

*Planning and Environment Act 1987*

**Panel Report**

**Surf Coast Planning Scheme Amendment C113**

**85 Geelong Road, Torquay**

**16 November 2016**

*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Surf Coast Planning Scheme Amendment C113

85 Geelong Road, Torquay

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A handwritten signature in blue ink, appearing to read 'Brett Davis', with a stylized flourish at the end.

Brett Davis, Chair

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## List of Abbreviations

DDO	Design and Development Overlay
LPPF	Local Planning Policy Framework
SUZ	Special Use Zone
The Act	<i>Planning and Environment Act 1987</i>

## Overview

### Amendment Summary

<b>The Amendment</b>	Surf Coast Planning Scheme Amendment C113
<b>Subject Site</b>	85 Geelong Road, Torquay (Lot 3 on LP 213066W)
<b>The Proponent</b>	Baines Torquay Pty Ltd
<b>Planning Authority</b>	Surf Coast Shire Council
<b>Authorisation</b>	4 May 2016
<b>Exhibition</b>	26 May to 27 June 2016
<b>Submissions</b>	A total of 16 submissions were received Eight submissions objected to the Amendment and eight submissions supported the Amendment.

### Panel Process

<b>The Panel</b>	Brett Davis (Chair), appointed on 31 August 2016 under the <i>Planning and Environment Act 1987</i> .
<b>Directions Hearing</b>	Surf Coast Shire Council, 19 September 2016
<b>Panel Hearing</b>	Surf Coast Shire Council, 18 October 2016
<b>Site Inspections</b>	Unaccompanied, 19 September 2016
<b>Appearances</b>	<ul style="list-style-type: none"> <li>• Surf Coast Shire Council represented by Sally Conway</li> <li>• Baines Torquay Pty Ltd represented by Giovanni Gattini, G2 Urban Planning who called expert evidence from:               <ul style="list-style-type: none"> <li>- Jim Higgs in Traffic</li> </ul> </li> <li>• Lions Village Torquay Incorporated represented by Phillip Newson</li> <li>• 3228 Residents Association represented by Andrew Cherubin</li> <li>• Suzanne Barker</li> <li>• Sue O'Shannassy</li> </ul>
<b>Date of this Report</b>	16 November 2016

## Executive Summary

### (i) Summary

Amendment C113 to the Surf Coast Planning Scheme (the Amendment) applies to land at 85 Geelong Road, Torquay (Lot 3 on LP 213066W). The site is located on the corner of Surf Coast Highway (Geelong Road) and Grossmans Road. Special Use Zone Schedule 5 (SUZ5) applies to the land and the site is located within '*Precinct T1 - Surf Coast Gateway Precinct.*' Baines Torquay Pty Ltd is the proponent and Council the Planning Authority for the Amendment.

SUZ5 is proposed to be amended to allow a service station to be considered for a planning permit within 'Precinct T1'. A section 173 Agreement registered on the land requires an *integrated development of the land* ensuring that a service station would not be built in isolation of other mixed uses proposed 'The Development Concept' attached to the agreement (Concept Plan).

Sixteen submissions were received, eight nominally for and eight against. The Panel notes that a number of the supporting submissions were from a family with interests in the land ownership. Key issues raised in submissions included that the site has been nominated as a 'gateway' to Torquay for many years and the use of the land (in part) for a service station is inappropriate. Concerns were raised with regard to noise, odour, hours of operation and the lack of strategic justification for the Amendment. Traffic arrangements and direct access from Grossmans Road was an issue. Concerns were raised that the Amendment was not consistent with Design and Development Overlay Schedule 7 (DDO7) that applies to the site and there been no attempt to assess whether there should be a change to the DDO7 to address urban design issues.

Council outlined the history of the site and that the SUZ5 is restrictive in terms of uses that are permitted without a planning permit. Council submitted that if it was added to the T1 Precinct, a service station would require a permit and subject to a planning permit process and public notice. The Amendment does not propose any changes to the purposes of the SUZ5. Council argued that the Amendment was strategically justified for a number of reasons and that the Amendment would not jeopardise the status of the land as an important landmark precinct for the town.

At the Hearing the Council submitted a revised SUZ 'post-exhibition' Schedule in response to submission of the 3228 Residents Association. Consequently, Council did not support direct access to the service station from Grossmans Road. The Proponent provided expert testimony objecting to this restriction, stating it was premature and should be subject to a detailed traffic impact assessment at the planning permit stage.

Council submitted that the Amendment is consistent with its *Sustainable Futures Plan 2040* and retail hierarchy for Torquay-Jan Juc.

The Proponent supported the Amendment on the basis that it will lay the groundwork for the preparation of a number of planning permit applications for the site. It argued that existing planning policy affirms Torquay's status now as an Urban Growth Centre and the

growing need for a range of both tourist and community services were at the core of the Amendment.

Several submitters questioned how a service station would meet the design objectives of DDO7. The Panel agrees with Council's submission that the DDO7 is important and it will ensure that the service station achieves appropriate design standards, and concludes no changes to DDO7 are required.

The Panel acknowledges views of submitters objecting to the use of the land for a service station being included within the SUZ5. However, it agreed with the Council that the site is suited to a range of uses. The Panel concluded that a planning permit process and s173 Agreement will enable issues such as design, amenity and location of uses to be addressed at the application stage. Importantly, third party appeal rights will still apply for that process.

