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## **AMENDMENT C339 PART 2 - CONSIDERATION OF 40-70 WINDSOR ROAD, NEWTOWN LATE SUBMISSION**

**To:** Peter Smith – Coordinator Strategic Implementation  
**From:** Allistair Krause – Strategic Planner  
**Subject:** Resolution to consider late submission to a Planning Scheme  
Amendment under delegation  
**File number:** Amendment C339 Part 2

### **Purpose**

This report considers a late submission to Amendment C339 Part 2 and recommends that Council resolves (under delegation) to refer the submission to an Independent Panel.

### **Summary**

- Under Section 22(2) of the *Planning and Environment Act 1987*, the planning authority (being the City of Greater Geelong) may consider late submissions.
- A late submission (Attachment 1) has been accepted in this report. The submission is from Tract Consultants Pty Ltd dated 19 April 2023. Tract are acting on behalf of Anseed Pty Ltd who own the land at 40-70 Windsor Road, Newtown.
- Overview of Submission-

The submission objects to Amendment C339 Part 2.

The subject land is currently partially zoned Urban Flood Zone (FZ) and partially zoned Public Park and Recreation Zone (PPRZ). A Land Subject to Inundation Overlay (LSIO) currently applies to the entire site.

The Land Subject to Inundation Overlay (LSIO) is proposed to be removed from the land. The Flood Overlay (FO1) is proposed to apply to majority of the site. The Land Subject to Inundation Overlay (LSIO1) is proposed to apply to the areas of the site not covered by the FO1. The zoning is not proposed to be altered by the Amendment.

The submission objects to the change in flooding controls, stating that the amendment “has the potential to unduly constrain opportunities of a large landholding within an area of natural beauty” ... and that “the application of the FO1 as proposed would prohibit any future subdivision of our clients land...”. Additionally, the submitter has requested that the PPRZ portion of the land is altered to reflect the private holding of the land.

The owner remains unconvinced by the justification to apply the FO1 and intends to engage an independent hydrologist to review the applicable flood studies.

- A detailed response to the submission will be provided in Council’s Part B submission on day one of the panel hearing.
- This report relies on the information contained in the Minutes of the Ordinary Meeting of Council 14 December 2021. This submission can be classed within ‘Theme 5 – Challenges to validity of flood modelling’. Pursuant to the City Response – The City considers the flood studies are soundly based pieces of work prepared by suitably qualified experts using best practise methods and technology.

- Council has already requested the appointment of a Panel and a Panel was appointed by the Chief Panel Member under delegation from the Minister for Planning on 6 April 2023. The Directions Hearing is proposed on 2 May 2023 and the main hearing is due to commence on 5 June 2023.
- It is recommended that the submission be referred to the appointed panel.

### **Recommendation**

**That Council, having considered the 40-70 Windsor Road, Newtown late submission to Amendment C339 Part 2 to the Greater Geelong Planning Scheme, resolves to:**

- 1) Refer the submission to the appointed Panel; and**
- 2) Submit to the Panel its response to the submission generally as outlined in this report and in the report contained in the Minutes of the Ordinary Meeting of Council 14 December 2021.**

**Approved as a resolution of Council by Council's delegate:**



**P. Smith**

**Date: 26 April 2023**

**Attachment 1 –**

**Amendment C339 Part 2 40-70 Windsor Road, Newtown Late Submission**

Tract

Alistair Krause  
Strategic Planner  
City of Greater Geelong  
Wadawurrung Country  
PO Box 104  
GEELONG VIC 3220  
via email: [alistair.krause@geelongcity.vic.gov.au](mailto:alistair.krause@geelongcity.vic.gov.au)

19 April 2023

Dear Alistair  
Submission to Planning Scheme Amendment C339  
40-70 Windsor Road, Newtown

Tract Consultants act on behalf of Anseed Pty Ltd who is the owner of the land at 40-70 Windsor Road, Newtown.

