

Planning and Environment Act 1987

Panel Report

**Greater Shepparton Planning Scheme Amendment C187
Public Acquisition Overlay – Congupna**

13 October 2016

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Greater Shepparton Planning Scheme Amendment C187

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A handwritten signature in black ink, appearing to read 'Con Tsotsoros'.

Con Tsotsoros, Chair

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List of Abbreviations

ARI	Average Recurrence Interval
Drainage Strategy	The Congupna Urban Drainage Strategy
EPA	Environment Protection Authority
PAO	Public Acquisition Overlay

Overview

Amendment Summary

The Amendment	Greater Shepparton Planning Scheme Amendment C187
Brief description	The Amendment seeks to apply the Public Acquisition Overlay (PAO22) to part of 25 Congupna Road and part of 226 Old Grahamvale Road, Congupna.
Subject land	Land shown in Figure 1
Planning Authority	Greater Shepparton City Council
Authorisation	MBR029705, 15 April 2016
Exhibition	9 June to 11 July 2016
Submissions	<p>Eight submissions received from:</p> <ol style="list-style-type: none"> 1 VicRoads 2 Goulburn Broken Catchment Management Authority 3 Environment Protection Authority 4 Department of Environment, Land, Water and Planning 5 Mr and Mrs Crifo 6 Mr Ben and Ms Tara Jones 7 Mr Matthew and Ms Michelle Walker 8 Department of Economic Development, Jobs, Transport and Resources

Panel Process

The Panel	Con Tsotsoros (Chair)
Directions Hearing	The Panel decided that a Directions Hearing was not required
Panel Hearing	Shepparton, 20 September 2016
Site Inspections	Unaccompanied, 20 September 2016
Appearances	<p>Greater Shepparton City Council represented by Ms Grace Docker with Mr Sam Kemp and calling the following expert witness:</p> <ul style="list-style-type: none"> - Mr Uwe Paffrath of Paffrath Consulting on drainage engineering <p>Mr Matthew and Ms Michelle Walker represented by Mr Walker</p>
Date of this Report	13 October 2016

Executive Summary

(i) Summary

Greater Shepparton Planning Scheme Amendment C187 (the Amendment) seeks to apply the Public Acquisition Overlay (PAO22) to part of 25 Congupna Road and part of 226 Old Grahamvale Road, Congupna.

The Wallace Street residential area in Congupna was developed when there were less stringent development conditions. The Amendment is required so that drainage infrastructure can respond to 1 in 100 year storm events and meet Council's Infrastructure Design Manual requirements. Congupna's 2012 flood provides evidence that the existing drainage system is unable to cope with such events.

The Amendment was exhibited from 9 June to 11 July 2016 and received eight submissions. Two submissions opposed the Amendment in its current form and a further submission sought clarification on financial related matters. Key issues raised in submissions include the proposed location of Basin B, impact of fencing and vegetation on existing views and outlook, restriction to existing informal access through land to be acquired for Basin B and potential amenity impacts resulting from how Basin B is maintained.

The Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

Having considered all submissions, the Panel concludes that the proposed Basin B site is the most practical and cost effective location. The Amendment will not restrict formally recognised access to the properties owned by Submitters 6 and 7. However, it will restrict access afforded by an informal arrangement with the property owner through land sought to be acquired by Council. There may be an opportunity to create a new access way directly from Congupna East Road to the property owned by Submitter 7.

There is no recommendation to change the Amendment in response to issues associated with views and outlook and basin maintenance. Basin maintenance is not a consideration for an Amendment proposing to apply a Public Acquisition Overlay.

The Panel agrees with Council that the exhibited land proposed for Basin B should be expanded to include the Environment Protection Authority Code of practice – onsite wastewater management setback.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Greater Shepparton Planning Scheme Amendment C187 be adopted as exhibited subject to the following:

- 1. Amend map 11PAO to extend part of 226 Old Grahamvale Road, Congupna (Lot 2 LP207658) from 6,500 square metres (65 metres by 100 metres) to 8,050 square metres (80.5 metres by 100 metres).**

1 Introduction

1.1 The subject land

The Amendment applies to land in Congupna shown as PAO22 in Figure 1. It is located approximately 10 kilometres north of the Shepparton Central Business District.