Based on the expert evidence and discussions at the Hearing, the Panel concludes that the post exhibition changes are premature and access from Grossmans Road should not be precluded at this stage. It notes VicRoads did not object to the Amendment and with more details to follow in the planning process it should be subject to a more rigorous traffic impact assessment when any planning permit application is lodged.

The Panel concludes that site's 'gateway' status has diminished as development has evolved in Torquay. That is not to say it is still not an important site, but the Panel believes it has a different function to what was once envisaged.

The Panel has considered the submissions received in relation to the Amendment and concludes the Amendment:

- Is strategically justified when assessed against state and local policy.
- Is consistent with the objectives of the *Torquay Jan Juc Retail Strategy 2011* at Clause 21.08 and the *Sustainable Futures Plan Torquay Jan Juc 2040*.
- Would not prevent the development of an iconic building on the corner of Grossmans Road.

## **(ii) Recommendation**

Based on the reasons set out in this Report, the Panel recommends:

**Surf Coast Planning Scheme Amendment C113 be adopted as exhibited and not include the post-exhibition changes.**

# 1 Introduction

## 1.1 The proposal

### (i) The Amendment

The Amendment applies to land at 85 Geelong Road, Torquay (Lot 3 on LP 213066W). The site is located on the corner of Surf Coast Highway (Geelong Road) and Grossmans Road.



Figure 1 Subject land <sup>1</sup>

The land is currently zoned SUZ5 and is located within '*Precinct T1 - Surf Coast Gateway Precinct*'. Currently, the subject land is vacant and almost entirely without vegetation. Land to the south is within the SUZ5. Adjacent to the site, land is developed with a 12 unit residential complex. Next to the southern boundary of the subject site, a common property area contains car parking, and land further to the south is zoned SUZ5 with a McDonalds and two vacant shops. Land to the south west is zoned SUZ4 '*Torquay Community Development Precinct*' and contains the Torquay Lions Village (residential village).

The Amendment proposes to amend SUZ5 by including Precinct 1 (with reference only to Lot 3 of LP 213066W – the subject land) in the list of precincts where a planning permit application can be made to the use of the land for a service station.

Currently, SUZ5 only allows a service station in Precinct T4, which is at 74 Geelong Road and already used as a Caltex service station.

<sup>1</sup> Council presentation (Document 1)



A section 173 Agreement under the *Planning and Environment Act 1987* (the Act) is registered on the land. It requires Baines Torquay Pty Ltd and any future owner of the land to developing the site in accordance with 'The Development Concept' attached to the agreement (Concept Plan). The Concept Plan includes a medical centre, aged care facility, service station and E-charging facility, child care centre, café and food outlets with specialty shops, a cinema or multi-purpose function centre and a community/outdoor amphitheatre.

## **1.2 Procedural matters**

At the Directions Hearing, the Panel noted that one of the submitters to the Amendment, Ms Barker is a sessional member of Planning Panels Victoria. This was declared at the Directions Hearing. Ms Barker made a similar declaration at the beginning of her submission at the Panel Hearing. The declaration was noted by all parties.

## **1.3 Issues dealt with in this report**

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the issues under the following headings:

- Planning context
- Special Use Zone Schedule 5.

## 2 Planning context

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

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

### 2.1 Policy framework

#### (i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the State Planning Policy Framework:

Clause 11.01-2 (Activity Centre Planning) – this clause contains the strategy, *“Broaden the mix in activity centres to include a range of services over long hours appropriate to the type of centre and needs of the population served”*.

Clause 11.07 (Geelong (G21) Regional Growth) – within this clause is clause 11.07-1 *“Support the growth of Bannockburn, Colac, Drysdale/Clifton Springs, Lara, Leopold, Ocean Grove and Torquay/Jan Juc as district towns by building on existing and planned infrastructure and focussing growth along key road and rail networks”*.

Clause 12.02-6 (Great Ocean Road region) – this clause has the objective *“To manage the sustainable development of the Great Ocean Road region”*.

Clause 17.01 (Business) – this clause supports *“development which meets the communities needs of retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities”*.

Clause 17.03 (Tourism) – this clause includes the strategy to *“seek to ensure that tourism facilities have access to suitable transport and be compatible with and build upon the assets and qualities of surrounding urban or rural activities and cultural and natural attractions”*.

#### (ii) Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives in the Local Planning Policy Framework (LPPF):

Clause 21.02-2 (Activity Centre Planning) includes Objective 1, *“to support a strong hierarchy of multi-functional, attractive, accessible activity centres across the municipality that can deliver the best possible facilities to residents and visitors and that maintains a vibrant and sustainable local economy”*.

Clause 21.02-4 (Tourism) contains the strategy to *“locate high profile, high volume tourism development in appropriate urban areas ...”* and to facilitate appropriate infrastructure.

Clause 21.08 (Torquay Jan-Juc Strategy) – states in its overview:

*“Torquay Jan Juc is the main urban growth centre of the Surf Coast Shire. It is a popular destination for surfers, tourists, holiday makers and retirees, but*

*also becoming increasingly popular for permanent settlement for those valuing a coastal lifestyle”.*

Clause 21.08-4 (Economic Development) – the aim of this clause is to support the strong hierarchy of mixed use activity centres in Torquay. The following strategies are relevant:

- *Reinforce the hierarchy and role of the established and planned activity, tourist and employment centres ...*
- *Consolidate and strengthen the role of the Torquay Town Centre as the major retail centre in Torquay-Jan Juc, promoting its status as the sub-regional centre and the place where higher order retailing and major activity will be directed ...*
- *Encourage mixed use development within activity centres ... at an intensity and scale that is in keeping with the scale and character of the centre.*

In its submission, Council stated that the site is strategically important and highly accessible to the local community and visitors as it is located on the Surf Coast Highway. Council considered that the Amendment would not impact negatively on the Torquay Town Centre or the LPPF. A greater mix of development would be provided for at the site.

