

GREATER GEELONG PLANNING SCHEME

AMENDMENT C332

RESOLUTION TO EXHIBIT AMENDMENT

UNDER DELEGATION FROM THE COUNCIL I HEREBY RESOLVE TO:

1. Support the preparation and exhibition of Amendment C332 to the Greater Geelong Planning Scheme to:
 - a) Rezone part of 42 Leather Street Breakwater and part of 350 Boundary Road Breakwater from the Public Use Zone 1 to the Public Resource and Conservation Zone;
 - b) Rezone part of 42 Leather Street Breakwater and part of 350 Boundary Road Breakwater from the Public Resource and Conservation Zone to the Public Use Zone 1;
 - c) Rezone part of 42 Leather Street Breakwater and part of 350 Boundary Road Breakwater from the Public Use Zone 1 to the Industrial 1 Zone; and
 - d) Apply the Design and Development Overlay Schedule 20 to the land being zoned Industrial 1 Zone.
2. Consider the application for a planning permit for a multi lot subdivision on the land at 42 Leather Street Breakwater and 350 Boundary Road Breakwater, concurrently with the preparation of the Amendment in accordance with Section 96A of the *Planning and Environment Act*, and that draft Planning Permit 1303/2015 be prepared and exhibited with the Amendment, subject to resolution of the detail of the permit conditions;
3. Request the Minister for Planning to authorise the preparation and exhibition of Amendment C332 and Planning Permit 1303/2015; and
4. Exhibit a draft Section 173 Agreement accompanying the Amendment documentation as outlined in this report.

SIGNED:

Peter Smith

DATE:

2/2/17

**PETER SMITH
COORDINATOR STRATEGIC IMPLEMENTATION
CITY DEVELOPMENT**

Planning and Environment Act 1987
GREATER GEELONG PLANNING SCHEME
DELEGATED AUTHORITY REPORT
AMENDMENT C332

To: Peter Smith - Coordinator, Strategic Implementation
From: Peter Schembri - Senior Strategic Planner
Subject: Barwon Water Project, 42 Leather Street & 350
Boundary Road, Breakwater
File number: Amendment C332 & Planning Permit Ap 1303/2015

Purpose

This report seeks delegated Council support to exhibit a planning scheme amendment concurrent with a draft permit to facilitate redevelopment of the Barwon Water depot in Breakwater.

Summary

- A Section 96A Amendment and Permit Application has been made by TGM Group on behalf of Barwon Water, landowner of 65 hectares south of Leather Street in Breakwater.
- Part of the land is currently used as an asset storage and maintenance facility. However the site is underutilised and Barwon Water intends to subdivide and sell areas of the property as part of a greater asset realisation program.
- The proposal requires a number of amendments to the planning scheme:
 - Rezone land from Public Use Zone 1 to Public Conservation and Resource Zone;
 - Rezone land from Public Conservation and Resource Zone to Public Use Zone 1;
 - Rezone land from Public Use Zone 1 to Industrial 1 Zone; and
 - Apply the Design and Development Overlay Schedule 20 (DDO20) to the land being zoned Industrial 1 Zone.
- The Amendment is to be exhibited concurrently with a draft 10-lot industrial subdivision and associated buildings and works permit (no. 1303/2015). Lots 9 and 10 will be retained by Barwon Water and lots 1-8 sold to the private sector.
- The draft Permit includes conditions to mitigate environmental impacts on the receiving Barwon River floodplain.
- The Amendment and Permit are consistent with State and Local Planning Policy and further consolidates the Breakwater Industrial Estate. The selection of the Industrial 1 Zone is compatible with surrounding land uses.
- It is recommended that the Amendment and draft Permit are placed on public exhibition subject to authorisation from the Minister for Planning.
- A draft section 173 agreement will also be exhibited consistent with Ministerial Direction No. 1 *Potentially Contaminated Land*.

