From: Kylie Dunn [mailto:kdunn@dmawlawyers.com.au]

Sent: Thursday, 15 June 2017 3:46 PM

To: AMOD
Cc: Paul Dugan

Subject: AM2014/231 & AM2016/25 - Application to vary a modern award - Horticulture Award

Dear Sir/Madam

We act for Mitolo Group Pty Ltd and Maranello Trading Pty Ltd.

We enclose for lodgment a supplementary witness statement for our witness, Ms Paula Colquhoun. We would be grateful if the statement could be brought to the attention of Vice President Catanzariti.

If you wish to discuss this matter, please do not hesitate to contact us.

Kind regards,

[Evolve:1b9e2c25-acfd-4728-9304-e52a0d488cdf]

Kylie Dunn | Associate



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IN THE FAIR WORK COMMISSION

Matter No. AM2014/231 / AM2016/25

Mitolo Group Pty Ltd

First Applicant

Australian Industry Group

Second Applicant

Maranello Trading Pty Ltd

Third Applicant

APPLICATION TO VARY A MODERN AWARD - HORTICULTURE AWARD 2010

SUPPLEMENTARY WITNESS STATEMENT OF PAULA COLQUHOUN

I, Paula Colquhoun, of 1304 Angle Vale Road, Virginia in the State of South Australia, Group Human Resources Manager for the Mitolo Group of Companies, state as follows:

Introduction

- 1. I refer to my previous witness statements dated 23 December 2016 and 17 May 2017.
- I make this supplementary statement in support of the application filed on 18 November 2016 and the amended application filed on 1 December 2016 by Mitolo Group Pty Ltd (Mitolo), Australian Industry Group and Maranello Trading Pty Ltd seeking an order pursuant to section 160 of the Fair Work Act 2009 (Cth) (FW Act) varying the coverage clause of the Horticulture Award 2010 (Horticulture Award). Mitolo also seeks a variation of the Horticulture Award under section 156 of the FW Act.
- 3. In this statement I refer to a number of documents. These documents are annexed to this statement and referred to by their paginated page number.

Lodged by: DMAW Lawyers Pty Ltd

on behalf of Mitolo Group Pty Ltd

and Maranello Trading Pty Ltd Level 3, 80 King William Street

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Address for Service:

Mitolo Group operations

- 4. I refer to paragraphs [43] to [82] of my witness statement dated 23 December 2016 where I describe in detail the Mitolo Group's potato operations in South Australia.
- 5. Annexed to this statement are a number of photographs which depict each component of the Mitolo Group's operations.

6. In particular:

- a bundle of photographs depicting the Mitolo Group's seed operations conducted at the Angle Vale Road Site (as described at paragraphs [48] and [50] of my statement dated 23 December 2016) appears at pages 10 to 16;
- 6.2 two photographs depicting harvested product being loaded into four tonne bins appear at pages 17 to 18;
- 6.3 a photograph depicting bins loaded with potatoes appears at page 19. This is how the potatoes arrive at the Angle Vale Road Site from where they are picked. The potatoes are not processed in any way in the period after being harvested into these bins and arriving at the Angle Vale Road Site;
- a photograph depicting potatoes being mechanically placed into the wash hopper (as described at paragraph [69] of my statement dated 23 December 2016) appears at page 20;
- 6.5 two photographs depicting potatoes passing through the wash hopper (described at paragraph [70] of my statement dated 23 December 2016) appear at pages 21 to 22;
- 6.6 a further photograph depicting the wash line appears at page 23;
- two photographs depicting the wash grading table (as described at paragraph [71] of my statement dated 23 December 2016) appear at pages 24 to 25;
- a photograph depicting the main grade line (as described at paragraph [73] of my statement dated 23 December 2016) appears at page 26;
- a photograph depicting the final grade (as described at paragraph [74] of my statement dated 23 December 2016) appears at page 27;

- 6.10 two photographs depicting the best before date of packaged product appear at pages 28 to 29. These photographs were taken on 9 June 2017 and the packaged product they show were packed on the same day;
- 6.11 a photograph depicting packaged potatoes being manually stacked on pallets appears at page 30;
- 6.12 two photographs depicting the final quality inspection (as described at paragraph [77] of my statement dated 23 December 2016) appear at pages 31 to 32;
- 6.13 a photograph depicting pallets of stock in the cool room awaiting dispatch (as described at paragraph [78] of my statement dated 23 December 2016) appears at page 33; and
- 6.14 a bundle of photographs depicting unsaleable waste (as described at paragraph [79] of my statement dated 23 December 2016) appears at pages 34 to 39.

Shift arrangements at Angle Vale Road Site

- 7. I refer to paragraph [12] of Ms Kay Rault's statement dated 21 April 2017 where she refers to there being two shifts for employees who work in the Mitolo Group's centralised facility located at Angle Vale Road, Virginia South Australia (Angle Vale Road Site).
- 8. In around January 2017, Mitolo introduced double shifts in respect of employees who carry out work comprising sorting, grading, washing, treating, packing and forwarding of crops (**SGWTPF Activities**) at the Angle Vale Road Site.
- 9. There is currently a morning shift and an afternoon shift. The morning shift commences from 5:00am on Mondays to Saturdays. The afternoon shift commences between 2:00pm and 5:00pm on Monday to Friday and on Sundays.
- 10. The length of both shifts varies depending on product quality, sales orders, weather and harvesting schedules.
- 11. Typically the morning shift will finish between 1:30pm and 4:30pm and the afternoon shift will finish between 10:00pm and 4:30am.
- 12. It was decided to introduce double shifts for the following reasons:

- 12.1 to more easily meet customer orders and sales volumes. Production times are determined by product quality. The implementation of double shifts helps to prevent employees from working long extended hours due to these variables;
- 12.2 to enable a 7 day supply to interstate customers and enable Mitolo Group to meet best before dates and quality standards; and
- 12.3 to enable the product to be washed, graded and packed across a greater span of hours and prevent deterioration of product.
- 13. In or around July 2012 Ms Rault asked to reduce her hours of work to 3 days per week until August 2013. I understood that she requested this change in her hours of work in order to accommodate her involvement as owner of a clothing business called "Inspired by Lacey Shea". I understand that this business continued until February 2017.
- 14. Ms Rault's starting times vary between 2:00pm and 5:00pm and her finishing times vary between 10:00pm and 4:30am. Ms Rault's weekly working hours have fluctuated between 24 and 56 hours each week over the past 12 months.

Operations in Virginia, South Australia

- 15. At paragraph [40] of my statement dated 23 December 2016 I refer to the area in Virginia, South Australia where the Angle Vale Road Site is situated being a rural area and zoned "Primary Production; Precinct Description: Horticulture". I have reviewed the information published by the Playford Council as to the zoning of the area and confirmed there is no other zoning which applies to the Angle Vale Road Site.
- 16. Attached to this statement are the following documents:
 - a photograph showing the view from the front office of the Angle Vale Road Site which shows that it is located in a rural, farming area (page 40);
 - 16.2 a photograph showing the Angle Vale Road Site from a distance (page 41);
 - 16.3 an aerial photograph showing the Angle Vale Road Site (page 42);
 - 16.4 an aerial photograph showing the Virginia region in South Australia (page 43); and

- 16.5 a zoning map published by the Playford Council (pages 44 to 46).
- 17. I refer to paragraph [36] of my statement dated 23 December 2016 and paragraphs [11] to [12] of my statement dated 17 May 2017 where I discuss the Mitolo Group's use of parcels of land at the Angle Vale Road Site. In the past the Mitolo Group has used part of this land to conduct seed and variety trials. Due to land rotation requirements it is not possible to use land for this purpose all of the time. Annexed to this statement at pages 47 to 50 is a bundle of photographs depicting seed and variety trials at the Angle Vale Road Site.

Similarity between operations of Mitolo Group and Zerella Holdings employees

- 18. I refer to paragraph [33] of the statement of Mr Paul White dated 20 December 2016 where he refers to negotiations for a new enterprise agreement for employees of Zerella Holdings Pty Ltd (**Zerella**) who perform work in the washing and packing facility referred to in Mr White's statement.
- 19. As stated at paragraph [6] of my statement dated 17 May 2017, I am aware from my enquiries with the Fair Work Commission that the Zerella enterprise agreement is underpinned by the Horticulture Award and that the National Union of Workers approved that agreement.
- 20. I am broadly familiar with the operations of Zerella due to the fact that it is one of the Mitolo Group's competitors.
- 21. Based on my knowledge of Zerella's operations it is my belief that there are a number of significant similarities between its operations and those of the Mitolo Group.

22. In particular:

- 22.1 Zerella grows potatoes and onions, the same as the Mitolo Group (see paragraph [4] of Mr White's statement and paragraph [9] of my statement dated 23 December 2016);
- 22.2 Zerella's customer base includes wholesale markets and supermarkets (see paragraph [4] of Mr White's statement). This is the same as the Mitolo Group (see paragraph [13] of my statement dated 23 December 2016);

- Zerella owns land on Johns Road in Virginia, South Australia. Zerella uses that land for growing potatoes, carrots and onions as well as for carrying out washing and packing activities (see paragraphs [12] and [14] of Mr White's statement). That land is approximately 1km from the Angle Vale Road Site;
- 22.4 around 1 per cent of Zerella's total produce is grown at the Johns Road site.

 The balance is brought in from other growing sites;
- 22.5 Zerella employs workers who perform duties at the Johns Road site which are identical to the SGWTPF Activities undertaken by Mitolo employees at the Angle Vale Road Site (see paragraph [15] of Mr White's statement);
- the Mitolo Group uses the Angle Vale Road Site for a number of purposes, including to undertake the SGWTPF Activities, as well as to conduct seed propagation, for dams and a water filtration system, and to store farm machinery, farm chemicals and fertilizer (see paragraph [36] of my statement dated 23 December 2016);
- 22.7 in the case of both Zerella and the Mitolo Group, the majority of packaged product is dispatched the same day (see paragraph [15] of Mr White's statement and paragraph [78] of my statement dated 23 December 2016);
- Zerella (in conjunction with another entity called Parilla Premium Potatoes) owns other growing sites in the Mallee region of South Australia where potatoes, carrots and onions are grown. The Mitolo Group grows potatoes on a number of different sites in the Virginia area surrounding the Angle Vale Road Site (as well as in the Riverland and Mallee). In both cases, produce is transported from the various growing sites owned by each business to the Johns Road site in the case of Zerella and to the Angle Vale Road Site in the case of the Mitolo Group (see paragraphs [9] and [18] of Mr White's statement and paragraph [67] of my statement dated 23 December 2016);
- 22.9 neither Zerella nor the Mitolo Group share their centralised facility with other enterprises (see paragraph [19] of Mr White's statement).
- 23. Attached to this statement are the following documents:
 - 23.1 an aerial photograph showing the Johns Road site operated by Zerella (page 51);

- 23.2 a photograph depicting Zerella's operations at Johns Road (page 52); and
- 23.3 a photograph taken from the Angle Vale Road Site of a sign located across the road, which states that Zerella's operations on Johns Road is located 1 kilometre from the Angle Vale Road Site operated by the Mitolo Group (page 53).

Virginia Farm Produce

- 24. One of the Mitolo Group's competitors is a business called Virginia Farm Produce.
- 25. I am aware from my dealings with employees of Virginia Farm Produce that employees' terms and conditions of employment are governed by a collective agreement entitled 'Adelview Pty Ltd trading as Virginia Farm Produce Packinghouse employee collective agreement' and the Horticulture Award.
- 26. Attached at page 54 is an aerial photograph which shows the location of the operations of each of the Mitolo Group, Zerella, Virginia Farm Produce and another competitor, Gawler River Produce. Each of those businesses owns land in rural South Australia and transports harvested produce to a centralised washing and packing facility located in or around Virginia.

Flexibility

- 27. I refer to paragraphs [82] and [106] to [117] of my statement dated 23 December 2016 where is describe the need for flexibility in the Mitolo Group's operations.
- 28. Produce that has been harvested is immediately loaded onto Mitolo Group trucks (which are scheduled in conjunction with harvest times) and delivered to the Angle Vale Road Site. It begins undergoing the SGWTPF Activities within between 30 mins and 12 hours of being delivered to the Angle Vale Road Site.
- 29. Produce that has been harvested and then undergone the SGWTPF Activities will have a shelf life of around 10 days after it is packed for dispatch. It is therefore important that produce is dispatched from site as soon as possible. On average, produce is generally dispatched from site the same day as being packed. It is very unusual for produce that has been packed to be stored on site for more than 48 hours.