Figure 1 Subject land

1.2 The proposal

The Amendment proposes to apply the Public Acquisition Overlay (PAO22) to the subject land to address existing drainage issues in response to 1 in 100 year storm events. The Goulburn Broken Catchment Management Authority (Submission 2) did not object to the Amendment, however it did note:

...the 100-year ARI flood is not the maximum possible flood. There is always a possibility that a flood larger in height and extent, than the 100-year ARI flood, may occur.

For drainage purposes, Congupna is divided into two catchments and a basin is proposed in each, as shown in Figure 1.

Table 1 Catchment and basin details

	Drainage Catchment 1 (West)	Drainage Catchment 2 (East)
Basin name	Basin A	Basin B
Address	25 Congupna West Road, Congupna (Lot 1 PS717710)	226 Old Grahamvale Road, Congupna (Lot 2 LP207658)
Zone	Farming Zone Schedule 1	Farming Zone Schedule 1
Overlays	Land Subject to Inundation Overlay	Land Subject to Inundation Overlay
Area	Approximately one hectare	Approximately one hectare
Context	Abuts Goulburn Valley Highway to the east and Congupna West Road to the north	Abuts Congupna East Road to the north

1.3 Background to the proposal

The Wallace Street residential area in Congupna was developed when there were less stringent development conditions. The area currently uses roadside drains along both sides of Wallace Street which provide insufficient storage capacity. This was evident during the 1 in 100 year flood in Congupna during 28 February to 1 March 2012. At the Hearing, Council presented a series of photographs from this event and an example is shown in Figure 2.



Figure 2 Congupna flooding 2012

1.4 Issues dealt with in this Report

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

The Panel has reviewed a large volume of material. The Panel has been selective in referring to the more relevant or determinative material in the report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the report.

This report deals with the issues under the following headings:

- Planning context
- Issues
 - Basin location
 - Views and outlook
 - Informal access through proposed Basin B land
 - Basin maintenance.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed Council's response and the policy context of the Amendment, and has made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

Council submitted that the Amendment supports State and local planning policy. Table 2 shows the clauses referenced in the Amendment's explanatory report and Council submission.

Table 2 Policy Framework

State Planning Policy Framework	
Clauses	
11 Settlement	<p>Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.</p>
11.10 Hume regional growth	
11.10-3 Planning for growth	<p>Objective To focus growth and development to maximise the strengths of existing settlements.</p> <p>Strategy Support growth and development in other existing urban settlements and foster the sustainability of small rural settlements.</p>
19 Infrastructure	<p>Planning for development of social and physical infrastructure should enable it to be provided in a way that is efficient, equitable, accessible and timely.</p>
19.03 Development infrastructure	
19.03-2 Water supply, sewerage and drainage	<p>Objective To plan for the provision of water supply, sewerage and drainage services that efficiently and effectively meet State and community needs and protect the environment.</p> <p>Strategy Plan urban stormwater drainage systems to:</p> <p>...</p> <ul style="list-style-type: none"> - Include measures to reduce peak flows and assist screening, filtering and treatment of stormwater, to enhance flood protection and minimise impacts on water quality in receiving waters.

Local Planning Policy Framework

Clauses

21 Municipal Strategic Statement

21.04 Settlement

21.04-5 Community life

Objective

To address community safety in the planning and management of the urban environment.

21.05 Environment

21.05-2 Floodplain and drainage management

Objective

To recognise the constraints of the floodplain on the use and development of land.

Strategy

Ensure that all new development maintains the free passage and temporary storage of floodwater, minimises flood damage is compatible with flood hazard and local drainage conditions, and minimises soil erosion, sedimentation and silting.

