Panel Report

Bass Coast Planning Scheme Amendment C151
Cowes Activity Centre

20 December 2018
Planning and Environment Act 1987
Panel Report pursuant to section 25 of the Act
Bass Coast Planning Scheme Amendment C151
Cowes Activity Centre Plan
20 December 2018

Sarah Carlisle, Chair
Rachael O’Neill, Member
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Glossary and abbreviations

Act  Planning and Environment Act 1987
Council  Bass Coast Shire Council
DELWP  Department of Environment, Land, Water and Planning
the 2010 Structure Plan  Cowes, Silverleaves, Ventnor and Wimbledon Heights Structure Plan, May 2010
the Drafting Guidelines  A Practitioners Guide to Victorian Planning Schemes
the Plan  Cowes Activity Centre Plan 2015
the Strategy  Phillip Island and San Remo Visitor Economy Strategy 2035 – Growing Tourism
VCAT  Victorian Civil and Administrative Tribunal
Overview

Amendment summary

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Panel process

| The Panel | Sarah Carlisle, Chair and Rachael O’Neill, Member |
| Directions Hearing | Cowes Customer Service Centre, 17 October 2018 |
| Panel Hearing | Cowes Customer Service Centre, 12 and 13 November 2018 |
| Site inspections | Unaccompanied, 12 and 14 November 2018 |
| Appearances | Refer to Appendix B |
| Citation | Bass Coast PSA C151 [2018] |
| Date of this Report | 20 December 2018 |
Executive summary

(i) Summary

Bass Coast Planning Scheme Amendment C151 (the Amendment) seeks to implement recommendations from the Cowes Activity Centre Plan 2015 to:

- rezone land within the activity centre
- delete existing Design and Development Overlay schedules and apply a new Design and Development Overlay Schedule 11 to most of the land within the activity centre, applying new preferred building heights and setbacks
- apply new Development Plan Overlay schedules across two key redevelopment sites (the former Isle of Wight site and the former Warley Hospital site)
- amend local planning policy to reflect and reference the Cowes Activity Centre Plan 2015 and the Phillip Island and San Remo Visitor Economy Strategy 2035 – Growing Tourism.

Council submitted that the Amendment “does not set out to make broadbrush or sweeping changes to the policy directions for Cowes”. It advised that rather, it builds on the existing frameworks, consolidates controls and provides clarity of land use and development. It noted that the Cowes Activity Centre Plan 2015 recognises that the “town has become disjointed and action is needed to consolidate the activity centre, facilitate development at the two key redevelopment sites and to activate the street during both day and the night”.

The Amendment seeks to consolidate commercially zoned land and facilitate more intense development, particularly at the northern end of the activity centre. It also seeks to rezone residential land to facilitate higher scale development than currently permitted in the General Residential Zone.

Submitters raised the following key issues in relation to the Amendment:

- loss of amenity
- erosion of neighbourhood character
- building heights in the activity centre, including on the former Isle of Wight and Warley Hospital sites
- impacts on traffic and parking
- rezoning of the St Phillips Church site
- proposed controls for Olive Justice Place
- loss of third party notice and appeal rights with the proposed application of the Development Plan Overlay across the former Isle of Wight and Warley Hospital sites.

Submissions raised other concerns, such as the location and merits of a potential car port ferry and skate park, that are beyond the scope of the Amendment.

The Panel has considered all written submissions along with presentations made to it at the public hearing held on 12 and 13 November 2018.

The Panel recommends that the Amendment proceed, subject to changes, including:

- retaining the existing Commercial 1 zoned land in Thompson Avenue
• rezoning land exhibited as General Residential Zone Schedule 2 to the Residential Growth Zone
• rezoning the former Warley Hospital site from the exhibited General Residential Zone Schedule 3 to the Residential Growth Zone
• changing the exhibited height controls across the former Isle of Wight and Warley Hospital sites
• replacing the exhibited Development Plan Overlay schedules across the two key redevelopment sites with new (yet to be drafted) Design and Development Overlay schedules
• a number of other drafting changes and improvements.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Bass Coast Planning Scheme Amendment C151 be approved as exhibited subject to the following:

Zoning changes

1. Retain the land at 144, 145, 9/146, 147, 2/148, 149, 150, 150A, 150B, 151, 152, 153, 154, 1/154 and 157 Thompson Avenue, Cowes in the Commercial 1 Zone.

2. Rezone land exhibited as General Residential Zone Schedules 2 and 3 to Residential Growth Zone.

3. Retain land in Hollydene Court, Cowes in the Commercial 1 Zone.

Changes to the exhibited Clause 21.08-5

4. Update the exhibited version of Clause 21.08-5 to read as a stand-alone policy, providing clearly articulated objectives and outcomes for the activity centre without reliance on references to the Cowes Activity Centre Plan 2015.

5. Delete the strategy from under the heading ‘land uses’ that reads “Support the ongoing establishment of homemaker land uses (i.e. restricted retail) within the existing Blue Gum Industrial Estate, provided these do not detrimentally impact upon the ongoing use and operation of existing industrial land uses within the estate”.

6. Amend Map 1: Cowes and Silverleaves Strategic Framework Plan to delete the ‘potential future link road’.

7. Amend Map 2: Cowes Activity Centre Framework Plan to update the colours for the designation of different areas.

Changes to the exhibited Clause 21.10


Changes to the exhibited Design and Development Overlay Schedule 11

9. Apply Design and Development Overlay Schedule 11 to land in Hollydene Court, Cowes.
10. Remove the Design and Development Overlay Schedule 11 from land at 1 Genesta Street, Cowes.

11. Make the following changes to Map 1:
   a) Include the land in Hollydene Court, Cowes in Precinct 2.
   b) Designate the land currently shown in Precinct 5 on Settlement Road, Cowes west of Thompson Avenue as ‘Precinct 6’.

12. Make the following changes to the text:
   a) Provide precinct specific design objectives.
   b) In Clause 2.0 ‘Buildings and works’, amend the second set of dot points under “The following buildings and works requirements ...” as follows:
      • Delete the first dot point and replace with:
        “An application that does not meet the built form requirements in Table 1 must be accompanied by a site analysis plan and a written urban context report documenting how the development will achieve the design objectives and outcomes of this schedule.”
      • At the second dot point, specify all locations where continuous awnings are sought, and delete “except where awnings would interfere with the heritage fig tree on the corner of The Esplanade and Bass Avenue” from the first dash point.
      • Amend the third dot point to clearly articulate what is intended.

13. Make the following changes to Table 1:
   a) Express the preferred heights in metres in the first instance.
   b) For Precinct 4, change the preferred upper level setback (above preferred street wall) to ‘0 metres’.
   c) For Precinct 5 (on Settlement Road, east of Thompson Avenue), change the street setback to ‘0 metres’.
   d) Include built form controls for the new Precinct 6 (on Settlement Road, west of Thompson Avenue) as follows:
      • preferred height – 11 metres (3 storeys)
      • preferred street level setback – maximum of 4 metres
      • preferred upper level setbacks (above the preferred street wall) – 5 metres.
   e) Delete the first note and replace with:
      “Preferred maximum height is the height in metres, measured from natural ground level”.
   f) Delete the note with the asterix.
   g) Delete the note referring to the former Isle of Wight site.

Residential Growth Zone

14. Ensure that any variations to street setback requirements in the Design and Development Overlay Schedule 11 and the new Design and Development Overlay schedule to be prepared for the former Warley Hospital site are translated into the
tables in the new Residential Growth Zone schedules varying Clause 54 and 55 (Standards A3 and B6 minimum street setback).

Changes to the exhibited Development Plan Overlay Schedule 26 (the Isle of Wight site)

15. Replace the exhibited Development Plan Overlay Schedule 26 with a Design and Development Overlay that includes:
   a) Design objectives.
   b) Design features and outcomes, such as massing and site layout, architectural quality, active frontages, vehicular access and car parking.
   c) Height expressed in metres in the first instance and include a reference to natural ground level.
   d) The following requirements:

      “An application that does not meet the built form requirements in this schedule must be accompanied by a site analysis plan and a written urban context report documenting how the development will achieve the design objectives and outcomes of this schedule.”

      “Before any changes may be permitted within the Tree Protection Zone, a suitably qualified consulting arborist (minimum Australian Qualifications Framework Level 5) must undertake any investigations necessary to determine impacts to the tree above and below ground. The responsible authority should use this information when determining whether or not to permit the works.”

16. Include a map generally in accordance with Map 1 in the exhibited Design and Development Overlay Schedule 26 but amended to:
   a) Align the boundary between area ‘I1’ and area ‘I2’ generally with the northern boundary of 4 Bass Avenue, Cowes.
   b) Include a new area labelled ‘I3’ that shows the 15 metre Tree Protection Zone for the Moreton Bay Fig.

17. Include preferred built form controls generally in accordance with Table 1 in the exhibited Design and Development Overlay Schedule 26 but amended as follows:
   a) Apply a preferred height limit of 7 storeys to area ‘I1’.
   b) Apply a preferred height limit of 5 storeys to area ‘I2’.
   c) Include an additional location known as area ‘I3 Moreton Bay Fig Tree Protection Zone’ and include the text: “no buildings and works within the 15 metre TPZ”.

Changes to the exhibited Development Plan Overlay Schedule 27 (the former Warley Hospital site)

18. Replace the exhibited Development Plan Overlay Schedule 27 with a new Design and Development Overlay schedule that includes:
   a) Design objectives.
   b) Design features and outcomes, such as massing and site layout, architectural quality, landscaping, vehicular access and car parking.
c) Height expressed in metres in the first instance and include a reference to natural ground level.
d) The following requirement:

“An application that does not meet the built form requirements in this schedule must be accompanied by a site analysis plan and a written urban context report documenting how the development will achieve the design objectives and outcomes of this schedule.”

19. Include a map generally in accordance with Map 1 in the exhibited Design and Development Overlay Schedule 27.

20. Include preferred built form controls generally in accordance with Table 1 in the exhibited Design and Development Overlay Schedule 27 but amended as follows:
   a) Apply a preferred height limit of 5 storeys to area ‘W1’
   b) Apply a preferred height limit of 3 storeys to area ‘W2’.

21. Include the following decision guideline:

   “Whether the development provides an appropriate visual transition to adjoining sensitive uses, including the church and residential properties.”

The Islander Caravan Park site

22. Align the activity centre boundary with the Commercial 1 Zone boundary.

23. Align the boundary of Design and Development Overlay Schedule 11 with the Commercial 1 Zone boundary.

Vegetation Protection Overlay Schedule 2

24. Undertake an arboricultural review prior to applying the Overlay to properties at 224, 226, 228, 230 and 232 Settlement Road and 26 Douglas Road, Cowes to ascertain whether there are any significant trees worthy of protection.

25. Remove the Overlay from properties at 1 and 11 The Esplanade, 2, 4, 6, 8, 10 and 13 Bass Avenue and 89 and 54 Chapel Street, Cowes.

Other drafting changes

26. Make the other drafting changes to the Amendment documentation described in Appendix D of this Report.
1 Introduction

1.1 The Amendment

(i) Amendment description and purpose

The purpose of the Amendment is to implement the recommendations of the Cowes Activity Centre Plan, 2015 (the Plan). The Amendment affects land within the Cowes township and more specifically within the Cowes Activity Centre.

The Amendment proposes to:

- Amend Clause 21.08 – Moderate Growth Settlements (specifically, Clause 21.08-5 which relates to Cowes and Silverleaves)
- Amend Clause 21.10 – Reference Documents to add the Plan and the Phillip Island and San Remo Visitor Economy Strategy 2035 – Growing Tourism (the Strategy)
- Rezone land to General Residential Zone Schedule 1
- Introduce a new Schedule 2 to Clause 32.08 (General Residential Zone) and apply the Schedule to selected residential land on the periphery of the activity centre
- Introduce a new Schedule 3 to Clause 32.08 (General Residential Zone) and apply the Schedule to the former Warley Hospital site
- Rezone various parcels of land within the activity centre to the Mixed Use Zone and Commercial 1 Zone
- Delete Schedule 1 to the Design and Development Overlay (Clause 43.02) from various parcels of land
- Delete Schedule 3 to the Design and Development Overlay
- Amend Schedule 4 to the Design and Development Overlay by deleting reference to Cowes
- Introduce a new Schedule 11 to the Design and Development Overlay and apply it to the bulk of the land within the activity centre
- Introduce new Schedules 26 and 27 to the Development Plan Overlay (Clause 43.04) and apply the Schedules to the former Isle of Wight site and the former Warley Hospital site respectively.

In its Part B submission, Council summarised the purpose of the Amendment and submitted that it seeks to “encourage the right development and land use mix within the Cowes Activity Centre”.

(ii) The subject land

The Amendment applies to land shown in Figure 1 below.
1.2 Background

This Amendment builds on Amendment C88 to the Bass Coast Planning Scheme, which implemented the Cowes, Silverleaves, Ventnor and Wimbledon Heights Structure Plan, May 2010 (the 2010 Structure Plan) into the scheme. At the time, the southern boundary of the activity centre’s commercial core along Thompson Avenue was at Church Street. The 2010 Structure Plan proposed extending the boundary further southwards, by rezoning land fronting Thompson Avenue between Church Street and Settlement Road from Mixed Use Zone to Business 1 Zone.

The extension of the Cowes Activity Centre was a significant issue in Amendment C88. Concerns included:
• whether the extension of the activity centre as proposed would result in too much Business 1 zoned land, leading to the closure of businesses in the core retail area
• whether the activity centre could support one or more additional supermarkets
• whether land fronting Thompson Avenue south of Settlement Road, between Settlement Road and Rhyll/Ventnor Road, should be considered for future rezoning to Mixed Use to reflect the Structure Plan’s designation of this area as a Tourism/Accommodation Services Precinct.

The C88 Panel supported that amendment, subject to changes. The Panel’s main findings relating to the activity centre, which were supported by extensive economic evidence, were:

• The extension of the Business 1 Zone (now the Commercial 1 Zone) along Thompson Avenue to Settlement Road was supported, and represented the right amount of commercially zoned land in the activity centre.
• Unmet demand is not immediately sufficient to sustain the two supermarket proposals without some reorganisation of the food and grocery sector, which could include closure of some smaller shops, the change of some shops to non-food goods and/or a lower retail turnover density.
• Nevertheless, by the end of the forecast period (2021) the supply and demand for food and groceries is likely to be in balance.
• The area between Settlement Road and Rhyll/Ventnor Road should be investigated as a future Mixed Use Zone with appropriate built form controls reflecting the gateway nature of the area.

This Amendment represents a ‘winding back’ of Amendment C88 in that it proposes ‘back zoning’ some land along Thompson Avenue north of Settlement Road from its current Commercial 1 Zone to the Mixed Use Zone.