### **(iii) Other planning strategies or policies used in formulating the Amendment**

#### **Sustainable Futures Plan Torquay Jan Juc 2040 (SFP)**

This is a reference document listed under Clause 21.08 ‘Torquay Jan Juc Strategy’, and provides the strategic basis for Clause 21.08 of the Surf Coast Planning Scheme. It was implemented through Amendment C66, which was gazetted in March 2014, with a revised version adopted by Council in June 2014.

The SFP is structured around five core values and principles, including ‘A local economy – providing employment opportunities locally’. This value sets out several principles including “Support the local retail economy and service industries, and encourage their growth within the defined areas and reinforce Gilbert Street as the key retail centre for Torquay Jan Juc”.

#### **Torquay Jan Juc Retail Strategy 2011**

This strategy provides direction regarding the broad commercial retail hierarchy for Torquay Jan Juc. Council noted in its submission that the following action is particularly relevant to Amendment C113:

*Maintain the integrity of the hierarchy, including the dominance of the Torquay town centre, in deciding on planning applications and rezoning requests for retail development.*

The subject land is not specifically referred to in the strategy, and whilst it is not directly part of the Surf City precinct (which is Precinct T2 in the SUZ5), it is referred to in the retail hierarchy as part of the ‘Surf City and surrounds’ activity centre.

#### **Surf Coast Highway Urban Design Guidelines 2006**

The Surf Coast Highway Urban Design Guidelines 2006 were implemented through Amendment C36 to the Surf Coast Planning Scheme. Through the Guidelines, development along the Surf Coast Highway between Grossmans Road and Bell Street is divided into five

distinct precincts. These are: Precinct 1 (Landmark), Precinct 2 (Early Torquay), Precinct 3 (Surf Centre), Precinct 4 (Transition), and Precinct 5 (Residential), and design guidelines are provided for these precincts. The subject land is included in Precinct 1, of which the vision is captured in the DDO7 which applies to the site. Council noted in its submission that Amendment C113 does not propose to make any changes to the DDO7.

**(iv) Relevant Planning Scheme Amendments**

**Surf Coast Planning Scheme Amendment C36**

This Amendment was prepared partly in response to the failure of an earlier Amendment (C14) to introduce urban design guidelines for Precinct 1 (including the subject land) and Precinct 3 in the SUZ along the Surf Coast Highway in Torquay. The Amendment involved a review of the Surf Coast Highway Urban Design Guidelines, now known as the *Surf Coast Highway Urban Design Guidelines 2006*.

As part of the Amendment, application requirements in relation to Precinct T1 were added to require the gateway status of 85 Geelong Road to have a landmark feature as part of any buildings and works proposal and substantial landscaping.

**Surf Coast Planning Scheme Amendment C37**

This Amendment implemented a number of strategic studies relating to Torquay Jan Juc, in particular the *Torquay Jan Juc Structure Plan 2007*.

SUZ5 was modified to relax some of the restrictions on permissible uses in the various precincts, however no change was made to the service station conditions.

**Surf Coast Planning Scheme Amendment C78**

This Amendment was a miscellaneous amendment, with numerous changes to the Surf Coast Planning Scheme. This was part of Council's continuous improvement process.

The SUZ5 Review Report (Surf Coast Shire, September 2011) did not specifically review whether a service station would be appropriate in locations other than Precinct 4, and Amendment C78 was prepared and exhibited with no change made to the provisions regarding service stations.

**Surf Coast Planning Scheme Amendment C90**

This Amendment introduced a further change to SUZ5. The change was to include 'Market' a Section 2 – Permit required use in recognition of the growing popularity of markets and their contribution to the local economy and tourism.

**Surf Coast Planning Scheme Amendment C92**

This Amendment amended the SUZ5 to remove the Section 1 Uses that were already included in Clause 62.01 'Uses not requiring a permit'.

**Surf Coast Planning Scheme Amendment C97**

At the time of exhibition, the SUZ5 applied to tourism precincts in both Torquay and Anglesea. During the public exhibition period, Amendment C97 was approved. Amendment C97 was introduced primarily to implement recommendations of the *Anglesea Great Ocean*

*Road Study 2016.* Amendment C97 deleted reference to all Anglesea precincts from the SUZ5. It created a new Schedule 8 to the Special Use Zone to apply to Anglesea tourism precincts.

## **2.2 Planning scheme provisions**

### **(i) Zones**

The site is currently zoned SUZ5 'Torquay Tourism Development Precincts'. The site is part of Precinct T1 – Surf Coast Gateway Precinct. The Amendment does not propose any changes to the purposes of the SUZ5.