21.07 Infrastructure

21.07-3 Urban stormwater management

Objectives

To maintain and enhance stormwater quality throughout the municipality.

To ensure that new development complies with the Infrastructure Design Manual.

2.2 Congupna Urban Drainage Strategy

The Congupna Urban Drainage Strategy (Drainage Strategy) was prepared by Paffrath Consulting in March 2016 to investigate options for managing natural storm events to reduce the risk of harm to people and property. The Drainage Strategy was prepared in consultation with the Goulburn Broken Catchment Management Authority.

Figure 3 of the Drainage Strategy recommended locations for each basin (see Figure 3 of this report) and each location formed the basis for the Public Acquisition Overlay proposed by the Amendment.

The Strategy concludes that the proposed stormwater collection, detention, treatment and discharge layout will:

- minimise the stormwater infrastructure to be maintained and renewed
- provide an appropriate level of drainage and stormwater detention
- meet the objectives of Council's Infrastructure Design Manual
- achieve relevant aims of the Greater Shepparton Planning Scheme.

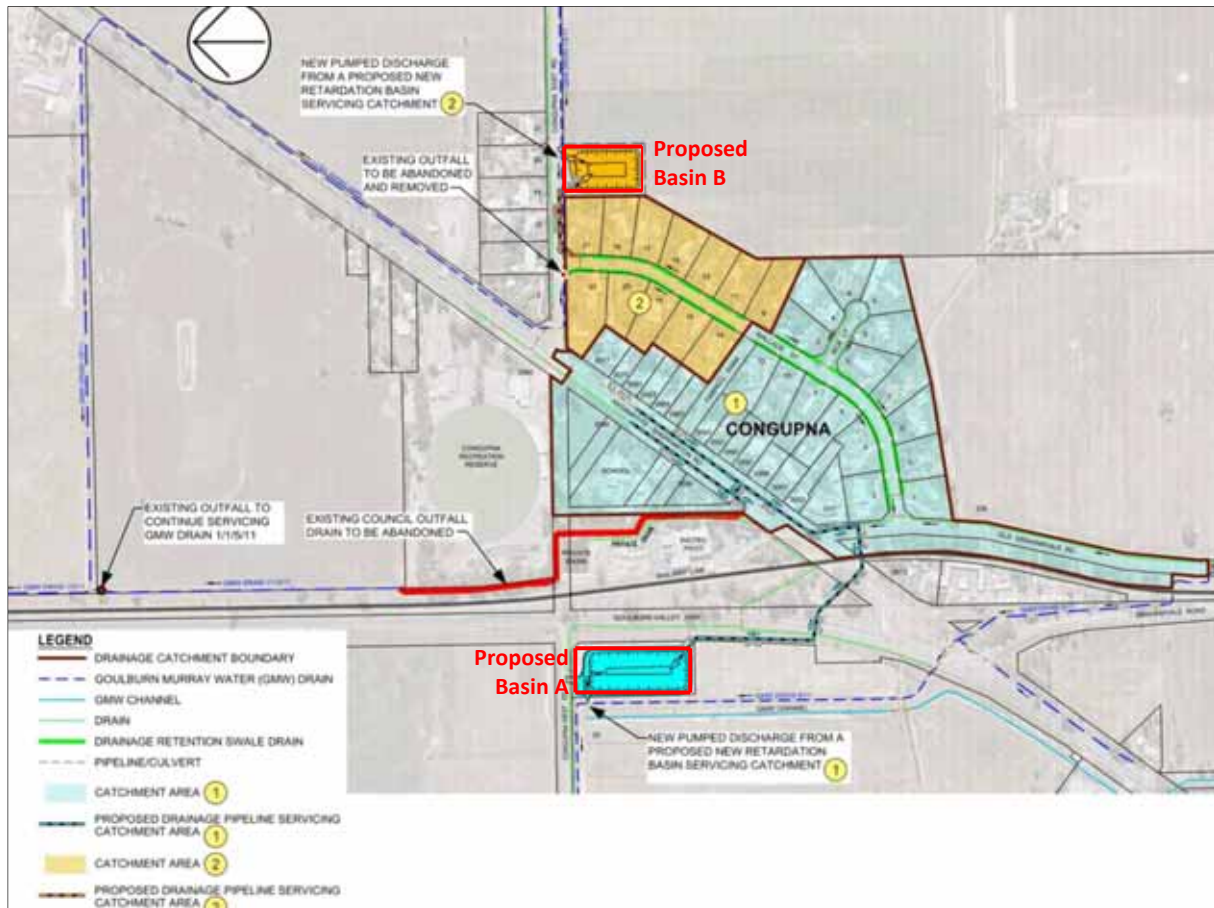


Figure 3 Recommended locations for Basin A and Basin B

2.3 Public Acquisition Overlay

The Amendment proposes to apply the Public Acquisition Overlay (PAO22) to the subject land. The purposes of the Public Acquisition Overlay are:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To identify land which is proposed to be acquired by a Minister, public authority or municipal council.

To reserve land for a public purpose and to ensure that changes to the use or development of the land do not prejudice the purpose for which the land is to be acquired.

To designate a Minister, public authority or municipal council as an acquiring authority for land reserved for a public purpose.

2.4 Ministerial Directions

Council submitted that the Amendment is consistent with the following Ministerial Directions:

- Ministerial Direction No 11 – Strategic Assessment of Amendments

- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

2.5 Discussion

Council submitted that Submission 6 questioned the need for the proposed drainage infrastructure. The Panel did not find any submission questioning the need for the proposed drainage infrastructure. It agrees with Council that the Congupna Urban Drainage Strategy, March 2016 (Drainage Strategy) and Mr Paffrath's evidence justify the proposed drainage infrastructure. Specifically, there is conclusive evidence that the existing drainage infrastructure is unable to satisfactorily manage a 1 in 100 year storm event.

The Panel agrees with Council's submission that the Amendment will provide environmental, social and economic benefits. This would result in a net community benefit.