1.3 Summary of issues raised in submissions

The key issues raised in the submissions of the various parties are briefly summarised as follows:

• proposed heights for the former Isle of Wight site – some submitters considered the proposed heights were excessive whilst others supported higher built form
• necessity to protect the Moreton Bay Fig tree on the former Isle of Wight site
• excessive height for the former Warley Hospital site
• lack of third party involvement/no third party rights for notice and review to the Victorian Civil and Administrative Tribunal (VCAT) with the proposed Development Plan Overlays
• loss of amenity, erosion of neighbourhood character and impacts on traffic and parking associated with the proposed Mixed Use Zone to the balance of the Waves apartment complex
• rezoning of properties in Hollydene Court – some submitters supported the rezoning based on concerns that commercial land use would impact the amenity of the area and exacerbate parking issues. Other submitters opposed the rezoning as it would reduce the opportunities for commercial development; devalue property;
would be contrary to the findings in the economic report appended to the Plan; and would impose mandatory garden area requirements
- activity centre boundary, zone boundary and Design and Development Overlay boundary across the Islander Caravan Park site
- the appropriateness of the proposed north-south link shown on the map in Clause 21.08
- references to the Cowes to Stony Point car ferry in the Plan and the Strategy given the uncertainty of its location
- reference to the skate park at Mussel Rocks in the Plan, which is no longer Council’s preferred location
- timing for capital works that are being undertaken prior to approval of the Amendment
- coastal erosion
- building heights in the activity centre
- impacts on traffic and parking
- rezoning of the St Phillips Church site
- proposed controls for Olive Justice Place
- consistency of the Amendment with the Planning and Environment Act 1987 (the Act) and state planning policy.

1.4 Proposed post-exhibition changes

Council proposed several changes to the exhibited amendment in response to submissions and also a further review of changes to exhibited text. Post-exhibition changes are not formally part of the Amendment and have no legal effect unless and until Council adopts them under section 29 of the Act after considering the Panel’s report. The Panel has considered the proposed changes and provided advice to help inform Council’s decision as to whether or not to formally adopt the changes.

The following is a summary of the more substantive post-exhibition changes outlined in Council’s Part A and Part B submissions and its closing submission:
- Hollydene Court – rezone to Mixed Use Zone rather than the exhibited General Residential Zone Schedule 1, and apply the Design and Development Overlay Schedule 11
- residential areas in the northern part of the activity centre (as shown in Figure 2 below) – rezone to Residential Growth Zone with new schedules, rather than the exhibited General Residential Zone Schedules 2 and 3
- former Warley Hospital site – rezone to Residential Growth Zone rather than the exhibited General Residential Zone Schedule 3, and amend the preferred heights to 3 to 5 storeys rather than the exhibited 3 to 7 storeys
- Isle of Wight site – include a 15 metre tree protection zone around the Moreton Bay Fig and apply controls to buildings and works within the tree protection zone in the Development Plan Overlay Schedule 26; remove the Vegetation Protection Overlay from the land
Council also proposed a number of drafting changes and corrections of errors, which are summarised and discussed in Chapter 8.6.

Figure 2  Post-exhibition change to apply the Residential Growth Zone to properties

1.5  Issues dealt with in this Report

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

The Panel has reviewed a large volume of material. The Panel has had to be 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.

1.6  Limitations

Some submissions raised concerns about the Amendment adversely affecting property values. Property valuation is not a valid planning consideration and has not been further considered in this Report.
2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report and set out a policy analysis and response in its Part A submission. The Panel has reviewed Council’s response and the policy context of the Amendment and is of the view that the summary is accurate.

2.1 Victorian planning objectives

Council submitted that the Amendment will further the objectives set out in section 4 of the Act by providing clear direction for the future land use and development the subject area. It seeks to enhance the character of the area by recognising key attributes in the built form and in the interface between private land and public spaces. The Amendment also seeks to encourage development that celebrates the urbanised coastal landscape as a valued asset to the community.

2.2 Planning Policy Framework

(i) State planning policies

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

- Clause 11.01-1S – Settlement
- Clause 11.02-1S – Supply of urban land
- Clause 11.03-2S – Growth Areas
- Clause 11.03-4S – Coastal settlement
- Clause 11.03-1S – Activity centres
- Clause 12.02-2 – Coastal crown land
- Clause 12.02-3S – Bays
- Clause 15.0-1S – Urban Design
- Clause 15.01-2S – Building Design
- Clause 16.01-3S – Housing Diversity
- Clause 16.01-2S – Location of residential development
- Clause 17.01-1S – Diversified economy
- Clause 17.04-2S – Coastal and maritime tourism and recreation
- Clause 17.04-1S – Facilitating tourism
- Clause 18.02-1S – Sustainable personal transport.

It submitted that the Amendment supports the implementation of these policies in the following ways:

- The Amendment identifies two key redevelopment sites (former Isle of Wight and Warley Hospital sites) and seeks to promote urban renewal and infill development by simplifying the controls and requirements for redevelopment through the introduction of Development Plan Overlays and the deletion of other controls.
• The Amendment seeks to create compact urban areas within the activity centre through the rezoning of commercial areas north of Settlement Road from Commercial 1 Zone to Mixed Use Zone to encourage mixed-use development.
• The Amendment will facilitate a mixed-use activity centre where development will be high quality, well designed and will create a sense of place. A diversity of housing will be achieved. Unique characteristics of the area will be retained through the provisions relating to significant trees.
• The Amendment will simplify planning controls and set clear expectations for land use and development.

(ii) Regional planning policies

Council submitted that the Amendment supports the following regional planning objective:
• Clause 11.01-1R – Settlement – Gippsland.

Council did not provide a specific response in relation to this provision however, the Panel considers that the Amendment will implement the strategies because it will:
• support the continuing role of towns in providing services to their districts
• clearly define the town centre boundaries and designate land for mixed-use development and a centralised commercial core, which will contribute to a vibrant, prosperous town
• promote housing diversity which will contribute to seasonal demand for accommodation and provide alternate housing choice for permanent residents
• contribute to Cowes’ primary role of supporting growth.

(iii) Local planning policies

Council submitted that the Amendment supports the following local planning objectives:
• Clause 21.02-2 – Housing
• Clause 21.03-4 – Tourism
• Clause 21.05-4 – Design and Built Form
• Clause 21.05-6 – Landscape Architecture
• Clause 21.08-5 – Cowes and Silverleaves.

The policies include the following objectives:
• increase housing densities and the consolidation of urban areas, including in Cowes
• encourage tourist development in Cowes (the tourist precinct of Cowes includes land along the foreshore and extending either side of Thompson Avenue/Phillip Island Road to the southern boundary of the golf driving range)
• provide diversity in tourist attractions and eating establishments
• achieve a high standard of architecture and urban design for built form and public spaces
• ensure that development creates and maintains a high quality landscape setting.

Council submitted that the Amendment supports and implements the local planning policy objectives and seeks to update and refine the existing policy framework and maps for Cowes at Clause 21.08-5.
2.3 Planning Strategies used in formulating the Amendment

(i) Cowes Activity Centre Plan, 2015

Council adopted the Plan at its meeting held on 24 June 2015. The intent of the Plan is to facilitate the re-building of Cowes as a destination. It sets out the following objectives:

- To protect, manage and enhance the foreshore as an important natural, cultural, recreational and tourism asset.
- To deliver a more compact and walkable town centre.
- To encourage vibrant street life and activity frontages along The Esplanade that take advantage of the unique vista of the foreshore.
- To create a more coherent built form character along Thompson Avenue to reinforce the sense of place.
- To facilitate the development of a vibrant civic precinct in the centre of town.
- To deliver more housing choice, diversity and affordability in and on the edges of the commercial core.
- To increase the vitality, amenity, comfort and safety of the public realm.
- To create a distinctive and contemporary seaside character.

The Plan identifies a number of policy and planning control modifications to the planning scheme to encourage the delivery of these objectives, which form the basis of the Amendment.

The Plan identifies that the existing planning provisions do not encourage the type of development that would make Cowes “great”. It notes that planning provisions are an important component of the Plan as the recommended changes will encourage the form of development that will make Cowes an attractive, vibrant and safe seaside village and a destination in its own right on Phillip Island.

The Plan identifies the following issues with the urban structure, which in effect, form the basis for the need for the Amendment:

- The town centre is over 1 kilometre in length and contains two distinct retail areas. If this trend continues, these areas will operate independently and not function as a coherent town.
- The centre of the town is not clearly defined and lacks activity and a key focal point, representing the missing link between the two ends. The Civic and Cultural buildings are not designed in a way to activate the town square. The library does not have a street presence to draw people in.
- Thompson Avenue is the central spine of the town but has not been developed in a uniform way. The character of the street changes dramatically from the north to the south and there is no consistency in heights, setbacks, site coverage, active frontages, building styles and awnings. The town has no recognisable character.
- The landmark former Isle of Wight site remains vacant. The current character of The Esplanade does not make a positive contribution to the unique beauty of the foreshore.
• There is a concentration of single, high traffic-generating land uses (supermarkets) in one location. This concentration does not make a positive contribution to the built form character of the town or the streetscape.
• There is a noticeable absence of alternate forms of housing provided within the town to support the changing lifestyle needs of residents and to allow people with better access to the town’s services.
• The area around Settlement Road is undergoing change through urban renewal. Vacant land is being marketed as suitable for residential development.

(ii) Phillip Island and San Remo Visitor Economy Strategy 2035 – Growing Tourism
Council adopted the Strategy at its meeting held on 17 August 2016. The Strategy sets the long-term vision for Phillip Island and San Remo’s visitor economy with sustainable growth as its central pillar. It was prepared to ensure the long-term viability and sustainability of this important sector and recognises the importance of both the community and the natural environment in achieving this outcome.

The key objectives of the Strategy include:
• developing a vision that reflects the tourism needs and aspirations of the community and recognises Phillip Island and San Remo as a unique place of environmental significance
• providing a strong evidence base to support investment in infrastructure and service delivery
• aligning with and supporting the existing plans and strategies that link to tourism and the broader community and economy
• balancing tourism demand with preserving and enhancing the natural environment through defining the environmental capacity of the Island
• ensuring a sustainable and diverse economy.

2.4 Planning scheme provisions
The Amendment seeks to rezone land to the Mixed Use Zone, Commercial 1 Zone and Residential Growth Zone (as a post-exhibition change). The application of the Residential Growth Zone would introduce a new zone into the Bass Coast Planning Scheme.

The Amendment seeks to introduce the new Schedules 26 and 27 to the Development Plan Overlay and a new Schedule 11 to the Design and Development Overlay.

2.5 Ministerial Directions and Practice Notes
Ministerial Directions
Council submitted that the Amendment meets the relevant requirements of:
- Ministerial Direction 11 – Strategic Assessment of Amendments
- Ministerial Direction 15 – The Planning Scheme Amendment Process
- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act – referred to as Ministerial Direction 7(5) in this report.

**A Practitioners Guide to Victorian Planning Schemes**

Prior to the hearing the Department of Environment, Land, Water and Planning (DELWP) published *A Practitioners Guide to Victorian Planning Schemes* (the Drafting Guidelines). The Panel has had regard to the Drafting Guidelines in the consideration of the Amendment and preparation of this Report. Section 7.1 of the Drafting Guidelines provides guidance on applying zones. As relevant to this Amendment, it states that the proposed zones should be applied as follows:

- **Mixed Use Zone** – provides for residential uses and a range of complementary commercial, industrial and other uses suitable for areas with a mixed use character.

- **Residential Growth Zone** – intended for locations near activity centres, train stations and other areas suitable for increased housing. Encourages medium density residential development in order to make optimum use of available services and facilities.

- **Commercial 1 Zone** – applied in mixed use commercial centres for retail, office, business, residential, entertainment and community uses. Allows a wide range of commercial and accommodation uses without a permit, including a supermarket or shop.

In terms of overlays, the Drafting Guidelines state the following:

- **Design and Development Overlay** – principally intended to implement requirements based on a demonstrated need to control built form and the built environment, using performance-based rather than prescriptive controls.

- **Development Plan Overlay** – where some form of plan is required to specify requirements over the development of an area and it is not necessary for the plan to be incorporated in the planning scheme and third party notice of the plan is not required. Does not allow permits to be granted that are inconsistent with a development plan.

**Planning Practice Notes**

Council submitted that the Amendment is consistent with:

- *Planning Practice Note 4 Writing a Municipal Strategic Statement*
- *Planning Practice Note 13 Incorporated and reference documents*
- *Planning Practice Note 23 Applying the Incorporated Plan and Development Plan Overlays*
- *Planning Practice Note 46 Strategic Assessment Guidelines*
- *Planning Practice Note 84 Applying the minimum garden area requirement.*
In addition, the Panel notes that Planning Practice Note 60 Height and setback controls for activity centres is also relevant to the Amendment.

2.6 Conclusion

Broadly speaking, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. It establishes clear boundaries for the activity centre, and seeks to create a more compact activity centre. It provides for housing diversity by encouraging higher density housing within the activity centre, and provides certainty in relation to where growth should occur and the built form expectations throughout the activity centre.

The Panel is satisfied that, broadly speaking, the Amendment supports the growth of Cowes and its continuing role in providing services to the Island. It will hopefully contribute to a vibrant, prosperous town, including by encouraging the redevelopment of key sites, which will hopefully provide a catalyst for the revitalisation of the activity centre more broadly. The application of the Mixed Use Zone along the foreshore will encourage consolidation of tourist development in an appropriate location.

That said, the Amendment needs substantial changes if it is to successfully deliver on the policy objectives contained in the Planning Policy Framework, and the vision contained in the Plan. The Panel also has some concerns about whether Council has chosen the appropriate planning tool in some cases. These issues are explored in detail in the following chapters.

The Amendment should proceed subject to addressing the more specific issues discussed in the following chapters.
3 Rezoning of land

3.1 Context

(i) The activity centre boundaries

At the Directions Hearing the Panel requested that Council explain why there appeared to be a discrepancy between the activity centre boundaries as shown in the Plan (shown in black in Figure 3) and Map 2 in Clause 21.08-5 (shown in red in Figure 3).

Figure 3 Activity centre boundary

Council submitted that the land beyond the red dashed line is largely residential and its exclusion from the activity centre boundary is consistent with the recommendations of the Activity Centre Boundaries Advisory Committee (2009), which suggested that residential land where significant increase in density or commercial development is not contemplated be excluded from the boundary. Council advised that the Plan provides strategies for concentrating retail, commercial and residential developments in the area in the red boundary only.

(ii) The proposed rezonings

The Amendment proposes rezoning some land within the activity centre, and retaining other land within its current zone. The ultimate proposed zoning is shown in Figure 4, which includes post-exhibition changes. Proposed zoning changes are marked with a ‘star’.
3.2 Land in Thompson Avenue north of Settlement Road

The Amendment proposes to rezone six properties either side of Thompson Avenue, immediately to the north of Settlement Road, from Commercial 1 Zone to Mixed Use Zone (144, 145, 9/146, 147, 2/148, 149, 150, 150A, 150B, 151, 152, 153, 154, 1/154 and 157 Thompson Avenue). It also proposes to rezone several properties, including the St Phillips Church land, from Mixed Use Zone to Commercial 1 Zone.