The purpose of SUZ5 is:

- To encourage tourism development in the following high profile precincts shown on Map 1 of this schedule to Clause 37.01:
  - Precinct T1 – Surf Coast Gateway Precinct, Surf Coast Highway, Torquay
  - Precinct T2 – Surf City Precinct, Surf Coast Highway, Torquay
  - Precinct T3 – Town Centre Foreshore Precinct, The Esplanade, Torquay
  - Precinct T4 – Corner Bristol Road and Surf Coast Highway, Torquay
- To encourage a range of tourism related land uses, including:
  - Diverse forms of medium density tourist accommodation;
  - Tourist activities and attractions; and
  - Tourism related retailing in appropriate locations.
- To promote a mix of tourism related uses, with food and drink premises and tourism related retail predominantly at ground floor level, and accommodation and offices predominantly at upper floor levels.
- To ensure that Precincts T1 and T2 are not dominated by restaurants, cafes and take-away food premises.
- To promote the use of environmentally response designs, material and colours to develop a distinct image for the Shire which reflects and complements its environmental and cultural attributes.



Figure 2 Map 1 to Special Use Zone Schedule 5

## (ii) Overlays

The site is affected by the following overlays:

- Design and Development Overlay, Schedule 7 'Surf Coast Boulevard, and is included within Precinct 1 – Landmark.'
- Development Contributions Plan Overlay, Schedule 2 'Torquay Jan Juc Development Contributions Plan'. The site is located in Charging Area 21.
- Parking Overlay, Schedule 1 'Surf Coast Highway, Torquay'. The site is part of Precinct 1.

The Amendment does not propose any change to overlays affecting the site.

## 2.3 Ministerial Directions and Practice Notes

### (i) Ministerial Directions

Council submitted that the Amendment meets the relevant requirements of The following Ministerial Directions:

#### **Ministerial Direction No 11 - Strategic Assessment of Amendments**

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments)

#### **The Form and Content of Planning Schemes (s7(5))**

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

**(ii) Planning Practice Notes**

**PPN03 – Applying the Special Use Zone**

This Practice Note provides guidance appropriate use of the Special Use Zone in planning schemes. Conditions when it is appropriate to apply the Special Use Zone include:

*An appropriate combination of other available zones, overlays and local policies cannot give effect objectives or requirements.*

SUZ5 was originally applied to the site due to no alternate zone options or combination of zone, overlay and local policy options.

**2.4 Discussion**

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

The Panel concludes that the Amendment is well founded and is strategically justified subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

## 3 The Special Use Zone Schedule 5

### 3.1 The issue

A number of submitters were concerned that a service station is incompatible with the 'landmark' or 'gateway' status of the site, and inappropriate to the zone. Submitters considered that the proposal does not meet the definition of a tourism focused development. This chapter summarises submissions made to the Amendment and the changes proposed to the SUZ5.

### 3.2 Evidence and submissions

Ms Sally Conway, for Surf Coast Shire Council, submitted that Amendment C113 does not propose to change any purpose of the SUZ5. A service station currently requires a permit in Precinct T4, which is the site of the current Woolworths affiliated service station at the corner of Bristol Road and the Surf Coast Highway.

Ms Conway argued that *"it would logically follow that a service station could not be seen as contrary to the purposes of the SUZ5 itself"*. Ms Conway submitted it reasonable that a service station offer as part of a broader tourism development is an appropriate use in the SUZ5. She noted that this entrance to Torquay has experienced significant change over the past few years, and over time, the SUZ5 has been amended to increase the number of permitted uses to adapt to change.

As the current Amendment does not propose to change any purpose of the SUZ5, Ms Conway submitted that it needs to be ascertained whether a service station is a use that could fit within the purposes of the zone. She noted that *"The vast majority of tourists to the Surf Coast Shire travel by private vehicle ... and for visitors coming straight from Melbourne, Torquay is often the first stopping point"*. Accordingly, Council considered it reasonable that a service station is an appropriate use in the SUZ5.

A number of submitters (1, 2, 3, 5, 8, 10, 13 and 15) raised the following concerns:

- No strategic justification for the site being used as a service station
- 85 Geelong Road is the gateway to Torquay, and should promote local trade rather than providing for large chain businesses
- The site has been considered as a 'Gateway' for a number of years by Council
- The Amendment should be in line with the Torquay-Jan Juc Strategy
- The Amendment is inconsistent with the strategic justification for the land which was established through Amendment C36. Amendment C36 provided policy direction stating the critical importance of the Surf Coast Highway and the subject site to Torquay
- DDO7 identifies the subject site as a critical landmark property, and the strategic direction built form parameters are still valid. A service station is inconsistent with this.

In response, Council noted the purpose of the SUZ5. The recent changes to the SUZ5 as a result of Amendment C97 have introduced a buildings and works permit requirement.



Council stated:

*... the Planning Scheme cannot control the brand of business seeking to use or develop land (e.g. whether a business is part of a wider chain or franchise) but may only control the type of land use and development design.*

**(i) S173 Agreement**

A s173 Agreement between Council and the Proponent is registered on the subject land. A document known as the 'The Development Concept' is attached to the agreement (Concept Plan).

