



# Reconsideration Submission

**Proposed Sea Containers**

**Lot 849 (No. 97) Kalyang Loop, Byford**

August 2022

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## Document Version Control

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## 1.0 Background

Nathan Briggs ('the Applicant'), the owner of Lot 849 (No. 97) Kalyang Loop, Byford (**the subject land** or **land**) has applied to the Shire of Serpentine Jarrahdale for development approval of two (2) sea-container structures at the aforementioned property address.

The subject land measures approximately 2,002m<sup>2</sup> and is located on the north-west periphery of the Byford Urban Area, approximately 270m to the south-west of the intersection of Kardan Boulevard and Thomas Road. The subject land accommodates a single-storey single dwelling, as well as an outbuilding (shed) of some 256m<sup>2</sup> which was previously approved by the Shire for use as a 'Warehouse' for the storage of building materials and other related equipment.

On 8 December 2021, a planning application was made which sought retrospective planning approval for the proposed development. Specifically, approval was initially sought for 1x 20ft sea container and 1x 40ft sea container<sup>1</sup> to be setback 1.8m from the rear (north) boundary and with a nil setback to the side (east) boundary.

The subject land is zoned 'Urban Development' and is also contained within Development Area 'DA 3 – Byford' pursuant to the Shire's Town Planning Scheme No. 2 (**TPS2** or **Scheme**). By virtue of its inclusion in 'DA 3', the subject land is also subject to the 'Redgum Brook Estate - North' Local Structure Plan (**LSP**) which designates the land as 'Composite Residential / Light Industrial'.

Furthermore, 'Local Development Plan No. 18 – Redgum Brook Estate – Stage 13' (**LDP**), designates a 'Residential R20' building envelope towards the front of the land and a 'Light Industrial' building envelope towards the rear. The LDP also shows that the Light Industrial building envelope is to be setback a total of 15m from the rear boundary (comprised of a 10m wide vegetation buffer and a further 5m setback) and a minimum side setback of 3m to the boundary.

The Applicant has applied to the State Administrative Tribunal (**Tribunal**) for a review of conditions (b) and (d) of Council's determination from the OCM of 16 May 2022. The conditions under review will be discussed further below.

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<sup>1</sup> The 40ft sea container was previously approved by the Shire to be located beside the shed (northern side).

## 2.0 Review of Determination

Upon receipt of the application, the Shire advertised the application to the adjoining landowner from 8 December 2022 to 22 December 2022 and received an objection citing concerns with respect to safety, visual amenity, land use and location. As part of the Applicant's attempt to address the concerns raised by the submitter, the Applicant proposed to setback the sea containers 1m from the neighbouring eastern boundary. The application was determined at the OCM of 16 May 2022 where it was approved subject to conditions, albeit modified, from those recommended by administration.

The Applicant seeks a review of Condition b) and d) of the abovementioned approval which states the following:

- b) *Within 60 days of the date of this approval, both sea containers are to be wholly relocated to within the approved Light Industry building envelope for the subject land, as depicted on the approved Local Development Plan for the land*
  
- d) *Within 60 days of this approval, the south and east facing walls of the sea containers (once relocated) are to be painted consistent with the colour of the existing dividing fence, to the satisfaction of the Shire of Serpentine Jarrahdale.*

With respect to condition (b) it is noted that the sea containers would be required to be setback a minimum of 15m from the rear boundary and 3m from the side boundary.

## 3.0 Planning Framework & Discussion of Review

Pursuant to clause 56(1) of the Deemed Provisions contained within Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015 (LPS Regulations)*, a decision maker must have due regard, but is not bound by, the LDP when deciding the application.