- 30. I refer to paragraphs [107] to [111] of my statement dated 23 December 2016 where I refer to the reasons why shifts need to start at 5:00am and why finishing times are required to be flexible.
- 31. There is a requirement for several key production roles to commence up to 1 hour before the start of every shift. These staff members are preparing the wash, grading and packaging lines for production. The following tasks are conducted prior to the start of each shift:

31.1 Wash:

- (a) filling the hoppers with water (18,000 litres);
- (b) conducting chlorine (sodium hypochlorite) checks;
- (c) applying SO² (sodium metabisulflite) to the hydro coolers;
- (d) tipping the first load of produce into the hopper and through the tumblers so that there is product on the grading lines for when the remainder of the workers commence;

31.2 CVS Operator:

(a) setting the grading machine in accordance with customer specifications;

31.3 Machine Operators:

(a) setting and loading of packaging equipment;

31.4 Team Leaders:

(a) supervision of early start staff members.

Comparison of Horticulture Award and SS&W Award

32. As stated at paragraph [118] of my statement dated 23 December 2016, I am familiar with the classification structure in the Horticulture Award and the Storage Services and Wholesale Award (**SS&W Award**).

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33. Based on my review of the classification structures in each award it is my belief that the Horticulture Award more closely aligns to the duties performed by workers

employed by Mitolo who are engaged in SGWTPF Activities at the Angle Vale Site.

In comparison, the classifications in the SS&W Award do not match the duties

performed by those workers.

34. I have prepared a schedule, which appears at pages 55 to 59, which identifies the

duties performed by each category of worker employed by Mitolo to perform

SGWTPF Activities at the Angle Vale Site and compares the applicable classification

level under each of the Horticulture Award and the SS&W Award.

35. I refer to paragraph [21] of Ms Rault's statement dated 21 April 2017 where she

states that if her employment with Mitolo was covered by the SS&W Award she

would be paid \$19.56 per hour.

36. The above rate is the current minimum hourly rate prescribed in clause 15.1 of the

SS&W Award for employees who fall within the classification of "storeworker grade 2"

under Schedule B to that award.

37. I have reviewed the classification descriptions in Schedule B to the SS&W Award.

Based on my review, if Ms Rault was covered by the SS&W Award, I consider that

the best classification "fit" for Ms Rault, given the work she performs, would be

"storeworker grade 1".

38. This is because the classification "storeworker grade 2" under the SS&W Award

requires "proven and demonstrated skills" at that level and responsibility for the

quality of the employee's own work. In contrast, the classification "storeworker grade

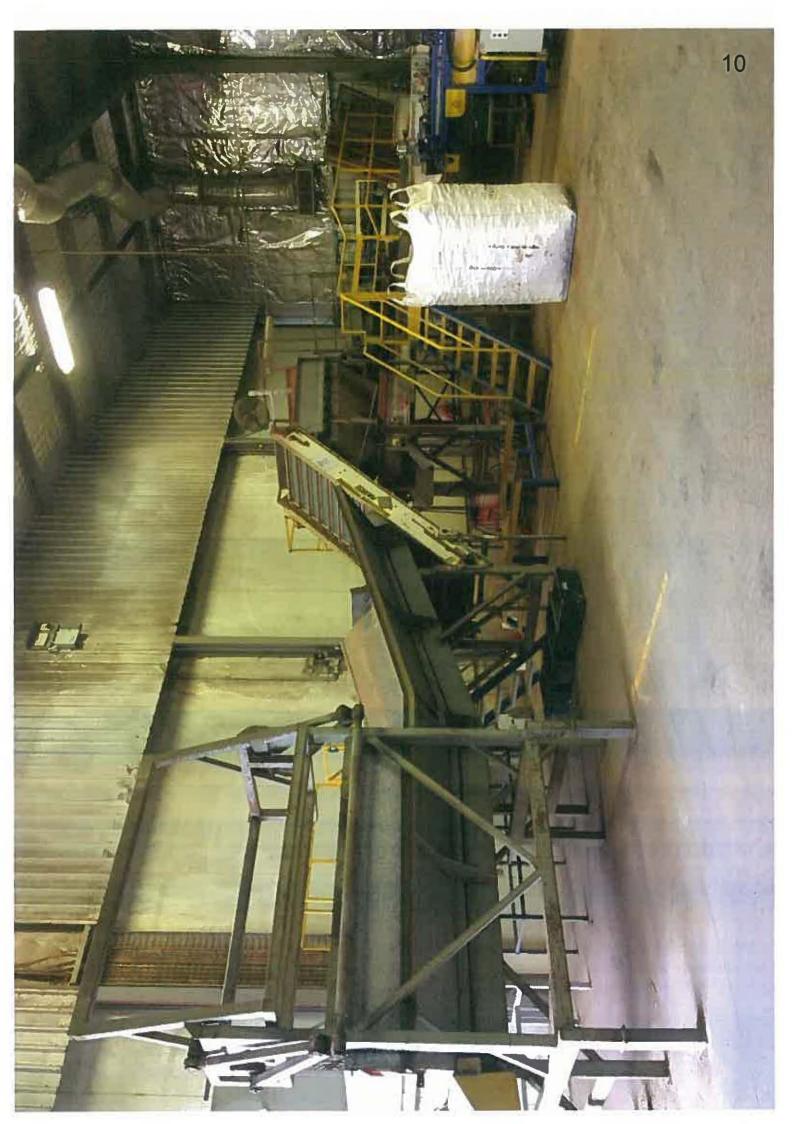
1" is "subject to detailed direction".

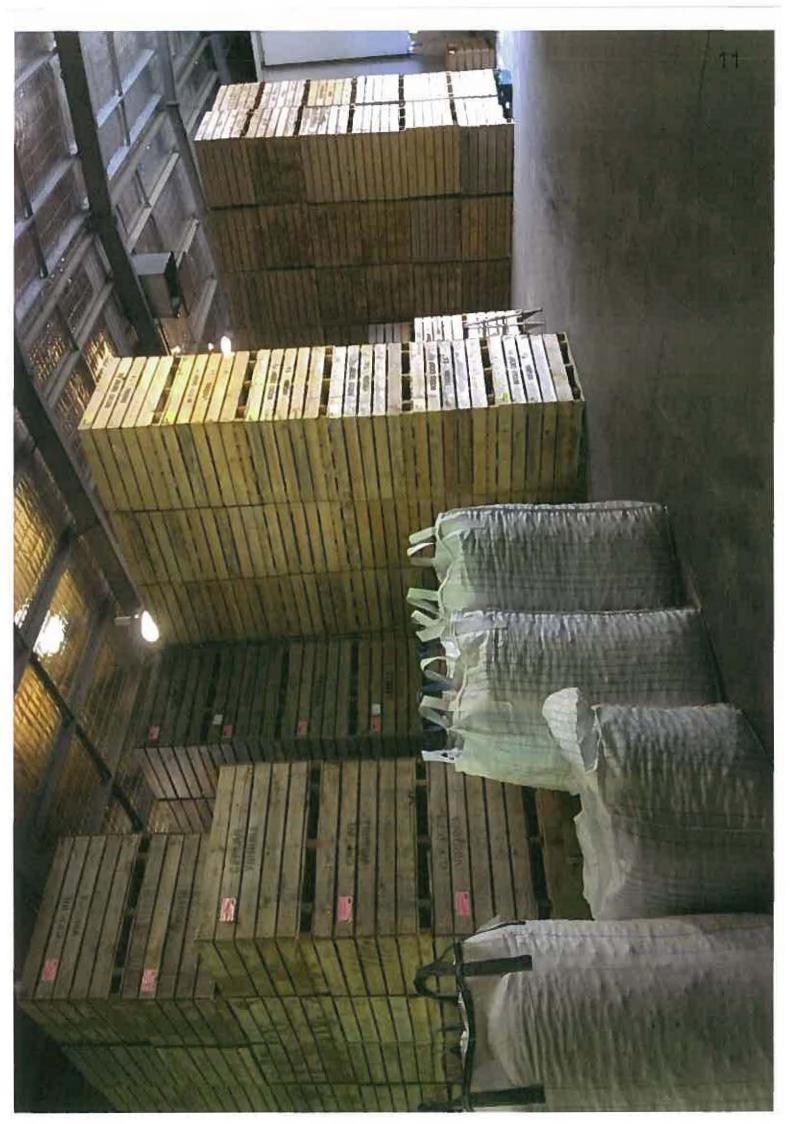
39. Accordingly, in the event that the SS&W Award covered Ms Rault's employment with

Mitolo her minimum hourly rate of pay as a "storeworker grade 1" would be \$19.38.