Recommendation

That Council, under delegation, resolves to:

1. Support the preparation and exhibition of Amendment C332 to the Greater Geelong Planning Scheme to:
 - a) Rezone part of 42 Leather Street Breakwater and part of 350 Boundary Road Breakwater from the Public Use Zone 1 to the Public Resource and Conservation Zone;
 - b) Rezone part of 42 Leather Street Breakwater and part of 350 Boundary Road Breakwater from the Public Resource and Conservation Zone to the Public Use Zone 1;
 - c) Rezone part of 42 Leather Street Breakwater and part of 350 Boundary Road Breakwater from the Public Use Zone 1 to the Industrial 1 Zone; and
 - d) Apply the Design and Development Overlay Schedule 20 to the land being zoned Industrial 1 Zone.
2. Consider the application for a planning permit for a multi lot subdivision on the land at 42 Leather Street Breakwater and 350 Boundary Road Breakwater, concurrently with the preparation of the Amendment in accordance with Section 96A of the *Planning and Environment Act*, and that draft Planning Permit 1303/2015 be prepared and exhibited with the Amendment, subject to resolution of the detail of the permit conditions;
3. Request the Minister for Planning to authorise the preparation and exhibition of Amendment C332 and Planning Permit 1303/2015; and
4. Exhibit a draft Section 173 Agreement accompanying the Amendment documentation as outlined in this report.

Report

Background

In October 2015 TGM Group Pty Ltd on behalf of the Barwon Region Water corporation submitted a combined Planning Scheme Amendment Application in accordance Section 96A of the *Planning and Environment Act* 1987 for the rezoning and subdivision of land at 42 Leather Street and 350 Boundary Road, Breakwater.

Following initial review, the application was revised and resubmitted dated October 2016.

Barwon Water is seeking to reorganise and better utilise the land for asset storage and infrastructure maintenance. This includes subdivision and the creation of 10 new lots with access to Leather Street. 8 of the lots are proposed to be rezoned to the Industrial 1 Zone for sale to the private sector.

TGM provide a thorough subject land and context assessment on pages 7-9 of its October 2016 Planning Report. Aerial maps of the area are shown in **Appendix 1**.

Details of the Amendment and Permit as taken from the TGM Report are:

- *Rezoning part of the subject land at 42 Leather Street Breakwater from the existing Public Use Zone to the Industrial 1 Zone.*
- *Introduction of Schedule 20 to the Design and Development Overlay over part of the land at 42 Leather Street.*
- *Rezoning of a small portion of the existing Public Conservation and Resource Zone to the Public Use Zone at 42 Leather Street and creating a lot for Barwon Water use (Lot 9) at 42 Leather Street.*
- *Introduction of the Public Use Zone over the existing sewer at 42 Leather Street and Boundary Road.*
- *Rezoning of a portion of the existing Public Use Zone land to Public Conservation and Resource Zone at 42 Leather Street.*
- *The development of a multi-lot industrial subdivision at 42 Leather Street.*
- *Removal/variation of some existing reserves and easements, and creation of new reserves and easements, as required.*
- *Associated buildings and works at 42 Leather Street.*

Appendix 2 shows the various rezoning components of the proposal.

The application is supported by a number of technical reports that address infrastructure and servicing, drainage, transport, heritage, fauna and flora and land contamination.

Other permits to note but not directly relevant to the application are:

1. Planning Permit 849/2016 issued 17 November 2016 allowing the removal of native vegetation at 42 Leather Street, Breakwater.
2. Heritage Permit P24243 issued 1 July 2016 allowing subdivision of 42 Leather Street including stormwater management conditions for the Ovoid Sewer Aqueduct. The land is included on the Victorian Heritage Register (Ref no. H895).

Discussion

Strategic planning merits

The site is a combination of Public Use Zone 1 (Service & Utility) and Public Conservation and Resource Zone (PCRZ). The existing zonings reflect the use of part of the land close to Leather Street for Barwon Water asset storage and maintenance. The balance of the site – located in the PCRZ, forms part of the Barwon River flood plain and is largely undeveloped.

The proposal to rezone a substantial portion of the PUZ1 land to the Industrial 1 Zone (IN1Z) will complement and strengthen the role of the Breakwater Industrial Precinct. The purpose of IN1Z is to provide for manufacturing industry, the storage and distribution of goods and associated uses in a manner which does not affect the safety and amenity of local communities.

There will be no adverse safety or amenity impacts as a result of the rezoning.

The proposed IN1Z can be efficiently serviced and adds to the supply of appropriately located industrial land in accordance with Clauses 17.02-1 and 21.07-2 of the Greater Geelong Planning Scheme. Introducing the DDO20 is consistent with its application to all industrial zones in the municipality.

The reconfigured PUZ1 and PCRZ land properly reflects the ongoing ownership and operations of Barwon Water. The PUZ1 land required to

establish a future depot is elevated and falls outside land subject to the Flood Overlay.