It is acknowledged that Council's ultimate decision varied the conditions recommended by the assessing officer, with a comparison provided in the following table:

Officer Recommendation	Council Resolution				
<p>a. The development is to be carried out in compliance with the plans and documentation listed below and endorsed with the Shire of Serpentine Jarrahdale stamp, except where amended by other conditions of this consent:</p> <table border="1" data-bbox="256 741 655 994"> <tr> <td data-bbox="256 741 456 994">Plans and Specifications</td> <td data-bbox="461 741 655 994">Plans P1 received at the Shire's offices on 8 December 2021.</td> </tr> </table>	Plans and Specifications	Plans P1 received at the Shire's offices on 8 December 2021.	<p>a. The development is to be carried out in compliance with the plans and documentation listed below and endorsed with the Shire of Serpentine Jarrahdale stamp, except where amended by other conditions of this consent:</p> <table border="1" data-bbox="831 786 1230 1032"> <tr> <td data-bbox="831 786 1031 1032">Plans and Specifications</td> <td data-bbox="1035 786 1230 1032">Plans P1 received at the Shire's offices on 8 December 2021.</td> </tr> </table>	Plans and Specifications	Plans P1 received at the Shire's offices on 8 December 2021.
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<p>b. All stormwater shall be retained within the property to the satisfaction of the Shire of Serpentine Jarrahdale. Direct disposal of stormwater onto the road, neighbouring properties, watercourses and drainage lines is not permitted.</p>	<p>b. Within 60 days of the date of this approval, both sea containers are to be wholly relocated to within the approved Light Industry building envelope for the subject land, as depicted on the approved Local Development Plan for the land.</p>				
<p>c. Within 60 days of this approval, the sea containers shall be relocated to a setback of 1 metre from the east boundary.</p>	<p>c. All stormwater shall be retained within the property to the satisfaction of the Shire of Serpentine Jarrahdale. Direct disposal of stormwater onto the road, neighbouring properties, watercourses and drainage lines is not permitted.</p>				
<p>d. Within 60 days of this approval, the south wall of the 20ft sea container and the south and east wall of the 40ft sea container are to be painted consistent with the colour of the existing dividing fence, to the satisfaction of the Shire of Serpentine Jarrahdale.</p>	<p>d. Within 60 days of this approval, the south and east facing walls of the sea containers (once relocated) are to be painted consistent with the colour of the existing dividing fence, to the satisfaction of the Shire of Serpentine Jarrahdale.</p>				

Council's reason for varying the officer recommendation is stated at the end of the OCM Minutes as follows:

*To strike a balance between the proponent and the neighbour in regard to the amenity in this area.<sup>2</sup>*

The height of the proposed sea containers are 2.59m and therefore will only protrude by 800mm above a standard 1.8m high dividing fence. Following a site assessment, it was noted that the dividing fence is at a height closer to 2m, so the difference is approximately 600mm. It is submitted that at this height the sea container would be less imposing than a full height shed that would have compliant setbacks.

The Shire's Local Planning Policy 4.19 – Outbuildings, Sheds, Garden Shed and Sea Containers (**LPP4.19**) provides that on lots with an area between 2,000sqm and 4,000sqm that sea containers shall:

1. Be suitably screened and/or fenced from public view;
2. Situated at the rear of the property; and
3. Painted in a colour that is consistent with the surrounding built or natural environment to blend the container with its surrounding environment.

It is understood that the purpose of the 10m wide vegetation buffer is for visual screening of the 'Light Industrial' portion of the land from public view. As stated in the officer report in respect to the vegetation buffer:

*"... the intention was to provide a screen that would filter the views of the 'Light Industrial' development from Thomas Road to the north, ultimately improving the visual amenity to the northern gateway of Byford".<sup>3</sup>*

Condition b) requires the sea containers to be relocated within the 'Light Industrial' building envelope. In this respect, it is emphasised that when viewed from Thomas Road, which is the only public location in which the sea containers would be visible, the bulk generated by the sea containers in their current location is negligible given the existing visual character which is dominated by the existing outbuildings exceeding the height of the rear fence. It is commonplace within this part of the locality to see

<sup>2</sup> See page 54 of the minutes of the OCM 16 May 2022.

<sup>3</sup> See page 49 of the minutes of the OCM 16 May 2022.

the tops of sheds and other buildings over side boundary fences, as illustrated within Figures 1 to 3 below.