Paula Colquhoun

15 June 2017



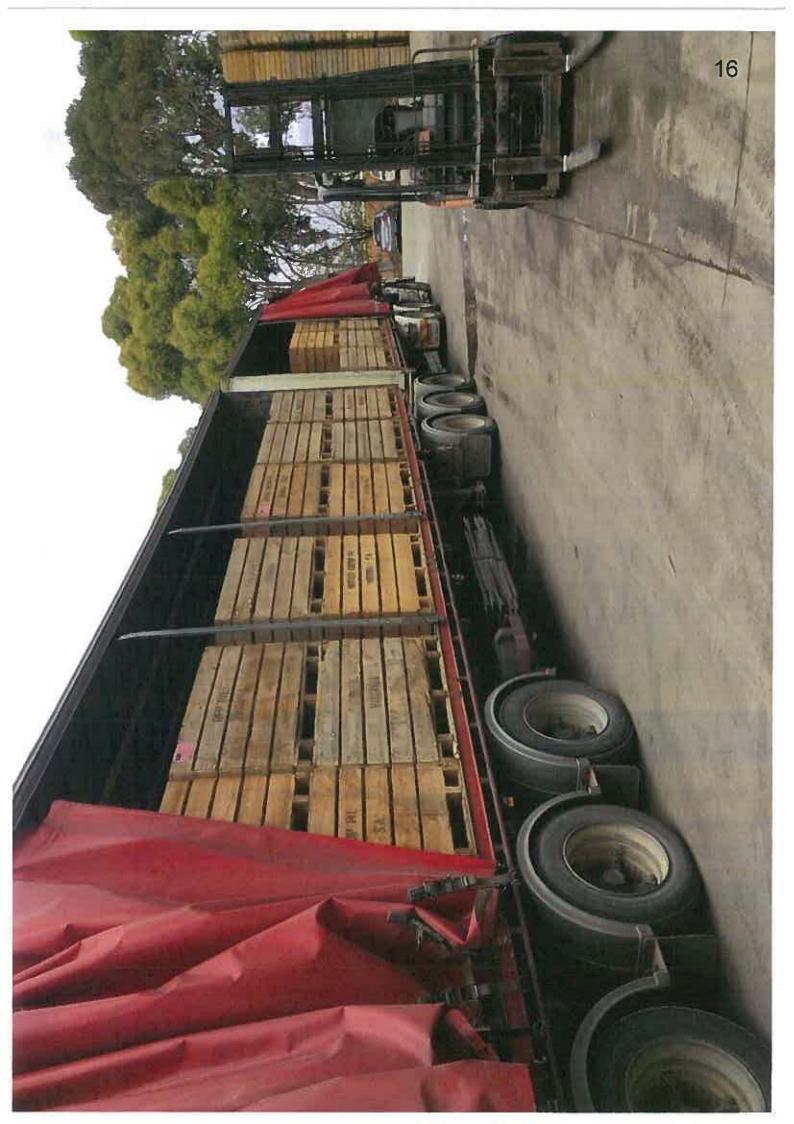


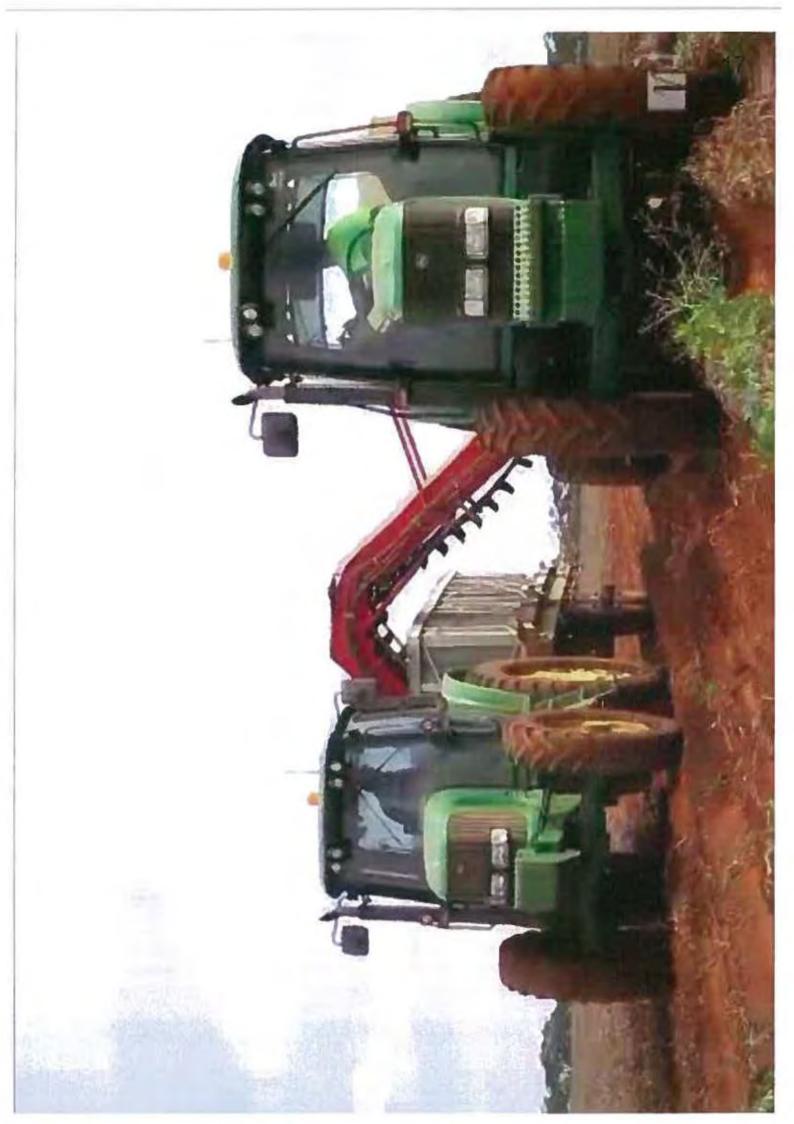


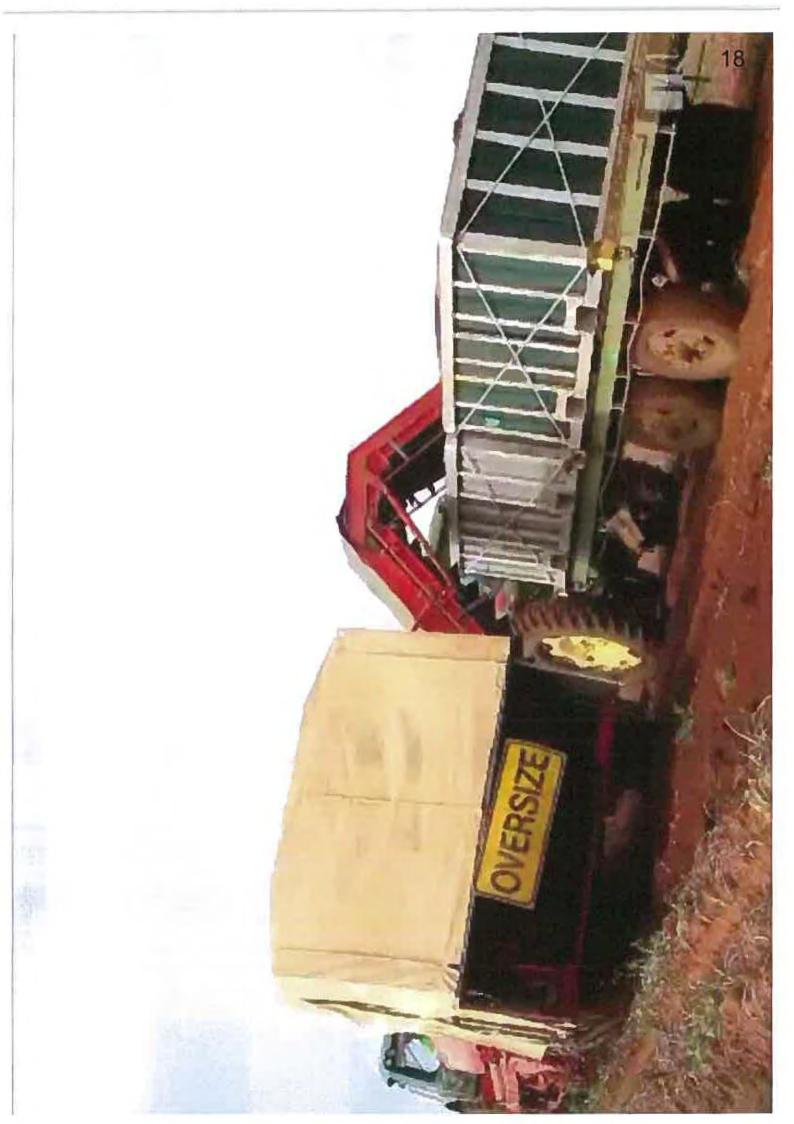


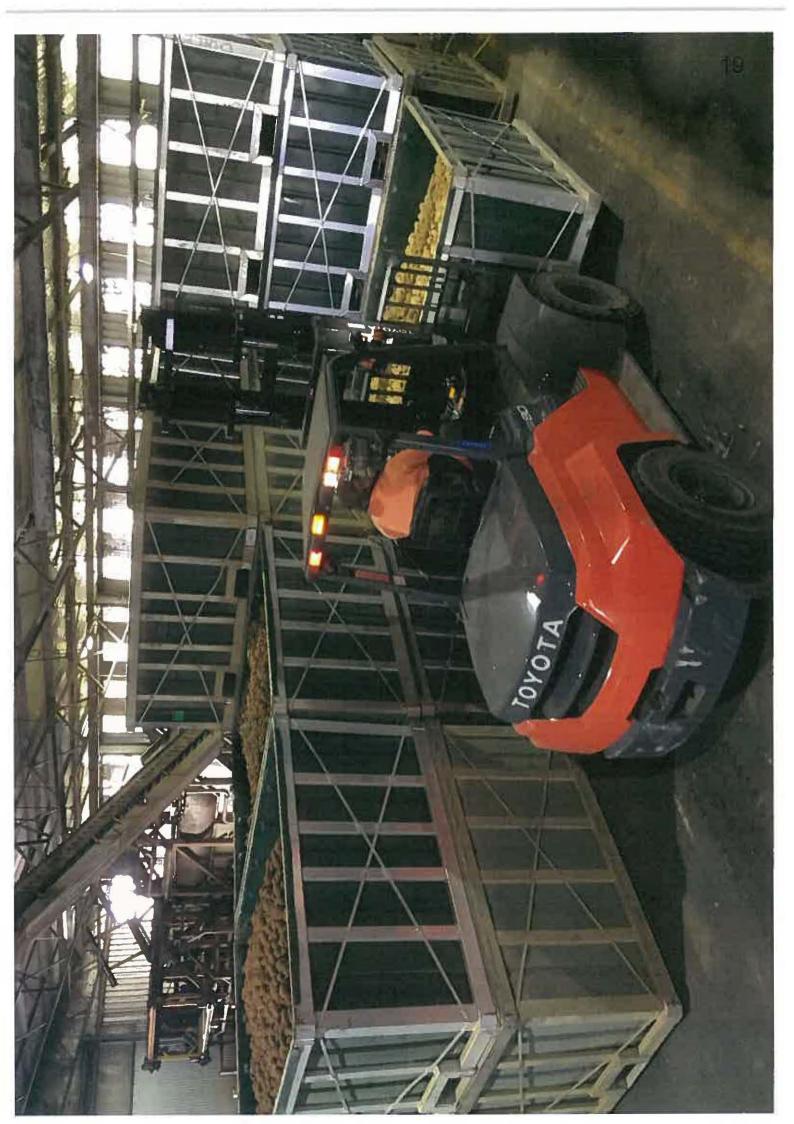


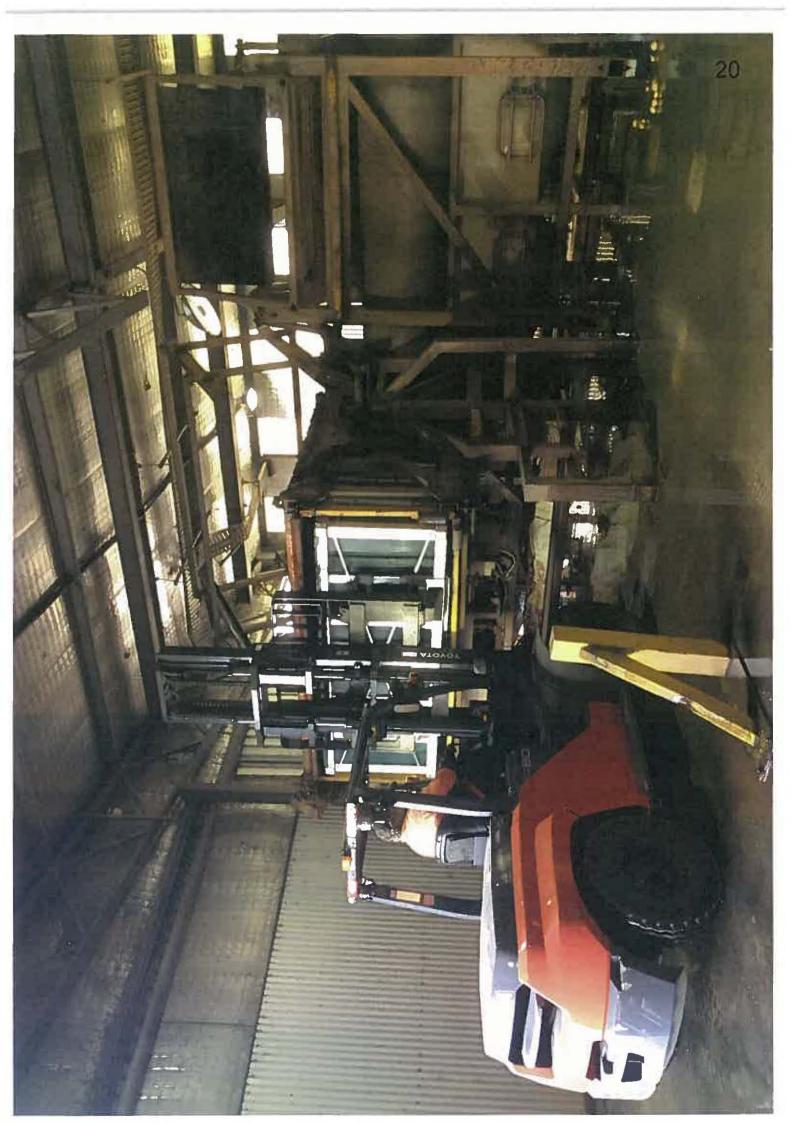


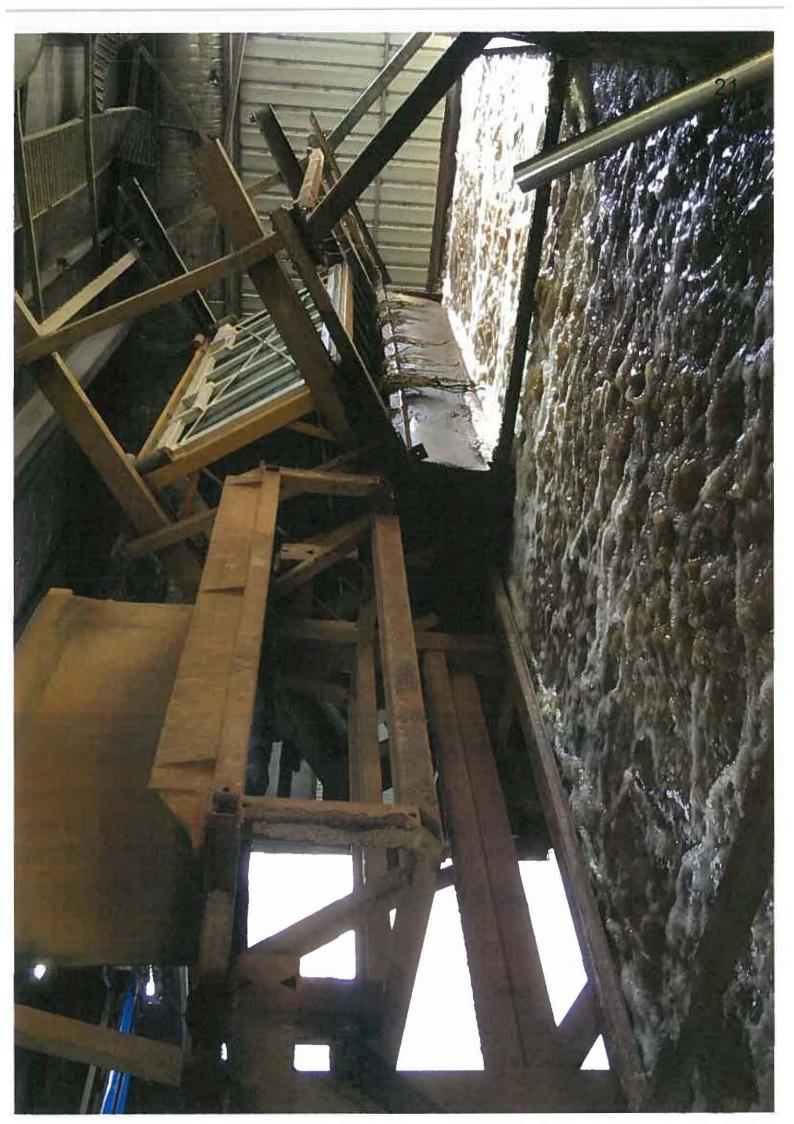