Further to previous correspondence between Council and our client, [REDACTED] we hereby provide this submission in relation to Planning Scheme Amendment C339. We understand the Amendment underwent exhibition in 2021, which concluded 16 August 2021.

We seek to make a late submission in relation to the exhibited documents given the notification for the amendment was sent to a since closed business entity and therefore it was not received by our client. Our client became aware of the Amendment following the 28 March 2023 Council Meeting, where the Council resolved to abandon the part of the Amendment which related to the Lara Flood Study and refer the remaining submissions to an independent Panel.

Our client requests to be included in the process moving forward as a key affected landowner and intends to be represented at the Panel.

#### Subject Site and Existing Controls

Our clients land comprises Lots 1 and 2 on Title Plan 820136N. The property is approximately 4.4ha in area and is bound by Windsor Road to the east and the Barwon River to the west.

The copy of Title attached at Appendix A demonstrates that the site is not affected by any Section 173 Agreements or Covenants. A 10.06m wide easement for the purpose of carriage and supply of water exists along the southern boundary in favour of lots on LP33990.

The site contains the Barwon Edge Restaurant at the western end of the site, nearest the Barwon River. The restaurant has planning permission via Planning Permit 943/2000, issued 10 August 2000. The Permit allowed for:

*Use and development of a licenced restaurant/boathouse, ancillary car parking, and access roads, boardwalk, jetty and ancillary works including boat storage and access in accordance with the endorsed plans.*

As shown in Figure 2 below, the site is located partially within the Public Parks and Recreation Zone (western portion) and partly within the Urban Floodway Zone (eastern portion). The site is affected by the Land Subject to Inundation Overlay (LSIO) and the Significant Landscape Overlay, Schedule 16 (SLO16).

The Barwon Edge Restaurant has been in operation since the early 2000's. The business contributes to the vibrancy of the Newtown area and by way of creating local jobs, adding to tourism and providing a hospitality venue for the local community. The landowner would like to retain the option for possible future expansion and/or provide alternative uses which would be in line with Council policy relating to economic development and tourism opportunities.