*Figure 1 – Existing Sheds visible from Thomas Road (Source: Google Streetview 2022)*



*Figure 2 – Existing Sheds visible from Thomas Road (Source: Google Streetview 2022)*



*Figure 3 – Existing Sheds visible from Thomas Road (Source: Google Streetview 2022)*

The images above make it clear that the view of the neighbouring properties from a public view is dominated by existing outbuildings, of which the majority are finished in a dark colour palette to achieve consistency and to also reduce the prominence of the outbuildings from view.

It is also important to consider the purpose of the zoning in which the subject site is situated, being the 'Urban Development' zone under TPS2, and further, the objectives of the 'Composite Residential/Light Industrial' zoning under the applicable LSP and subsequent LDP, Redgum Brook Estate – North, which provides for a 10m wide vegetation buffer at the rear of properties within the LSP/LDP area.

It can therefore be inferred that the overarching purpose of the vegetation buffer is to screen the 'Light Industrial' portion of the land from Thomas Road, and not from neighbouring properties. Given that multiple outbuildings are viewable from Thomas Road, it is submitted that the location of the sea containers poses no significant impact upon the existing visual amenity viewable from the public.

In addition, from the perspective of any adjoining landowners, views of tall outbuildings are dominant across the side boundaries of the 'Composite Residential/Light Industrial' lots. Figure 4 below contains an image taken from the rear alfresco area of the subject site and illustrates how existing outbuildings on

neighbouring properties impose a greater visual impact than a much more modestly proportioned (and lower) sea container.



*Figure 4 – Illustration of existing outbuildings on neighbouring properties visible from subject site  
(Source: Altus Planning).*

It is therefore submitted that the proposed location of the sea containers will bear little to no impact upon visual amenity viewed from neighbouring properties.

## 4.0 Revisions to the proposal

Having heard the Shire's concerns in more detail during mediation, the Applicant makes the following changes to the proposal for the reconsideration of Council in light of the Tribunal's invitation for the matter to be reconsidered:

1. The side setback of the sea containers is now proposed to be relocated 3m metres from the eastern boundary. This is in lieu of the nil setback that currently exists and 1m recommended by the Shire of officers; and

2. Applicant is also willing to provide either lattice screening atop the dividing fence for a section of 12.1m abutting the sea containers, or, permanent cladding or some other permanently affixed material on the visible portion of the sea container above 1.8m in height facing the eastern elevation. The colour of the material in both instances is to be consistent with the colour of the existing dividing fence.

The above changes are reflected on the revised plan dated 9 August 2022 (see attached).

With the above in mind, the merits of the application can be summarised as follows:

- i) In respect to the change's resultant from points 1 and 2 above, the sea container will either not be visible to the eastern neighbour or alternatively, will simply blend in with the existing colourbond fence;
- ii) In respect to point 2, as the sea container is near new, the Applicant does not wish to paint it but is happy to treat the top portion (as outlined above) so that it blends in with the colour of the existing fence;
- iii) The advantage of retaining the sea containers (as above) is that the balance rear vegetative buffer will be used as intended as is already evidenced on-site; it already contains established ornamental pear trees, citrus trees and a chicken coup;
- iv) As noted in the officer report "*Storing materials internally is considered to provide an overall improvement to the amenity of an area*"<sup>4</sup>. In the absence of the sea containers, there would be nothing to prevent parts of the laydown area that are not vegetated to be used as open air, laydown area; and
- v) The proposal now accords with the 3m side setback as prescribed in the LDP.

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<sup>4</sup> See page 46 of the minutes of the OCM 16 May 2022.

## 5.0 Conclusion

The sea containers subject to this application proposes the retention but relocation of the sea containers to mitigate any perceived adverse visual amenity impact which is the stated reason for Council's refusal (i.e., *To strike a balance between the proponent and the neighbour in regards to the amenity in this area*).

The applicant resides on the property with his young family and simply seeks to store work materials in a more orderly fashion and at the same time, allow his young children to freely roam in their 'back yard' in the manner one would expect on a larger than usual residential allotment.

For the reasons outlined within this report, it is submitted the changes made are generous and in the spirit of compromise given that the Shire's officers were willing to support the sea containers only 1m from the abutting boundary.

