

Planning and Environment Act 1987

Panel Report

Greater Geelong Planning Scheme Amendment C332 and Permit 1303/2015

front page

12 July 2017

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Panel Report pursuant to section 25 and 96E of the Act

Greater Geelong Planning Scheme Amendment C332 and Permit 1303/2015

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Trevor McCullough, Chair

Contents

	Page
1 Introduction.....	1
1.1 The Amendment.....	1
1.2 Background to the proposal.....	2
1.3 Summary of issues raised in submissions	2
1.4 Issues not contested.....	3
1.5 Issues dealt with in this report.....	4
2 Issues raised in submissions.....	5
2.1 The issues	5
2.2 Submissions.....	5
2.3 Discussion	7
2.4 Conclusions.....	8
2.5 Recommendations	8

List of Figures

	Page
Figure 1 The subject land	1

List of Abbreviations

DDO20	Design and Development Overlay Schedule 20
DELWP	Department of Environment, Land, Water and Planning
IN1Z	Industrial 1 Zone
PCRZ	Public Conservation and Resource Zone
PUZ1	Public Use Zone Category 1 (Service and Utility)

Overview

Amendment Summary

The Amendment	Greater Geelong Planning Scheme Amendment C332 and Permit 1303/2015
Brief description	<p>Amendment C332 seeks to:</p> <ul style="list-style-type: none"> • Rezone part of the subject land to the Industrial 1 Zone and other parts to the Public Use Zone 1 and the Public Conservation and Resource Zone. • Apply the Design and Development Overlay Schedule 20 to the land being zoned Industrial 1 Zone. <p>The draft Permit (no 1303/2015) provides for a 10-lot industrial subdivision and associated buildings and works.</p>
Subject site	42 Leather Street and 350 Boundary Road, Breakwater
The Proponent	TGM Pty Ltd on behalf of Barwon Water
Planning Authority	City of Greater Geelong
Authorisation	A03523 authorised on 15 February 2017
Exhibition	23 March to 24 April 2017
Submissions	<p>Number of Submissions: 5</p> <p>Supporting or not objecting submissions were received from Barwon Water, DELWP and S and L Knight.</p> <p>The only objecting submission was received from Kings Lawyers on behalf of M and C Bath</p>

Panel Process

The Panel	Trevor McCullough
Directions Hearing	Not required
Panel Hearing	Geelong 23 June 2017
Site Inspections	Unaccompanied, 23 June 2017
Appearances	<ul style="list-style-type: none"> • Peter Schembri on behalf of Greater Geelong City Council • Chris Marshall of Beveridge Williams and Tony Belcher on behalf of Barwon Water • Malcolm Bath
Date of this Report	12 July 2017

Executive Summary

(i) Summary

Greater Geelong Planning Scheme Amendment C332 and Permit 1303/2015 (the Amendment) relates to Barwon Water owned land at 42 Leather Street and 350 Boundary Road, Breakwater. The Amendment seeks to reorganise the land by rezoning that part fronting Leather Street to the Industrial 1 Zone and other parts to the Public Use Zone 1 and the Public Conservation and Resource Zone.

The Amendment also proposes to apply the Design and Development Overlay Schedule 20 to the land being zoned Industrial 1 Zone.

The Amendment is concurrent with a Planning Permit Application (no. 1303/2015) to allow a 10-lot industrial subdivision and associated buildings and works. Lots 9 and 10 will be retained by Barwon Water, and lots 1-8 sold to the private sector.

Barwon Water is progressing the Barwon River Ovoid Sewer Aqueduct Park project on land to the south of the subject land.

The one objecting submitter is concerned that the Amendment will cut off public access and viewing opportunities to the aqueduct structure, and the alternative access point from Tanner Street will create amenity issues for residents in that area.

The Panel has considered the submission made by objector, along with the responses of Council and Barwon Water and concludes that:

- The Amendment will prevent direct access to the ovoid sewer aqueduct via the subject land, but this is an appropriate outcome in the context of safety of the site and the planning for the Aqueduct Park.
- The proposed alternative access point to the Aqueduct Park from Tanner Street may create future amenity issues for residents, but these issues are more appropriately dealt with in the Aqueduct Park planning process.
- No changes are required to the Amendment or planning permit to address the issues raised by the objecting submitter.