(i) The issue

The issue is whether there is strategic justification to support the rezoning land north of Settlement Road along Thompson Avenue from Commercial 1 Zone to Mixed Use Zone, and the St Phillips Church land from Mixed Use Zone to Commercial 1 Zone.
(ii) Submissions

Council submitted the proposed rezonings were consistent with the objective of the Plan to consolidate land zoned Commercial 1 in the commercial core and apply the Mixed Use Zone at the peripheries of the activity centre. It submitted that applying the Mixed Use Zone at the peripheries of the activity centre “encourages the emergence of residential land uses within the Activity Centre and introduces more people to the town centre.” Further, the Mixed Use Zone “encourages a variety of complementary residential, commercial and industrial land uses to emerge alongside each other.”

Council advised the Panel that beyond the Strategy and the advice from RPS Consultants dated 28 February 2015 at Appendix E of the Plan, there were no further economic studies undertaken to inform the preparation of the Amendment.

Council advised the Panel that Amendment C88 sought to extend the activity centre southwards along Thompson Avenue by rezoning land between Church Street and Settlement Road from Mixed Use Zone to Business 1 Zone. The C88 Panel recommended investigating the introduction of the Mixed Use Zone with underlying policy support to manage and guide mixed-use development along Thompson Avenue south (but not north) of Settlement Road, between Settlement Road and Ventnor/Cowes Rhyll Road. This was to reflect the 2010 Structure Plan objectives that the area south of Settlement Road be considered as a tourism and accommodation services precinct.

This Amendment proposes to effectively reverse the commercial rezoning of land on Thompson Avenue north of Settlement Road and to instead apply the Mixed Use Zone. Council submitted that rezoning the properties fronting Thompson Avenue from Commercial 1 to Mixed Use serves a purpose to allow a “sympathetic transition between the core commercial spine of the Activity Centre and residential land uses south of Settlement Road.”

Council submitted that the Mixed Use Zone will work in conjunction with a number of other strategies proposed as part of the Amendment to support the effective delivery of concentrated commercial development within the northern part of the activity centre, including the objective to “consolidate the Activity Centre and intensify land uses to contribute towards street activity, vibrancy and patronage.”

Council submitted that:

The Amendment does not seek to increase the extent of land available for commercial land uses, rather it seeks to ensure the delivery of a greater mixture of these commercial land uses within what is defined as the Activity Centre Boundary to allow for activation of the street both during the night and during the day.

Mr Bromley opposed the proposed rezoning of land at 144-156 and 145-157 Thompson Avenue from Commercial 1 Zone to Mixed Use Zone. He noted that the Plan referenced reducing the size of the commercial core to a 400 metre walking radius of the Civic and Cultural Centre; and submitted that the rezoning appeared to reduce the commercial core to less than 400 metres to the south of the cultural centre. He submitted a preferable boundary would be Settlement Road, rather than a mid-block change in the zoning.
He submitted that there was a legitimate need for commercial tenancies that predominantly service the local community, such as hardware and furniture shops and medical centres, within the activity centre. He submitted that these uses are appropriately located on the periphery of commercial areas.

Mr Bromley submitted that the intended outcome for applying the Mixed Use Zone is unclear. He submitted that the Mixed Use Zone supports a residential function, and having residential uses at ground floor occupying the primary frontage to Thompson Avenue is undesirable for land north of Settlement Road. He submitted that if the purpose is to encourage commercial uses at ground level and residential uses above, then the Commercial 1 Zone supports that form of use and development. In support of this position, he referenced the proposed objectives in Schedule 11 to the Design and Development Overlay, which require the creation of street activation and facilitation of greater diversity and density of housing, accommodation and compatible uses on upper levels.

In closing, Mr Bromley submitted that there is insufficient strategic or economic justification to rezone existing commercial properties to Mixed Use Zone.

A submitter (submission 3) opposed the rezoning of the St Phillips Church property and submitted that it would send the wrong message that the Church is an inappropriate use. He submitted that it was contrary to the vision identified for the Church forecourt, including its relationship with the Civic Centre, outlined in the Plan.

In response to questions from the Panel, in its closing Council advised that the Church and adjacent properties (96 and 102 Thompson Avenue) were included in the Mixed Use Zone when the New Format planning scheme came into effect in December 1999. The zoning remained in place through Amendment C46 and Amendment C88. Council noted that Amendment C88 introduced the Thompson Avenue Precinct Plan into local policy, which identified the area as ‘commercial’. Council submitted this reference was based on the development on the land.

(iii) Discussion

The Panel agrees with Mr Bromley’s submission that the land fronting Thompson Avenue north of Settlement Road, should be retained in the Commercial 1 Zone.

The Mixed Use Zone is nested in the residential zones and as noted in the Drafting Guidelines, “provides for residential uses and a range of complementary commercial, industrial and other uses suitable for areas with a mixed use character.” The Drafting Guidelines note that that the Commercial 1 Zone is “applied in mixed use commercial centres for retail, office, business, residential, entertainment and community uses. Allows a wide range of commercial and accommodation uses without a permit, including a supermarket or shop.”

The Panel understands Council’s desire to consolidate the activity centre, including the retail core. Having inspected the area, the Panel accepts that the supermarkets, particularly the Coles supermarket, interrupts the streetscape. The Panel also agrees that the supermarkets form a barrier in terms of the Thompson Avenue retail offering.
However, the Panel is concerned that the Amendment seeks to ‘back zone’ properties fronting Thompson Avenue that were rezoned as part of Amendment C88. The C88 Panel received extensive economic evidence in relation to the amount of commercial floorspace required in the activity centre, including forecasts to 2021. That panel concluded (with this Panel’s emphasis):

- **The Structure Plan and Amendment has expanded the Business 1 Zone to the right extent.**
- **Unmet demand is not immediately sufficient to sustain the two supermarket proposals without some reorganisation of the food and grocery sector ... Nevertheless by the end of the forecast period (2021) the supply and demand for food and groceries is likely to be in balance.**
- **The proposed rezoning of all of the land along Thompson Avenue between Church Street and Settlement Road to Business 1 is not contrary to orderly planning.**

No economic evidence was presented to this Panel which suggests that the C88 Panel or the economic evidence presented to that panel might have overestimated the amount of commercial floor space required.

Council has confirmed that the only economic assessment that has been undertaken to support this Amendment was that prepared by RPS and appended to the Plan. The RPS report is very high level, and the Panel understands that it was a desktop study only. The RPS analysis considers three demand scenarios, which were as follows:

1. **Nothing much changes, the current and recent activity (notably the supermarkets) marks the end of demand for new retail space for the next 10 to 15 years with the town centre evolving within its existing footprint.**

2. **Incremental and smaller scale changes occur over the next 10 to 15 years in line with the increased presence of weekenders capturing of latent demand. This would see pressure for new development (up to 5,000sqm in small increments – perhaps) and the evolution of the town centre footprint. This could see some lower end retail and services relocate out of the block north of Chapel, possibly to the block south of Chapel.**

3. **Reaching major new thresholds, the increase of the weekender population to more longer stays and permanent residents could trigger new levels of demand for:**
   - **Dining and related**
   - **Homewares and fashion**
   - **Discount department store**
   - **Bulky Goods**

   *If there is significant conversion of weekender to permanent/more regular residents, the scale of the retail could possibly increase by an additional 20,000sqm in the next 15 years.*

RPS concluded the most likely outcome for the town centre will be scenarios 1 or 2. The report noted that RPS are mindful of the rate of change that could occur if the weekender population increases to any great extent.

The report concluded:
In the fullness of time I believe the block bounded by Church and Settlement will be required to host a sizeable retail footprint. This will appear to the general public as an extension of the existing land uses that include Mitre 10, IGA, service stations etc. I believe it would be prudent to have this area zoned to facilitate retail expansion of the Town Centre with the higher density residential concentrated to the east and west of the main street.

The Panel is of the view that this assessment does not support the proposed rezoning of land fronting Thompson Avenue north of Settlement Road, and in fact supports the economic evidence presented to and the recommendations of the C88 Panel that suggests that the land should be retained in a commercial zone.

The Panel also notes the comments of the C88 Panel that:

... we note in this context that neither Council nor its consultants were able to justify or defend the estimate of retail demand relied upon for the Structure Plan. ... We appreciate that using existing relevant expert studies saves money in a resource-constrained environment. However, as a matter of principle, such studies should be publicly available; otherwise the independence of conclusions must be open to question.

This Panel is mindful that Council was the proponent of Amendment C88. Now, only eight years later, or six years after Council adopted the Cowes Activity Centre Plan, it is seeking to wind back the zoning it previously supported. It did not call expert evidence to support its position during the hearing. Further, the RPS assessment concludes that the land proposed for rezoning would most likely be required to accommodate retail demand.

The Panel agrees with the observations of the C88 Panel that “this area is part of the town centre and should be zoned accordingly.” The purposes of the Commercial 1 Zone include:

- To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
- To provide for residential uses at densities complementary to the role and scale of the commercial centre.

The Panel agrees with Mr Bromley’s submission that the Commercial 1 Zone supports Council’s desired outcome. The Commercial 1 Zone, supplemented by policy, can readily achieve tourist accommodation. The Panel considers that policy can provide guidance for the commercial core and peripheries, to ensure that core retail uses locate in the core commercial spine, and related uses such as tourism uses or restricted retail uses that predominantly serve the local population locate at the periphery of the core commercial spine.

The Panel is also of the view that the Commercial 1 Zone is better placed to achieve activation at ground level with residential uses above.

As such, the Panel accepts Mr Bromley’s submission that there is insufficient strategic or economic justification to rezone the existing Commercial 1 Zone properties to Mixed Use Zone.

In terms of the St Phillips Church and the adjacent properties fronting Thompson Avenue, the Panel agrees with Council that the preferred zone is Commercial 1. Similarly to the
observations of the C88 Panel, this Panel observes that this land is in the core of the commercial centre and it is appropriate that it is zoned to reflect this position.

The purposes of the Commercial 1 Zone support community uses. The Panel does not agree with submitters that the rezoning will provide the impression that the Church is no longer an integral part of the activity centre, or an inappropriate use. The Panel observes that there are various examples of churches that are part of activity centres and included in Commercial 1 Zones, such as Immaculate Conception Church, at the corner of Burwood Road and Glenferrie Road, Hawthorn.

3.3 Hollydene Court

The Amendment as exhibited proposes to rezone the land in Hollydene Court from Commercial 1 Zone to General Residential Zone. As part of the post-exhibition changes, Council is now proposing to include the land in the Mixed Use Zone and apply the Design and Development Overlay Schedule 11, with a maximum height of 3 storeys.

(i) The issue

The issues are whether the proposed rezoning and application of the Design and Development Overlay is appropriate.

(ii) Submissions

Council advised the Panel that submissions were divided in support for the exhibited General Residential Zone and in opposing the proposed rezoning.

In support of the residential zone submitters (submissions 9 and 33) raised concerns with commercial activity in a small court that would adversely impact on the amenity of existing dwellings and exacerbate existing parking issues.

In support of the retention of the Commercial 1 Zone, submitters (submissions 15 and 23) raised concerns that the rezoning would have a negative impact, including:

- Properties were purchased in Hollydene Court with an understanding of the opportunities for use and development available under the current commercial zone. The application of the residential zone would remove opportunities for commercial development.
- Rezoning would be contrary to the RPS economic assessment which suggests that the area between Church Street and Settlement Road will be required to host a sizeable retail footprint.
- The future development potential of the properties will be restricted by the mandatory garden area requirement as well as height restrictions that do not currently apply.

Following notification to affected properties of Council’s post-exhibition position, a further submission was received (submission 33) which supported the exhibited zone and advised that had the Mixed Use Zone been exhibited that they would have opposed the Amendment on the basis of increased parking problems and loss of amenity.
Council submitted that the intent of rezoning the properties in Hollydene Court was to reflect the existing residential land use, discourage commercial use and development, and contribute to the objective of consolidating the commercial core of the activity centre. Council was also concerned with the potential for land use conflicts between existing residential development and new commercial uses.

It noted that prior to gazettal of Amendment C88, the properties were in the Mixed Use Zone. Council submitted that the application of the Mixed Use Zone was useful for ‘transitional areas’, including Hollydene Court. It noted that the Mixed Use Zone would allow small scale commercial uses ensuring that amenity impacts on residential properties was considered.

Council submitted that the application of Design and Development Overlay Schedule 11 (with a height limit of 3 storeys) would reflect the existing height limit.

(iii) Discussion

The location and existing zoning of Hollydene Court is shown in a red outline in Figure 5 below. In the Panel’s view, and as confirmed during the site visit, the existing land use and development and potentially the court bowl do not in themselves lead to a logical inclusion in the Commercial 1 Zone. However, the role of planning is not to apply zones to reflect the current conditions. Rather, it is to ensure that sufficient land is supplied and that planning objectives are achieved.

The Panel is of the view that removing the Hollydene Court land from the Commercial 1 Zone will leave a ‘gap’ in the Commercial 1 zone and it will be the only one in its length along Thompson Avenue to Settlement Road. Properties in the court also abut the Commercial 1 Zone to the north, east and south.

The court is included in the activity centre boundary and the Panel is also of the view that rezoning the land is inconsistent with Council objectives to consolidate the commercial centre. As with the proposed rezoning of land along Thompson Avenue, there is no economic evidence to justify the effective ‘back zoning’ of the land.

On the basis of this position, the Panel considers it appropriate to extend the Design and Development Overlay Schedule 11 to the land and suggests that the court forms a logical extension of Precinct 2, which has a preferred height limit of 3 storeys.
3.4 The Waves Apartment Complex and Steele Street

The land at 1 The Esplanade is currently in two zones, with the northern portion in the Mixed Use Zone and the southern portion in the General Residential Zone Schedule 1. The Amendment proposes to extend the Mixed Use Zone across the entire property.

(i) The issue

The issue is whether the proposed rezoning is appropriate.
(ii) **Submissions**

Council submitted that the zoning was an anomaly that should be corrected by the Amendment. It noted that the Plan identifies the area along The Esplanade as “high quality entertainment, tourism and residential living” and that the translation of this into the Mixed Use Zone is appropriate.

It submitted that the extension of the Mixed Use Zone over the property is to “ensure a consistent zone is applied across the property for the purposes of any future redevelopment of this site, and to ensure that the objectives of locating tourism and entertainment land uses near The Esplanade can be achieved”.

Ms Barclay represented the Owners Corporation as well as making submissions on her own behalf. She submitted that the Body Corporate Committee opposed the rezoning as there are currently no business/retail uses operating from Stages 1, 2 and 3 of the complex and that the buildings were designed as residential. She submitted that any commercial uses permitted within the Mixed Use Zone would have adverse amenity impacts on the dwellings and that there were sufficient commercial uses within the eastern end of The Esplanade.

Ms Barclay noted that there is only one car space dedicated to each apartment and that the introduction of commercial uses would impact on car parking. She submitted that there is currently inadequate car parking along The Esplanade and that owners were concerned that the need for additional car parking would place pressure on Council to replace open space along the beachfront with car parking. She observed that the proposed transit station that was remote from the beachfront was a good solution to address the need for visitor parking.

Ms Barclay submitted that there is a need to protect the eastern end of The Esplanade from overdevelopment. She submitted that:

> We are in agreement with the policy statement which seeks to consolidate the retail/commercial town centre along Thompson Avenue precinct and not bring commercial interests directly down to the foreshore area. We believe Erewhon Point, Steele St and the Lovers’ Walk Precinct has unique historical and heritage value to Phillip Island and should not be spoiled by inappropriate development particularly any further commercial/retail activity.