It is our view that such a development is consistent with the objectives of the 'Residential Composite/Light Industrial' zone and moreover the LDP which is to be given 'due regard' and cannot be enforced as if were a statutory requirement under a local planning scheme or some other statute.

Accordingly, the Applicant seeks to have the decision made by Council at the OCM of 16 May 2022 reconsidered, as per the invitation by the Tribunal under Section 31(1) of the SAT Act as follows:

- i) To have condition (b) removed; and
- ii) To have condition (d) modified so that it requires either a lattice on top of a portion of the existing dividing fence to the east, or a portion of the east elevation of the container which faces the boundary being screened by a permeant fixture that is the same colour as the dividing fence, as indicated on the revised plan.

I trust this information is to your satisfaction, we otherwise look forward to your favourable determination.

Altus Planning

# h o l e i n t h e w a l l **design.**

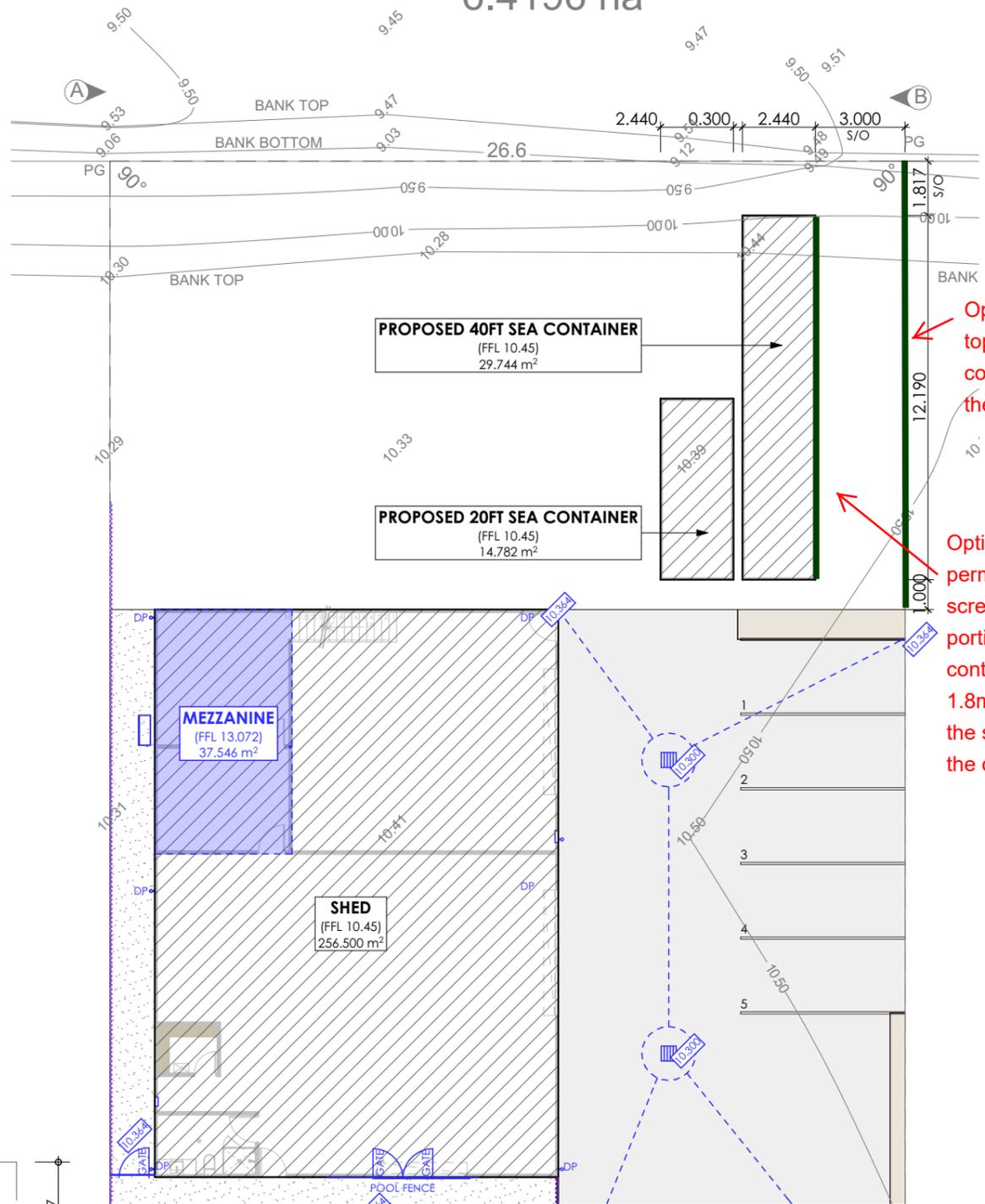
Nathan Briggs  
Proposed Renovation  
#97 Kalyang Loop  
BYFORD WA 6122

