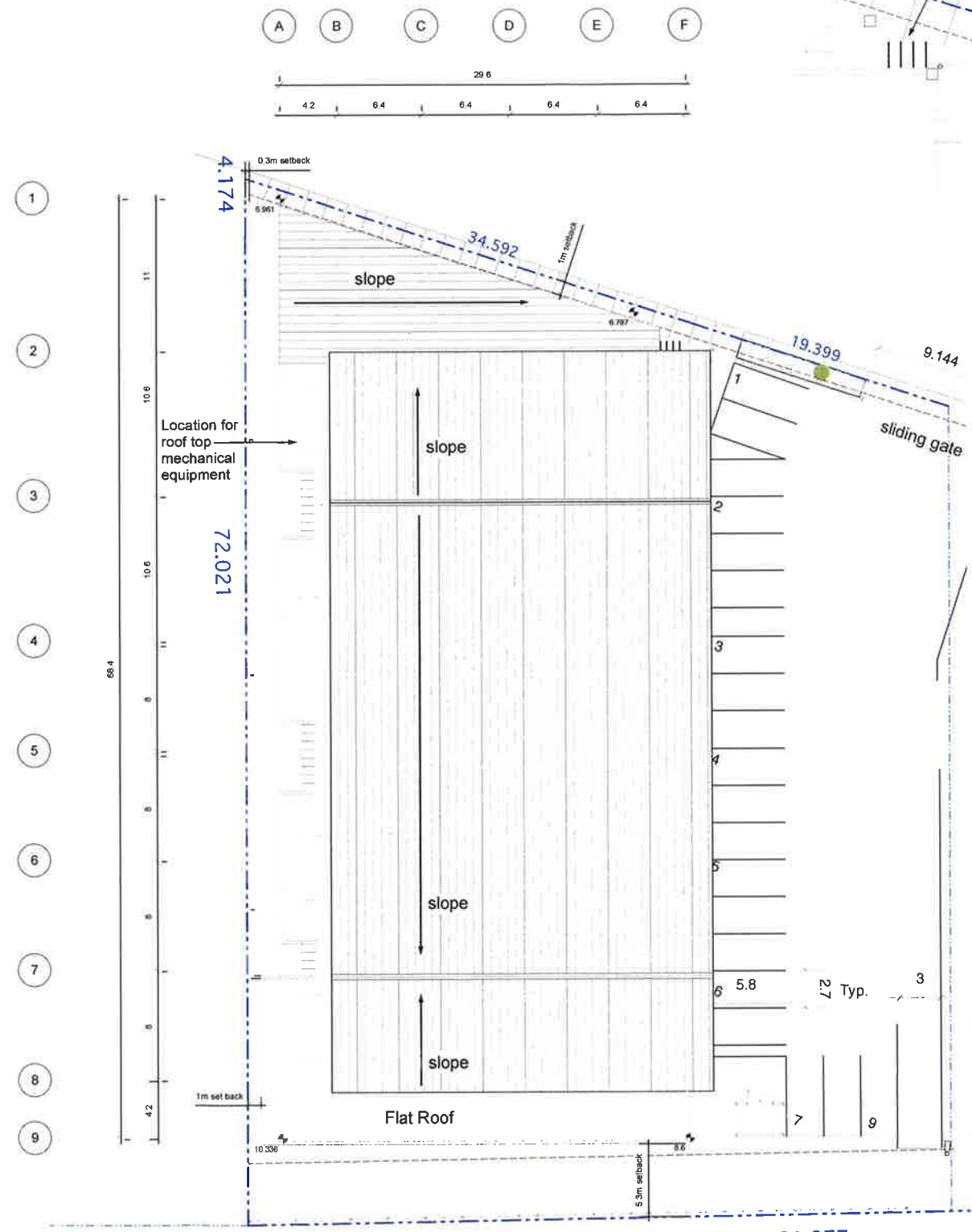
TOWN OF SIDNEY



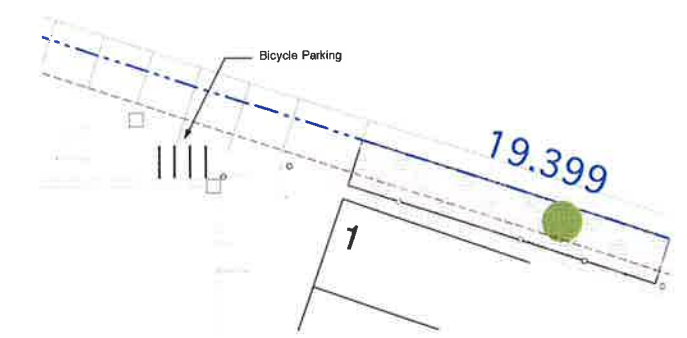




Floor Plan



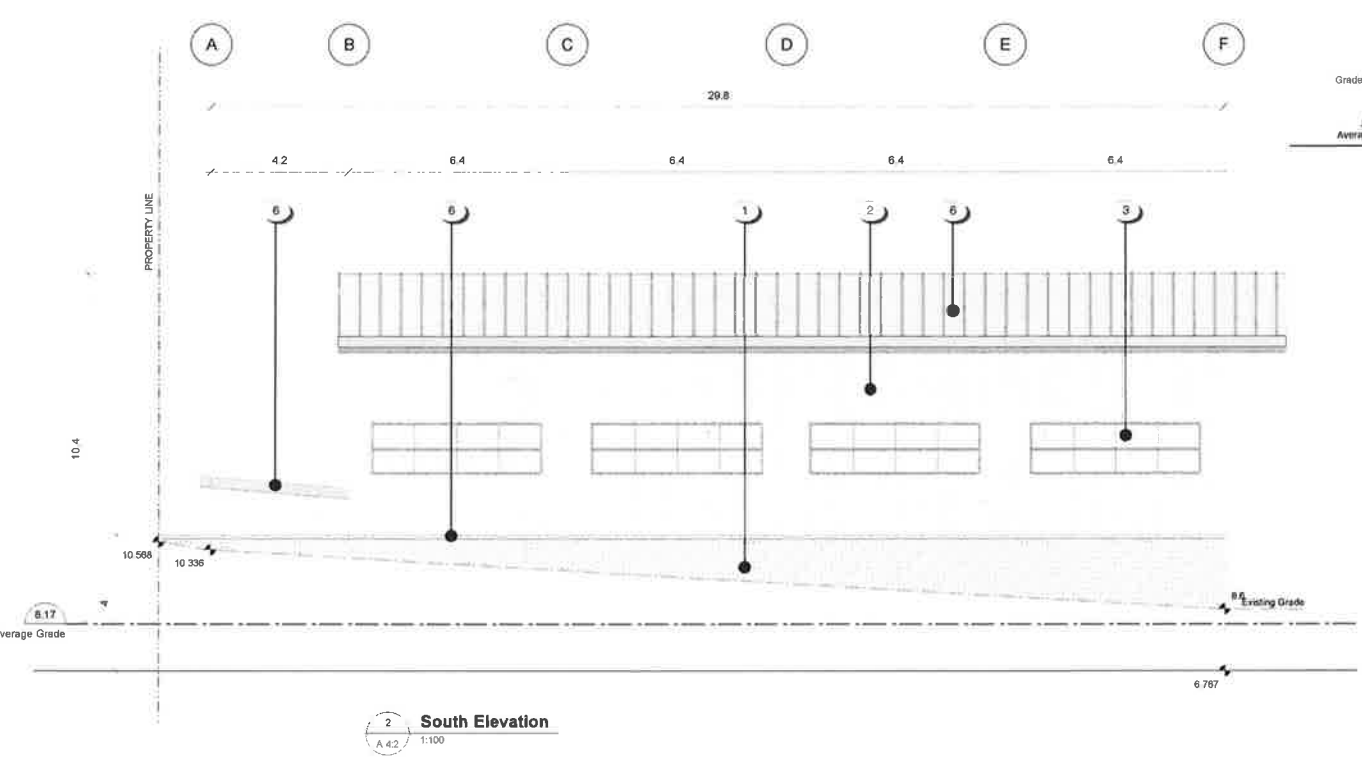