(ii) Recommendations

The Panel recommends that Greater Geelong Planning Scheme Amendment C332 be adopted, and Planning Permit 1303/2015 be issued, as exhibited.

1 Introduction

1.1 The Amendment

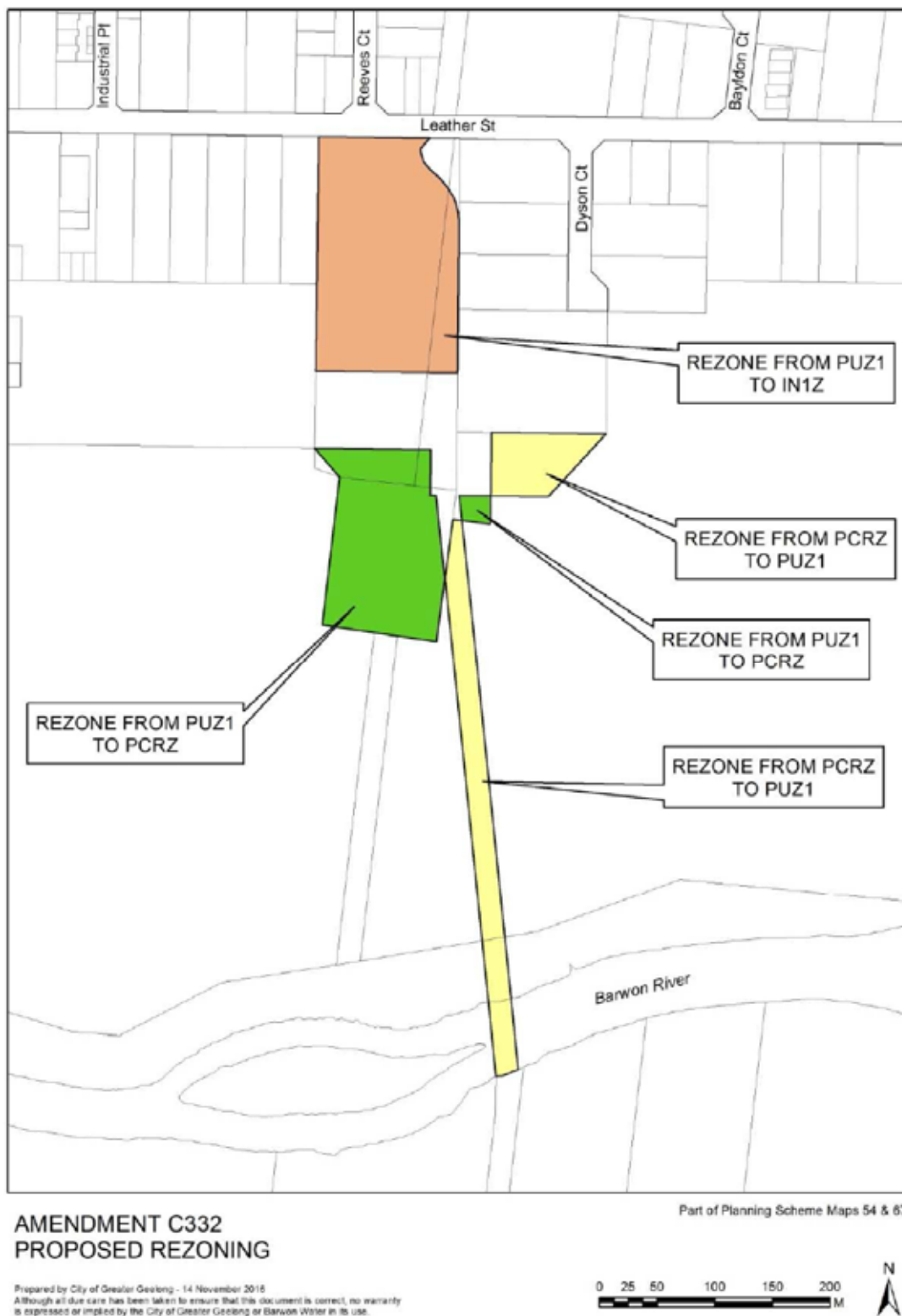


Figure 1 The subject land

Amendment C332 seeks to reorganise Barwon Water owned land in Breakwater by rezoning that part fronting Leather Street to the Industrial 1 Zone and other parts to the Public Use Zone 1 and the Public Conservation and Resource Zone.