Figure 1: Aerial Photograph



Figure 2: Current Zoning

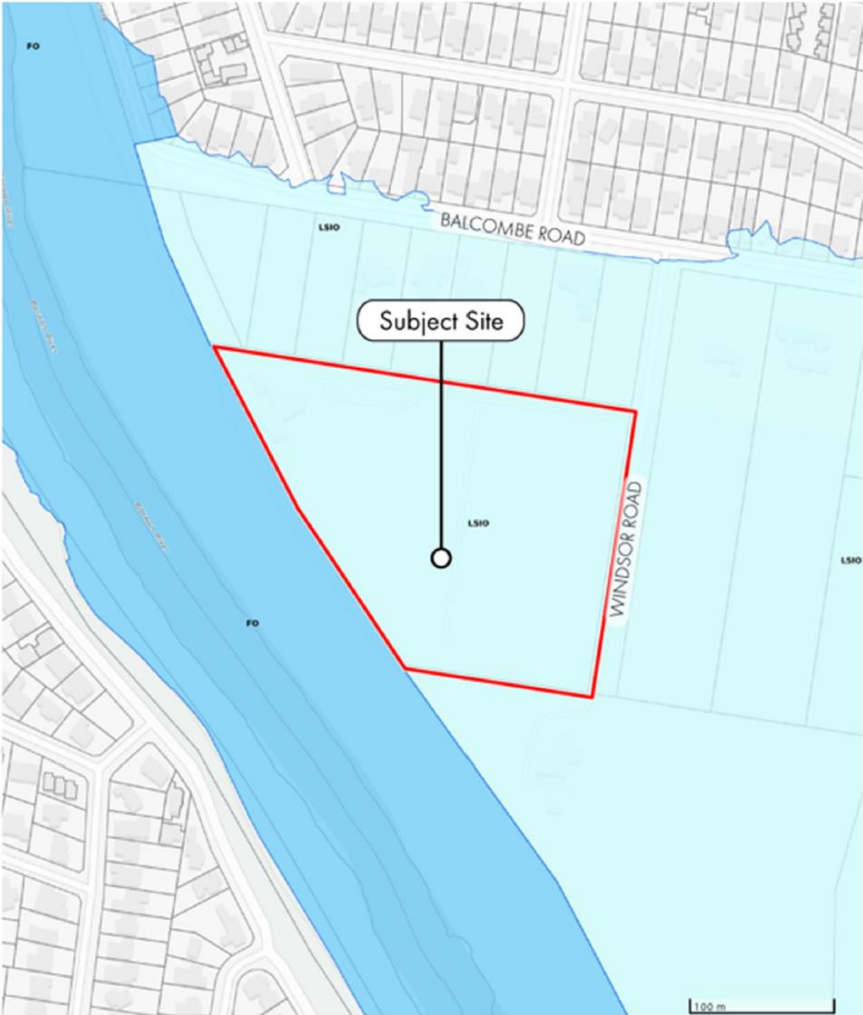


Figure 3: Current extent of FO and LSIO

Proposed Controls

Amendment C339, as exhibited, proposes to:

- Apply the Floodway Overlay, Schedule 1 (FO1) to the majority of the site.
- Delete the Land Subject to Inundation from the majority of the site.
- Apply the Land Subject to Inundation, Schedule 1 (LSIO1) to the areas of the site not covered by the FO1.
- Introduce a new Schedule 1 to the LSIO.
- Introduce a new Schedule 1 to the FO.

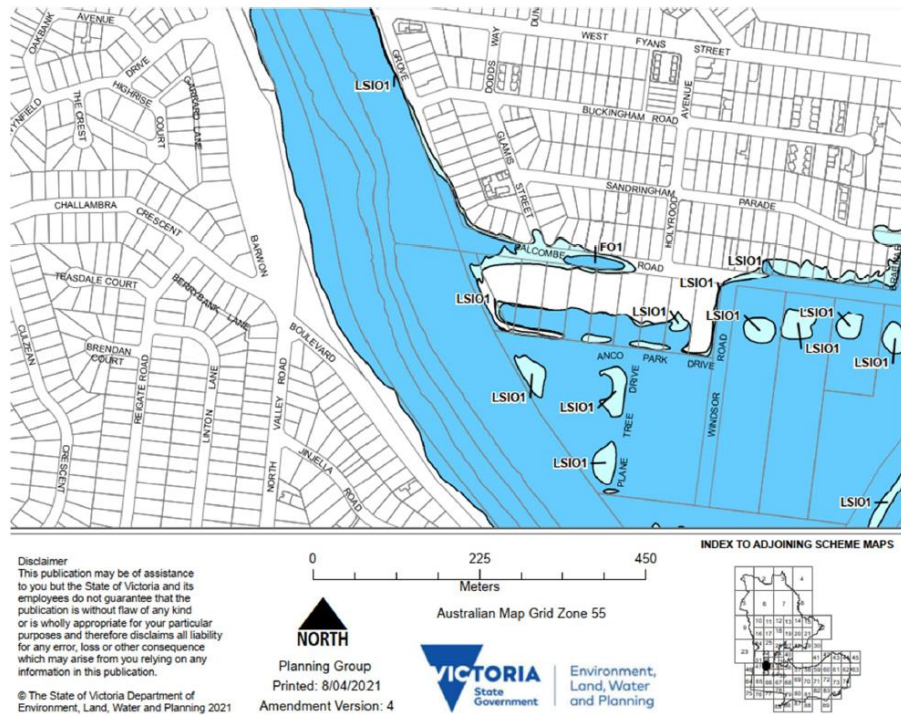


Figure 4: Extract of Map 48 showing proposed changes to FO and LSIO (as exhibited)

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Submission

We are seeking to be engaged as key property holders within the area affected by the Amendment. The purpose of the Floodway Overlay is (amongst others):

*To identify waterways, major floodpaths, drainage depressions and high hazard areas which have the greatest risk and frequency of being affected by flooding. (emphasis added)*

The amendment of the flooding controls on the land from LSIO to FO has the potential to unduly constrain the future opportunities of a large landholding within an area of natural beauty. Land uses and supporting development which balance the flooding risk appropriately against other planning and economic policy should be supported and encouraged in this location.