SHEET	NAME	DATE	COMMENT	REV
1	SEA CONTAINER LAYOUT	9/08/2022 6:05 PM	SEA CONTAINER SETBACK AMENDMENT	J

6.4196 ha

### SITE LEGEND

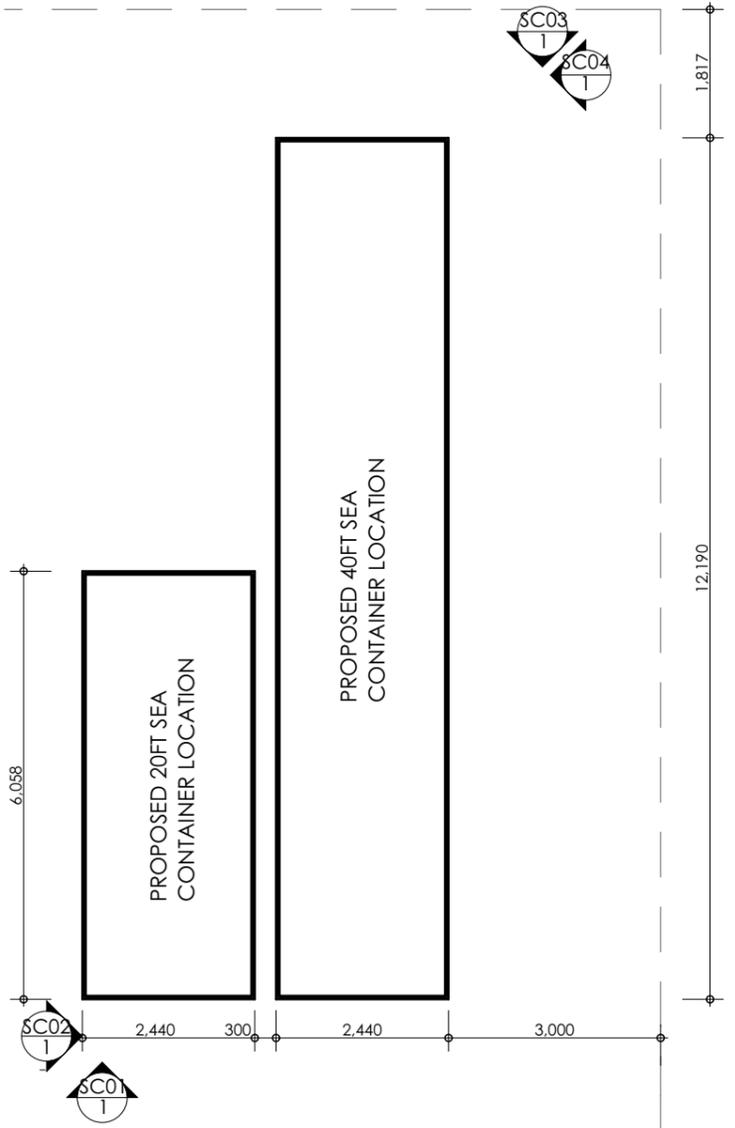
- 300w CAVITY CONC. BWK RETAINING WALL TO S.E DETAILS
- PAVING
- ASPHALT
- GRASS
- GARDEN BED
- 1200h POOL FENCE TO NCC & AUS STDS 1926.1
- 1200h POOL GATE TO NCC & AUS STDS 1926.1
- 1800x1800h SOAKWELL W/ TRAFFICABLE GRATE TO CIVIL ENGINEERS DETAILS
- COLORBOND FENCE



Option of lattice on top of existing colourbond fence in the same colour.