The majority of the site (i.e. proposed Lot 10 consisting of 66 hectares) is to be retained in the PCRZ. The purpose of the PCRZ includes to protect and conserve the natural environment and to provide facilities which assist in public education and interpretation of the natural environment. This public zone will facilitate any future transfer (to Parks Victoria for example) to capitalise on the floodplain's environmental, heritage and recreation values.

Barwon Water in collaboration with the Barwon River Parklands Steering Committee have recently released plans to convert the PCRZ land into public parkland – to be known as the Ovoid Sewer Aqueduct Park. The proposal is available for public comment at: <https://www.barwonwater.vic.gov.au/about/news-blog/parkland-proposal-for-historic-aqueduct>

The masterplan (November 2016) shows the location of access points from the ends of Tucker Street, Tanner Street and Boundary Road. There is no proposed public access from the amendment land which is considered appropriate.

Subdivision permit

The rezoning is concurrent with a Planning Permit Application seeking approval for a 10-lot subdivision, associated buildings and works and easement removal and creation. The draft permit will include a range of conditions as required by Council (as the Responsible Authority) and Service Authorities.

More specifically, permits are triggered under:-

- Clause 33.01-3 (proposed IN1Z) to subdivide land;
- Clause 44.03-1 (existing Flood Overlay) for buildings & works; and
- Clause 52.02 (Easements, Restrictions & Reserves).

Under the provisions of the DDO20 a permit is not required for subdivision.

The cultural heritage assessment prepared by Dr Tim Stone recommends that development of the subject land may proceed without any further Aboriginal cultural heritage assessment or CHMP.

A proposed plan of subdivision showing the industrial lot and road layout will be placed on exhibition in conjunction with the draft Permit. The subdivision plan is shown at **Appendix 3**.

The TGM Planning Report appropriately responds to the Decision Guidelines at Clause 65.02 of the Planning Scheme, stating:-

The application is considered to be appropriate in the context of the above decision guidelines. The site is currently underutilised and under this proposal it will be made available for industrial use whilst maintaining the public use function by Barwon Water. This proposal will achieve an improved planning outcome by making available land that is surplus to Barwon Water requirements and by rezoning the balance to better reflect the best use of the land. The balance area (lot 10) to the south will be retained by Barwon Water and maintained as Public Conservation and Resource Zone.

The northern portion of the site adjoining Leather Street is well suited to an industrial subdivision given the physical characteristics of the land and its industrial context. The proposal will create lots available to assist in meeting the growing demand for industrial land within the Geelong region. The

density, area and dimensions of the proposed lots will be suited to a range of industrial uses, and each lot will be of ample area to accommodate buildings and works, and associated access, car parking and landscaping, to achieve a high amenity industrial area.

Utility services will be made available to each lot. The application is supported by a stormwater management report which demonstrates that the land can be subdivided and recommends a minor upgrade to the existing detention basin to meet contemporary stormwater management principles. The subdivision will be serviced by a new road along the east boundary, which will provide direct access via Leather Street. Common property is not proposed and the subdivision will not be staged.

It is considered the design of the subdivision is acceptable after considering the decision guidelines at Clause 33.01-3 *Industrial 1 Zone*. There are no impacts to the heritage listed Ovoid Sewer Aqueduct, Barwon River floodplain or interface uses. The subdivision will improve the streetscape of Leather Street and allows sufficient scope for landscape treatments.

Council engineers note that the existing maintenance tracks on the floodplain will be covered by easements in favour of the City of Greater Geelong. This is considered a satisfactory method of formalising access however the tracks will need modification to ensure maximum grades are met and include all-weather surfacing.

Environmental Implications

The environmental site investigation did not identify soil contamination or groundwater conditions that would prevent use of the site for commercial/ industrial purposes. The assessment makes recommendations to prepare a Soil Management Plan which can be conditioned on the permit.

No native vegetation will be removed as a consequence of this application.

A drainage basin is located within the floodplain which shall be the point of discharge for the industrial subdivision. This basin has naturally evolved into a wetland and is in reasonably good health. The TGM Site Stormwater Management Plan adequately addresses stormwater management.

The floodplain is identified in the 'FO' area shown on the map at **Appendix 4**.

Financial Implications

There are no financial implications.

Policy/Legal/Statutory Implications

The proposed rezoning and permit are consistent with a range of State and Local policies as outlined in the Amendment C332 Explanatory Report.