2.6 Conclusion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework, and is consistent with the relevant Ministerial Directions. The Amendment is well founded and strategically justified, and the Amendment should proceed, subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Issues

Key issues raised in submissions include the proposed location of Basin B, impact of fencing and vegetation on existing views and outlook, restriction to existing informal access through land to be acquired for Basin B and potential amenity impacts resulting from how Basin B is maintained.

3.1 Basin location

(i) The issue

The issue is whether the proposed basin is in an appropriate location. This would affect the extent and location of the proposed Public Acquisition Overlay.

(ii) Evidence and submissions

Mr Paffrath's evidence considered three options with different alignments, as shown in Appendix A. He stepped the Panel through details for each of the three basin locations included in his evidence. Mr Paffrath concluded that Option 1, which forms the basis for the Amendment, was the most cost effective and practical option, especially because it is located:

- adjacent to the Goulburn-Murray Water drain
- at the lowest point of the paddock.

When questioned by the Panel, he stated that there was no issue with the Congupna settlement area expanding around the proposed basin at Congupna East Road. He added that there are examples around Victoria where this has occurred.

Council submitted that it supported Option 1 for reasons in Mr Paffrath's evidence and added:

When initially approached by Council, the landowner of the proposed site for basin B indicated that this would be their preferred location (best configuration for usable farm land).

Submissions 6 and 7 opposed the basin being located directly east of their properties and sought to have it located further east. Council responded that locating Basin B further east would result in a deeper basin and likely to encounter unfavourable ground conditions. At the Hearing, Council estimated that moving Basin B 180 metres further away would require deeper pipe works which would add an estimated \$66,000 in costs, excluding additional land acquisition costs.

Submitters were concerned that the proposed fence and vegetation would affect their existing views and outlook, informal access through land subject to be acquired would be lost and there could be adverse impacts resulting from insufficient maintenance. These issues are each discussed in the following chapters. This chapter focusses on the most appropriate location for the proposed basin, when considering the three options presented in Mr Paffrath's evidence.