Option of a permanently affixed screen on the portion of the sea container above 1.8m in height and in the same colour of the dividing fence.

**SITE PLAN**  
1:200

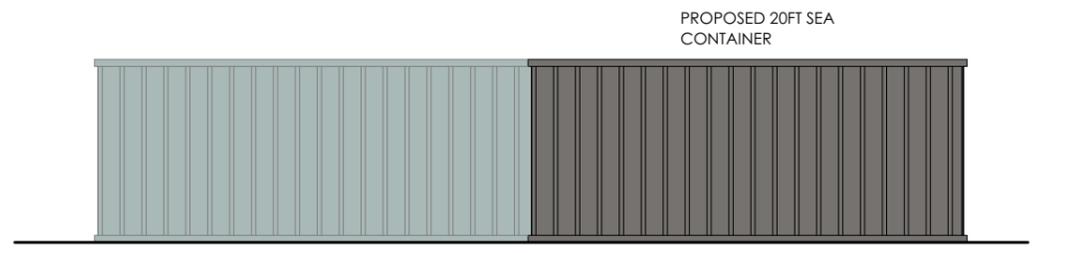


**PROPOSED SEA CONTAINER PLAN**  
1:100

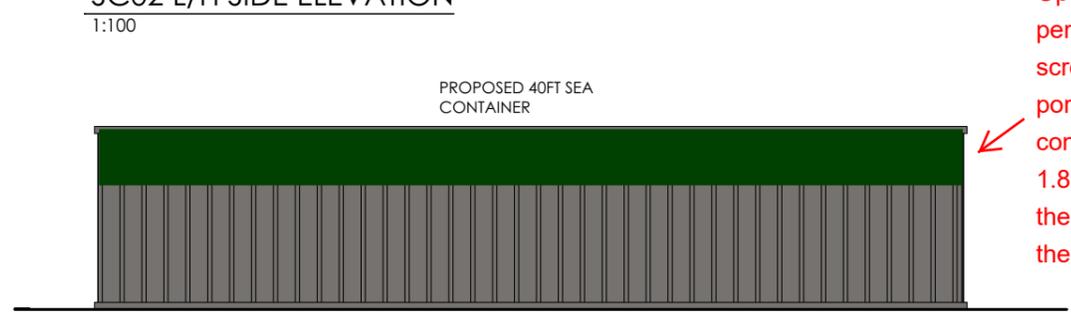


**SC01 FRONT ELEVATION**  
1:100

**SC03 REAR ELEVATION**  
1:100



**SC02 L/H SIDE ELEVATION**  
1:100



**SC04 R/H SIDE ELEVATION**  
1:100

Option of a permanently affixed screen on the portion of the sea container above 1.8m in height and in the same colour of the dividing fence.

**hole in the wall design.**

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holeinthewalldesign@hotmail.com

STAGE:	DEVELOPMENT APPROVAL
CLIENT:	Nathan Briggs
PROJECT:	Proposed Renovation #97 Kalyang Loop BYFORD WA 6122

SHEET: SEA CONTAINER LAYOUT		SHEET N°: <b>1</b> OF 1
REV	COMMENT	DATE
F	ELECTRICAL UPDATES	13/06/2021 8:36 AM
G	SEA CONTAINER DEVELOPMENT APPROVAL	29/11/2021 6:27 PM
H	SEA CONTAINER ELEVATIONS DEVELOPMENT APPROVAL	5/12/2021 1:29 PM
I	SEA CONTAINER SETBACK AND TREE SCREENING	27/04/2022 5:32 PM
J	SEA CONTAINER SETBACK AMENDMENT	9/08/2022 6:05 PM
DRAWING N°: W1.A		JOB N°: #Pln