Ministerial Direction no. 1 applies to potentially contaminated land. In preparing an amendment which would have the effect of allowing (whether or not subject to the grant of a permit) potentially contaminated land to be used for a sensitive use, a planning authority must satisfy itself that the environmental conditions of that land are or will be suitable for that use.

A 'sensitive use' includes a Child care centre and this is the only sensitive use not prohibited in the proposed IN1Z. The Landserv Environmental Assessment June 2015 found: *"The investigation did not identify soil contamination or groundwater conditions that would prevent use of the Site for commercial /*

industrial purposes". However the assessment has not considered a Child care centre use.

In order for Council to meet its obligations under Ministerial Direction no. 1 either an Environmental Audit Overlay or a Section 173 Agreement must be applied to the land being rezoned to the IN1Z. An agreement is preferred by both parties and will be registered on title prior to approval of Amendment C332. The agreement shall stipulate that the owner does not apply for a planning permit to use and develop the land for a Child care centre unless a certificate or statement has been issued in accordance with the *Environment Protection Act*.

The Amendment also rezones land to the PCRZ which can provide for public open space. On this issue, the Landserv Assessment states:

"Based on the desktop research and limited sampling of soils / sediments in the drain and outfall dam in the floodplain area, the investigation did not identify indications of soil or surface water contamination that would normally be of concern for the proposed relinquishment and potential transfer of the PCRZ land back to the Commonwealth of Australia (the Crown) or to a government agency. However, the floodplain properties cover a larger area, which was not inspected or investigated in detail within the scope of this project." (p. ES-i)

Ministerial Direction no. 1 does not classify Public open space as a 'sensitive use'. However the Direction does encourage planning authorities to satisfy themselves that the environmental conditions of land are appropriate for its intended use in accordance with the general duties of planning authorities under Section 12 of the *Act*.

Landserv further advised by email dated 18/0//2017 that they have no reason to believe the PCRZ area contains contamination and it would seem likely to be suitable for ongoing uses consistent with PCRZ. Landserv also stated: *"However, we have not confirmed this with soil or groundwater sampling (we would not normally see the need to carry out such sampling in the PCRZ area)."* This advice however was in the absence of knowledge about the proposed Ovoid Sewer Aqueduct Park and Landserv subsequently verbally advised that additional testing may be prudent.

In response, Barwon Water wrote to Council dated 27 January 2017 (see **Appendix 5**) that it is of the opinion that sufficient information has been provided to satisfy Section 12.

Council officers, on reviewing this information and having inspected the site, are satisfied that the environmental conditions of the land to be rezoned to PCRZ are appropriate for future use as parkland.

Alignment to City Plan

The Amendment supports the 'Growing our Economy' strategic direction of City Plan by providing additional industrial land in a serviced estate.

Officer Direct or Indirect Interest

No officers involved in this report have any direct or indirect interest in accordance with Section 80c of the *Local Government Act*.

Risk Assessment

Processing of this Amendment is considered to be a low level risk for Council.

Social Considerations

There are no directly relevant social considerations. The proposed future floodplain parkland which encompasses part of the Amendment land will be a significant public asset for the Geelong region.

Human Rights Charter

The Amendment will not impact on any basic rights, freedoms and responsibilities as set out in the Charter. Planning legislation ensures an open community consultation process occurs, enabling people to freely express their views and if necessary obtain a fair hearing before an Independent Panel.

Communication

Nearby business owners and tenants will be formally notified during the exhibition period, as well as notices published in local newspapers and on the Geelong Australia website.