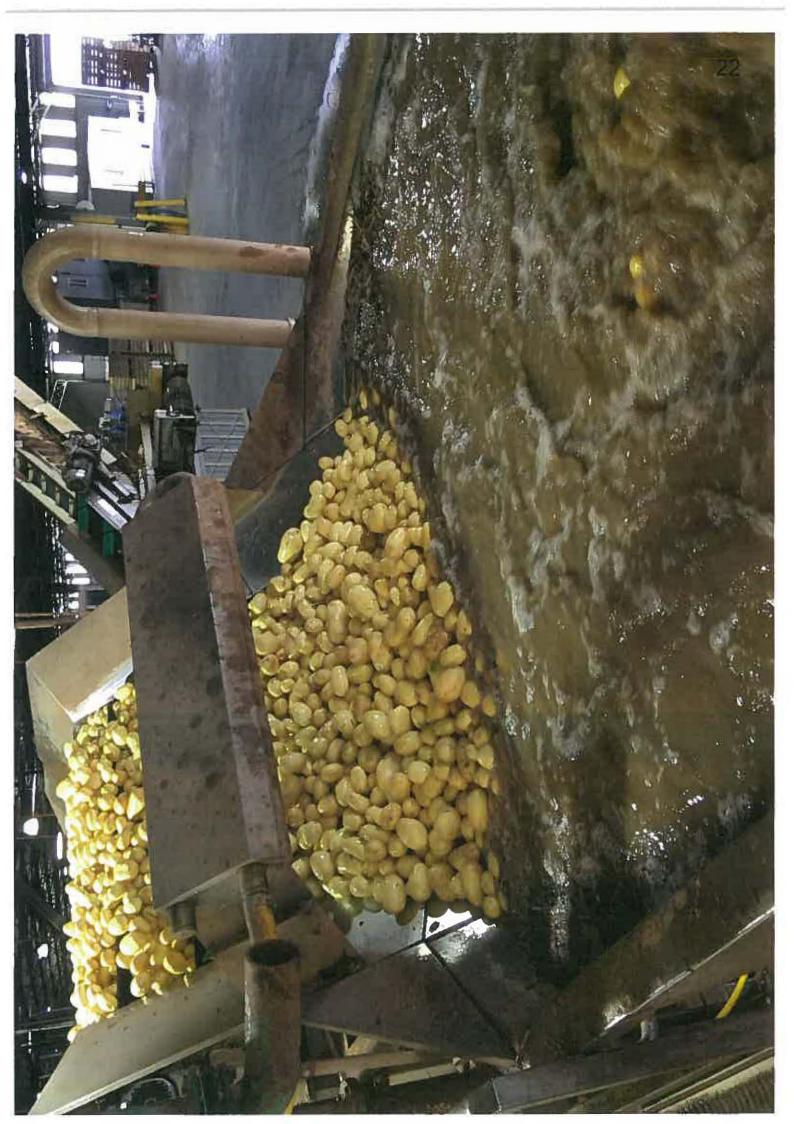


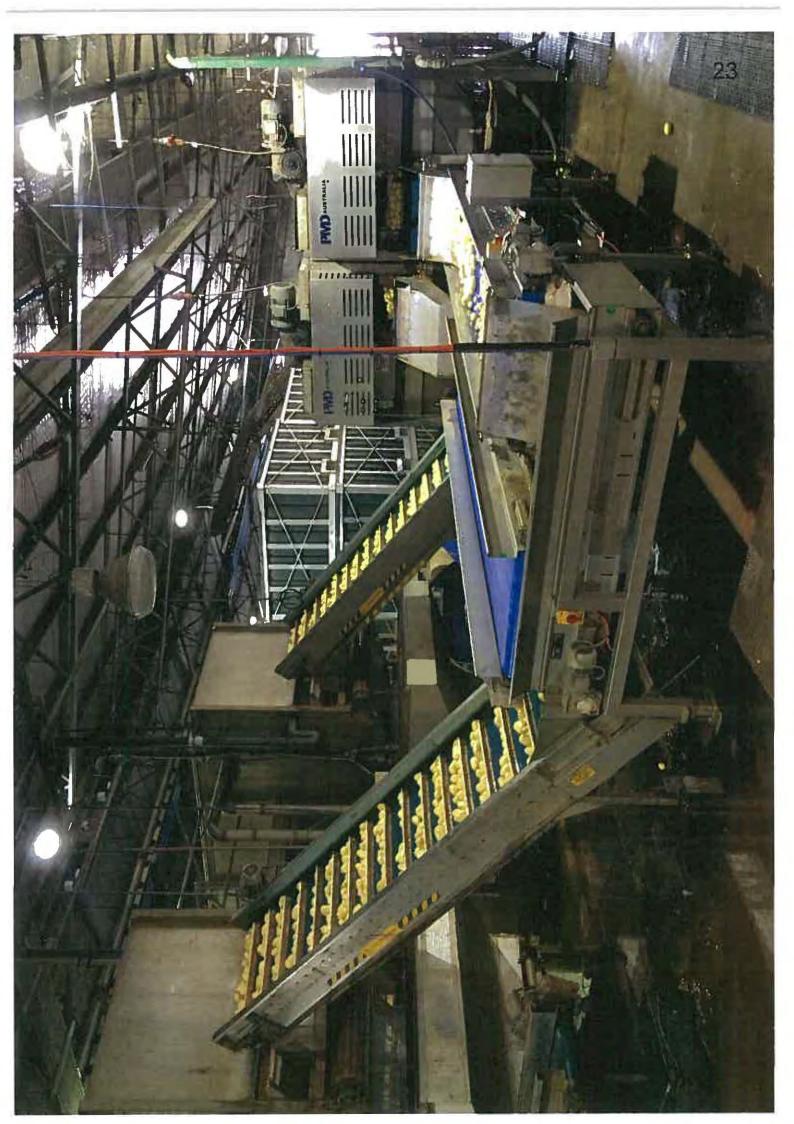


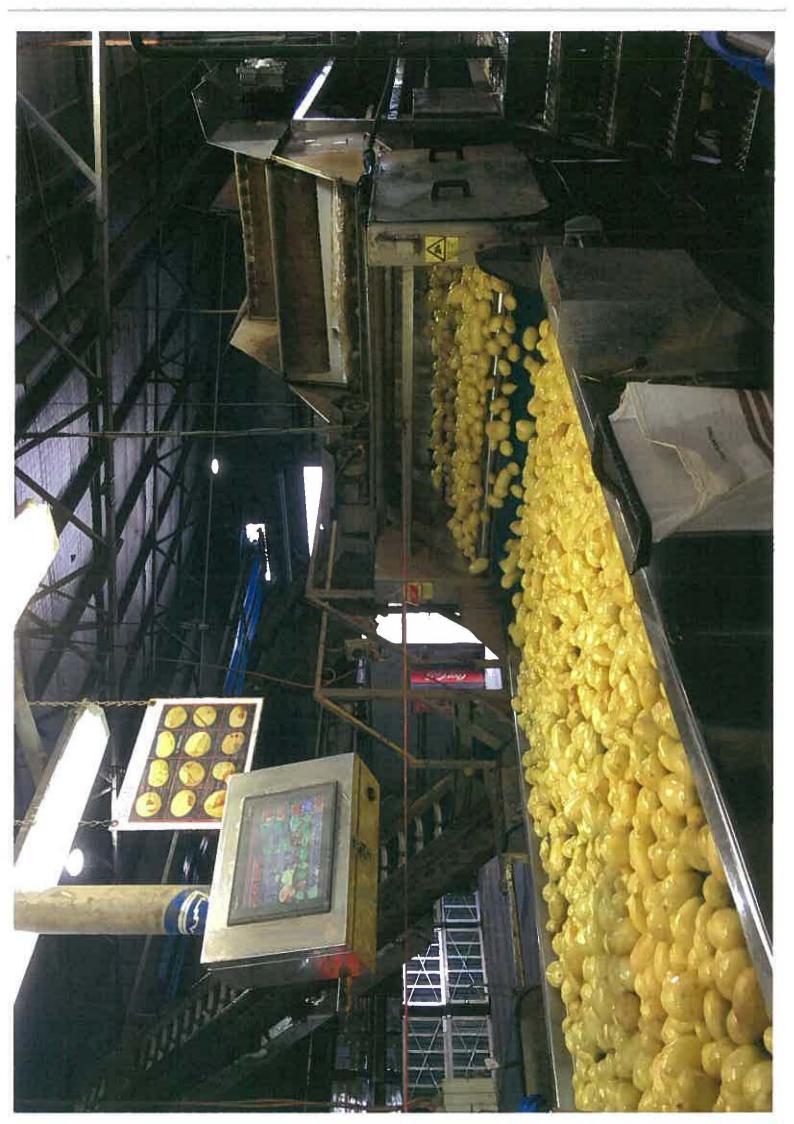






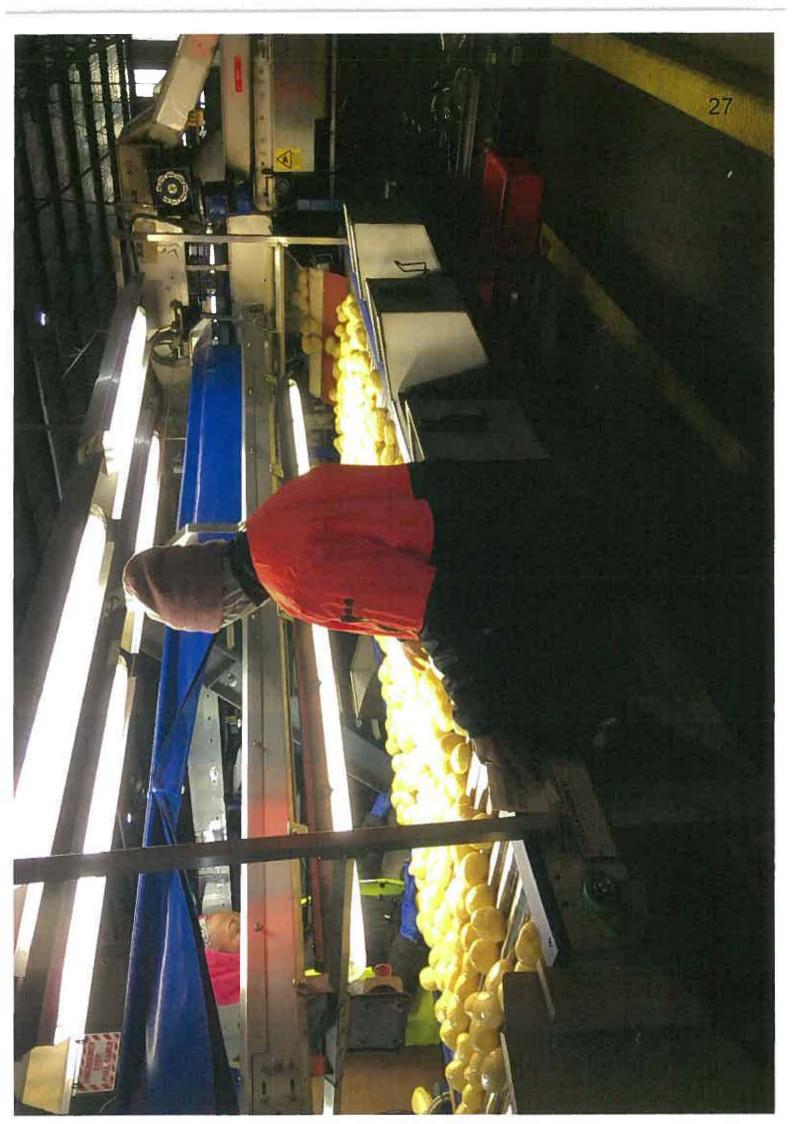


















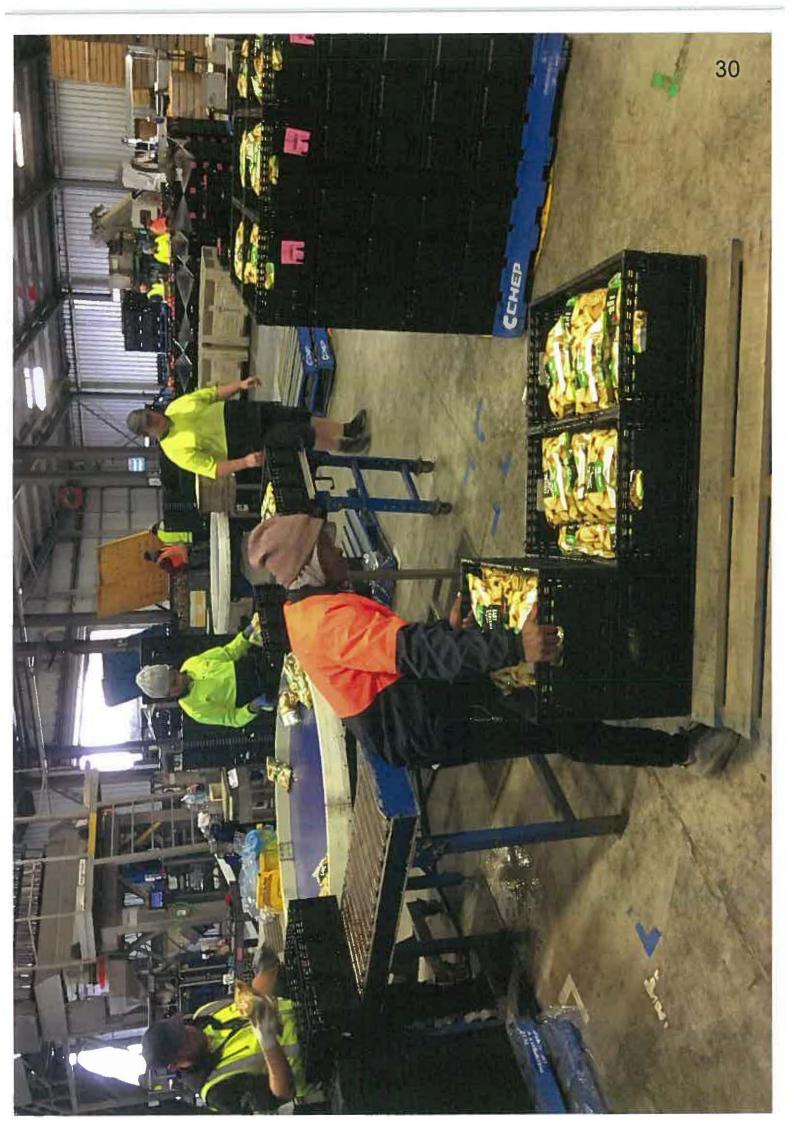
2 kg