We also note the application of the FO1 as proposed would prohibit any future subdivision of our client's land, which is considered to be unduly restrictive in this instance and does not provide clarity or transparency to landowners. Our client is concerned about:

- The potential technical deficiencies, as evidenced by abandonment of Lara flood study.
- The disparity between evidence identifying the Site as an area of flood fringe in c.1998 and the new interpretation of data which categorise it as a high risk floodway, noting that the 1%AEP from previous studies to now is essentially the same.
- The discrepancy between the proposed reduction in extent of the LSIO immediately to the north of the subject site and the proposed introduction of the FO1, indicating a higher flood risk to our clients land.

Accordingly, our client objects to the change in planning controls and remains unconvinced by the justification put forward by Council to underpin the application of the FO1. Our client intends to engage an independent hydrologist to undertake an assessment of the flooding studies done to date and make further submissions at Panel as to the flooding risk classification of their property.

Additionally, we take this opportunity to again flag with Council that the application of the Public Parks and Recreation Zone land to private freehold land is inappropriate and requires correction to reflect the private holdings of the land and the current and future purpose of the land.

We respectfully request to be included as a submitter in any correspondence moving forward in relation to the proposed Planning Scheme Amendment C339. If you require any additional clarification, please call Simon Loader on 9429 6133.

Yours sincerely



Senior Principal Planner  
Tract  
[sloader@tract.net.au](mailto:sloader@tract.net.au)





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**REGISTER SEARCH STATEMENT (Title Search) Transfer of  
Land Act 1958**

Page 1 of 1

VOLUME 09797 FOLIO 174

Security no : 124105352270R  
Produced 13/04/2023 02:22 PM

**LAND DESCRIPTION**

Lots 1 and 2 on Title Plan 820136N (formerly known as part of Lot 6 on Plan of Subdivision 033990, part of Lot 7 on Plan of Subdivision 033990).  
PARENT TITLE Volume 08291 Folio 332  
Created by instrument N197315C 17/12/1987

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Sole Proprietor

ANCO SEED & TURF PTY LTD of WINDSOR ROAD NEWTOWN 3220  
N197315C 17/12/1987

**ENCUMBRANCES, CAVEATS AND NOTICES**

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE TP820136N FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

DOCUMENT END



## Imaged Document Cover Sheet

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171287 0937 45 90 N197315C

**VICTORIA**

**TRANSFER OF LAND**

Subject to the encumbrances affecting the land including any created by dealings lodged for registration prior to the lodging of this instrument the transferor for the consideration expressed transfers to the transferee all his estate and interest in the fee simple in the land described. (Notes 1-4)

Land

(Note 5)

The land now remaining in Certificate of Title Volume 8291 Folio 332 being the whole of the land more particularly described in the said Certificate of Title excluding the land excised by J.217633 and K.111033.

**CAVEAT  
 NEW TITLE**

Consideration

(Note 6)

NINETY THOUSAND DOLLARS (\$90,000.00.)

Transferor

(Note 7)

HERBERT STEPHEN HARGREAVES

STAMP DUTY VICTORIA  
 2222TRANS#193427 S.D.U. 44 9DEC87  
 RECEIPT# 18164 11A \$100001,960.00

Transferee

(Note 8)

ANCO SEED & TURF PTY. LTD. of Windsor Road, Newtown, Geelong.

Dated the Seventh day of December 1987.