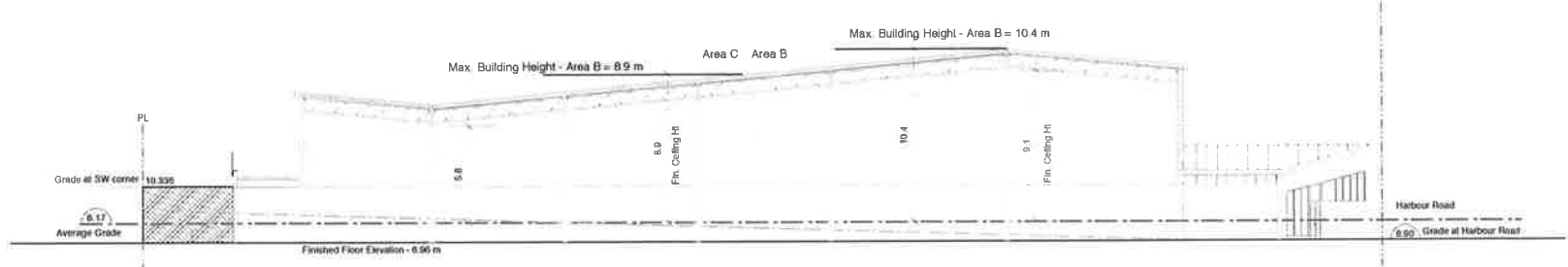
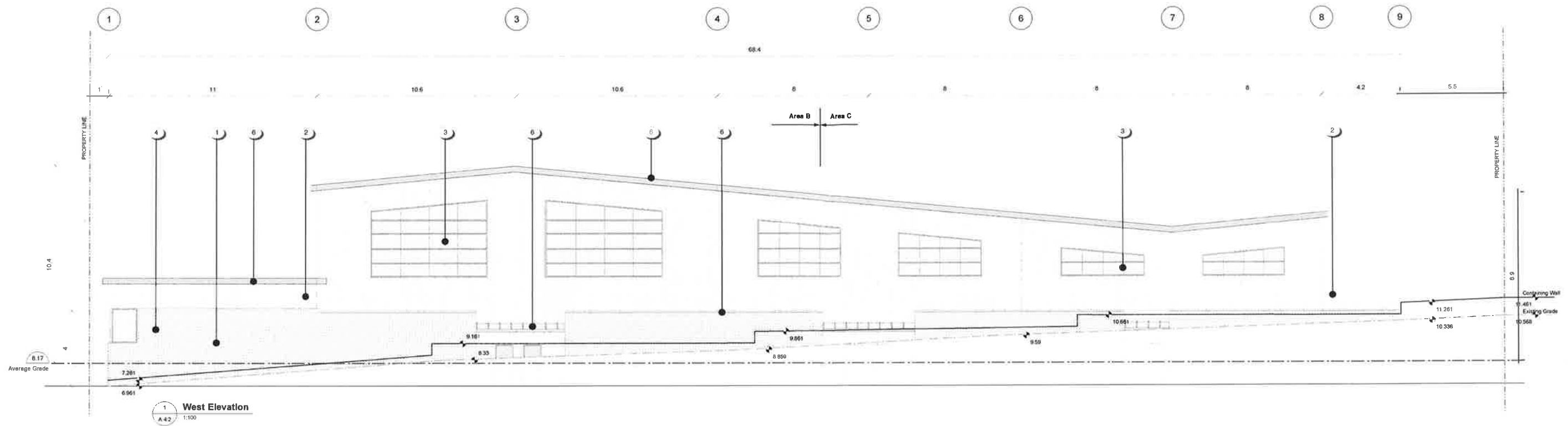
Roof Plan



Bicycle Parking Close Up  
3  
A4.1 1:100

July 22, 2009	Revised for DP
June 22, 2009	Issued for DP
200909	SDA Deck Warehouse
KDH	PCH
1:200	90'

NOTE: All dimensions are shown in meters.