(iii) Discussion

The Panel accepts Mr Paffrath's evidence and agrees with Council's submission that Option 1 is the best of the three options for locating Basin B. Cost alone should not be the concluding factor for its location. Basin B should be constructed in the most practical location.

The Panel considers the Option 1 land to be the most practical location for collecting and draining storm water. This means cost effective infrastructure. While there appears to be very little cost difference between Options 1 and 3, it is likely that Option 3 would cost considerably more once details associated with locating a basin on a less optimal elevation are known. The proposed Basin B location would also result in minimal impact on existing farming operations on the balance of the parcel being acquired.

Any impact of the proposed basin's location on the existing informal access through the subject land is discussed at Chapter 3.3.

(iv) Conclusion

The Panel concludes:

- The proposed Basin B site is the most practical and cost effective location.

3.2 Views and outlook**(i) The issue**

The issue is whether the proposed basin will adversely impact on views and outlook from existing properties.

(ii) Submissions

Submissions 6 and 7 opposed the proposed fence around the Basin B land. At the Hearing, Submitter 7 questioned how this land was any different to public open space with a lake and no surrounding fence. Submission 6 stated:

We would not like to see the proposed fencing around the dam as this would look unsightly and also in time the trees will block our views across the land, which we currently enjoy on a regular basis.

Council responded that it changed the design to remove tree screen plantation and changed the fence from a 1.8 metre chain wire fence to a rural post and wire fence. It added that the basin walls would be flattened to a 1 in 8 grade so that there was a more gradual decline from the perimeter of the basin, in line with the Infrastructure Design Manual requirements.

(iii) Discussion

While significance landscapes and visual impacts are managed through the Victoria Planning Provisions, there are no rights to private views. When taking into account property sizes, the distance from existing dwellings, and the location and form of the proposed basin, the Panel does not consider that Basin B would have adversely impact on existing outlooks. However, removing the tree plantation and changing the fence type goes a long way to helping residents retain a considerable proportion of their existing views. Council is commended for its positive response to submitter concerns.

(iv) Conclusion

The Panel concludes:

- The proposed Basin B will not adversely impact on existing views and outlooks.

3.3 Informal access through proposed Basin B land**(i) The issue**

Submitters 6 and 7 have properties with formal access from Wallace Street. Through an informal arrangement, they use part of the neighbour's property, which is proposed to be compulsorily acquired, to access their properties from the rear. The issue is whether this access should be maintained to properties owned by Submitters 6 and 7 after the land is acquired by Council.

(ii) Submissions

Submitters 6 and 7 sought to continue using neighbouring private property to access their own properties. At the Hearing, Submitter 7 said that they constructed a new shed with a 3.5 metre high roller door because a caravan was inaccessible from Wallace Street through their existing 2.3 metre tall car port. They added that Council issued a building permit to construct the shed in February 2015 before being informed of the proposed public acquisition of the land for Basin B.

The Panel was not presented with documentation to confirm a formal arrangement between Submitters 6 and 7 and the abutting property owner to the east.

Council submitted that it received legal advice which states that it should not create an easement for access through the proposed Basin B because Council could be held liable if anything happened to anyone or anything travelling over the easement. Legal advice also stated that providing access through a Council asset may create a precedent or expectation for other property owners abutting similar land.

At the Hearing, Council estimated that legal costs for creating an easement on the property title would be approximately \$16,000, while the cost of a new cross-over over Goulburn-Murray Water's open drain was approximately \$6,000.

(iii) Discussion

The Panel considers it unfortunate that Submitter 7 constructed a new shed before being informed that the land they use to access their shed from Congupna East Road will be acquired for Basin B. Submitters 6 and 7 will not be losing formal access to their properties from Wallace Street but understands why Submitter 7 seeks alternative access. A new crossover over the Goulburn-Murray Water drain provides a cost-effective solution, however the Panel understands that this would be funded by the property owners who did not budget for this additional cost.