The Amendment also proposes to apply the Design and Development Overlay Schedule 20 to the land being zoned Industrial 1 Zone.

The Amendment is concurrent with a Planning Permit Application (no. 1303/2015) to allow a 10-lot industrial subdivision and associated buildings and works. Lots 9 and 10 will be retained by Barwon Water and lots 1-8 sold to the private sector.

Council advised that the Amendment is supported by a section 173¹ Agreement consistent with Ministerial Direction No. 1 *Potentially Contaminated Land*.

1.2 Background to the proposal

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. Eight of the lots are proposed to be rezoned to the Industrial 1 Zone for sale to the private sector.

Council and Barwon Water submitted that the Amendment is required to facilitate the subdivision and development of part of the land for industrial purposes consistent with the broader industrial context of Breakwater. The Amendment is also required to establish land for Barwon Water to maintain and develop utilities to service the Greater Geelong community.

Barwon Water is progressing the Barwon River Ovoid Sewer Aqueduct Park project on land to the south of the subject land. The Project seeks to²:

- *Conserve and promote the historically significant aqueduct structure, while improving public safety*
- *Restore public access along the Barwon River and northern bank*
- *Provide for a range of low-impact recreational activities and staged development of visitor facilities*
- *Protect the diversity, cultural heritage and floodplain values of the park.*

Council submitted that the Amendment assists in providing protection for the Ovoid Sewer Aqueduct and is consistent with the objectives of the Park project.

Whilst not directly related to the Amendment, the proposed Park adjoins the land, and is the subject of concern by the objecting submitter.

The Amendment request is supported by a Flora and Fauna Assessment, an Environmental Site Assessment and a Stormwater Management Plan, commissioned by the proponent.

1.3 Summary of issues raised in submissions

The proposed planning permit has been referred to the appropriate referral authorities and required conditions have been included in the exhibited permit.

¹ Of the *Planning and Environment Act 1987*.

² Aqueduct park proposal from <http://www.yoursay.barwonwater.vic.gov.au/aqueduct-park>.

The key issues raised in the objecting submission from Kings Lawyers on behalf of M and C Bath are briefly summarised as follows:

- The rezoning will cut off public access and viewing opportunities to the aqueduct structure
- The alternative access point from Tanner Street will create amenity issues for residents.

1.4 Issues not contested

The strategic merits of the Amendment are not contested. Council has provided: the Explanatory Report and its delegated authority report dated 19 May 2017; and in the written submission to the Hearing, a thorough account of the strategic foundations for the Amendment.

Council submitted that the proposal will add to the limited supply of industrial land within the existing serviced Breakwater Industrial Precinct. It will also establish land for the ongoing maintenance and development of public utilities to continue to serve the Geelong community.

Council submitted³:

The amendment makes proper use of the Victoria Planning Provisions.

The selection of the Industrial 1 Zone for the portion of land fronting Leather Street and above the Barwon River floodplain is an efficient use of land for industrial purposes. This zone is consistent with the surrounding precinct which seeks to provide for manufacturing industry, the storage and distribution of goods and associated uses.

Applying the Design and Development Overlay Schedule 20 to the land being rezoned Industrial 1 is consistent with its application to all industrial zones in the municipality. The DDO20 will ensure future buildings and works permit applications respond to a range of design objectives and requirements.

The reorganisation of lands zoned Public Use - Service and Utility and Public Conservation and Resource reflects on-going ownership and management by Barwon Water. The Public Conservation and Resource Zone is also the appropriate zone to facilitate any future transfer for parkland use. Barwon Water plans to establish a 66-hectare park around the heritage listed Barwon River Ovoid Sewer Aqueduct.