The Section 173 Agreement is between the landholder and Council. The Agreement states:

*'R.4 The Responsible Authority has determined to provide in-principle support for the preparation of the Proposed Amendment, subject to the Owner entering into this Agreement, the purpose of which is to ensure that the Development Proposal proceeds as an integrated development of the Land which yields the array of uses depicted on the Concept Plan and that the Service Station component of the Development Proposal is not developed in isolation.'*

Council submitted that the Agreement sets out the following specific obligations of the owner (amongst others):

*'3.1.1 All use and development on the Land be generally in accordance with the Concept Plan; and*

*3.1.2 It will, within two years of approval of the Proposed Amendment, make application to the Council as necessary for planning permission to allow for the use and development of the Land in accordance with the Concept Plan and use its best endeavours to obtain all necessary planning permissions to do so; to the satisfaction of the Responsible Authority.'*

It defines the Concept Plan as:

*The proposed development concept plan relating to the proposed Amendment as amended from time to time and as shown at Appendix A.*

Ms Conway submitted that its purpose was a commitment from the developer to develop the site for more than just a service station, and this is outlined within the Agreement. Mr Gattini submitted the concept plan does not have formal status yet it requires the land owner to do specific things. He stated:

*Within the context of the Amendment there's a belts and braces S173 Agreement which details a defacto a performance requirement, particularly triggers for when the service station is built.*

Mr Cherubin, for 3228 Residents Association (submitter 13) submitted at the Hearing that he queried the s173 Agreement and argued that while there was in principle support for a service station, it was at the West Coast Business Park site, a further 1 kilometre north of the subject site.

Giovanni Gattini of G2 Urban Planning represented the Proponent, Baines Torquay Pty Ltd.

## (ii) Concept Plan

Mr Gattini submitted that it is important to note that the current controls pertaining to the site were introduced in October 2000 as part of the new format planning scheme.

He submitted Torquay has undergone considerable growth since that time. He argued that existing planning policy affirmed Torquay's status as an Urban Growth Centre. It was Mr Gattini's view that within the Shire, Torquay is arguably the key urban growth centre with Winchelsea playing a secondary role.

Mr Gattini outlined that at present SUZ5 only allows a service station in Precinct T4. Precinct T4 is at 74 Geelong Road and is already used as a Caltex service station. He discussed the s173 Agreement and the Concept Plan proposing a mixed use concept for the site incorporating commercial uses, community, allied health and tourism related uses, and an electric car charging E station and service station for the site. Mr Gattini noted that the future development of the site needed to be generally in accordance with the Concept Plan.

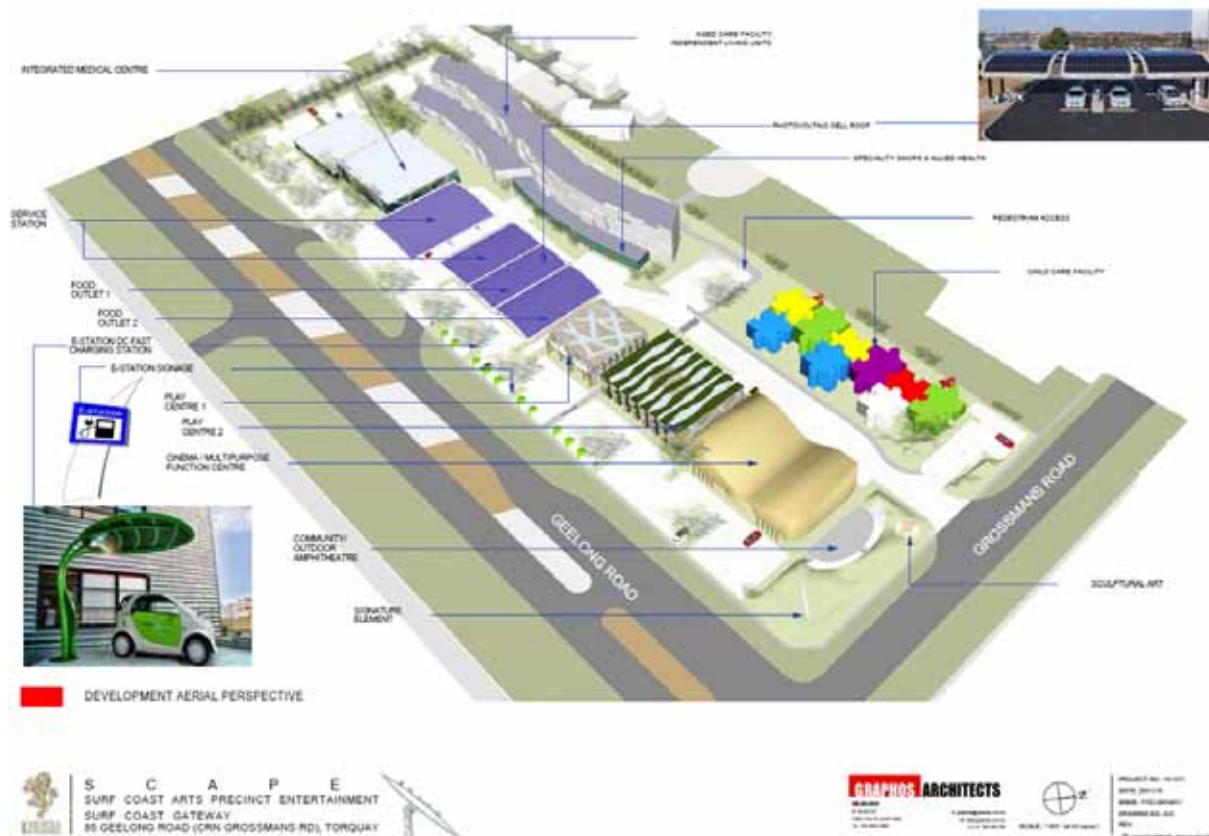


Figure 3 Concept Plan<sup>2</sup>

Mr Gattini outlined that the basis for requesting a petrol station was to initiate an 'E- station' in conjunction with a service station this at this site. He submitted:

<sup>2</sup> G2 Urban Planning Submission (Document 2)

*The E station reflects a move in society towards a more sustainable and environmental future. The proposed station is reflective of the need for charge facilities to be provided for electric cars and motorcycles currently accessing the surf coast ... Access by environmentally friendly vehicles is currently denied due to battery range limitations.*

Mr Gattini explained that the Amendment proposes to overcome this problem by facilitating a charging station as part of the mainstream service station, which will take prominence on Surf Coast Highway so that a new range of visitors can access the surf coast in an environmentally friendly way.