Ms Barclay submitted that whilst Steele Street accommodates a range of residential options including various private dwelling types, guesthouses, and a caravan park, its character is unique and needs to be preserved with the continuation of the Vegetation Protection Overlay controls. She opposed the application of the General Residential Zone Schedule 2 and an exemption from the minimum garden area.

She also submitted that Council should investigate overlay controls to preserve the significant character. Ms Barclay submitted that both sides of Steele Street should be retained as General Residential Zone Schedule 1 and that no Design and Development Overlay should apply to the land, and the Vegetation Protection Overlay should continue to apply.

Ms Hunt submitted that the town’s boundaries should be maintained and that she is concerned that that “intensive development within the town boundaries is having a
detrimental effect on neighbourhood character, amenity and the environment, with a loss of vegetation and gardens.”

(iii) Discussion

The Panel agrees with Council that it is appropriate to include the balance of the Waves Apartment Complex in the Mixed Use Zone. It is accepted planning practice that zone boundaries follow title boundaries or other clearly defined features.

The Panel observes that the Mixed Use Zone is nested in the residential zones in the planning scheme and its purpose is to promote the development of residential development, allowing for some other uses, which complement the mixed-use function of the locality.

During its site inspection the Panel observed the vacant ground floor tenancy at the complex, which if tenanted would provide ‘activation’ of the ground floor, is precisely the type of outcome sought by the zone. These types of uses are ancillary to the residential land use and serve to complement and service the nearby residents.

The Panel does not agree with Ms Barclay that the rezoning will lead to non-residential development within the complex. Apart from the non-residential tenancy that is currently vacant fronting The Esplanade, there seems no other opportunity to provide for a non-residential use.

The Panel notes that the apartments are separately strata titled, making future redevelopment proposals unlikely. Further, the complex is modern and of relatively recent construction and the likelihood of redevelopment seems remote.

3.5 Other proposed rezonings

As exhibited, the Amendment proposed to introduce Schedules 2 and 3 to the General Residential Zone and apply them to residential land within the activity centre boundaries, to facilitate higher built form than is allowed under the General Residential Zone Schedule 1 (which generally applies to residential land outside the activity centre boundaries). Schedule 2 was proposed to be applied to the land shown in Figure 2 on page 5, and Schedule 3 was proposed to be applied to the Warley Hospital site, which is discussed in detail in Chapter 5.2.

Following the Directions Hearing and questions from the Panel, Council is now proposing to rezone that land to the Residential Growth Zone, which contemplates higher density residential development of up to 4 storeys. It is also proposing to include the former Warley Hospital site (exhibited as General Residential Zone Schedule 3) in the Residential Growth Zone, but this is addressed in Chapter 5.

The Amendment also proposes to rezone other residential land proximate to the commercial centre in the northern part of the activity centre to the Mixed Use Zone, as shown in Figure 4 on page 13.

(i) The issue

The issue is whether the proposed and post-exhibition zones are appropriate.
(ii) Submissions

Council submitted that the Mixed Use Zone is to extend south along Warley Avenue and south along Bass Avenue, replacing the General Residential Zone Schedule 1 to encourage the delivery of commercial development within the core commercial spine.

The Explanatory Report noted that land on the corner of Chapel Street and Bass Avenue is to be rezoned from General Residential Zone Schedule 1 to Commercial 1 Zone and Mixed Use Zone to align land uses and built form with the desired redevelopment of the former Isle of Wight site and transition to the commercial area to the west. The Mixed Use Zone has been selected as the mandatory garden area requirement in the General Residential Zone considered an unnecessary control in this location.

Council submitted that the Plan recommends that the General Residential Zone be applied with tailored schedules to allow variation in building heights and Clause 54 and 55 Standards in relation to front setbacks to facilitate a higher intensity of development and consistent building alignment for these sites.

Council advised the Panel that the General Residential Zone has been applied generously across the Shire and is a zone that the community and developers are familiar with. The Residential Growth Zone has not been applied to land within the Shire, but following further review, Council considers the application of the zone would be appropriate for sites exhibited as General Residential Zone Schedule 2. Council submitted that application of the Residential Growth Zone "would provide certainty to the community that the land identified is earmarked for higher density development."

Council submitted that the requirement that buildings on lots that abut another residential zone meet the requirements of various ResCode Standards would ensure that developments (for non residential uses) would require compliance to alleviate adverse amenity impacts.

The exhibited Schedule 2 was proposed for a limited number of residential properties because the preferred height limits contained in the Plan cannot be achieved in the General Residential Zone Schedule 1.

Council noted one of the objectives of the Residential Growth Zone is to increase housing densities in areas with good access to services and transport, including activity centres. Council submitted that the sites have “excellent access to the foreshore, retail offer in Cowes and public transport. Redevelopment and intensification of a consolidated activity centre will help Council achieve an activated, compact and walkable activity centre, consistent with the objectives of the Cowes Activity Centre Plan 2015.”

(iii) Discussion

The Panel generally supports the proposal to rezone other land within the activity centre as proposed by Council, including Council’s proposed post-exhibition changes to rezone residential land in the northern part of the activity centre to Residential Growth Zone rather than General Residential Zone Schedules 2 and 3.

The use of the Mixed Use Zone on the east side of Warley Avenue will effectively ‘close a gap’ between existing Mixed Use land and Commercial 1 land, and will contribute towards consolidating the activity centre, including removing an existing at-grade car park from the
General Residential Zone. The Drafting Guidelines note that the Mixed Use Zone should be used where it “provides for residential uses and a range of complementary commercial industrial and other uses suitable for areas with a mixed use character.”

The rezoning in Warley Avenue, coupled with the proposed heights for the land in the proposed Schedule 11 to the Design and Development Overlay, will facilitate development with heights that are akin to those already developed on the corner of The Esplanade and Warley Avenue. The zone also provides an appropriate interface to residentially zoned land sited opposite.

The rezoning of the four parcels at the corner of Bass Avenue and Chapel Street to Mixed Use Zone will also ‘close a gap’ between existing land zoned Mixed Use and Commercial 1. These parcels are located to the south of the former Isle of Wight site, where a higher scale of development is supported. The proposed zoning will provide an appropriate interface in that context as well as with the residentially zoned land opposite.

As exhibited, the Amendment sought to rezone land along The Esplanade (between Warley Avenue and Walpole Street) and land immediately to the south of land in the Mixed Use Zone along The Esplanade (between Bass Avenue and Steele Street) to General Residential Zone Schedule 2. The proposed Schedule included a varied mandatory height and storey limit and did not waive the garden area requirement. Council proposed a post-exhibition change to rezone these areas to Residential Growth Zone, which does not include a garden area requirement, to facilitate more intense development.

The Panel agrees with the application of the Residential Growth Zone to this land, and indeed queries why it had not been originally proposed. It seems to the Panel that the Residential Growth Zone is used precisely to achieve Council’s objectives, as it allows for higher scale development and does not include a garden area requirement. It also has the benefit of avoiding multiple schedules in the General Residential Zone and provides clarity and transparency regarding the intent of built form for those properties.

In support of this, the Drafting Guidelines note that the Residential Growth Zone is “intended for locations near activity centres, train stations and other areas suitable for increased housing.” It “encourages medium density residential development in order to make optimum use of available services and facilities.”

In The Esplanade/Warley Avenue context it will provide a transition into the General Residential Zone Schedule 1 and be opposite land in the Mixed Use Zone. In the Bass Avenue/Steele Street context, it will provide a transition between the Mixed Use Zone and General Residential Zone Schedule 1.

The Panel supports the proposal to rezone land on the north side of Settlement Road, west of Douglas Road, from Mixed Use Zone and General Residential Zone Schedule 1. On its inspection, the Panel observed that all of the properties were used for residential purposes and a couple had recently been redeveloped with townhouses and there was a recent application for planning permit for a motel on another. The rezoning supports Council’s objective to consolidate the activity centre.
3.6 Conclusions and recommendations

The Panel concludes:

- Land with frontage to Thompson Avenue, north of Settlement Road, should not be rezoned from Commercial 1 Zone to Mixed Use Zone.
- As exhibited, rezone the St Phillips Church land and adjacent properties from Mixed Use Zone to Commercial 1 Zone.
- The proposed rezoning of land on the periphery of the activity centre (beyond Thompson Avenue) to the Mixed Use Zone is appropriate.
- The post-exhibition position to rezone land to the Residential Growth Zone instead of the General Residential Zone Schedule 2 is appropriate.
- Land in Hollydene Court should remain in the Commercial 1 Zone, and the Design and Development Overlay Schedule 11 should be applied with the land included in Precinct 2 along with the neighbouring land.
- Rezoning of the balance of the land at 1 The Esplanade to the Mixed Use Zone is appropriate and it will not give rise to adverse amenity impacts.

The Panel recommends:

- Retain the land at 144, 145, 9/146, 147, 2/148, 149, 150, 150A, 150B, 151, 152, 153, 154, 1/154 and 157 Thompson Avenue in the Commercial 1 Zone.
- Rezone land exhibited as General Residential Zone Schedule 2 to Residential Growth Zone.
- Retain the land in Hollydene Court in the Commercial 1 Zone.
- Apply the Design and Development Overlay Schedule 11 to land in Hollydene Court, and include the land in Precinct 2 in Map 1 of the Schedule.
4 Built form controls

4.1 Context

This section of the Report deals with the proposed built form controls for land in the activity centre boundary. The former Isle of Wight and Warley Hospital sites are discussed in Chapter 5.

The Amendment proposes to remove the Design and Development Overlay from some residential properties that are beyond the activity centre boundary. The extent of the overlay to be removed is shown in Figure 6.

The Amendment will also replace existing Schedules 1, 3 and 4 to the Design and Development Overlay from land affected by the Amendment and include these properties in Schedule 11. The land affected is included in Figure 7.

The proposed heights and other built form controls are precinct based and are detailed in Table 1 to Schedule 11, which is extracted as Table 1 below. The Precincts are shown in Figure 8.
Figure 8  Precinct in proposed Design and Development Overlay Schedule 11

Table 1  Built form controls proposed under Design and Development Overlay Schedule 11

<table>
<thead>
<tr>
<th>Precinct 1 – Waterfront Mixed Use (The Esplanade, between Warley Avenue and Steele Street)</th>
<th>Preferred height</th>
<th>Preferred street wall height</th>
<th>Preferred street level setbacks</th>
<th>Preferred upper level setbacks (above preferred street wall)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 storeys (17 metres)</td>
<td>2 storeys (8 metres)*</td>
<td>0 metres</td>
<td>5 metres</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Precinct 2 – Thompson Avenue and the activity centre generally</th>
<th>Preferred height</th>
<th>Preferred street wall height</th>
<th>Preferred street level setbacks</th>
<th>Preferred upper level setbacks (above preferred street wall)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 storeys (11 metres)</td>
<td>2 storeys (8 metres)</td>
<td>0 metres</td>
<td>5 metres</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Precinct 3 – Waterfront Gateway (Gateway sites on Thompson Avenue and Chapel Street)</th>
<th>Preferred height</th>
<th>Preferred street wall height</th>
<th>Preferred street level setbacks</th>
<th>Preferred upper level setbacks (above preferred street wall)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4 storeys (14 metres) | 2 storeys (8 metres) | 0 metres | 5 metres

| Precinct 4 – Northern Activity Centre Edge (Transitional sites between the activity centre and residential areas) |
| 4 storeys (14 metres) | 2 storeys (8 metres) | Maximum 4 metres | 5 metres |

| Precinct 5 – Southern Activity Centre Edge (Mixed use sites on Settlement Road) |
| 3 storeys (11 metres) | Not applicable | Maximum 4 metres | 5 metres |

**Notes**

Preferred maximum height is metres or storeys, whichever is lesser.
Preferred maximum height excludes rooftop plant and lift overruns, provided these elements are well setback form the roof edge.

* Should the preferred street wall height be proposed to be exceeded, an urban design and landscape character assessment should be undertaken to analyse the topography and relationship of the proposed development to the foreshore, beach, and views of Cowes from the water.

Note – The former Isle of Wight site and the former Warley Hospital site are excluded from the built form requirements in this Table, due to their inclusion in the Development Plan Overlay Schedules applicable to the sites.

### 4.2 The issue

The issue is whether these controls are appropriate and appropriately drafted.

### 4.3 Land in Thompson Avenue and Settlement Road

The proposed heights in this area are:
- Thompson Avenue and Settlement Road (Precinct 2) – 3 storeys
- Corner sites on Thompson Avenue and Chapel Street (Precinct 3) – 4 storeys.

(i) **Submissions**

Three submissions (submitters 4, 26 and 30) raised concerns regarding building heights in the activity centre (beyond those relating to the former Isle of Wight and Warley Hospital sites).

Council submitted that the Amendment “does not make sweeping changes to the existing provisions”. It submitted that generally, proposed Schedule 11 to the Design and Development Overlay retains existing height controls and “puts them in a coherent form”.

Council advised that the boundary of Schedule 11 generally follows the existing boundary of Schedules 3 and 4 to the Design and Development Overlay, but excluding the former Isle of Wight and Warley Hospital sites and Council owned land at 67 Chapel Street (which is outside the activity centre boundary).

Council submitted that Schedule 11 to the Design and Development Overlay seeks to provide more flexibility in achieving higher density development than is currently afforded under the existing Schedules 3 and 4. It submitted that this would complement the Commercial 1 and Mixed Use zoning in the northern end of the activity centre, which seek to provide for developments at higher densities.
Council submitted that the existing schedules suggest that development should not exceed 2 storeys on land between The Esplanade and Church Street. This is inconsistent with heights permitted in the General Residential Zone that applies to land outside the activity centre boundary, which allows development to 3 storeys. Council advised that proposed Schedule 11 would allow development in the northern end of the activity centre of 3 to 4 storeys (or greater if it can be demonstrated that sound urban design outcomes can be achieved). Council submitted that this would help concentrate mixed-use development in the commercial core.

Council advised that the existing Schedule 3 allows for higher intensity development of 5 storeys (excluding the Isle of Wight site which has a mandatory 7 storey control) on land along The Esplanade, between Walpole Street and Findlay Avenue. The Plan nominates higher preferred building heights for land between Findlay Street and Steele Street and land fronting Chapel Street to the north. The proposed heights are to maximise opportunities to capture views.

Council submitted that built form controls for Thompson Avenue, from The Esplanade to Church Street, unify and strengthen the built form by requiring zero street setbacks, active frontage and continuous awnings; and seek a continuous 2 storey street wall, with upper levels set back to maintain a coastal village character. Council submitted that there is a need for Thompson Avenue to be developed in a uniform way to contribute to streetscape character and reinforce its role as the central spine of the town.

(ii) Discussion

The objective behind the height controls is to encourage renewal and essentially focus the higher scale development along The Esplanade at 5 storeys, stepping to 4 storeys on land to the south. The controls seek to provide a consistent scale of 3 to 4 storeys along Thompson Avenue and Settlement Road.