(iv) Conclusions

The Panel concludes:

- The Amendment will not restrict formally recognised access to properties owned by Submitters 6 and 7.
- Any informal access to existing properties is not a matter for the Amendment.

3.4 Basin maintenance**(i) The issue**

The issue is whether basin maintenance is a consideration of the Amendment.

(ii) Evidence and submissions

Mr Paffrath's evidence and Council's submission stated that Basin B would not retain water permanently. Referred to as a 'dry basin', in a 1 in 100 year event it would fill to 1.67 metres depth and discharge 5.2 litres of water each second into the Goulburn-Murray Water drain. The basin would be fully discharged in five days.

Submissions 6 and 7 were concerned that waterways of this nature would attract insects, mosquitos, frogs, mice, snakes and foxes. Both submitters considered the land to be acquired adjacent to their properties would not be maintained to their expectations. Submission 6 stated:

The stagnant water will potentially have an offensive smell, and if the area is not maintained the long grass will prove messy and also a fire risk. Currently the drainage channel along Congupna East Road is not well maintained and this increases our concern of the proposed dam.

Council responded that that land would be subject to its maintenance regime and:

The fences will be sprayed and open areas slashed periodically. Once constructed, the pump at the proposed basin will be observed regularly by Council officers, ensuring that Council's Maintenance Team will be onsite to monitor the condition of the basin.

At the Hearing, Council noted that the adjacent property owner can construct a dam, similar to the one proposed for Basin B, within close proximity of their property without a planning permit¹.

Council submitted that the Basin B land is not subject to a Bushfire Management Overlay and is not located in an area identified as bushfire prone for the purposes of the building control system under the *Building Regulations 2006*.

(iii) Discussion

It is noted that there is an existing open drain along Congupna East Road where there is an existing opportunity for the type of animal or insect life raised in Submissions 6 and 7. The Panel accepts Mr Paffrath's evidence that there would be no stagnant water permanently

¹ Victoria Planning Provisions, Clause 62.02-1

stored in the basin. There is no evidence that the drainage infrastructure would attract further wildlife and insects, create an offensive odour or increase fire risk. In either case, this is a matter that can be addressed through a separate council process and does not influence whether the Public Acquisition Overlay should be applied to the subject land.

(iv) Conclusion

The Panel concludes:

- Basin maintenance is not a consideration for an Amendment proposing to apply a Public Acquisition Overlay.

3.5 Post exhibition changes

Council originally sought to acquire 6,500 square metres of land (65 metres by 100 metres) for Basin B. In its submission, the Environment Protection Authority (EPA) said that the Amendment is based on the information provided to it. However, Council identified that the *EPA Code of Practice – Onsite wastewater management* requires a septic treatment and grey water effluent treatment to be set back 30 metres from a property. To comply, 8,050 square metres of land (80.5 metres by 100 metres) would be required. Council submitted:

Council officers met with the land owners of 226 Old Grahamvale Road, Congupna (site of proposed basin B) on 25 July, 2016 to explain the need to increase the extent of the PAO to allow for additional land to be acquired to construct basin B, given the EPA setback requirement.

The land owners of 226 Old Grahamvale Road, Congupna have provided a letter of support for the request to acquire additional land to construct basin B

...

The Panel considers it is important that land for Basin B be increased to 8,050 square metres of land (80.5 metres by 100 metres) to meet the 30 metre setback in *EPA Code of Practice – Onsite wastewater management*. This would result in the basin being located further away from existing properties and achieve a better amenity outcome.

(i) Recommendation

The Panel recommends:

1. **Amend map 11PAO to extend part of 226 Old Grahamvale Road, Congupna (Lot 2 LP207658) from 6,500 square metres (65 metres by 100 metres) to 8,050 square metres (80.5 metres by 100 metres).**

Appendix A Three drainage alignment options

Option	Alignment
Option 1 (Adopted option) \$1,060,897	
Option 2 \$1,186,235	

Option	Alignment
<p>Option 3</p> <p>\$1,084,073</p>	