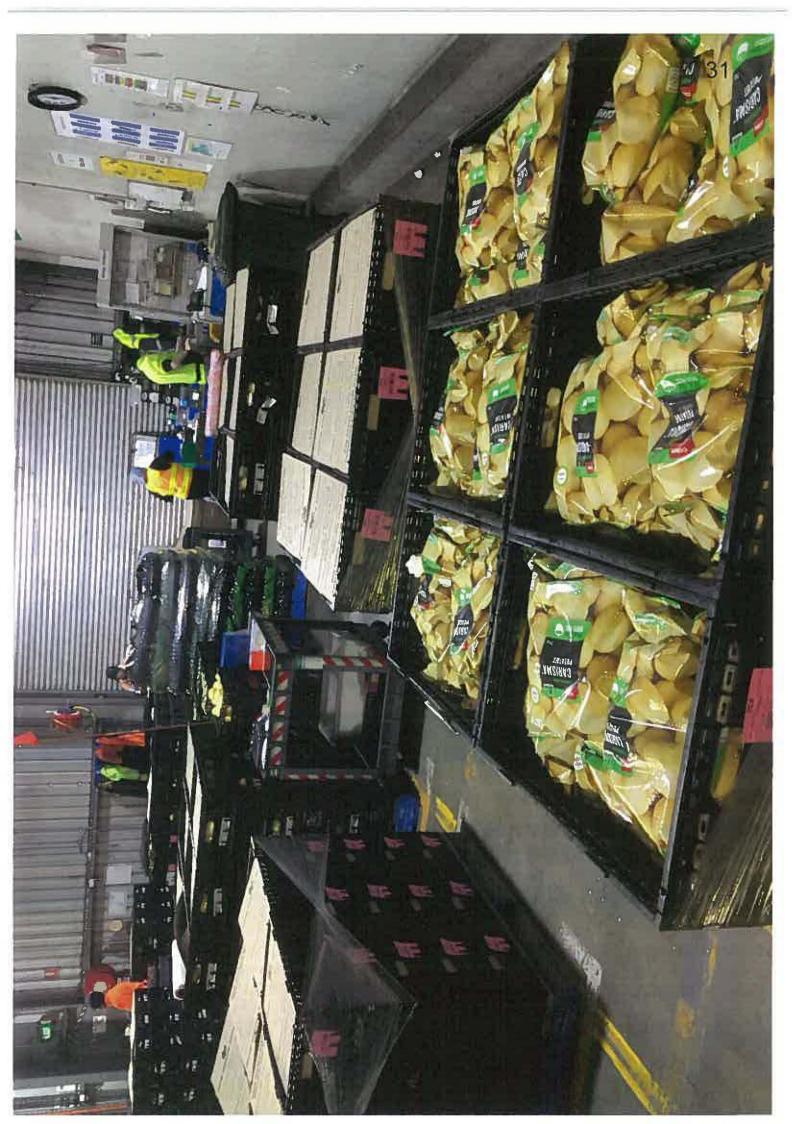
+ Contains Vitamin C, which helps support your immune system, reduce tiredness*

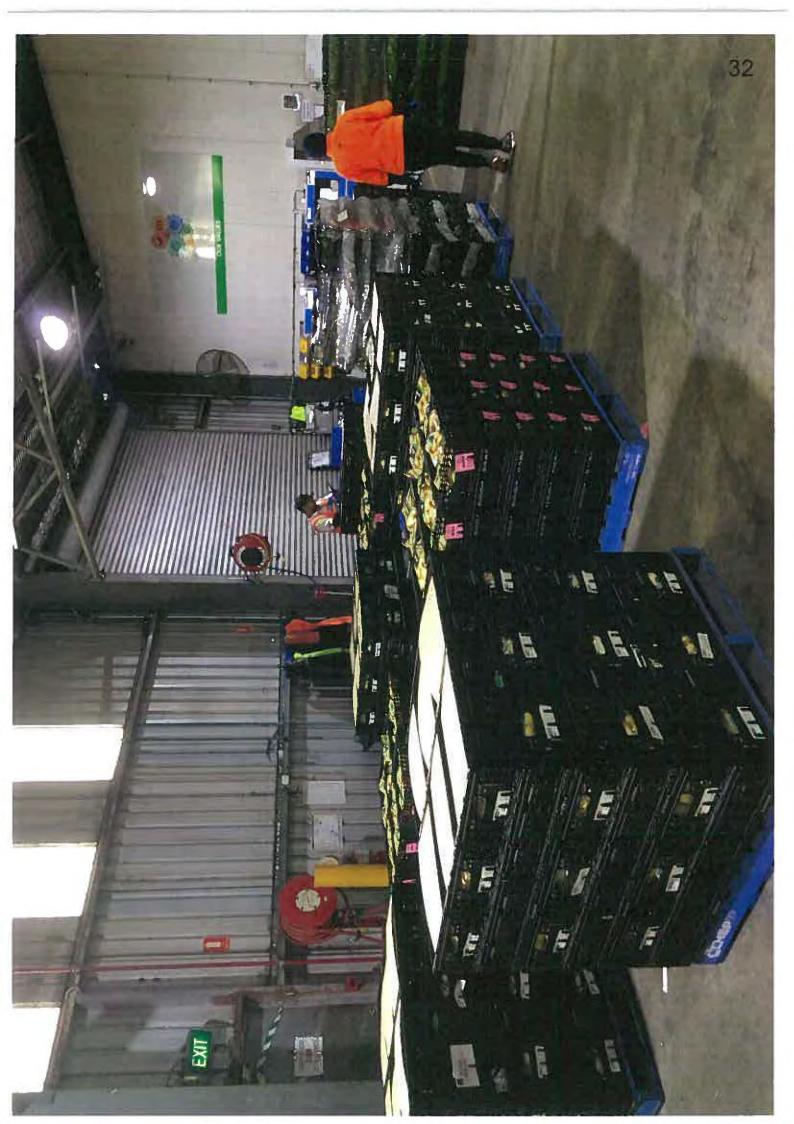
+ Homegrown in Australia

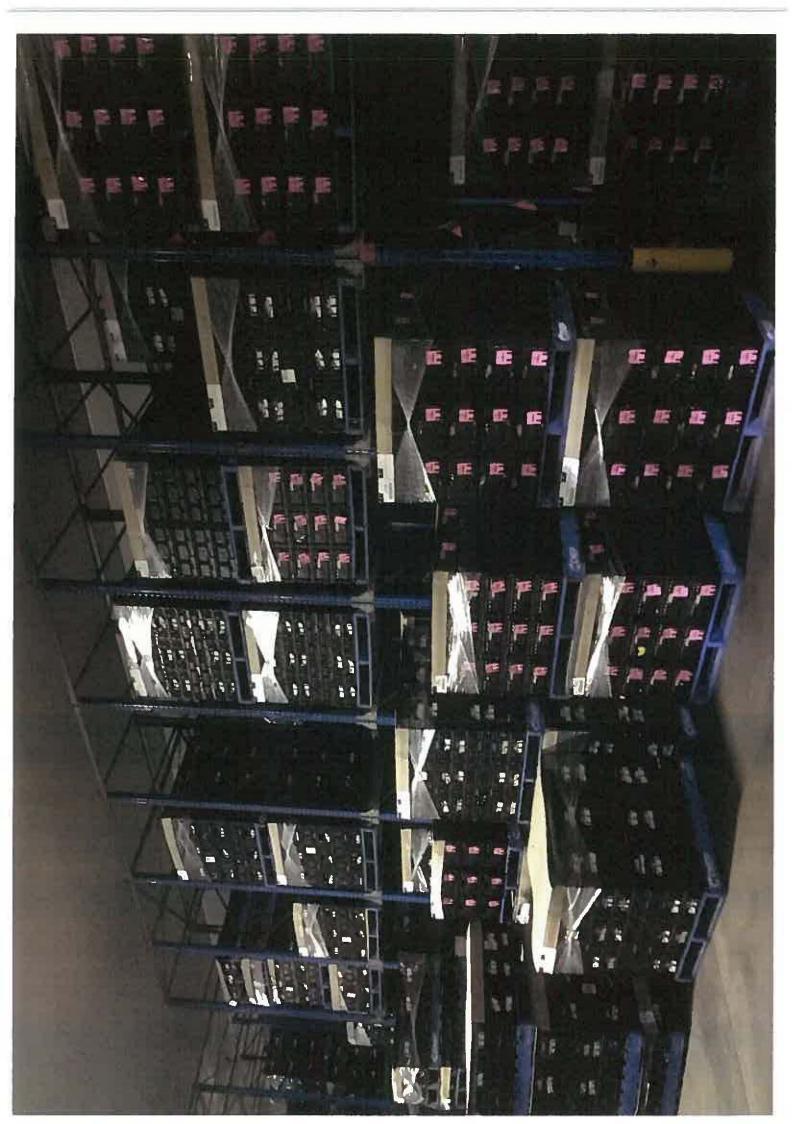
EGA DAY: 1, nikamin potato (75g) = 1 serve of veg