Appendix 1 - Aerial Maps

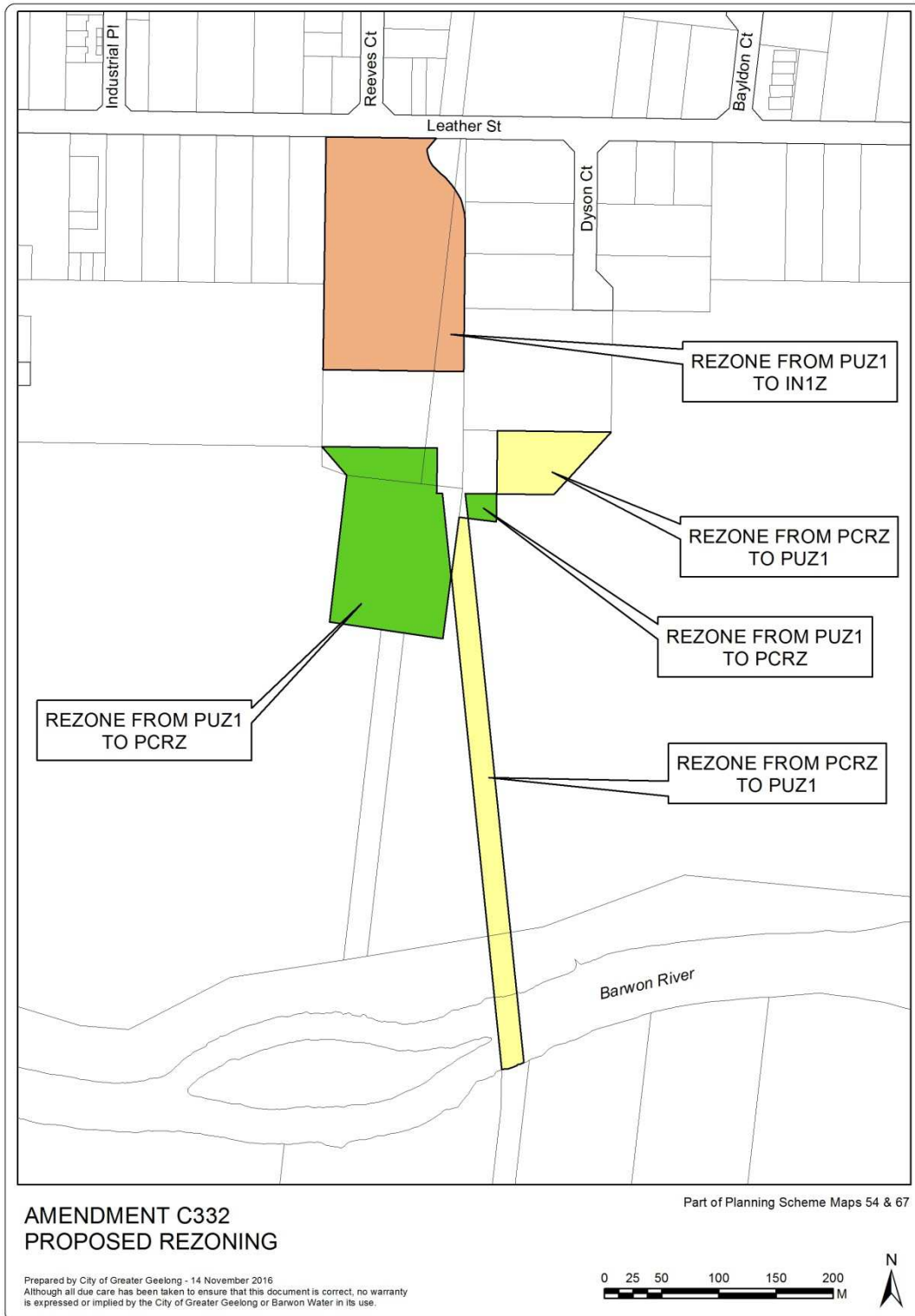




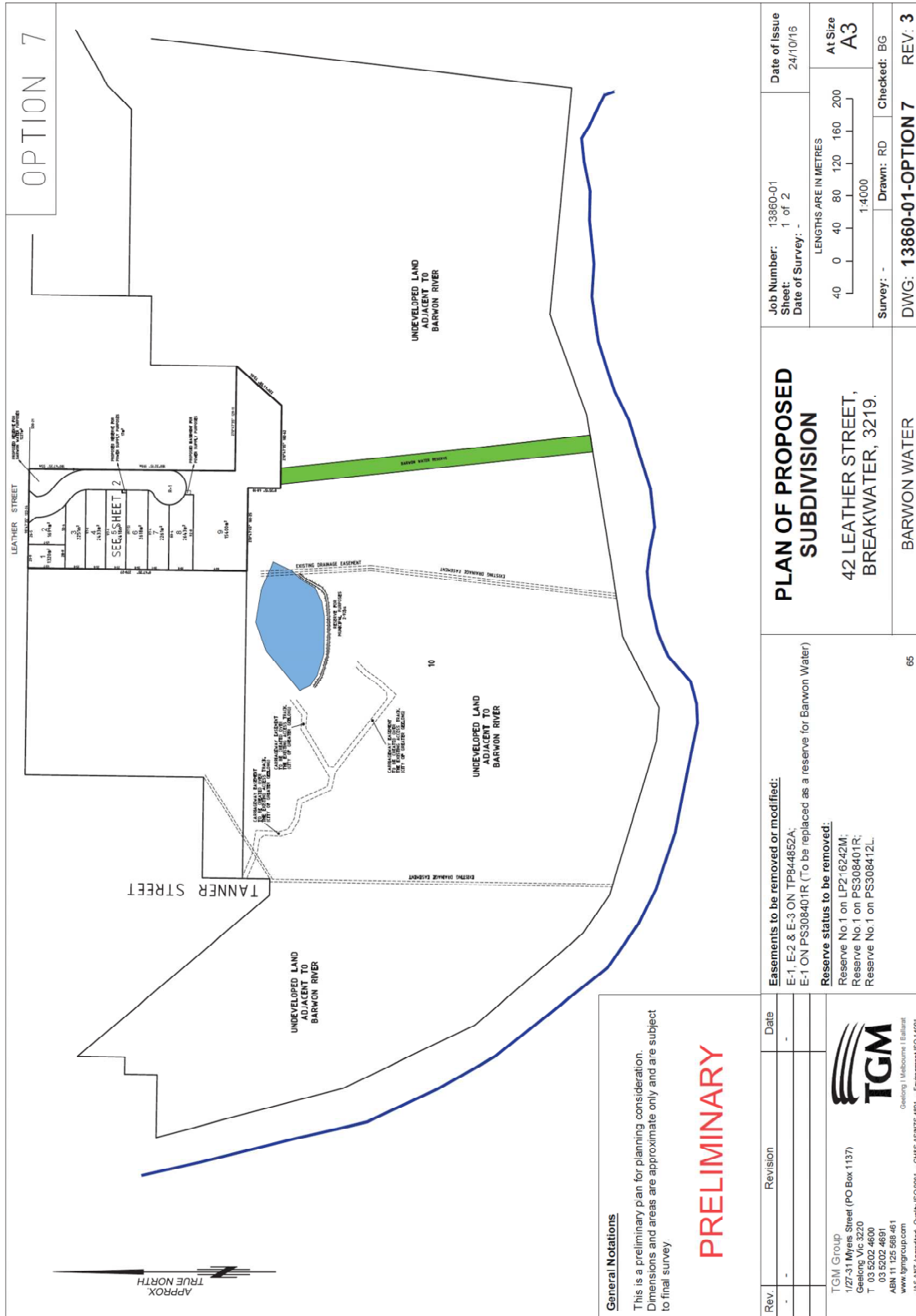
NORTH ➔

Looking west over the Barwon River and floodplain with the Breakwater Industrial Estate located to the north of the floodplain

Appendix 2 - Proposed Rezoning Map



Appendix 3 - Proposed Plan of Subdivision



General Notations
 This is a preliminary plan for planning consideration. Dimensions and areas are approximate only and are subject to final survey.

PRELIMINARY

Rev	Revision	Date
-	-	-

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TGM
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Easements to be removed or modified:
 E-1, E-2, & E-3 ON TPR44852A;
 E-1 ON PS308401R (To be replaced as a reserve for Barwon Water)

Reserve status to be removed:
 Reserve No.1 on LP216222M;
 Reserve No.1 on PS308401R;
 Reserve No.1 on PS308412L.

PLAN OF PROPOSED SUBDIVISION
 42 LEATHER STREET,
 BREAKWATER, 3219.