- MATERIAL LIST:**
1. CONCRETE
  2. METAL SIDING
  3. KALWAL
  4. ALUMINUM WINDOW
  5. METAL GARAGE DOOR
  6. METAL ROOFING

Date	Description	By	For
July 12, 2008	Rev. issued for GP		
June 25, 2008	Issued for GP		
2008/09			
1:100			

NOTE: All dimensions are shown in meters.

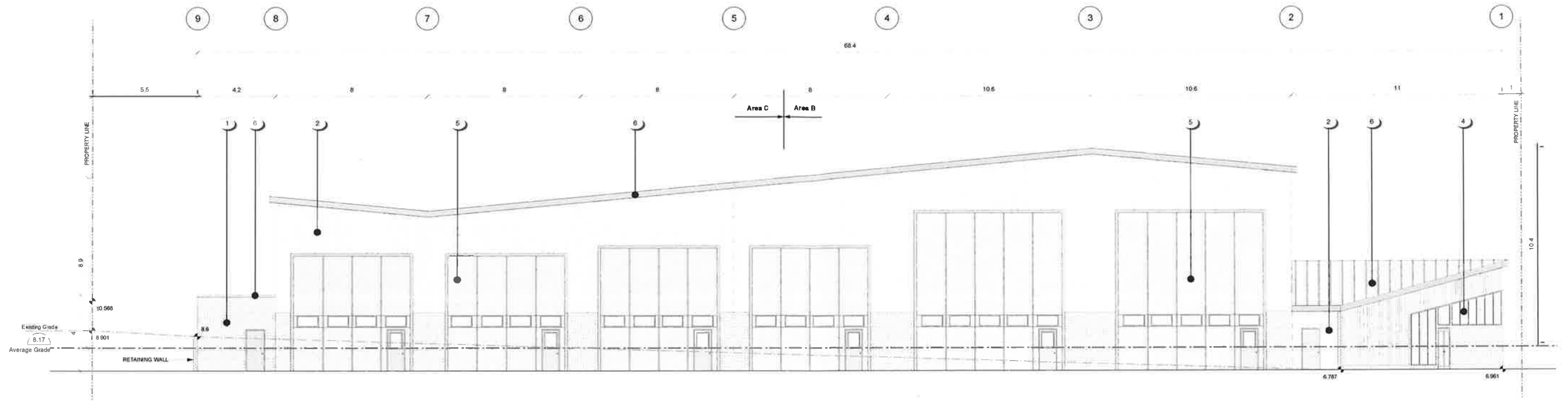
**de Hoog & Kierulff architects**  
 177 Park Street, Victoria BC, Canada V8V 3C3  
 Tel: 250.458.3367 Fax: 250.458.3391 email: dhk@dhka.ca