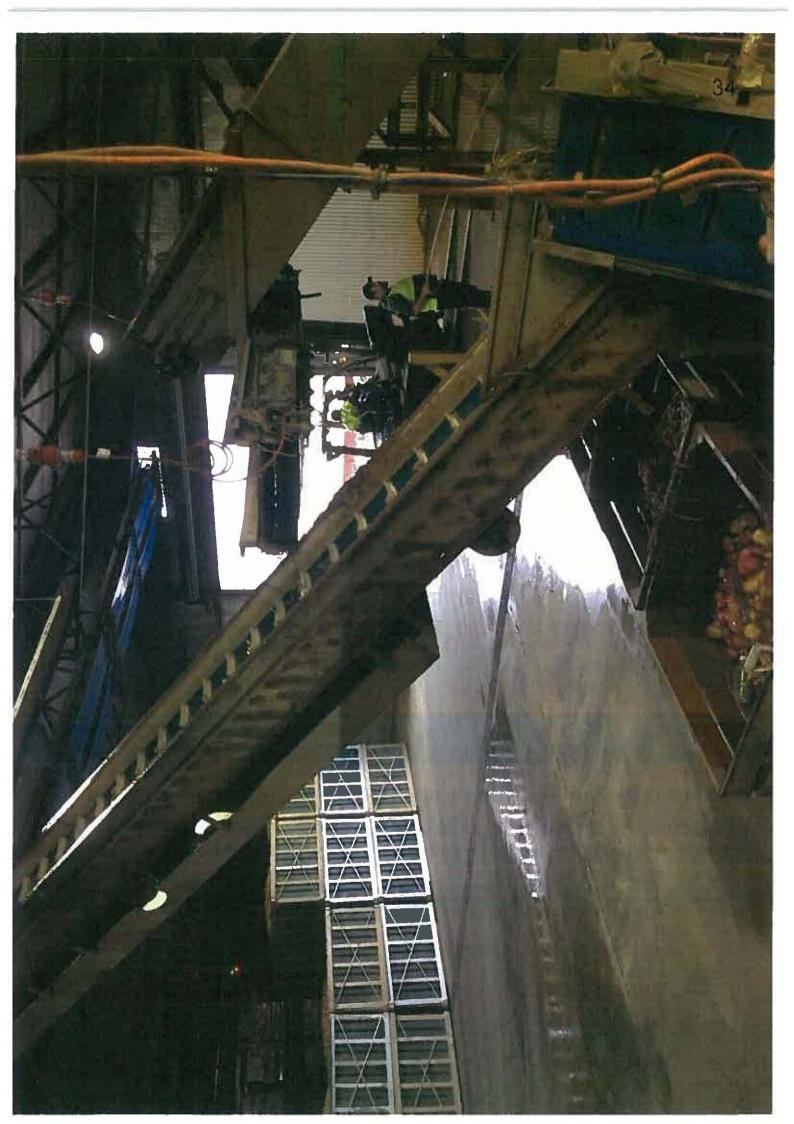
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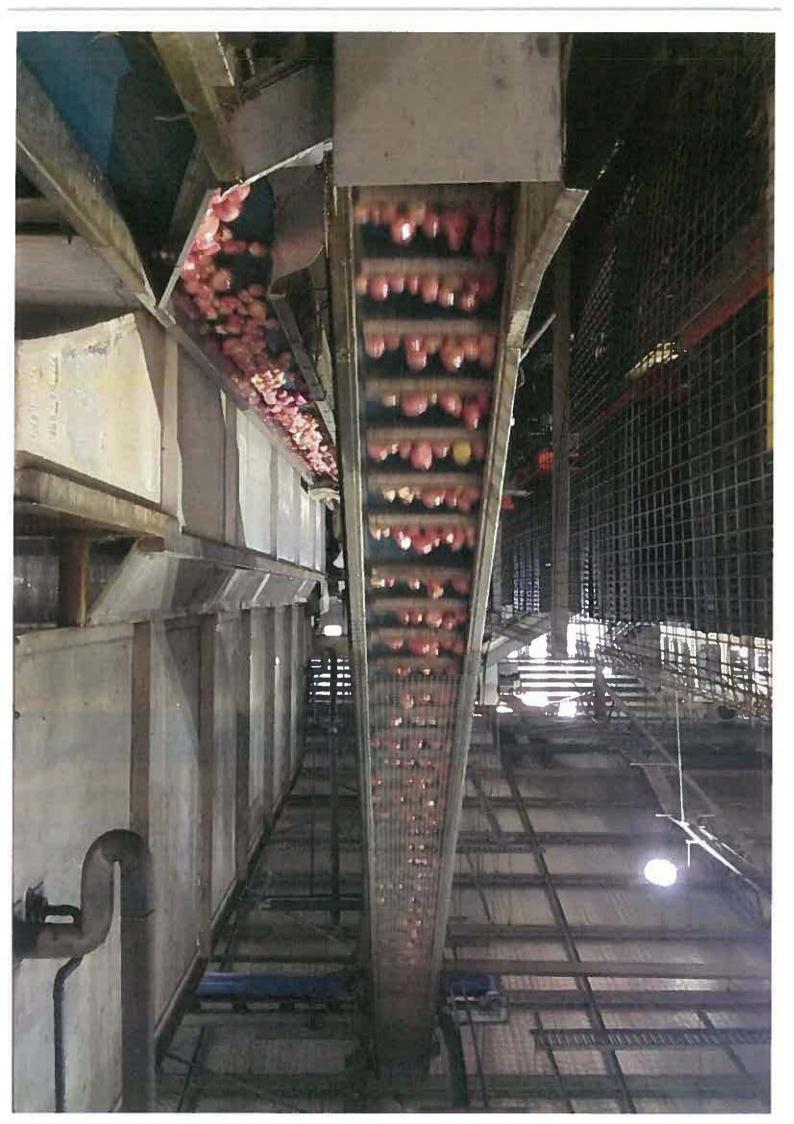