The Panel is of the view that the proposed height controls are appropriate in this context and consistent with the Planning Policy Framework that encourages activity centres to be a focus for land uses and services, and identifies that they are ideally placed to accommodate higher density housing.

Planning Practice Note 60 Height and setback controls for activity centres acknowledges that change in and around activity centres needs to be managed carefully and that Structure Plans should provide the foundation for identifying preferred directions for future growth and articulating how this will be achieved.

Planning Practice Note 60 notes that height and setback controls can be appropriate as long as they are not aimed at restricting built form, but at facilitating good design outcomes. It states that proposed controls must be soundly based on the outcomes of strategic research and background analysis, including a built form analysis. Further, a council will need to demonstrate that controls are based on identifiable objectives or outcomes and achieve the following:

- identifies significant opportunities for change and explores alternative built form objectives and outcomes to accommodate the change
- includes an analysis of visual and amenity impacts
• identifies any significant physical features such as views and topography
• identifies and articulates how new development should address street frontages and laneways and relate to adjacent residential areas
• selects appropriate heights and built form outcomes through evaluation of built form objectives, land use outcomes and economic growth consistent with state and regional policy.

It notes that discretionary controls, combined with clear design objectives and decision guidelines, are preferred and that the Design and Development Overlay is the preferred planning instrument for implementing discretionary height and setback controls.

The height limits along part of Thompson Avenue, between The Esplanade and Church Street will be increased from a discretionary height limit of 2 storeys to a preferred height limit of 3 storeys. This will bring the height control along Thompson Avenue to a consistent 3 storeys. The higher scale is to facilitate shop-top housing.

The properties at the corner of Thompson Avenue and Church Street (Precinct 3) will have a preferred height of 4 storeys, which is to capitalise on views of the foreshore.

The Panel notes that the proposed heights will allow for intensification of built form in the activity centre and are appropriate in achieving a graduation of height from The Esplanade.

The proposed controls also seek a zero lot line, a 2 storey street wall and a set back of 5 metres above the street wall. They also require the provision of continuous awnings.

The Plan includes the assessment detailed in Planning Practice Note 60, although consideration of amenity impacts is limited to the former Isle of Wight and Warley Hospital sites. Whilst the Plan is clear in its assessment and guidance in terms of heights (based on an assessment of topography, view lines and strategic objectives), the Panel can see no reference to or preference for a street wall height or setback for any of the precincts. It notes that on land in the Mixed Use Zone, the Plan references a 4 metre setback.

The Panel is satisfied that the proposed height controls are based on an urban design analysis that is generally consistent with the approach required in Practice Note 60. Whilst the Panel accepts Council’s preference (which is in part based on the urban design analysis) for consistency and cohesiveness in terms of built form, the Panel notes that the reference to a 5 metre setback above the street wall seems arbitrary and does not derive from existing controls or from the Plan.

Having noted that, the Panel observes that built form controls in other planning schemes include requirements for setbacks varying between 5 metres and 8 metres, depending on the streetwall heights, context, built form outcomes, interface with heritage buildings and the like. In this instance, the Panel agrees with the proposed setback, but notes that it should be directly linked with the objectives for the precinct. The control will allow for an urban design analysis to justify departure from this where appropriate.

The Panel supports the provision of continuous awnings as they will provide pedestrian amenity and weather protection.
4.4 Land in the Mixed Use Zone and the Residential Growth Zone

At the time the Plan was drafted a number of properties in the General Residential Zone benefitted from the height limits included in Schedules 3 and 4 to the Design and Development Overlay. These heights were derived from Amendment C46 and the Plan sought to reinforce these preferred heights through a single Schedule to the Design and Development Overlay.

When Amendment VC110 was gazetted on 27 March 2017 the height limit in the General Residential Zone became mandatory at a maximum height of 11 metres and 3 storeys. This created a conflict between the height controls that applied to residentially zoned land. The Amendment proposes to resolve the conflict. As exhibited, the Amendment proposed to use a schedule to the General Residential Zone to vary the mandatory height limit in the parent provision to 14 metres and 4 storeys for land in Precinct 4. Council’s post exhibition position is that these parcels should be included in the Residential Growth Zone Schedule 2 where the same height control that was exhibited would apply.

The existing Design and Development Overlay Schedule 1 applies to residential areas near the foreshore. This Schedule will be deleted from properties in the activity centre and Schedule 11 will be applied. Council advised that relevant requirements presently in Schedule 1 will be replicated in Schedule 11, including the decision guideline that consideration of siting and design of new development is given to the Design and Siting Guidelines for Coastal Areas and Rural Hinterland, 1999 and Siting and Design Guidelines for Structures on the Victorian Coast, Victorian Coastal Council, 1998.

(i) Submissions

Submission 27 was lodged by the owners of 18 The Esplanade. The submitter referenced a planning permit that had issued for the development of a four storey building on the land that has since lapsed. The submitter also noted that the existing General Residential Zone Schedule 1 that applies to the land has a mandatory height limit of 11 metres and 3 storeys, which is inconsistent with the existing Design and Development Overlay Schedule 3 that also applies to the land, which has a preferred maximum height of 14 metres and 4 storeys.

The General Residential Zone Schedule 2 sought to provide a mandatory maximum height of 14 metres or 4 storeys and a preferred maximum ground floor setback of 4 metres from the street. Schedule 11 to the Design and Development Overlay includes a mandatory maximum height of 14 metres or 4 storeys, a discretionary maximum street wall of 8 metres or 2 storeys and a preferred setback of 5 metres above the street wall.

Submission 27 opposed the lack of flexibility in the proposed controls and submitted that they did not reflect the previous approval for the land or the development potential of the land.

(ii) Discussion

As noted above, the intent of the height controls is to provide a graduation of height south from The Esplanade, that is, focussing the higher built form on The Esplanade.
Apart from the land in the General Residential Zone, the height controls on the balance of land along The Esplanade were subject to discretionary controls. They essentially provided for a stepping of height along The Esplanade from Osbourne Avenue in the west and Steele Street in the east from 3 storeys rising to 5 storeys in the central section.

The Amendment retains the height controls as preferred heights and provides consistency in applying a preferred height of 5 storeys along The Esplanade between Warley Avenue and Findlay Street (Precinct 1). The rezoning of land between Walpole Street and Warley Avenue (Precinct 4) from the General Residential Zone to the Residential Growth Zone will return the height control to a preferred limit of 4 storeys.

The land that is now being proposed to be included in the Residential Growth Zone between Bass Avenue and Findlay Street (Precinct 4) and the land on west side of Bass Avenue extending to the corner of Chapel Street (Precinct 3) is currently subject to a mandatory height control of 3 storeys under the General Residential Zone Schedule 1. Under the Design and Development Overlay Schedule 11 these will be increased to preferred heights of 4 storeys.

The Panel considers that the proposed heights, which at most are generally 1 storey above the existing height controls, are appropriate and agrees with the rationale to focus the higher scale development around The Esplanade and step the built form as the land rises. The preference for 4 storeys in the higher order Residential Growth Zone and Mixed Use Zone will also provide for a transition of scale into the residential ‘hinterland’ to the west, east and south.

In terms of setbacks, the existing provisions set a preferred street wall height of 2 storeys but do not set a preferred setback beyond the street wall or a maximum setback on residentially zoned land. The Amendment seeks to achieve a consistent street wall height with built form above set back. For land in the Mixed Use Zone in Precincts 1, 2 and 3, it allows for a 2 storey street wall sited on the street alignment, with higher built form set back 5 metres from the street wall. The only variation is a preferred street setback of a maximum of 4 metres for the land in Precinct 4 to be included in the Residential Growth Zone. This requirement will also need to be reflected in the table varying the requirements of Clauses 54 and 55 in the schedule to the Residential Growth Zone.

The Panel is satisfied that the proposed street setback for the Residential Growth Zone land in Precinct 4, which is expressed as a maximum, is appropriate and will ensure that sites are developed in an efficient manner. It will provide a transition from the zero setback to the east and the more generous setbacks to the west. The Panel considers that the proposed controls will allow flexibility in design.

However, the Panel does not agree with the requirement for a 5 metre setback above the street wall for the Residential Growth Zone land in Precinct 4. As noted above, the reference to 5 metres in the proposed control is not based on an urban design analysis. Given there is a requirement to provide a street setback, which is entirely appropriate in a residential context, the Panel does not agree that there should be reference to a preferred setback above 2 storeys. The Panel considers that a thorough analysis of the site and context should appropriately inform the design response. Accordingly, the Panel is of the view that
in Precinct 4, the preferred upper level setback above street wall should be deleted from Table 1.

The Panel does not agree with the required front setback in Precinct 5 on Settlement Road, just east of Thompson Avenue. Given the limited number of properties, the existing built form (including recent construction) and the requirement for a zero setback on properties to the west and north, it seems more logical and appropriate to reflect that setback in this part of the Precinct.

4.5 Conclusions and recommendations

The Panel concludes:
- The proposed built form controls along Thompson Avenue are appropriate.
- The proposed heights and setbacks in other precincts are generally appropriate, subject to changes to the upper level setback for Precinct 4 and changes to setbacks and designation of land in Precinct 5.

The Panel recommends:

In Table 1, change the preferred upper level setback above preferred street wall for Precinct 4 to ‘0 metres’.

In Table 1, change the street setback in Precinct 5 (on Settlement Road, east of Thompson Avenue) to ‘0 metres’.

Include land currently shown in Precinct 5 (on Settlement Road, west of Thompson Avenue) in a new precinct ‘Precinct 6’ and update Table 1 to include the following built form controls for Precinct 6:
- preferred height – 11 metres (3 storeys)
- preferred street level setback – maximum of 4 metres
- preferred upper level setbacks (above the preferred street wall) – 5 metres.

Ensure that any variations to street setback requirements in the Design and Development Overlay Schedule 11 and the new Design and Development Overlay schedule to be prepared for the former Warley Hospital site are translated into the tables in the new Residential Growth Zone schedules varying Clause 54 and 55 (Standards A3 and B6 minimum street setback).
5 Redevelopment sites

5.1 Former Isle of Wight site

The Amendment proposes to remove the existing Design and Development Overlay and Vegetation Protection Overlay that apply to this site and replace it with a Development Plan Overlay.

The proposed Schedule 26 to the Development Plan Overlay includes a preferred built form of 7 storeys fronting The Esplanade (shown as 'I1' in Figure 9) and four storeys for the lots fronting Bass Avenue (shown as 'I2' in Figure 9). The current Design and Development Overlay includes a mandatory maximum building height of 7 storeys above natural ground level across the entire site.

Figure 9 Proposed heights for the Isle of Wight site

Council retained an arborist to prepare a report in relation to the Moreton Bay Fig. The Panel directed Council to circulate the report prior to the Hearing, which it did.

(i) The issue

The issue is whether the proposed controls are appropriate, including the built form outcomes and the approval process for a Development Plan.

(ii) Submissions

Council

Council advised the Panel that Amendment C23 was a combined planning scheme amendment and application for planning permit that sought to rezone the land from the
Residential 1 Zone to the Mixed Use Zone and make changes to the overlays, to permit redevelopment of the land with a hotel and convention centre.

There are two urban design documents that provide a built form framework for the precinct, including the Isle of Wight site, both of which are referenced in the planning scheme. The Urban Design Framework (2000) set a maximum height of 5 storeys for the precinct and specified that a “landmark development” should be no greater than 50 per cent above the generally recommended height, to preserve the dominance of the landscape and tree canopy.

The Urban Design Report – Appendix Cowes Foreshore Precinct (2003) was a revision of the 2000 Framework and was adopted by Council in 2003. In relation to the Isle of Wight site, it specified that built form should not exceed 2 storeys (7 metres to top of wall and 8 metres to the ridgeline) at the street interface. At mid building lot, the height should not exceed 5 storeys (17.5 metres maximum overall building height).

Council advised that at the time, it was of the view that the landmark site status outweighed the preferred height. It submitted that the C23 Panel supported this view and concluded that the proposed height was acceptable and relied on the 2000 Framework.

In its closing, Council sought to clarify that the approved scheme included a stepped approach to height at the south of the site which graduates to a 5 storey development, which it says responded to the slope and is not dissimilar to the proposed height controls, including 4 storeys to the rear.

Council advised this Panel that it had changed its view as to the appropriate height across the site and that the preferred heights identified in the Plan were informed by the height of street trees. The Plan notes that the 7 storey height in area ‘I1’ is to maximise views and the 4 storey height in area ‘I2’ is to protect the amenity of surrounding sites.

Council also noted that the previous planning permit (021186A) issued at the direction of the Victorian Civil and Administrative Tribunal has expired. This permit allowed for the redevelopment of the site for a 7 storey building.

Council submitted that it considers that the proposed preferred building heights are the most appropriate outcome for the site and generally represent an outcome for the site that “balances the need to create planning provisions for a landmark redevelopment of the site, whilst also being an acceptable outcome within the existing built form context and community expectations.”

In terms of the application of the Development Plan Overlay, Council submitted that these overlays are flexible tools that can be used to implement a plan to guide the future use and development of a site whereas a Design and Development Overlay was typically applied to control height and setbacks.

Council submitted that the Development Plan Overlay was more appropriate as the Amendment is “about place making and creating spaces within the private realm that express the community’s vision for Cowes as outlined in the Cowes Activity Centre Plan.”

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1 Extrapolating the intent of the built form control, the height of a “landmark development” could be approximately 7 storeys.
Council acknowledged that replacement of the existing Design and Development Overlay with the Development Plan Overlay across the site would remove existing notice and review rights for third parties. However, it submitted that there would be an opportunity for further community consultation when the Development Plan was lodged and confirmed that it would consult with the community as part of the Development Plan approval stage.

The National Trust

Mr Buchanan, on behalf of the National Trust, observed that whilst Council had advised that it would consult with the community in relation to the Development Plan, this is only informal consultation and there would be no review rights that occur as part of a ‘normal’ planning process. He submitted that a Development Plan Overlay was more suited to a broad acre subdivision or infill development sites such as former brickworks site in Blackburn South, the former Kew Cottages site in Kew and the former Amcor/Australian Paper Mills site in Fairfield.

Mr Buchanan submitted that it was not just the Development Plan Overlay per se that was of concern, but the fact that no concept plans or information was exhibited as part of this Amendment, which is the only statutory process involving third parties. Mr Buchanan was also critical of the perceived lack of criteria for development of the site, including the building heights expressed as a ‘preference’ for a maximum of 7 storeys. Mr Buchanan submitted that:

... applying a DPO, with the consequent absence of third party rights, makes it necessary and incumbent on the planning system to require a more coherent and defined suite of likely design outcomes. Further we believe the design outcomes must centre on some clearly measurable and quantifiable design standards.

Mr Buchanan referenced the C23 Panel’s observations in relation to the site and why it had landmark status. He submitted that one would expect that the Schedule to the Overlay would require a visual impact assessment to be prepared that demonstrates how a proposed development responds to clear design guidelines and an indicative building envelope plan. This assessment would provide a site line analysis, 3D modelling and perspectives from key public/water viewpoints. It would also address the Moreton Bay Fig and how this relates to the built form.