**Van Isle Marina**  
 2320 Harbour Road, Sidney BC  
 Victoria BC

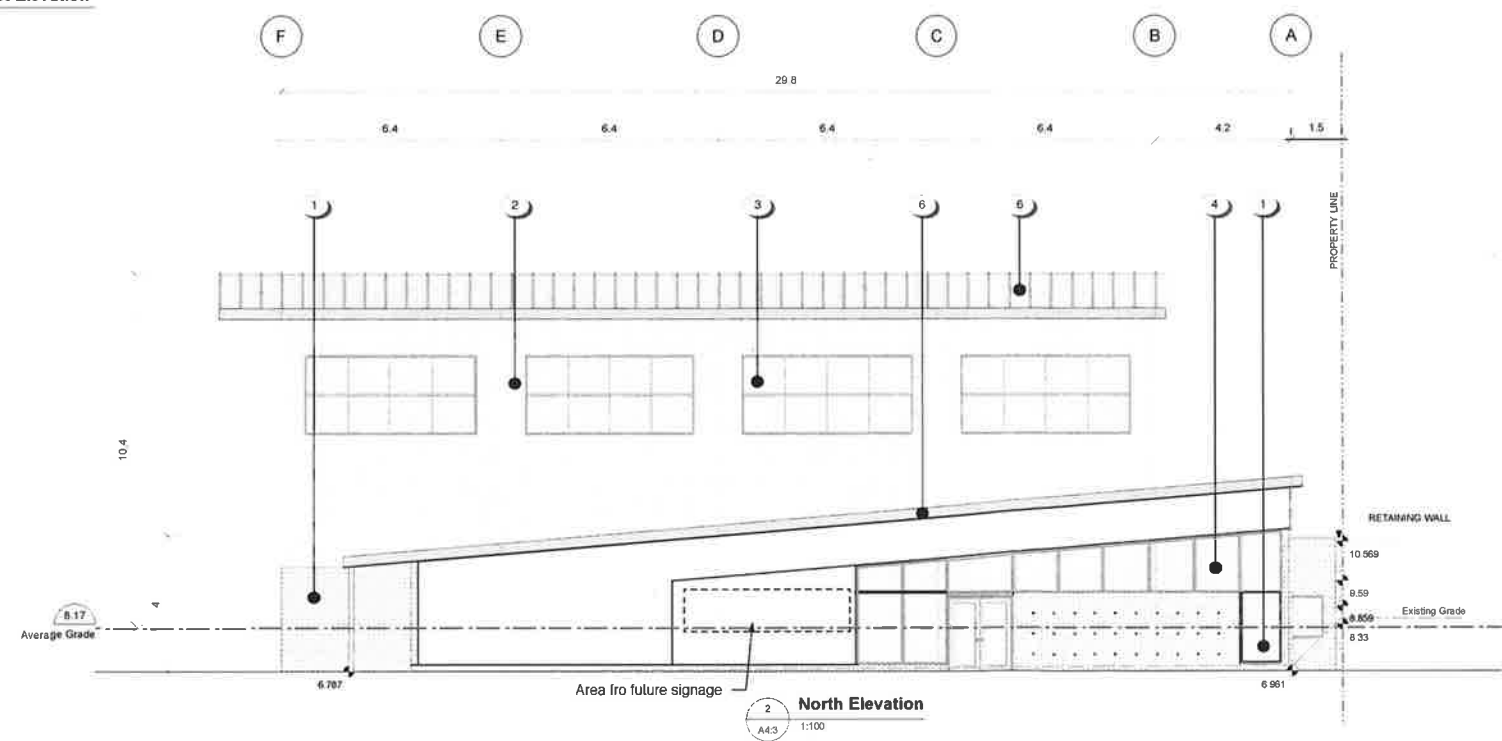
Building 1: Elevations

A 4:2





1 East Elevation  
A4.3 1:100



2 North Elevation  
A4.3 1:100

- MATERIAL LIST:
1. CONCRETE
  2. METAL SIDING
  3. KALWAL
  4. ALUMINUM WINDOW
  5. METAL GARAGE DOOR
  6. METAL ROOFING

July 23 2009	Revised for DP
June 26 2009	Issued for DP
235690	904 Boat Warehouse
1:100	304

NOTE: All dimensions are shown in millimeters.

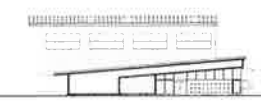
de Hoog & Kierulff architects  
 977 Park Street, Victoria BC, Canada V8W 2K2 www.dhka.ca  
 Tel: 250.433.3267 Fax: 250.433.3391 email: dhka@dhka.ca

Van Isle Marina  
 2320 Harbour Road, Sidney BC  
 Victoria BC

Building 1: Elevations  
 A 4:3



Building 2



Building 1