BARWON WATER

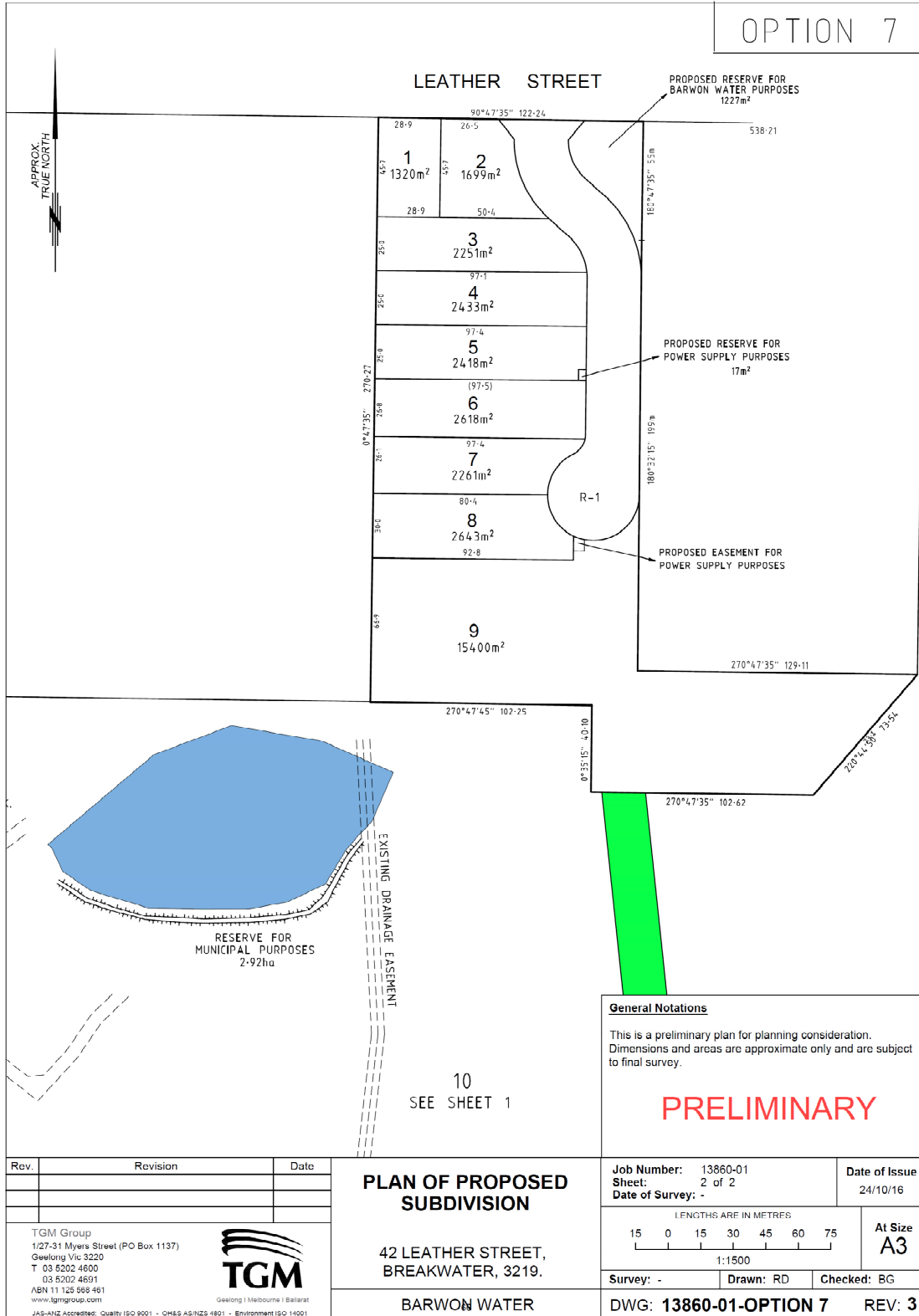
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 Sheet: 1 of 2
 Date of Issue: 24/10/15
 Date of Survey: -

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Survey: - Drawn: RD Checked: BG
 DWG: 13860-01-OPTION 7 REV: 3

65

OPTION 7



General Notations
 This is a preliminary plan for planning consideration. Dimensions and areas are approximate only and are subject to final survey.