Mr Buchanan observed that the proposed Schedule does not reference the Plan or include the diagrams and cross sections prepared for the site. He also submitted that the Plan did not undertake a detailed planning and urban design analysis of the site. Rather, it arrived at broad findings for the site, but more in relation to the broader design framework for the activity centre.

Mr Buchanan concluded that the proposed Schedule “gives inadequate guidance and a distinct lack of clarity and certainty in the future design outcomes for development of the Isle of Wight site...”. Mr Buchanan submitted that the Schedule should include wording requiring advertising of the Development Plan for 28 days and referral to relevant authorities and the National Trust. He also submitted that the Schedule should include a
clear set of decision guidelines that the responsible authority must consider in assessing the Development Plan and any amendments to it.

**The site owner**

Mr Bitmead appeared on behalf of the owners of the site. His submission sought to amend the exhibited heights across the site to allow an extension of the 7 storey limit further south into the site, with a 5 storey height to the rear. In opening comments, Mr Bitmead acknowledged the arborist report and submitted that he took no issue with the recommendations of the report requiring a 15 metre tree protection zone. In response to Panel questions, he indicated that it would be appropriate to require a detailed arboricultural review at the time of application for planning permit to justify any allowable encroachments.

He submitted that there “is little explanation as to why the proposed DPO26 proposes a step down to the rear, other than a general comment relating to the protection of the amenity of the surrounding area”. Further, “reference to the preferred 4 storey height being linked to the height of trees on the subject site is confusing given the only significant tree being the Moreton Bay Fig is located adjoining the 7 storey height to the Esplanade. There are no significant trees corresponding to the area of the proposed 4 storey preferred height.”

Mr Bitmead submitted that the rear of the site could accommodate additional height without impacting on character objectives of the area or the amenity of adjoining properties. He submitted the following in support of his position:

- his proposed extension of the 7 storey height limit sits on flatter topography and does not adjoin any sensitive uses as it adjoins a Council car park to the west
- the rear of the site does not contain any significant vegetation
- increased heights will not be visible from Thompson Avenue, and would not affect any major view lines
- panoramic water views for properties to the south down Bass Avenue and over commercial buildings and down Thompson Avenue would be maintained
- additional height better references the landmark character of the site (noting that historically the site has been recognised as being suitable for a 7 storey development)
- his proposed heights still maintain a stepping down of built form.

Mr Bitmead submitted that on larger landmark sites there is an opportunity for built form to “go beyond” the preferred building heights without impacting on adjoining properties or compromising the overall preferred character for an area. He observed, “this is presumably why the mandatory height controls of the existing scheme are now to be replaced by the discretionary height provisions.”

He submitted that height should not be the primary determinant of whether a proposed building is appropriate or not, but rather should be based on the quality of design, siting, relationship with other buildings, overlooking, overshadowing, view lines, connectivity and materials. On this basis, he submitted that the preferred building height in the Schedule should be accompanied by appropriately drafted assessment guidelines specifying the circumstances when preferred heights could be varied.
In response to Panel questions, he advised that he would have no objection to retaining a Design and Development Overlay across the site. He did not consider that there was any benefit in having a lengthy Development Plan Overlay Schedule applied.

Other submitters

Ms Hunt submitted that maintaining the view from the pier was important and that the community did not accept a 7 storey height. She submitted that a landmark site could be one without the need to accommodate height. She expressed her concern at the removal of third party advertising and appeal rights with the proposed introduction of the Development Plan Overlay across the site.

Ms Hancock represented the Phillip Island Conservation Society and tabled an extract from a publication ‘An Island worth conserving’, which detailed the many and varied iterations of development proposals for the Isle of Wight site between 1987 and 2005. She submitted that the Society supported a 7 storey height for the site and emphasised the need for good architecture. She submitted that a residential development should “cater to the top end of the market” such as Craig’s Hotel in Ballarat and that it could include a shopping centre, offering quality shops. Ms Hancock was also critical of the removal of third party advertising and appeal rights.

(iii) Discussion

It is evident to the Panel that the Isle of Wight site is of significant interest to the community.

The proposed built form controls

In its consideration of the proposed controls and their appropriateness, the Panel is cognisant that the site has been the subject of extensive urban design analysis on both the part of Council and previous proponents for redevelopment, an analysis by the C23 Panel and VCAT on separate occasions. This Panel was mindful that what Council is now proposing represents a ‘winding back’ or possible reduction of development potential that has been embodied in planning controls that have applied to the site for certainly the last 15 or so years since Amendment C23.

In C23 Panel recommended the extension of Design and Development Overlay Schedule 3 across the site and the following provisions:

- an objective to retain the Moreton Bay Fig
- promotion of pedestrian linkages to Thompson Avenue, the Esplanade and Bass Avenue
- a requirement that the built form provides for active uses along the Esplanade and Bass Avenue frontages
- reference to implementation of parking plans for the precinct identified in Clause 22.04
- reference to both the 2000 and 2003 Urban Design Reports, but adopting the maximum height for the Isle of Wight site specified in the 2000 report.

The C23 Panel concluded:
There was broad acceptance that the planning framework for the site envisages an intensive development of a substantial scale. It was also acknowledged that any building on the site will be prominent due to its elevated position and location in a break in foreshore vegetation.

The analysis of urban design issues in 2000 and 2003 suggested that development in the precinct should be limited to 5 storeys to ensure that vegetation remains the dominant landscape. However, the 2000 analysis provided for development up to 7 storeys on the Isle of Wight site in recognition of its “landmark” status.

The Panel agrees that landmark sites provide opportunities for buildings that depart from the norm in a locality and a planning framework that provides greater design flexibility is often justified. On this important site the planning framework should seek an excellent building that will act as a catalyst for improvement of the precinct as a whole - it should not demand a reticent building. The Panel supports Council’s view that the height of the proposal is acceptable on this site.

Despite the time that has passed since the previous Panel’s consideration, this Panel agrees with its observations. This is an important site in Cowes and ultimately it seems that all parties’ objectives are to achieve a quality development that capitalises on the site’s location and features. Whilst Council’s proposed heights are generally in the realm of the previous approval (which the Panel notes did step down across the site to a height of approximately 5 storeys at the rear), the dispute is really about where the transition point is.

As exhibited, Council proposes to seek a transition of height to 4 storeys at approximately 61 metres from the frontage (the depth of the allotments fronting The Esplanade). Mr Bitmead proposes the transition at approximately 81 metres into the site (or at the point of the northern boundary of 4 Bass Avenue) and at a height of 5 storeys.

The Panel observed during its site visits that the site rises from approximately the point at which Mr Bitmead is proposing the transition in height to occur. The Panel notes that the proposed transition detailed in the Plan (shown in Figure 10) occurs at the same point, however, this has not translated into the exhibited controls. Further, from the material presented to the Panel, it appears that the transition in the 2003 approval occurred further south into the site than the proposed boundary between areas ‘I1’ and ‘I2’.

In light of the extent of previous urban design analysis that has occurred in relation to the site and indeed the current work contained in the Plan that indicates a transition in scale further south into the site, and based on the Panel’s site visits, the more logical transition in height occurs deeper into the site at the point Mr Bitmead has suggested.

The Panel also agrees with Mr Bitmead’s submissions that the preferred height limit at the rear of the site should be 5 storeys, allowing for a transition in scale from the landmark site to the adjacent properties to the south.
The Panel supports height limits generally within the range of 5 to 7 storeys across the site. However, given the proposal to reference these as preferred (discretionary) controls, the Panel notes there is the potential to achieve more height subject to satisfying relevant criteria, as detailed in Chapter 8.

The Panel agrees with Mr Bitmead that it is not only a matter of height that is of significance to this site, but how it responds to its landmark status, visual prominence on the foreshore, viewlines, interface with adjacent properties and the like. The overwhelming objective should be to achieve a quality redevelopment that respects and enhances these attributes. Part and parcel of this redevelopment is the necessity to incorporate, design around and make a feature of the significant Moreton Bay fig tree.

The Panel also agrees with Mr Bitmead that the relevant consideration of height should not be only based on amenity considerations. Notwithstanding, the Panel observes that the site interfaces with commercially zoned properties to the west and proposed Mixed Use Zone to the south. The vision for the properties to the south is to achieve a higher built form and density of development. Given the size of the Isle of Wight site there is opportunity to be respect the interface between the properties and ensure equitable development rights. Development to the east is separated by Bass Avenue, which has a considerable width, and as such, there will be limited, if any, need to consider amenity impacts on properties to the east as a result of any proposed development.
The Moreton Bay fig

In terms of the protection of the Moreton Bag Fig, the Panel agrees with the Council’s post-exhibition position to include a tree protection zone in the overlay control and associated requirements including further arboricultural assessments to determine whether any proposed building and works and/or encroachment is acceptable. The proposed wording is detailed in Chapter 8. The suitability of deleting the Vegetation Protection Overlay from the balance of the site is discussed in Chapter 7.

Is the Development Plan Overlay the right tool?

The Panel is of the view that a Design and Development Overlay is a more appropriate tool to use to guide the future development of the land. This position is supported having regard to the Drafting Guidelines and Planning Practice Note 23 – Applying the Incorporated Plan and Development Plan Overlays. Practice Note 23 notes:

Because the DPO has no public approval process for the plan, it should normally be applied to development proposals that are not likely to significantly affect third party interests, self-contained sites where ownership is limited to one or two parties and sites that contain no existing residential population and do not adjoin established residential areas.

Practice Note 60 – Height and setback controls for activity centres also supports this approach as it states that a Design and Development Overlay is “the preferred planning instrument” for implementing discretionary building heights and setbacks.

In response to questions by the Panel during Council’s closing, it advised that existing Development Plan Overlays within the Shire apply to greenfield developments and staged developments. In the Panel’s view, that is an appropriate use of the Development Plan Overlay. Council was not able to point any other circumstances where the Design and Development Overlay has been applied to a single site.

Whilst a ‘landmark site’ and a landholding that is significantly larger than adjoining properties, this is not the case where an overlay is required to plan for the future use or development of an ‘area’.

Practice Note 23 also states that if the overlay is approved without a plan, it is “essential that a strategic framework is in place to provide direction and certainty about the future form of development of the land.” The proposed Schedule does not provide a strategic framework and as noted by Mr Buchanan fails to include information from the Plan, including the massing diagram. At a minimum, the Schedule does not include objectives, which the Practice Note states should underpin any use, development or staging provisions set out in the plan.

The Panel accepts Mr Bitmead’s observations in relation to the preferred overlay. The Panel also observes that Mr Bitmead’s clients no doubt purchased the site with a Design and Development Overlay in place and were aware of the planning process, including engagement with the community. The Panel considers that Mr Bitmead’s position provides a pragmatic response to ameliorating community concern of having limited involvement in the planning process, and no formal rights in terms of notice and appeal.
The Panel appreciates Council’s approach in seeking to ensure the timely redevelopment of the site and streamlining the process. However, given the discretionary controls and the desire of all parties to see a high-quality development on the site, the Panel considers that a control that is more performance based, than prescriptive in terms of siting, setbacks and heights is the preferred response. In this regard, the Panel notes the Drafting Guidelines state that a Design and Development Overlay is principally intended to implement requirements based on a demonstrated need to control built form and the built environment, using performance-based rather than prescriptive controls.

(iv) Conclusions

The Panel concludes:

- The exhibited Development Plan Overlay Schedule 26 should be replaced with a new Design and Development Overlay schedule.
- The preferred height limits for the Isle of Wight site should be between 5 and 7 storeys, with the transition occurring generally at the northern boundary of 4 Bass Avenue.

(v) Recommendations

The Panel recommends:

The exhibited Development Plan Overlay Schedule 26 should be replaced with a new Design and Development Overlay schedule.

The new Design and Development Overlay schedule should include preferred height limits of 5 storeys in area ‘I1’ and 7 storeys in area ‘I2’, and the point of transition should occur generally in line with the northern boundary of 4 Bass Avenue.

The new Design and Development Overlay schedule should include a new area ‘I3’ reflecting the tree protection zone for the Moreton Bay Fig, and should include the following requirement:

“Before any changes may be permitted within the Tree Protection Zone, a suitably qualified consulting arborist (minimum Australian Qualifications Framework Level 5) must undertake any investigations necessary to determine impacts to the tree above and below ground. The responsible authority should use this information when determining whether or not to permit the works.”

5.2 Former Warley Hospital site

As exhibited, the Amendment proposed to rezone the land from General Residential Zone Schedule 1 to General Residential Zone Schedule 3. Post-exhibition, Council is proposing to include the land in the Residential Growth Zone.

The current height control is mandatory and is 11 metres and 3 storeys (or 12 metres if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees).
As exhibited, the Amendment proposes to replace the existing Design and Development Overlay that applies to this site with a Development Plan Overlay that includes a 7 storey height limit for the majority of the site (shown as W1 on Figure 11) and stepping down to 3 storeys towards the rear of the site (shown as W2 on Figure 11). Post-exhibition Council is proposing to allow a height of 5 storeys where previously 7 storeys was proposed (W1).

![Figure 11](image)

**Figure 11** Proposed height limits for the former Warley Hospital site

(i) **The issue**

The issue is whether the proposed controls are appropriate, including the built form outcomes and the approval process for a Development Plan.

(ii) **Submissions**

Council referred to the number of submissions received opposing the proposed height of 7 storeys and the support provided by submitters for a 5 storey height limit, including by the owner of the site.

It noted that the Plan identifies the site as a ‘key redevelopment site’, recommending that policy “facilitate a high quality and architecturally designed and integrated development...”
which capitalises on ocean views and is in keeping with the scale of the avenue of Norfolk Pines along Warley Avenue”. The proposed 7 storeys was derived from the Plan, which Council noted considered the site context, taking into account slope and the height of street trees to determine an appropriate preferred built form outcome for the site.

Council advised:

This minor change (reducing the maximum height from 7 storeys to 5 storeys) is not expected to have a significant impact on the intent of increasing densities and attracting more people to live and work in Cowes as it will still allow for greater density and height that what is allowed for under the existing controls, but will also ensure development is respective of its neighbouring uses (residential and the church).

Council advanced the same arguments in support of the application of a Development Plan Overlay as it did in relation to the former Isle of Wight site.

The submission received from the owner of the site (submission 29) was brief in content and advised Council that it would work to a 5 storey height over the part of the land previously shown as 7 storeys. The owner did not comment on the proposed application of a Development Plan Overlay.

Mr Buchanan advanced similar concerns in relation to the proposed Development Plan Overlay as he did in relation to the former Isle of Wight site, regarding the lack of consistency between the proposed Schedule and the Plan, the generalised nature of the drafting of the proposed Schedule and the loss of third party notice and appeal rights.

Ms Hancock submitted that the Hospital belonged to the community and the community had a strong sense of ownership. She submitted that it matters to the community what form of development goes on the site and the community is opposed to 7 storeys. She submitted that there is a need for development that fits into the landscape as currently the view of the site is of trees. She submitted that a more appropriate height would be 3 storeys.

Ms Hancock noted disappointment regarding Council’s decision to refuse an application for a drug rehabilitation centre, noting that was a use consistent with the historical use of the site.