Barwon Water submitted⁴:

The amendment proposes to rezone land at 42 Leather Street Breakwater to enable the subdivision and development of land for industrial purposes as per the surrounding land use and to correct historic anomalies regarding land zoning within the Barwon River floodplain.

The Panel agrees that the Amendment is strategically justified.

³ Council Explanatory Report.

⁴ Barwon Water written submission as proponent.

Service authorities raised no concerns about the ability to service the land, and the proponent has produced background reports that demonstrate that the land is able to be developed with manageable impacts on infrastructure and the amenity of the nearby area.

The conditions proposed in the exhibited planning permit were not challenged, and the Panel has therefore not considered the wording of the permit conditions in any detail. The objecting submitter did request an additional condition, which is discussed in the next chapter.

1.5 Issues dealt with in this report

The Panel considered all written submissions made in response to the exhibition of the Amendment; as well as submissions and other material presented to it during the Hearing, and observations from a site visit.

The Panel has not provided any commentary on the issues that are uncontested, including the strategic merits of the Amendment. The Panel accepts the Strategic Assessment carried out by Council in the Explanatory Report.

The only matters that require commentary from the Panel are those raised in the objecting submission.

2 Issues raised in submissions

2.1 The issues

Will the Amendment unreasonably cut off public access and viewing opportunities to the historically listed ovoid sewer aqueduct?

Will the alternative access point from Tanner Street create amenity issues for residents?

Should any amenity issues be addressed in the Amendment or in permit conditions?

2.2 Submissions

Mr Bath explained that he owns two residential properties in Tanner Street Breakwater in what is otherwise an industrial area.

Mr Bath confirmed at the hearing that he has no issue with the proposed rezoning or the planning permit.

Mr Bath submitted that the development of the proposed Aqueduct Park will cause visitors to the aqueduct to travel and park in the residential precinct at the south end of Tanner Street.

He submitted that a number of visitors already view the ovoid sewer aqueduct from the south end of Tanner Street. He further submitted that *“this area is not currently suited for any increase in the numbers as the road is not constructed, lighting is poor and there are potential amenity conflicts with both the nearby industrial uses and the immediate residential uses. These include noise and dust”*.

Mr Bath acknowledged the work being done on planning of the Aqueduct Park, and that this may potentially address some of the concerns. He submitted that the Amendment and permit present an opportunity to directly address the potential amenity concerns.

He requested that Tanner Street be sealed to eliminate potential dust and amenity issues.

Mr Bath tabled a concept plan prepared by Barwon Water which showed Tanner Street sealed and a car park constructed at the southern end for use by park users. Mr Marshall confirmed that this was a concept prepared by Barwon Water as a potential future treatment. He advised that there was no funding for the proposal at this stage. Mr Bath advised that he would support such a concept, and further suggested that there should be a requirement in the current permit approval for Barwon Water to commit to this work.

The written submission made by Kings Lawyers on behalf of the Baths suggested that Barwon Water and the City of Greater Geelong could enter into a section 173 agreement agreeing to the construction of a suitable access road, parking area, turnaround area and suitable facilities e.g. lighting, litter and potentially toilets. Such an agreement could be provided for as a condition of the proposed permit 1303/2015.

Council responded as follows⁵:

The submission is not supported.

⁵ Council delegated officer report 19 May 2017.

The proposed rezoning and industrial subdivision at 42 Leather Street is entirely compatible with the use of the surrounding land for industrial purposes. It will strengthen the role of the Breakwater Industrial Precinct and provide added economic and employment opportunities. Barwon Water will retain a depot in the newly created Lots 9 & 10 at the southern end of the subdivision.

42 Leather Street is located in the heart of the industrial estate and is not a suitable location to access the proposed Barwon River Ovoid Sewer Aqueduct Park. The park plan is unrelated to Amendment C332 and shows new access points (to the park) from Boundary Road, Tanner Street and Tucker Street. No access to Leather Street is envisaged.

The proposed park covers over 66 hectares of the Barwon River floodplain and is zoned Public Conservation and Resource Zone. The rezonings forming part of Amendment C332 are limited to the land at 42 Leather Street and land directly south; to include the new depot and main sewer asset in the Public Use Zone 1. Neither the submitter's land nor the Tanner Street road reserve form part of the Amendment land. The land south of Tanner Street will remain in the Public Conservation and Resource Zone.