PRELIMINARY

Rev.	Revision	Date

PLAN OF PROPOSED SUBDIVISION

42 LEATHER STREET,
 BREAKWATER, 3219.

BARWON WATER

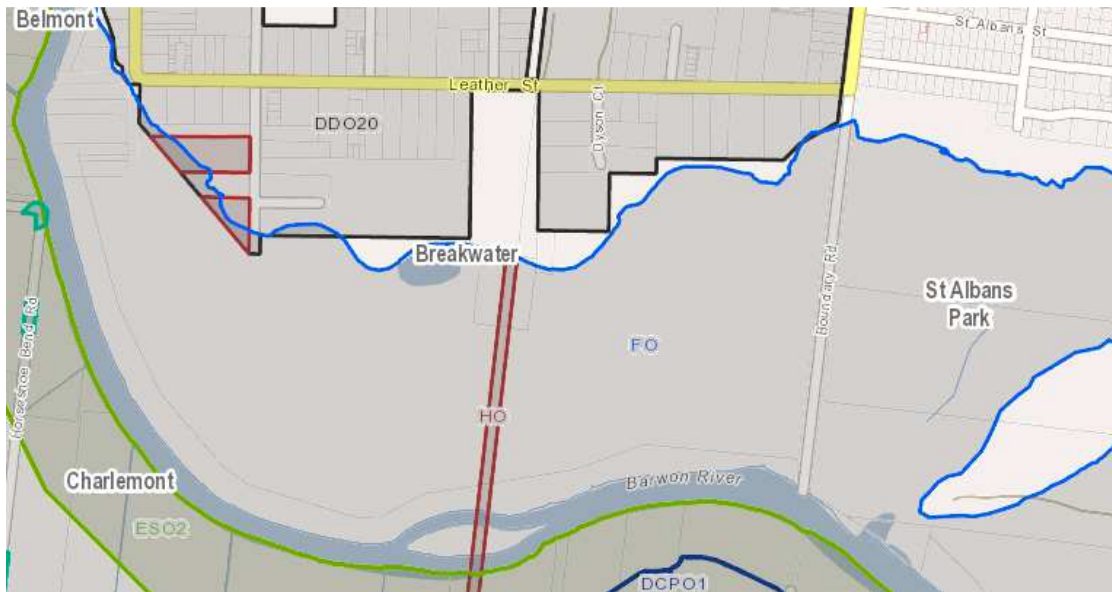
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Sheet: 2 of 2	
Date of Survey: -	
LENGTHS ARE IN METRES	
1:1500	
Survey: -	Checked: BG
Drawn: RD	
DWG: 13860-01-OPTION 7	
REV: 3	

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Appendix 4 - Existing Overlays Map



Legend

FO – Flood Overlay

HO – Heritage Overlay 56 (Ovoid Sewer Aqueduct over Barwon River)

DDO20 – Design & Development Overlay Schedule 20 (Industrial 1, 2 and 3 Zones)

ESO2 – Environmental Significance Overlay Schedule 2 (High Value Wetlands and Associated Habitat Protection)



27 January 2016

Peter Schembri
Senior Strategic Planner - Strategic Implementation
City of Greater Geelong
PO Box 104
Geelong VIC 3220

Dear Peter,

PSA C332 – Leather Street Breakwater – Ministerial Direction No.1

We are aware that you have raised concern about the portion of C332 that involves rezoning of Public Use Zone (PUZ1) land to Public Conservation and Resource Zone (PCRZ) and the potential trigger of Direction No.1 under Section 12 (2) (a) of the Planning and Environment Act 1987. This concern is based on the fact that the land is to be opened up for public access and potentially transferred to a government agency in the future as public open space.

We note that Direction No.1 defines "sensitive use" as residential use, child care centre, pre-school centre or primary school. It also defines "potentially contaminated land" as having been used for industry, mining, or the storage of chemicals, gas, wastes or liquid fuel. The floodplain land in question was used for sheep farming until the 1980's but has never been used for any of the purposes that would define it as potentially contaminated land. The proposed use is not a sensitive use.

We also note that the Direction does not require the issue of a certificate or statement in relation to amendments which allow potentially contaminated land to be used for other purposes.

The Direction does require Council (as planning authority) to satisfy itself that the environmental conditions of the land are suitable if land is to be rezoned to allow public open space. We are of the opinion that given

- a) the floodplain land has only historically been used for farming and not any industrial purpose (and revegetated over the past 30 years);
- b) extensive soil and groundwater testing of the land above the floodplain has indicated contamination levels that are of no threat to surrounding ecosystems;
- c) soil sampling of the drain and outfall dam within the floodplain land (which would be the highest risk location for contamination) "did not identify indications of soil or surface water contamination that would normally be of concern for the proposed relinquishment and potential transfer of the PCRZ land back to the Commonwealth of Australia (the Crown) or to a government agency" (Environmental Site Assessment, Landserv, June 2015), and
- d) the proposed "open space" does not mean the land will ever be developed as sports fields, play grounds or other uses that would generate exposure risks to the public. (The land contains significant native vegetation and fauna habitat that will be protected).

that sufficient information has been provided to satisfy this condition.

We look forward to finalising this matter and proceeding to the exhibition stage.

Yours faithfully

A handwritten signature in black ink, appearing to read "Tony Belcher".

Tony Belcher
Strategic Projects Coordinator

Barwon Region Water Corporation
ABN 86 348 316 514