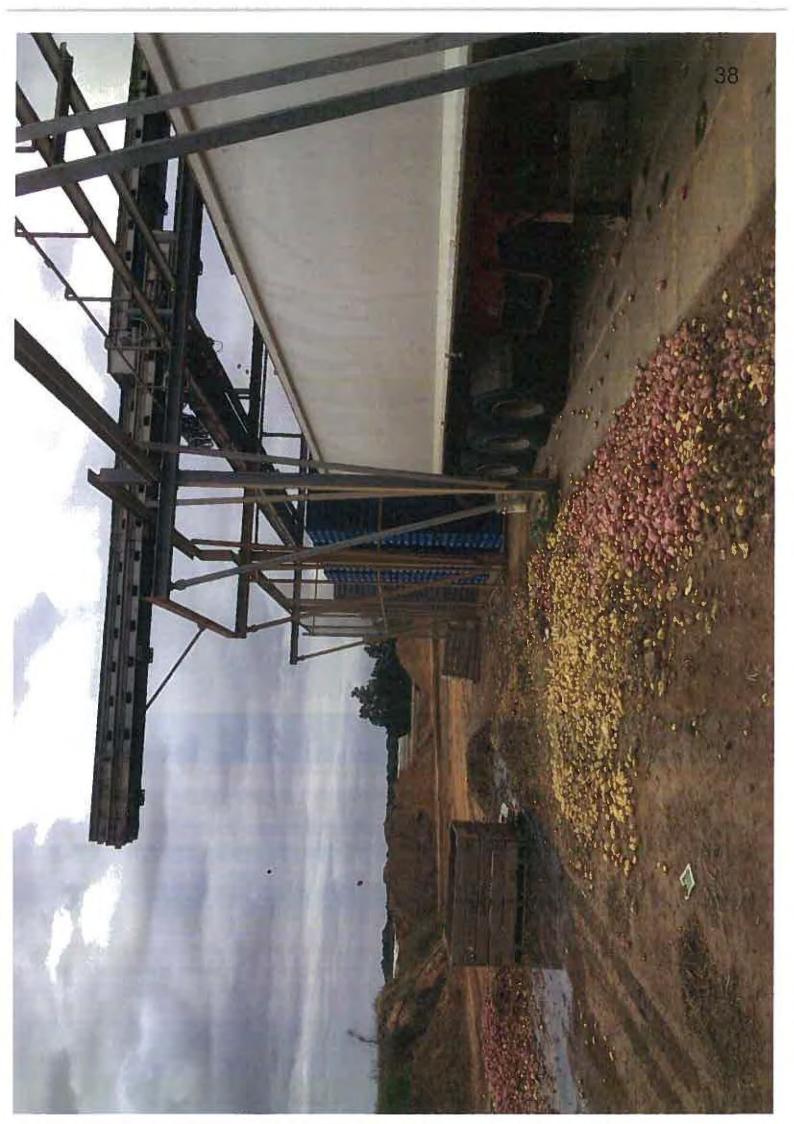










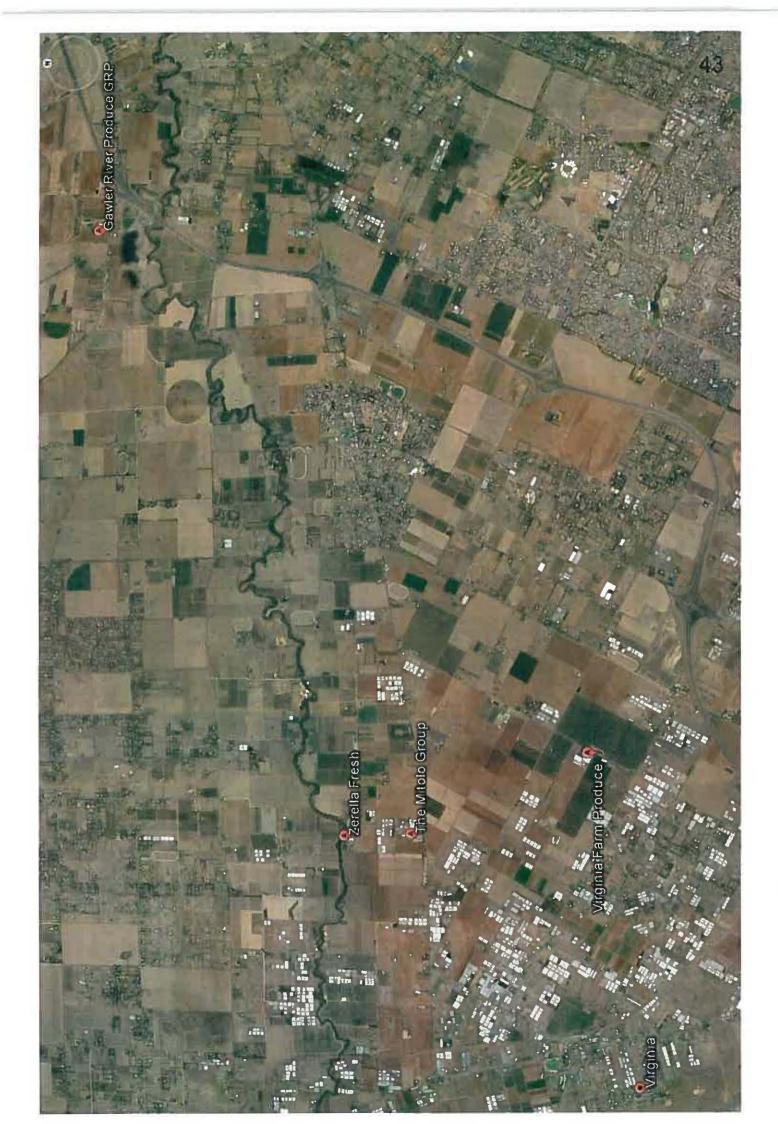


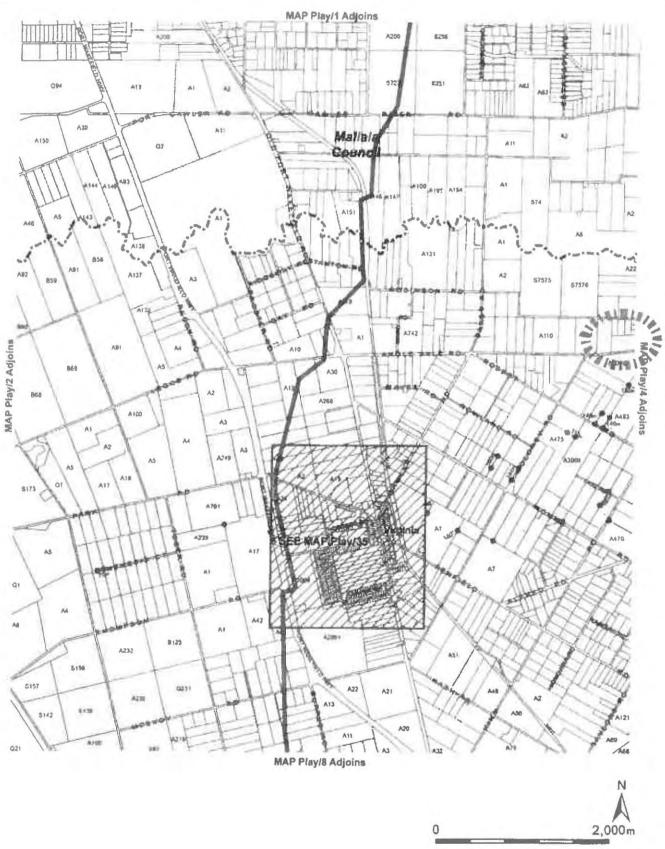




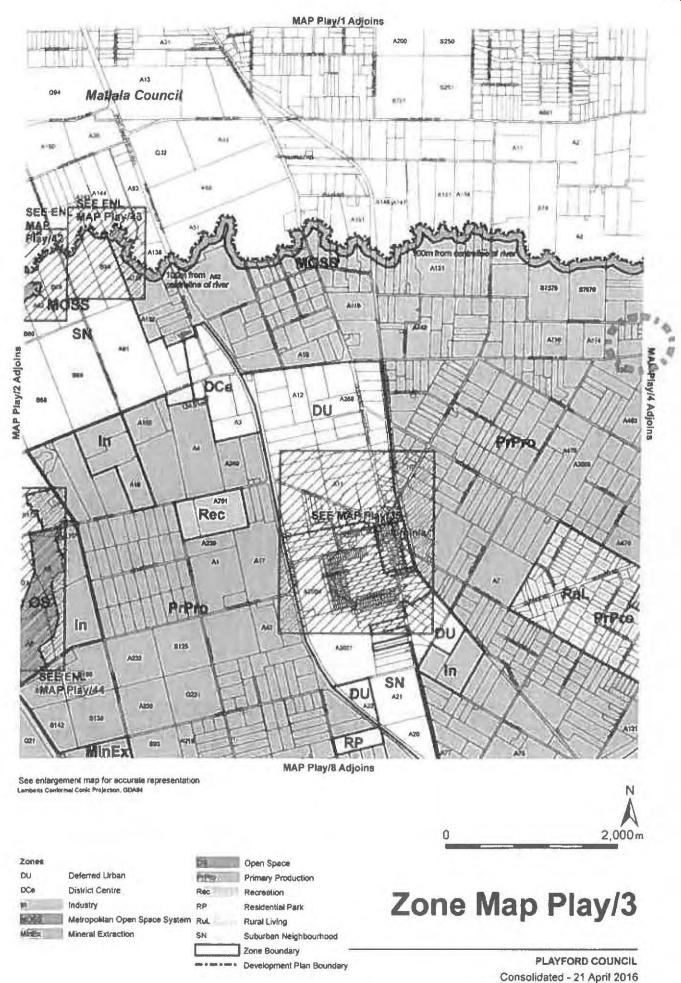






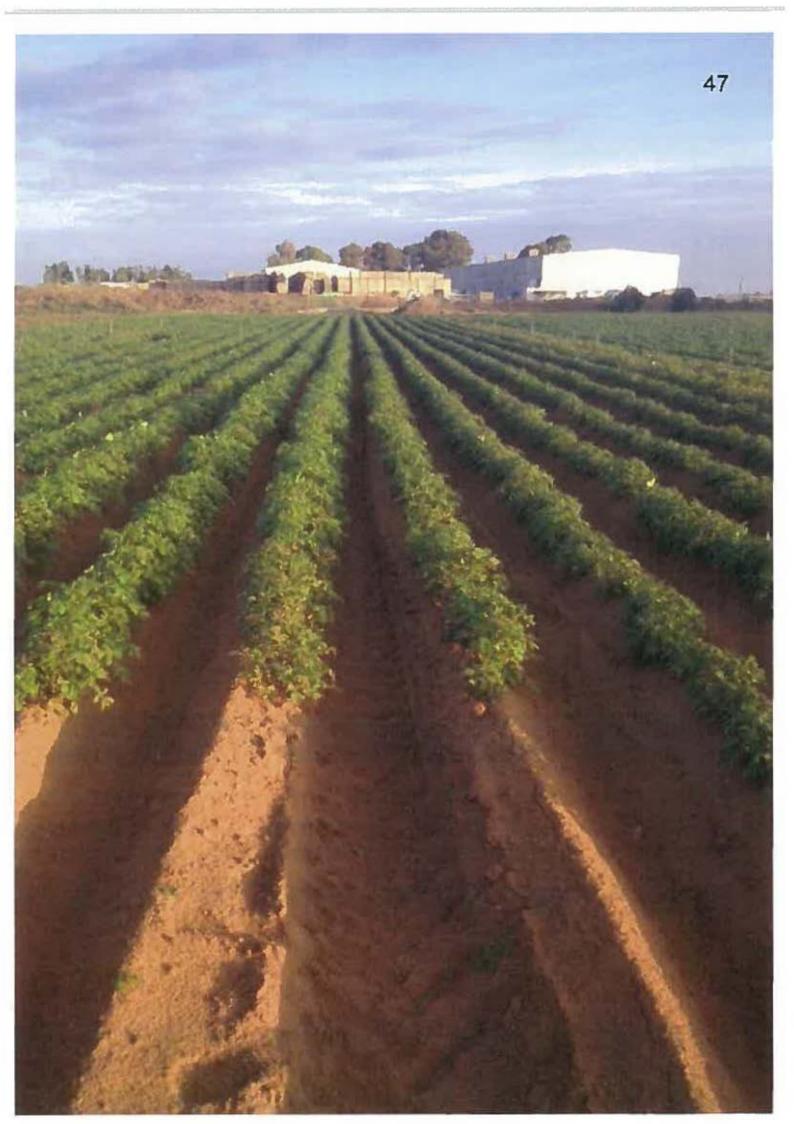


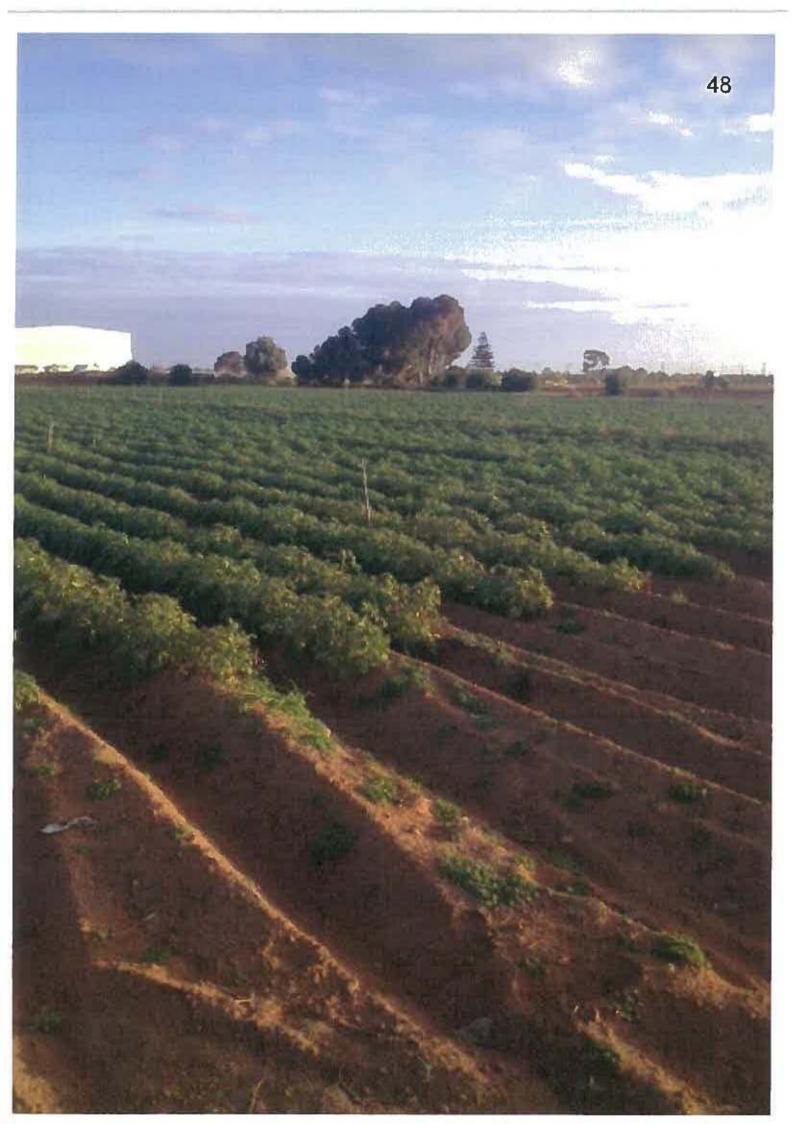
Overlay Map Play/3 DEVELOPMENT CONSTRAINTS