The Aqueduct Park plan identifies the bottom end of Tanner Street as a viewing point and access point to a new walking path. This section of Tanner Street is unsealed and its construction has been the subject of a long-running dispute between the submitter and the owner of the large vacant industrial property opposite (95-97 Tanner Street). Amenity standards for residents in an industrial zone are significantly lesser than in a residential zone.

After the Aqueduct Park plan is finalised and during the implementation phase, Barwon Water will work with Council and relevant stakeholders to upgrade the park access points. This process is independent of Amendment C332.

Council and Barwon Water officers met with the landowner and David King from Kings Lawyers on Tuesday 9 May. David King suggested at the meeting that Council consider applying a Development Plan Overlay to require the sealing of Tanner Street to accommodate future park visitors.

Changing the Amendment to include a Development Plan Overlay is not supported. Amenity issues related to park visitors using the unsealed section of Tanner Street south of Leather Street are not considered to be related to the Amendment.

Permit 1303-2015 will create carriageway easements in favour of the City of Greater Geelong within the Public Conservation and Resource Zone. Access to these easements will be from the end of Tanner Street however the impact to Tanner Street residents will be negligible.

In its submission to the Hearing, Council summarized its position as follows:

While the concerns of Mr Bath are long-standing and genuine, we say they are unrelated to Amendment C332.

Barwon Water submitted that:

The rezoning's of this area are not linked to the process involved in the implementation of the Aqueduct Park Masterplan which is a separate and longer term process that will require more detailed investigation and consultation prior to finalising detailed works.

Part of this work will include addressing the Tanner Street interface to allow public access subject to consideration of a number of issues including the views of relevant properties owners.

The detail required to undertake this work is not reflected in the Tanner Street plan as provided by the submitter which it should be noted requires the substantial upgrade of Tanner Street.

For these reasons and the fact that the majority of this plan is not located on land in the Public Conservation and Resource Zone the proposed introduction of this plan to the schedule to this zone is not supported.

In summary there is no logical connection between the Amendment and the ultimate longer term resolution of the establishment of the Aqueduct Park. There is also already a demonstrated commitment and processes in place, now and in the future to ensure that Barwon Water and the City of Greater Geelong work in partnership to implement improved public facilities having regard to the attributes of this area including the existing amenity of adjoining uses.

2.3 Discussion

The Panel accepts that the current informal access to the aqueduct via the subject land will no longer be possible if the Amendment proceeds and the land is developed as proposed. The Panel, however, accepts that alternative, safer and more appropriate access is proposed as part of the Aqueduct Park master plan.

The Southern end of Tanner Street appears to have been nominated as one of the preferred access points to the upgraded Aqueduct Park, and it is likely that there will be an increase in vehicle and pedestrian access via Tanner Street. The Panel agrees with Mr Bath that any amenity issues that arise out of this plan ought to be addressed by Barwon Water and Council. Appropriate provision for this access, and treatment of any potential amenity issues, are however more properly addressed through the Aqueduct Park planning process.

The Panel believes that it is not appropriate to include any changes to the Amendment or proposed permit conditions that relate to access via Tanner Street. In the Panel's view there is simply not a direct connection between the Amendment and the possible future amenity impacts in Tanner Street, and it would therefore be inappropriate to require a condition on the permit to address amenity impacts.

2.4 Conclusions

The Panel concludes:

- The Amendment will prevent direct access to the ovoid sewer aqueduct via the subject land, but this is an appropriate outcome in the context of safety of the site and the planning for the Aqueduct Park.
- The proposed alternative access point to the Aqueduct Park from Tanner Street may create future amenity issues for residents, but these issues are more appropriately dealt with in the Aqueduct Park planning process.
- No changes are required to the Amendment or planning permit to address the issues raised by the objecting submitter.

2.5 Recommendations

The Panel recommends that Greater Geelong Planning Scheme Amendment C332 be adopted, and Planning Permit 1303/2015 be issued, as exhibited.