Ms Hancock and Ms Hunt also reiterated concerns regarding the loss of third party notice and appeal rights that they raised in relation to the former Isle of Wight site.

(iii) Discussion

Whilst the former Warley Hospital site is a ‘key redevelopment site’, in the Panel’s view it is not a ‘landmark site’ that may warrant a higher built form than surrounding development.

The Panel observed on its site visit that the site is directly adjacent to residential properties to its north and west, and in particular notes the lower scale development to the west. There is no specific policy impetus to increase intensity of development or height on those properties. Further, noting the preferred height limit for properties to the north of 4 storeys and the properties opposite of 5 storeys and 3 storeys, the Panel agrees with Council’s post-
exhibition position of reducing heights on the site to 3 and 5 storeys, rather than 3 and 7 storeys. The stepping down in height towards the south will provide an appropriate transition of scale into the lower scale of development to the south and as the land rises, relative to properties to the west.

Given the heights proposed, the Panel also supports the proposed post-exhibition change to rezone the site to Residential Growth Zone rather than General Residential Zone Schedule 3, as the Residential Growth Zone contemplates more intense built form and height than the General Residential Zone.

The Panel’s observations in relation to the preferred overlay control apply equally to this land as to the former Isle of Wight site. Indeed, there is potentially more justification to apply the Design and Development Overlay to the former Warley Hospital given the somewhat ‘fluid’ approach to determining appropriate height controls, with the Council reducing the preferred height based on community feedback, and the interface with residential properties. This is a site that adjoins an established residential area and where development could affect third-party interests.

The Panel also notes the owner’s support for the post-exhibition height. The Panel notes that the owner chose not to participate in the panel hearing process. Nevertheless, given the presence of a Design and Development Overlay currently over the site, the application of another such overlay over the land does not erode his rights, as may have been the case had the site been affected by a Development Plan Overlay. That is, the planning process for an application for planning permit lodged today would follow the same course, including public notification and third party rights to review, as will be allowed under the Panel’s preferred Design and Development Overlay.

(iv) Conclusions

The Panel concludes:

- The former Warley Hospital site should be rezoned to Residential Growth Zone, with a new tailored schedule, rather than the exhibited General Residential Zone Schedule 3.
- The exhibited Development Plan Overlay Schedule 27 should be replaced with a new Design and Development Overlay schedule.
- The post-exhibition preferred maximum height of between 3 and 5 storeys is appropriate.

(v) Recommendations

The Panel recommends:

The former Warley Hospital site should be rezoned to Residential Growth Zone rather than the exhibited General Residential Zone Schedule 3.

The exhibited Development Plan Overlay Schedule 27 should be replaced with a new Design and Development Overlay schedule.

The new Design and Development Overlay Schedule should specify:

a) a preferred height limit of 5 storeys to area ‘W1’
b) a preferred height limit of 3 storeys to area ‘W2’.

5.3 Islander Caravan Park site

The land is currently in two zones, the Commercial 1 Zone to the front of the property and the General Residential Zone Schedule 1 to the rear (as shown in Figure 12 below). The Design and Development Overlay Schedule 4 adopts the same alignment across the site.

The Amendment proposes to retain the existing zone boundaries and extend Design and Development Overlay Schedule 11 further into the site, to generally align with the western side of Watchorn Road (as shown in Figure 13 below).

There is a ‘potential future link road’ extending in a north-south direction through the site that is currently shown on the Strategic Framework Plan in Clause 21.08-5 (Figure 14 below). This designation was omitted from the exhibited Framework Plan and Council submits that it should be added as a post-exhibition change.

![Figure 12: Existing zones over Islander Caravan Park site](image1)

![Figure 13: Exhibited Design and Development Overlay Schedule 11](image2)
Figure 14  North-south link through Islander Caravan Park site in existing Strategic Framework Plan

(i)  The issues

The issues are whether the zone and Design and Development Overlay boundaries are appropriate and whether there is a need to continue to show a potential north-south link through the site.

(ii)  Submissions

The owner of the land (submission 1) requested Council extend the Commercial 1 Zone a further 50 metres to the east to align with an approved subdivision of the land (approved in 2012 but not registered).

Council submitted that the Commercial 1 Zone was applied by Amendment C88, which rezoned that portion of the land from the Mixed Use Zone. The zone boundary follows the rear boundary line of the surrounding properties, which are smaller and do not extend as deep as the site.

Council submitted that the intent of applying the zones in this manner was to “encourage commercial uses fronting Thompson Avenue and retain the balance of the land for residential purposes in keeping with the surrounds and minimising land use conflicts”. It submitted that the request to extend the Commercial 1 Zone boundary was inconsistent with the Cowes, Silverleaves, Ventnor and Wimbledon Heights Structure Plan, 2010 and the Activity Centre Plan. Further, extending the boundary of the commercial zone would introduce commercial use and development adjacent to residential properties that had not been foreshadowed during the exhibition of the Amendment.

Council opposed the extension of the Design and Development Overlay Schedule 11 across the entire site and submitted that the boundary was based on the activity centre area defined in the Amendment. Council submitted that the built form controls included in Precinct 2 of the Schedule that apply to the site could, if extended further, affect the amenity of surrounding residential properties.
During Council’s submission the Panel observed that the commercial designation shown on the existing Strategic Framework Plan in Clause 21.08-5 extended beyond the existing commercial boundary and seemed to align with the location sought by submitter 1. In its closing statement, Council advised that the C88 Panel did not seek to alter the boundary and that the alignment of the commercial designation was consistent with the 2010 Structure Plan.

Council advised the Panel that the future north-south link was its long-standing vision since the adoption of the 2010 Structure Plan. The intent of the link is to provide for connectivity between Watchorn Road and Chapel Street and provide alternative access from Thompson Avenue. Council advised the Panel that the reference to the requirement to ‘undertake a feasibility study to determine the requirements of facilitating a north-south link road as indicated in the Thompson Avenue Precinct Plan below’ currently noted on the Strategic Framework Plan was omitted in the exhibited version and should be reinstated prior to adoption of the Amendment. It submitted that the link should remain in policy so that it can be considered as part of a future project or the redevelopment of the Islander and Bushy Park caravan sites.

Mr Bromley represented Steller who has an interest in the site. He noted the discrepancy between the activity centre boundary in the maps in proposed Clause 21.08-5 and the proposed boundary of the Design and Development Overlay Schedule 11. He submitted that the maps in the Plan define the activity centre boundary as a much broader area, one that includes commercial areas and the ‘substantial change areas’ identified in map 1 of Clause 21.08-5. Mr Bromley submitted that the existing map in Clause 21.08-5 supported the inclusion of the entire site within the activity centre boundary as it was included in the ‘substantial change area’ designation.

Mr Bromley submitted that setting the activity centre boundary to include the site was consistent with the recommendations of the Activity Centre Boundaries Advisory Committee (2009) in relation to setting activity centre boundaries. He submitted that it satisfied the criteria of being:

*Residential land that is unencumbered by significant constraints and where significant density increases or redevelopment based on the proximity of an Activity Centre is contemplated.*

Mr Bromley submitted that the entire site should be included in the activity centre boundary for the following reasons:

- to provide clarity and certainty in respect of planning controls that affect the site
- no other site in the activity centre appears to be dissected by the boundary
- the site represents an “excellent development opportunity” in the core of the commercial centre that has the ability to deliver development outcomes sought by the Plan.

Mr Bromley observed that the alignment of proposed Design and Development Overlay Schedule 11 did not accord with the zone boundary and submitted that it should be extended to reflect the activity centre boundary.
Mr Bromley submitted that reference to a potential north-south link through the site should be removed from policy as it would constrain the redevelopment of the site. Further, in the 10 years since the preparation of the Cowes, Silverleaves, Ventnor and Wimbledon Heights Structure Plan, Council has not undertaken a feasibility study to determine whether the link road is required. Council has made no attempt to acquire land through a Public Acquisition Overlay. He submitted:

In our submission the Council has not sufficient justified the retention of the references to the link road and has not sufficiently progressed the implementation of the link road. It is not good planning to retain indefinitely policy statements which potentially significantly constrain the redevelopment of private land without advancing the strategic work necessary to justify or enact that statement.

Ms Hunt supported the removal of the north-south link citing safety concerns with the elderly citizens’ accommodation at Melaleuca Lodge and terminates opposite the primary school.

(iii) Discussion

Whilst not identified as a ‘key redevelopment site’ in the Plan, the Panel has included consideration of this site in this chapter because it is a key redevelopment site in the sense of its location, size and development potential. The Panel notes that it is significantly larger in size than the former Warley Hospital site and larger than the former Isle of Wight site.

The Panel could not see an explicit reference in the C88 Panel report to the rationale behind the zone boundary. The Panel sees merit in extending the Commercial 1 Zone boundary as requested by submitter 1 and is of the view that a logical termination of the zone boundary would be to align with Watson Road to the south. Whilst one property between the caravan park site and Watson Road is used and developed for residential purposes, the lot abutting Watson Road has frontage to Thompson Avenue and extends through to Watchorn Road, with the rear part of the property used as a car park.

However, the Panel agrees that this would apply a new zone to land that was not exhibited. Accordingly, the Panel makes no recommendations in this regard, but suggests that Council give further consideration to this issue.

The Panel agrees with Council that it is not appropriate to include the entire site within the activity centre boundary. However, the Panel considers, and as indicated during the hearing, that an activity centre boundary that does not correlate with a zone boundary is not considered orderly planning. The Panel considers it appropriate to amend the activity centre boundary to align with the zone boundary. The Panel is also of the view that the Schedule 11 boundary should correlate with the zone boundary, and that Map 1 in Schedule 11 should be amended to reflect this.

The Panel notes that the part of the land not in the Commercial 1 Zone is included in the Vegetation Protection Overlay. The Panel observed on its site visit there are a number of native trees scattered throughout the property. On this basis, it does not accept Mr Bromley’s submissions that the site satisfies the locational criteria for an activity centre boundary, as it is encumbered. The Panel does not say that the site is not well located or
cannot accommodate a significant density, but is of the view that the activity centre boundary should not include the entire site.

The balance of the land in the General Residential Zone Schedule 1 is limited to a mandatory height limit of 11 metres and 3 storeys. This is the same height and storey limitation included in Precinct 2 to Schedule 11 of the Design and Development Overlay (although that is a discretionary limit) that applies to the front half of the site. The Panel does not see merit in extending the Design and Development Overlay boundary as its height limit will not override the mandatory limit in the zone. In the Panel’s view, justification for and support of a more intensive development on the site can be found in the purpose of the zone, which includes “to encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.”

In terms of the ‘north-south’ link, the Panel agrees with Mr Bromley that it should be deleted from the policy framework. The Panel agrees with Mr Bromley that Council has had sufficient time within which to undertake a feasibility study and pursue site acquisition, which it has not done. Council confirmed that there is no timeframe around this project.

The Panel considers that, if constructed, the north-south link would effectively ‘push’ cars into an area beyond the activity centre boundary and into a residential area. The Panel observes that pursuing a new road seems somewhat counter intuitive to encouraging walking in and around the centre.

The C88 Panel observed that the link was shown in the 2010 Structure Plan and “strategically it had benefit in pursuing these links to reduce reliance on Thompson Avenue”. The Panel did not, however, conclude it was necessary and Council did not call traffic evidence in either that hearing or this hearing to further advance its position as to its need.

(iv) Conclusions

The Panel concludes:

- The activity centre boundary should align with the zone boundary over the site.
- The extent of Design and Development Overlay Schedule 11 should correlate with the zone boundary.
- The ‘north-south’ link designation should be deleted from Clause 21.08-5.

(v) Recommendations

The Panel recommends that in relation to the Islander Caravan Park site:

The activity centre boundary and the boundary of Design and Development Overlay Schedule 11 should align with the Commercial 1 Zone boundary.

The ‘potential future link road’ should be deleted from the Strategic Framework Plan in Clause 21.08-5.
6 Other Issues

6.1 Vegetation Protection Overlay

Application of the Vegetation Protection Overlay did not form part of the exhibited Amendment. However, as part of its post-exhibition changes, Council seeks to refine the application of the overlay to apply it to residentially zoned land included in the Amendment, and to remove it from selected sites to be zoned Mixed Use or Commercial 1 within the activity centre boundaries. The proposed changes are shown in Figures 15 to 17.

![Figure 15](image1.png)  
**Figure 15**  Post-exhibition change to delete the Vegetation Protection Overlay from properties

![Figure 16](image2.png)  
**Figure 16**  Post-exhibition change to delete the Vegetation Protection Overlay from properties
(i) **The issue**

The issue is whether it is appropriate to remove and apply the Vegetation Protection Overlay as proposed in Council’s post-exhibition changes.

(ii) **Submissions**

In response to questions from the Panel, Council addressed the application of the Vegetation Protection Overlay in its closing submission.

Council advised the Panel that the Vegetation Protection Overlay Schedule 2 has been applied to all residentially zoned land in the Shire. It was implemented as part of Amendment C46 (Part 2). Council also advised the Panel that at the time, it was recommended that the overlay only cover identified species indigenous to the Island.

Council noted that where the Amendment proposed rezoning land to a non-residential zone, it should also have included removal of the overlay from the land. Equally, the land at 224, 226, 228, 230 and 232 Settlement Road and 26 Douglas Road is to be rezoned to General Residential Zone, so the overlay should apply.

Council submitted that the overlay applies to part of the Coles carpark (as shown in Figure 16) and should be deleted.

(iii) **Discussion**

The Drafting Guidelines note that the Vegetation Protection Overlay is “*specifically designed to protect significant native and exotic vegetation in an urban and rural environment. It can be applied to individual trees, stands of trees or areas of significant vegetation.*”

The Statement of Significance in Schedule 2 to the overlay is as follows:
It is estimated that less than 15 per cent of Phillip Island retains a natural cover of vegetation. Given the general lack of vegetation on Phillip Island, it is important to protect indigenous and large native trees in urban areas. It is also important to encourage and facilitate the planting of vegetation indigenous to a particular locality to maintain and enhance the natural environment of the urban areas of Phillip Island and to enhance habitat.

The urban areas of Phillip Island are generally characterised by native vegetation that contribute towards the character of these seaside communities and provide habitat for native fauna. Conservation and enhancement of the natural environment is very important to the character of these urban areas.

Whilst the Panel accepts that Council is seeking consistency in the application of the overlay to residentially zoned land, it notes that five of the six properties on Settlement Road and Douglas Road that Council is seeking to apply the overlay to (shown in Figure 17) have been developed with unit developments, two of which are of recent construction. The Panel observed on its site visit that as a result of the redevelopment there were minimal trees on the land and as such questions the validity of applying the overlay in this instance. The Panel considers that Council should undertake an arboricultural review to ascertain whether there are any significant trees worthy of protection before applying the overlay to these properties.

The Panel does not oppose Council’s post-exhibition position to delete the overlay from the balance of the Waves Complex site and the Coles car park site.