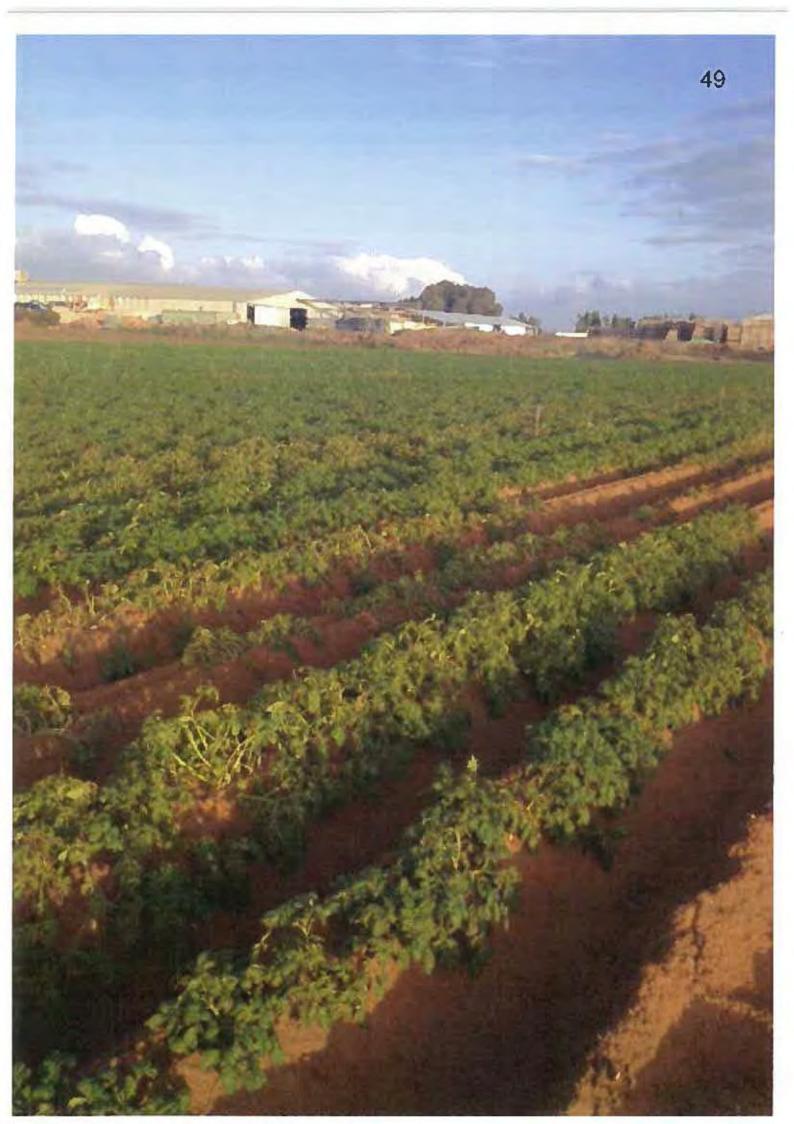


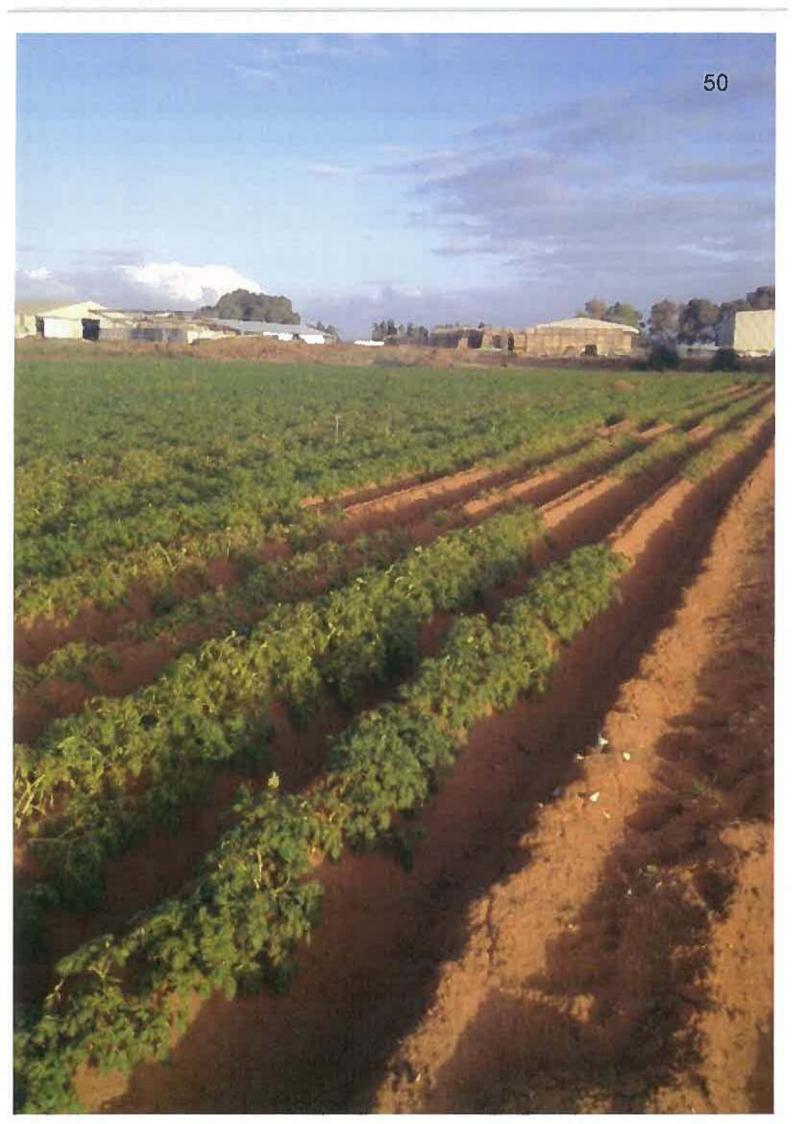


Precinct Map Play/3



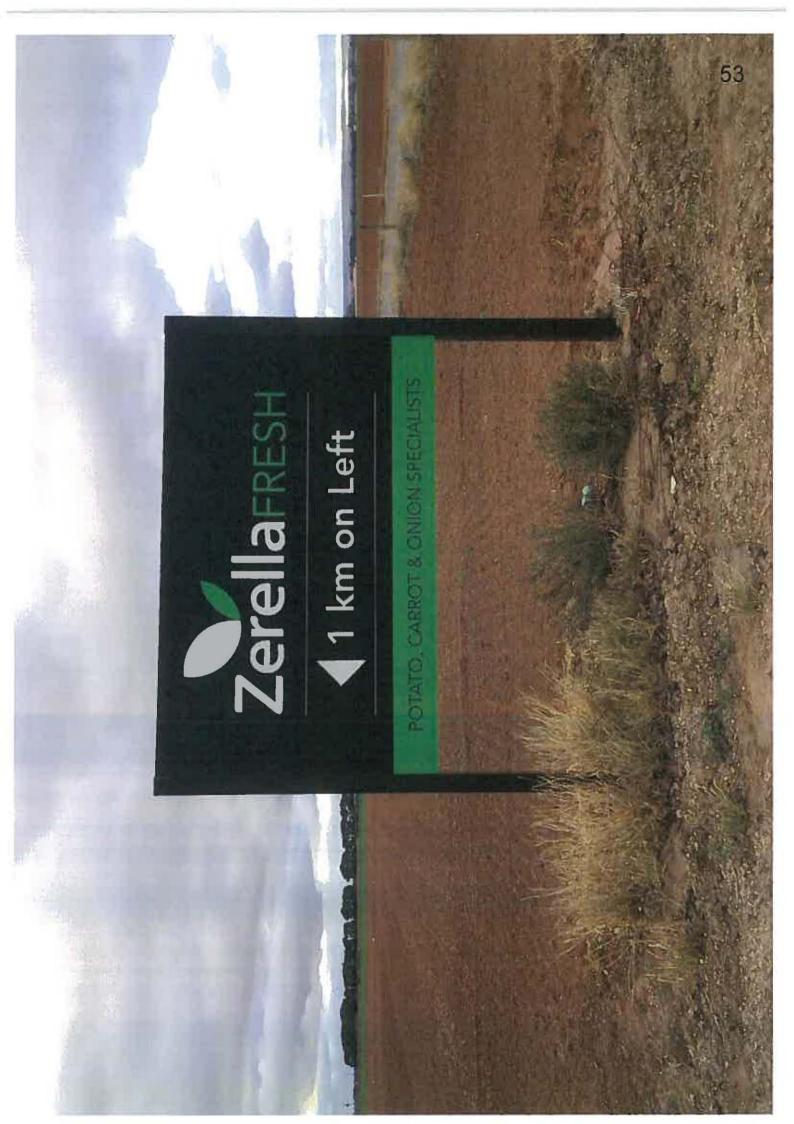












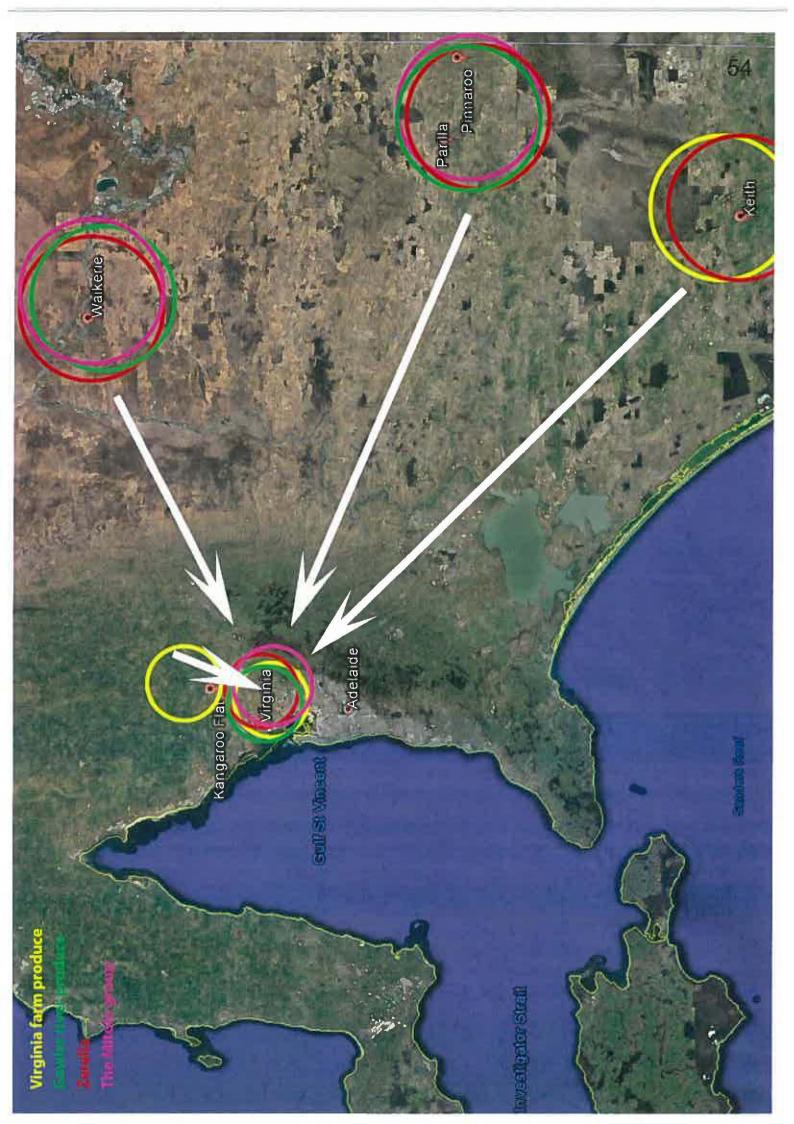


TABLE OF WORK CLASSIFICATIONS

Role	Horticulture Award 2010	Storage Services and Wholesale Award 2010
Transport (eg forklift driver/ produce tipper) Produce is transported in 4 tonne and 8 tonne bins on Mitolo Group fleet trucks or tractors and then tipped into hoppers Packed product is moved around the packing shed at various stages of production	B.1 Level 1 operating small towing tractor engaged in transfer of produce bins and other containers during harvest B.2 Level 2 employee operating tractors with engine capacity of up to 70 kW B.3 Level 3 employee driving motor forries or mechanical harvesters or forklifts operating tractors with engine capacity of over 70 kW B.4 Level 4 employee licensed and certified to operate forklifts, engine driving and crane driving operation B.5 Level 5 employee operating all lifting equipment	B.2 Storeworker grade 2 Iicensed operation of all appropriate materials handling equipment B.3 Storeworker grade 3 Operation of all materials handling equipment under licence Note: Forklift drivers are included under various levels, however always come under the classification of "steel distributing employees"
Washing Potatoes delivered from incoming trucks and are mechanically placed onto a wash hopper which requires consistent maintenance and quality checks Chemicals are applied, including SO ₂ and chlorine, pH testing is undertaken, water levels and hydro coolers are maintained, daily checks on grey water, monitoring water filtration plant, detecting errors and advising produce damage/ quality	B.1 Level 1 • performing general labouring duties B.2 Level 2 employee • repetition work on automatic, semi-automatic or single purpose machines or equipment B.3 Level 3 employee • minor maintenance of plant B.4 Level 4 employee • using precision measuring instruments	B.1 Storeworker grade 1 • periodic stock-checks • use of non-licensed material handling equipment B.2 Storeworker grade 2 • licensed operation of all appropriate materials handling equipment

Role	Horticulture Award 2010	Storage Services and Wholesale Award 2010
concerns to harvest crew and supervisors	machine setting, loading and operation quality assurance/control monitoring variables affecting production yields, detecting errors, investigating causes and recommending collective/preventative action performing quality checks on the work of others B.5 Level 5 employee operating, setting up and adjusting maintenance functions including (but not limited to) running adjustments to production equipment and minor maintenance of plant	
Grading Product is graded (involving cutting) in accordance with quality, size and customer specifications, and then approved or rejected Variables are monitored, errors are detected and collective and preventative action is recommended via feedback to graders	B.1 Level 1 Sorting, packing or grading of produce where this requires the exercise of only minimal judgment performing basic recording functions related to work performed at this level B.2 Level 2 employee sorting, packing and grading beyond the scope of Level 1 duties maintaining simple records general and routine product testing B.3 Level 3 employee recording detailed information on production and quality indicators B.4 Level 4 employee	No relevant descriptor/classification

Role	Horticulture Award 2010	Storage Services and Wholesale Award 2010
Packaging	inventory and store control quality assurance/control monitoring variables affecting production yields, detecting errors, investigating causes and recommending collective/preventative action B.1 Level 1	B.1 Storeworker grade 1
Graded product is sent to packing lines where machines are set up to enable packing in accordance with customer specifications Machines require configuration to ensure the correct produce is placed in the correct packaging, including coding and allocation of "use by" date and traceability Routine product inspection is performed and adjustments are made to machinery as required	 sorting, packing or grading of produce where this requires the exercise of only minimal judgment B.2 Level 2 employee performing a range of tasks involving the set up and operation of production and/or packaging or picking equipment, labelling and/or consumer picking equipment repetition work on automatic, semi-automatic or single purpose machines or equipment sorting, packing and grading beyond the scope of Level 1 duties maintaining simple records general and routine product testing B.3 Level 3 employee recording detailed information on production and quality indicators B.4 Level 4 employee machine setting, loading and operation quality assurance/control monitoring variables affecting production yields, 	 storing and packing of goods and materials in accordance with appropriate procedures and/or regulations; use of non-licensed material handling equipment B.2 Storeworker grade 2 licensed operation of all appropriate materials handling equipment B.3 Storeworker grade 3 Understands and is responsible for quality control standards operation of all materials handling equipment under licence B.4 Storeworker grade 4 Implements quality control techniques and procedures

Role	Horticulture Award 2010	Storage Services and Wholesale Award 2010
	detecting errors, investigating causes and recommending collective/preventative action B.5 Level 5 employee • operating, setting up and adjusting maintenance functions including (but not limited to) running adjustments to production equipment	
Packaged produce labour Finished product is stacked onto pallets so that it can be dispatched to wholesale markets and warehouses Machinery requires set up, basic adjustments and operation, including changing machine configuration to bagging, crates cartons etc.	B.1 Level 1 • performing general labouring duties B.2 Level 2 employee • repetition work on automatic, semi-automatic or single purpose machines or equipment B.3 Level 3 employee • minor maintenance of plant B.4 Level 4 employee • machine setting, loading and operation B.5 Level 5 employee • operating, setting up and adjusting maintenance functions including (but not limited to) running adjustments to production equipment	B.1 Storeworker grade 1 storing and packing of goods and materials in accordance with appropriate procedures and/or regulations allocating and retrieving goods from specific warehouse areas
Quality control A final quality inspection of finished stock is performed by employees trained to inspect and either pass or reject product on the basis of quality indicators such as disease, breakdown,	B.4 Level 4 employee	B.3 Storeworker grade 3 Understands and is responsible for quality control standards B.4 Storeworker grade 4 Implements quality control techniques and procedures

Role	Horticulture Award 2010	Storage Services and Wholesale Award 2010
brown staining, bleak heart, scabbing, cold cracks and skinning	inspecting products and/or materials for conformity with established operational standards and approves/passes first off samples	
Supervision The washing, grading and packaging of produce is overseen to ensure all produce meets required specification and is packaged in accordance with food safety standards Any detection of defects/variables are investigated and preventative measures are communicated back to the harvest crew	B.4 Level 4 employee performing quality checks on the work of others B.5 Level 5 employee inspecting products and/or materials for conformity with established operational standards and approves/passes first off samples performing quality checks on the work of others	B.3 Storeworker grade 3 employee who is responsible for the supervision of and the responsibility for the conduct of work of up to 10 employees B.4 Storeworker grade 4 Ability to supervise and provide direction and guidance to other employees including the ability to assist in the provision of on-the-job training and induction detailing and co-ordinating activities of other storeworkers and acting in a leading hand capacity for in excess of 10 storeworkers maintaining control registers including inventory control and being responsible for the preparation and reconciliation of regular reports or stock movement, dispatches, etc.