Execution & Attestation

(Note 9)

COSE	SIGNED by the said Transferor in the )	<u>H. S. Hargreaves</u>
DUTY	presence of: )	<u>[Signature]</u>
STAMP	WITNESSES )	<u>[Signature]</u>
TYPE	THE COMMON SEAL of ANCO SEED & TURF )	
VALUE	PTY. LTD. was hereunto affixed in )	
ASSESSOR	accordance with its Memorandum and )	
	Articles of Association in the )	
	presence of: )	



Director [Signature]  
 Director/Secretary [Signature]



V8291 F332  
 (land num)  
 Area: 4.423 ha  
 11/1/88  
 SK 90. 20.1.88.

**T1** Office Use Only  
 OFFICE OF TITLES  
 VICTORIA

23 DEC 1987

Approval No. T1/1

REGISTRATION OF THIS INSTRUMENT HAS BEEN ENTERED IN THE REGISTER BOOK



#### NOTES

1. This form must be used for all transfers by the registered proprietor of an estate in fee simple other than
  - (a) transfers by direction
  - (b) transfers creating or reserving easements
  - (c) transfers containing a restrictive covenant or a covenant created pursuant to statute
  - (d) transfers of mortgages charges or leases or leasehold estates
  - (e) transfers of other than the full interest of the transferor for which the appropriate form must be used.
2. Transfers may be lodged as an original only and must be typed or completed in ink.
3. All signatures must be in ink.
4. If there is insufficient space in any panel to accommodate the required information use the above space or an annexure sheet (Form A1). Insert only the words "See Annexure A" (or as the case may be) in the appropriate panel and enter the information above or on the annexure sheet under the appropriate heading.

Multiple annexures may appear on the same annexure sheet but each must be correctly headed.  
All annexure sheets should be properly identified and signed by the parties and securely attached to the instrument.
5. Volume and folio references must be given. If the whole of the land in a title is to be transferred no other description should be used. If the transfer affects part only of the land in a title the lot and plan number or Crown description should also be given. Any necessary diagram should be endorsed above or on an annexure sheet (Form A1).
6. Set out the amount (in figures) or the nature of the consideration.

In a transfer on sale of land subject to a mortgage it should be clearly shown whether or not the amount owing under the mortgage is included in the consideration e.g. \$ ..... which includes the amount owing under mortgage No. ....
7. Insert full name. Address is not required.
8. Insert full name and address. If two or more transferees state whether as joint tenants or tenants in common. If tenants in common specify shares.
9. If an executing party is a natural person execution should read "Signed by the transferor (transferee) in the presence of .....". The witness must be an independent person. If an executing party is a body corporate execution should conform to any prescribed formalities relating to the affixing of the common seal.



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<b>TITLE PLAN</b>		<b>EDITION 1</b>		<b>TP 820136N</b>	
<b>Location of Land</b> Parish : Moorparanyal Township : - Crown Allotment : - Crown Portion : - Section : - Last Plan Reference : LP 33990 Title Reference : Vol. 9797 FOL. 174 Depth Limitation : NIL			<b>Notations</b> NOTE 1: Lot 1 hereon formerly part of Lot 6 on LP 33990 NOTE 2 : Lot 2 hereon formerly part of Lot 7 on LP 33990 NOTE 3: As to the land shown marked "A-1", a Water Supply Easement Appurtenant to the within land has been created by PS 413164R		
<b>Easement Information</b> E – Encumbering Easement    R – Encumbering Easement (ROAD)    A – Appurtenant Easement					THIS PLAN HAS BEEN PREPARED BY LAND REGISTRY, LAND VICTORIA FOR TITLE DIAGRAM PURPOSES  Checked by:
Easement Reference	Purpose / Authority	Width (Metres)	Origin	Land benefited / In favour of	
E - 1	Carriage way and the Supply of Water	10.06m	LP 33990	Lots on LP 33990	
					Assistant Registrar of Titles Date 28/11/04
TOTAL AREA 4.423 ha  MEASUREMENTS ARE IN METRES					
LENGTHS ARE IN METRES	SCALE	SHEET SIZE A3			
Sheet 1 of 1 Sheet					