Mr Gattini submitted there are no practical reasons for not being able to locate a service station at this location and meet the normal access and safety standards required of such a use and that the proposed service station will be a relatively minor component of the overall development. Mr Gattini outlined that the proposed service station is in direct alignment with the theme of Clause 21.01-3 which states:

- **Development and Growth:** *We foster healthy and sustainable communities by supporting tourism and rural businesses, and encouraging clean industries and development that respects the Surf Coast's environment and lifestyle.*

Mr Gattini submitted:

*For the first time an environmentally friendly service station is proposed along the highway frontage. A service station and E station are entirely consistent with this part of the surf coast environment and lifestyle.*

Submitter 14 supported the Amendment and believes that the 'site is long overdue for development and the proposed plan makes good use of the site that sits at the gateway to the entrance of the town.'

Ms Suzanne Barker (submitter 15) submitted at the Hearing her objection to the Amendment on the basis that the subject site is located on one of the most prominent intersections in Torquay. The land has been identified as an iconic gateway entry point to the town through previous studies such as the *Surf Coast Highway Urban Design Guidelines*, and Council has appropriately acknowledged this through the application of DDO7 in conjunction with the SUZ5.

Ms Barker submitted that it is critical to understand that the controls work together – one guides land use, the other the built form. She submitted:

*The main issue with the approach that the Council and the Proponent have made in seeking this change is that it is not consistent with the requirements of DDO7 nor has there been any attempt to assess whether there should be a change to the DDO7 in response to this proposed change. Furthermore the DDO7 was crafted in the context that the SUZ5 prohibited a service station and therefore has not explicitly considered any relevant built form parameters.*

Ms Barker argued that there has been no attempt to examine whether there is a strategic basis for making this change other than it serves the Proponent's concept proposal. It was

submitted that the officer report to Council acknowledges that previous reviews of SUZ5 have not found that a service station should be a permissible use.

Ms Barker argued that my view a service station is a problematic use because of the inherent built form requirements which are associated with it.

Ms Barker urged the Panel to consider the importance of the Surf Coast Highway and its appearance. The majority of opposing submitters raised concerns with regard to the built form outcomes associated with a service station as well as amenity issues. Ms Barker submitted that if an amendment is to proceed at some time in the future, then this should occur on the basis that: firstly a service station is strategically justified in this prominent location; and secondly the built form controls are sufficiently robust to provide guidance to decision makers in relation to assessing such an application.

Ms Conway submitted that in terms of the future development of the land for a service station and built form outcomes, it is important to note that all of the existing requirements and decision guidelines within the Surf Coast Planning Scheme that currently apply to development of the land will continue to apply. No change is proposed to the DDO7 affecting the land.

At the Hearing, Ms O'Shannassy (submitter 10) argued that the Amendment was not consistent with the 'Gateway status' of the site. She objected to the possibility of convenience food outlets close to schools and that the possibility of some of 'community infrastructure' should not be used as an enticement for the Amendment to proceed. Mr Cherubin argued along similar lines, criticising the Amendment as 'ad-hoc' planning.

Ms Conway submitted that shops, food and drink premises and convenience shops are ready permit-required uses under the SUZ5.

### **(iii) Amenity issues**

Mr Phillip Newson, on behalf of the neighbouring Lions Village (submitter 5) appeared at the Hearing and objected on the lack of details about the application, hours of operation (potentially 24 hours), overlooking and intensity of development.

Submitters 1,2,3,8, 10 and 13 argued that a service station was not needed on the site and raised amenity concerns including increases in traffic and potential danger to children, increased traffic at the Grossmans Road and Surf coast Highway intersection, and impacts of odour, noise, overshadowing and privacy loss. General health and safety concerns were raised about the prospect of a service station in close proximity to residential uses.

In response, Council stated that acknowledged that a service station would likely have potential impacts that would need to be considered. Ms Conway explained that any permit application for a service station in the future would be required to address a number of conditions and requirements set out in the Surf Coast Planning Scheme, including to not detrimentally affect the amenity of the neighbourhood, and the applicant would need to provide plans and specialist reports to address a number of issues.

Ms Conway noted that the Grossmans Road and Surf Coast Highway intersection is a signalised intersection with a school crossing supervisor along the primary walking/cycling route to the schools for children attending these schools.

It is likely that a service station will result in additional traffic in particular from morning commuters, and residential development off Grossmans Road with potentially more development of the Spring Creek area has the potential to create conflict if access to a service station were permitted from Grossmans Road. It is likely that cars would line up turn right into the subject land as large volumes of pedestrian traffic uses this area during school zone times.

Council noted that the Concept Plan presented by the proponent located the service station towards the middle to south end of the site on the eastern side fronting the Surf Coast Highway.

Council stated that most of the amenity, health and safety concerns raised in the submissions will be addressed at the planning permit application stage. Council supported the concerns raised with traffic movements and possible conflict in the high pedestrian area of Grossmans Road. Council recommended that SUZ5 be further modified.

The written submission of the 3228 Residents Association (submitter 13) opposed a service station on this site and requested traffic and access changes to the SUZ5. At its Council meeting of 23 August 2016 Council resolved to include a post-exhibition requirement that mirrored the 3228 suggestion in Precinct T1 that the site must:

- *Be accessed only from the Surf Coast Highway or service road running parallel to the Surf Coast Highway.*
- *Not be located on the Grossmans Road frontage or have access from Grossmans Road.*

Mr Gattini opposed this post-exhibition change. Mr Higgs, an expert traffic witness was called by Mr Gattini. It was Mr Higgs view that:

*Future development of Torquay ... will rely on Grossmans Road quite significantly for access to and from the north. If there is access from Grossmans Road residents of those areas west would be able to access convenience services without going around the block or the Surf Coast Highway.*

It was Mr Higgs' evidence that development generally in accordance with the Concept Plan can be achieved with appropriate levels of pedestrian and vehicular traffic safety. His evidence outlined that service stations derive most custom from traffic that is on the road network regardless of the presence of a service station and it would be usual for planning permit applications to be required to include traffic impact assessments for specific use and development proposals. He concluded:

*I see no reason to refuse access from Grossmans Road. Future development of Torquay, particularly in the Spring Creek/Duffields Road area, will rely on Grossmans Road quite significantly for access to and from the north. The proposed access shown on the Concept Plan is well clear of the intersection with the Surf Coast Highway and could be located further west if desired.*

Ms Conway emphasised that service stations are generally high traffic volume and high turnover activities, and at this site it is preferable that access be provided off the declared road network which has been designed for high volume traffic.

Council and other submitters raised the concern of the proximity of the fire and ambulance stations and schools to the site. Mr Higgs evidence was that this came down to the Traffic Impact Assessment as part of normal planning applications. It was his evidence that:

*I don't think there's any reason to suggest a fire station or an ambulance station would have any particular impacts at the Grossmans Road frontage to this site.*

Council submitted that the alternative of allowing access to a potential service station from Grossmans Road is undesirable, in particular due to:

- *This section of local road has very high traffic volumes and traffic congestion at school times as there are two large primary schools, a private day-care facility and children services hub along this road. Queues are observed most days at school times from Surf Coast Highway to Briody Drive (about 150m). Council recently commissioned a road safety audit focused on traffic problems around the school precinct.*
- *The introduction of an additional access onto this section of road close to the Surf Coast Highway intersection will introduce another conflict point with right turn movements both in and out of the subject site adding to this already congested area.*
- *The adjacent pathway has very high vulnerable pedestrian volumes due to school children and also due to parents accessing the early learning centres on the abutting section of Grossmans Road.*
- *There are also two emergency services (ambulance and fire) located in this section that predominantly rely on access along Grossmans Rd and so added congestion increases risk of quick egress.*
- *The proposed Spring Creek development located about 1km down Grossmans Road will further add to the traffic congestion as the area develops.*

Mr Higgs was cross examined by Council and Ms Barker on the lack of information regarding safety in his expert witness report. Mr Higgs explained that he did not see the issue of pedestrian safety as a major concern so he did not dwell on this aspect. It his evidence that the traffic situation was 'a guessing game' until such time as the final uses were determined. For example, he suggested:

*We don't know how many stories would be in the proposed medical centre. Even factoring in the mix of other uses such as child care and the like if you have 25 doctors in the medical centre based on a 2000 square metre footprint traffic generation across the day would vary considerably.*

It was Mr Higgs' evidence that the service station is not the traffic generator Council makes it out to be, and the existing road network can handle this capacity. In saying so, Mr Higgs explained work being undertaken for the nearby Spring Creek Precinct Structure Plan, anticipating approximately an additional 1,700 dwellings that would use Grossmans Road. When asked whether Grossmans Road could take the additional traffic volumes predicted by these developments, Mr Higgs stated that by his calculations Grossmans Road would typically need duplication when it reached between 12 – 14,000 vehicle movements each

day and that present and future movements would still be well under this figure if the developments proceed.

Mr Newson raised the issue of peak traffic events around the schools in the morning affecting those numbers. Mr Higgs suggested that future development could contemplate left in / left out arrangements to Grossmans Road, however reiterating that this solution be contemplated at the detailed design stage.

#### **(iv) Community Infrastructure**

Submitters 1, 4, 5, 9, 10, 11, 12 and 14 all raise the possibility of community infrastructure provision, particularly an arts facility with some submitters viewing this potential as a good reason to proceed with the Amendment, and others strongly opposed to this being used to justify the Amendment.

In its submission, Council noted that the provision of community infrastructure on the subject site, which is privately owned, is not a requirement of the Surf Coast Planning Scheme and there has been no agreement that future development should provide a community or Council managed arts facility.

### **3.3 Discussion**

The Panel notes that over the years, this entrance to Torquay has undergone substantial change. The introduction of the West Coast Business Park approximately 1 kilometre north of the subject site, the construction of the Surf Coast Shire Municipal Offices opposite the business park, and significant planned and built residential development in the intervening 1 kilometre has meant that the significance of the land as the premier gateway site for Torquay is somewhat diminished. Notwithstanding this, the land is still in a very prominent location on the Surf Coast Highway and provides a lead up to the Surf City development to the south.

A service station provides a product (primarily fuel, although usually ancillary products are provided) that are in high demand by both residents and tourists. Its contribution to this site, be it landmark or gateway, can contribute to tourist related options as well as provide a convenience function. The addition of the E-Charging facility is an added incentive although the Panel notes that is not dependent on a typical service station needing to be built. The Panel notes from the s173 Agreement provided that electronic charging facilities are associated with the definition of service station.

Nevertheless, the Panel notes the SUZ5 has been amended a number of times to increase the number of permitted uses that can be considered in order to encourage a greater mix of uses within each precinct and foster economic development, and the service station use is consistent with this.

It is important the service station not be located on the corner of Grossmans Road and Surf Coast Highway. Council and the Proponent acknowledge this.

The Panel agrees with Council that the subject site is a large site on the Surf Coast Highway and has a commercially based zoning. It is not unusual for a service station to be located within towns, near to residential areas and other community facilities. Any service station

proposed for the site would need a planning permit application and would need to address the issues outlined.

The site sits within Precinct 1 'Landmark' of DDO7 which contains performance criteria around building height, siting, design and landscaping. In particular, it requires a landmark element for any building located on the corner of Grossmans Road, a 40 metre minimum landscaped setback to any proposed parking from Grossmans Road to incorporate the installation of landmark planting and design, a 20 metre building setback to the Surf Coast Highway and a 10 metre minimum setback to Grossmans Road. The Panel is satisfied that sufficient design rigour will result in an amenable outcome should and when the service station application be lodged and assessed.

The Panel notes that the Concept Plan is a high level plan which proposes uses including a service station and a variety of uses underpinned by the s173 Agreement. Council explained that the Agreement acknowledges there will be no fettering of powers of the Responsible Authority, simply put that they reserve the right to grant or refuse any future application on the site if it does not meet their requirements.

The Panel agrees with Council that it is clear that there is no obligation on Council to approve all or any of the proposed uses should they fail to present sufficient merit as part of a future planning permit application.

It is noted that the SUZ5 is very restrictive in terms of uses that are permitted without a planning permit. All of the uses proposed through the Concept Plan would require a planning permit and would be subject to public notification. SUZ5 does not exempt any types of planning application from public notice or review.

On the matter of community infrastructure, the Panel notes that the Amendment does not provide for this provision. The concept plan in the s173 Agreement requires *all use and development on the Land be generally in accordance with the Concept Plan* and that the plan does contemplate 'community uses' in a broad sense.

Torquay is changing at a rapid rate and needs to accommodate growth. As outlined in its Explanatory Report, the population of Torquay and its hinterland is growing rapidly, with Torquay being the third largest growing statistical area in Victoria in 2014-15. This Amendment responds positively to this high growth environment by opening up opportunities for this important site.

With regard to the post-exhibition changes, the Panel was not convinced that Council at this stage should preclude options for access from Grossmans Road. It agreed with the evidence of Mr Higgs that to do so now was premature. The Panel was satisfied that traffic generated in the future to and from the precinct will be the subject of future traffic impact assessments by Council and VicRoads. As such, access from Grossmans Road at this stage should not be precluded.

The Panel concludes that SUZ5 does not need to specify the location of the service station as the Concept Plan is clear that the location is to be central to the site along the Surf Coast Highway and this plan makes specific reference to a 'gateway feature' on the corner. Any attempt to amend the Concept Plan would still require Council approval.



The Panel concludes that site's 'gateway' status has diminished as development has evolved in Torquay. That is not to say it is still not an important site, but the Panel believes it has a different function to what was once envisaged.

### **3.4 Conclusions**

The Panel has considered the submissions received in relation to the Amendment and concludes the Amendment:

- Is strategically justified when assessed against state and local policy.
- Is consistent with the objectives of the *Torquay Jan Juc Retail Strategy 2011* at Clause 21.08 and the *Sustainable Futures Plan Torquay Jan Juc 2040*.
- Would not prevent the development of an iconic building on the corner of Grossmans Road.

### **3.5 Recommendations**

The Panel recommends:

**Surf Coast Planning Scheme Amendment C113 be adopted as exhibited and not include the post-exhibition changes.**

## Appendix A Submitters to the Amendment

No.	Submitter
1	Darren and Helen Watkins
2	Phil Brancatisano
3	Louise Desmond
4	Glen Barton
5	Lions Village Torquay Inc.
6	Mary Liuzzi
7	Ameri Industries Pty Ltd
7a	Famiglia Liuzzi Pty Ltd
8	Angie Reiter and Hayden Bleazby
9	Christian and Fiona Cole
10	Sue O'Shannassy
11	Liz Smith
12	Erica Hayes
13	3228 Residents Association
14	Craig McGree
15	Suzanne Barker

## Appendix B Document list

No.	Date	Description	Presented by
1	18 Oct 16	Submission by the Planning Authority	Sally Conway, Surf Coast Shire
2	18 Oct 16	Submission on behalf of Baines Torquay Pty Ltd	Giovanni Gattini, G2 Planning
3	18 Oct 16	Submission on behalf of Lions Village, Torquay	P Newson
4	18 Oct 16	Submission	S Barker
5	18 Oct 16	Submission	S O'Shannassy
6	18 Oct 16	Submission on behalf of 3228 Residents Association	A Cherubin