In terms of the proposal to remove the overlay from properties in Bass Avenue and at the corner of Bass Avenue and Chapel Street, the Panel notes that some of these allotments comprise the former Isle of Wight site and adjacent properties proposed for rezoning to Mixed Use. During the hearing Council confirmed that the significant tree on the Isle of Wight site that it was seeking to protect as part of a redevelopment was the Moreton Bay Fig. On the basis of Council’s position, the Panel agrees with Mr Bitmead’s observations that it is not possible to retain trees in the middle of the site and achieve the design objectives for a landmark site.

(iv) Conclusions

The Panel concludes:

- Prior to applying the Vegetation Protection Overlay Schedule 2 to properties in Settlement Road and Douglas Road, Council should undertake an arboricultural review to ascertain whether there are any significant trees worthy of protection.
- It is appropriate to proceed with the post-exhibition position to remove the overlay from properties that will be rezoned and/or are already in non-residential zones.

(v) Recommendations

The Panel recommends:

Undertake an arboricultural review prior to applying the Vegetation Protection Overlay Schedule 2 to properties at 224, 226, 228, 230 and 232 Settlement Road.
and 26 Douglas Road, to ascertain whether there are any significant trees worthy of protection.

Remove the Vegetation Protection Overlay Schedule 2 from the properties at 1 and 11 The Esplanade, 2, 4, 6, 8, 10 and 13 Bass Avenue and 89 and 54 Chapel Street.

6.2 Blue Gum Industrial Park

(i) The issue

The Plan made a recommendation in relation to policy applying to the Blue Gum Industrial Park that was not translated into the exhibited Clause 21.08. At the Directions Hearing the Panel sought clarification from Council as to why the Amendment did not address the issue.

(ii) Submissions

Council advised the Panel that the industrial park was first identified in the planning scheme through Amendment C88 when it was rezoned from Industrial 1 to Industrial 3 and a minimum leasable floor area for restricted retail premises of 700 square metres was introduced. Policy was included at Clause 21.08-5 to support the establishment of homemaker uses within the estate provided they do not detrimentally impact on the ongoing use and operation of the industrial land uses.

The Plan recommended that the policy be amended on the basis that there were vacant properties within the activity centre that could be used and developed for restricted retail and that this was appropriate to protect the viability of the centre.

Council advised the Panel that this recommendation was not pursued in the drafting of the Amendment as the Mixed Use Zone and Commercial 1 Zone encourage ‘retail premises’ as a Section 1 use. Council considered that restricted retail should be encouraged in the Blue Gum Industrial Park rather than the activity centre.

As noted in Chapter 3.2, Mr Bromley submitted that there was a legitimate need for commercial tenancies such hardware and furniture shops that predominantly service the local community within the activity centre, but on the periphery of core retail area.

(iii) Discussion

The Panel has reviewed the existing Industrial 3 Zone and its schedule and notes that there is no floor space limitation. The Panel notes that the C88 Panel recommended that a 700 square metre floor space limitation be imposed, as it considered that Council’s proposed limitation of 300 square metres was too low, and could “detract from the function of the town centre and crowd out industrial uses.”

Whilst ‘retail premises’ and ‘restricted retail premises’ are Section 2 – permit required uses in the Industrial 3 Zone, a purpose of the Industrial 3 Zone is “to allow limited retail opportunities including convenience shops, small scale supermarkets and associated shops in appropriate locations” (Panel’s emphasis).
The Panel inspected the Blue Gum Estate and observed that apart from some small display areas associated with flooring businesses and the odd food and drink premises, the use and development of the estate is industrial in nature. The Panel agrees with the recommendation of the Plan that the existing policy reference to support the establishment of home maker centres in the Industrial Estate should be deleted, as these uses would be better suited in the activity centre.

In the Panel’s view, it is not necessary to promote the Industrial Estate for home maker centres. It agrees with Mr Bromley that there is a legitimate need for uses such as hardware and furniture shops within the activity centre, on the periphery of core retail area. The Panel notes that the C88 Panel, beyond recommending a larger floor area cap, made no observations in relation to the appropriateness or otherwise of the policy.

(iv) Conclusions
The Panel concludes:
- The strategy supporting restricted retail in the Blue Gum Industrial Estate should be deleted.

(v) Recommendations
The Panel recommends:

Amend Clause 21.08-5 to delete the strategy “support the ongoing establishment of homemaker land uses (i.e. restricted retail) within the existing Blue Gum Industrial Estate, provided these do not detrimentally impact upon the ongoing use and operation of existing industrial land uses within the estate.”

6.3 Olive Justice Place
Olive Justice Place is Council-owned land currently used as a car park. Submitters were concerned with the height control proposed for the site (4 storeys) and the use of the land.

(i) The issue
The issue is whether the proposed controls are appropriate.

(ii) Evidence and submissions
Ms Hancock provided the Panel with an overview of Ms Justice’s life and her commitment to the community. She advised that Ms Justice’s vision for the site was that it would become a park and garden where people could gather and mothers could feed their babies. Ms Hancock advised that Council had purchased the land from Ms Justice’s estate following her death and the Estate donated the proceeds to the Salvation Army to develop a drug and alcohol rehabilitation centre. Ms Hancock submitted that it would be appropriate for Ms Justice’s wishes to be realised in relation to the land.

In its Part B submission Council indicated that there are no existing plans to change the use or redevelop the site. However, in its closing submission, and following Mr Schinkel tabling an extract from Council’s budget, it confirmed that the 2018/19 budget includes allocation of $25,000 to prepare an open space master plan. Council advised that this process would
resolve whether the land is to be developed for open space or some other form of community use.

(iii) Discussion

The Panel notes Council’s commitment to undertake a study to explore the options for establishing a community use for the land. The Panel makes no recommendations, but notes that it would be appropriate for Council to prioritise and pursue a community use for which the land was purchased.
7 Background documents

7.1 The issue

Council is proposing to include the Cowes Activity Centre Plan and the Phillip Island and San Remo Visitor Economy Strategy as background documents in the planning scheme. The issue is whether it is appropriate and or necessary to do so.

7.2 Submissions

Council adopted the Strategy in August 2016, following its adoption of the Plan in June 2015. Council submitted that the Strategy reinforces and provides additional economic and tourism policy context for the recommendations of the Plan. It noted that the Strategy has a clear commitment to sustainable growth, setting a 2035 target to grow off peak visitor expenditure by $80 million per annum above natural growth. There are five strategies to achieve this objective, one of which is to generate year-round visitation. Council submitted that this is relevant to the Amendment as it seeks to achieve growth in mid-week visitation and a capacity for 24,500 visitors per day.

Council submitted that ‘game changer’ projects identified in the Strategy include new event infrastructure at Cowes Cultural Centre, the Jetty Triangle, San Remo foreshore and temporary infrastructure for surfing events. Other relevant ‘game changer’ projects include “re-establish the region’s position in the conference market by facilitating a redevelopment of the Isle of Wight and Continental sites into a world-class accommodation and conference centre.”

Council submitted:

Therefore, to understand the full policy context upon which this amendment has been framed the [Plan] and the [Strategy] should be read in conjunction. With the [Plan] providing specific controls guiding built form, and the [Strategy] providing broader tourism and economic policy context for the amendment. Therefore, it is reasonable that both the [Strategy] and the [Plan] be included as reference documents at Clause 21.10 of the Bass Coast Planning Scheme.

Council submitted that this approach was consistent with Planning Practice Note 13. It also advised the Panel that it had recently adopted a Planning Scheme Review in May 2018, which reviewed Council adopted documents, including the Strategy. The review recommended a rewrite of Clause 21.03 – Economic Development as a priority action. It advised that the rewrite is currently underway and it is for this reason that changes to local policy were limited in the Amendment and that it is proposed to include the Plan and Strategy as reference documents.

Various submitters (submissions 7, 11, 14, 16, 17,19, 24, 25, 26 and 28) have raised concerns with the Plan and the Strategy in their references to the Stony Point to Cowes Car Ferry, the Mussel Rocks Skate Park, the Jetty Triangle and the Transit Hub.
Ms Hunt advanced these concerns on the basis that decisions have been made and works have commenced, including the Jetty Triangle and Transit Hub, before the documents are included in the planning scheme as a reference document. She observed some sections of the Plan have become out-dated, including in relation to the Car Ferry, Skate Park and changes to the Cultural Centre redevelopment plans.

Mr Schinkel shared these concerns and submitted that references to the Car Ferry in the Strategy are inconsistent with Council resolutions in relation to its location. He was critical of Council’s reference to the ‘potential’ Transit Hub in the Explanatory Report, as it is no longer ‘potential’ given Council is proceeding with the development. Mr Schinkel submitted that the environmental effects of the Car Ferry had not been considered and the Amendment should be abandoned.

Council advised the Panel that the matter of the location of the car ferry has been deferred. Council submitted that reference to the car ferry in the Plan includes possible locations, not suitable or designated locations.

In response to questions from the Panel, Council advised that Amendment C143, gazetted on 4 August 2016, affected the Jetty Triangle site and Council owned land at 63-65 Chapel Street and 50-56 Church Street. Amendment C143 rezoned the land from General Residential Zone Schedule 1 to Public Use Zone Schedule 7 and deleted the Design and Development Overlay Schedule 1 and Vegetation Protection Overlay Schedule 2 from the land.

Amendment C143 was to facilitate development of the land for public uses identified in the Plan, including the aquatics facility, health and wellbeing centre, all day car park and transit centre. The transit centre will be developed on Council owned land fronting Chapel Street and will provide all-day parking.

In response to questions from the Panel regarding the transit hub, including the lack of detail on map 2 in Clause 21.08-5 and in corresponding policy, Council advised that it was appropriate to replace the reference “Potential Transit Hub” with “Future Transit Hub and All-day Carpark” and update policy to reflect this development.

Council also submitted that the Plan noted that Mussel Rock could, subject to further work, be investigated to accommodate a skate park, but did not designate the use for this location. Further work has been undertaken, including the development of a specific Council policy relating to skate parks, which confirms that the skate park will not proceed at this location.

7.3 Discussion

The Panel is of the view that the planning scheme should include the substantive elements of the Plan and if appropriate the Strategy insofar as they are related to planning matters. There is no need for either document to be a background document in the planning scheme.

Planning Practice Note 13 – Incorporated and Background Documents states:

... there is no need to refer to a document if the substantive elements of the document have been included in the planning scheme in either the [Municipal Planning Strategy], a local planning policy or a schedule, unless it contains additional useful information.”
In the Panel’s view, if the planning scheme is clear in its intent, including background documents as reference documents merely adds an unnecessary layer. Translating the necessary elements of the documents into the scheme is the preferable approach as it provides for greater transparency and clarity for residents and developers. It also means that should applications for planning permit be pursued to VCAT then it removes a potential dispute as to the weight that should be afforded or the relevance of a particular document. This view is also consistent with the Practice Note 13 that states “planning schemes should be transparent and complete in terms of policies and provisions that are replied upon to make decisions about planning matters.”

The Plan and the Strategy are detailed documents that address many issues beyond the scope of planning and the planning scheme. The Panel considers that the salient points and overarching objectives can (and should) be clearly articulated in planning policy, zoning and overlay controls. The Panel observes that by its very nature planning is a complex and often lengthy process and that this in part is the reason for the community’s concerns with the proposal to include the documents as background documents. Projects that have been mooted in the Plan have already been constructed and/or are proceeding to design, and in the community’s mind, this is confusing and appears that insufficient regard is being given to community consultation and feedback.

A case in point is the inclusion of the 2010 Structure Plan as a reference document at Clause 21.10. Given that this was the basis of Amendment C88 that sought to, among other things, rezone land in Thompson Avenue from Mixed Use Zone to Commercial 1 Zone, and Amendment C151 is now seeking to ‘back-zone’ these properties, problems are likely to arise if both documents are included as reference documents because of the inconsistencies between the two documents. The 2010 Structure Plan also identifies the area between Settlement Road and Rhyl/Ventnor Road as a ‘tourism/accommodation services precinct’, which was relied on to inform policy introduced through Amendment C88 that this area would be investigated in the future as a Mixed Use Zone. This Amendment now proposes to delete this from local policy.

The C88 Panel report expressed the view that Council had placed too much reliance on the 2010 Structure Plan as a reference document, and needed to translate more of its direction into the planning scheme. It noted “reference documents have only a limited role in decision-making as they are not part of the planning scheme. They do not have the status of incorporated documents or carry the same weight. It is therefore very important not to rely on a document for decision making that is separate from the planning scheme.” This Panel agrees with this observation.

### 7.4 Conclusion and recommendation

The Panel concludes:

- It is not necessary to include the Plan and the Strategy as background documents in Clause 21.10.

The Panel recommends:

**Remove reference to the Cowes Activity Centre Plan (2015) and the Phillip Island and San Remo Visitor Economy Strategy 2035 (2016) from Clause 21.10.**
8 Drafting and post-exhibition changes

8.1 Introduction
This section provides a consolidated approach for drafting of the proposed controls and should be read in conjunction with recommendations included in preceding chapters of this Report, and with Appendix D.

8.2 Clause 21.08-5
For the reasons set out in the previous Chapter, the exhibited version of the local policy should be updated to read as a stand-alone policy, providing clearly articulated objectives and outcomes for the activity centre without having to rely on the Plan. It should also be updated to accord with the Panel’s specific recommendations included in this Report.

As discussed during the hearing, the colours used in Map 2 should be readily differentiated.

8.3 Design and Development Overlay Schedule 11
In addition to recommendations relating to Schedule 11 provided in Chapter 4, the Panel suggests that a preferred approach would be to include design objectives relevant to each precinct, or if there is a synergy between precincts, to consolidate the objectives.

For instance, the first design objective is:

- To create a coherent coastal village character through consistent built form within the Activity Centre and to facilitate development which fosters street activation.

The Panel observes that the precincts within the activity centre have different preferred heights and built form controls. Whilst Council is seeking consistency within the respective precincts, there is not consistency throughout the activity centre. Further, ‘street activation’ is not sought in Precinct 4 where the land is residentially zoned and there is a preferred maximum front setback of 4 metres. Equally, the objective requiring “compatible uses on upper levels” is not appropriate for residentially zoned land.

The Panel is of the view that the objectives should also be clearly articulated and avoid use of terms such as “with special emphasis” and “compatible uses”. These are unclear in their meaning and intent.

The Panel is of the view that the second set of dot points in Clause 2.0 ‘buildings and works’ should be updated to:

- convert the first dot point to an application requirement – that an application that does not meet the built form requirements must be accompanied by a site analysis plan and a written urban context report documenting how the development will achieve the design objectives and outcomes in the schedule
- clearly specify all locations where continuous awnings are sought (it currently reads along Thompson Road to Church Street – the Panel understands that this does not reflect Council’s intent for continuous awnings along the entire length of the core retail area extending to Settlement Road)
- delete reference to the former Isle of Wight site – this is subject to a site-specific control, and all controls relating to the Isle of Wight site should be consolidated into the Design and Development Overlay for that site.
- better articulate what is intended by reference to “development should feature quality architecture, designed to create visual interest and contribute to the coastal village character of the Cowes Activity Centre.”

Table 1 should be amended to express the preferred height as metres in the first instance (as per Planning Practice Note 60).

The notes in Table 1 should be amended as follows:
- replace the first note with “Preferred maximum height is metres in the first instance, measured from natural ground level.”
- delete the asterix, as this is dealt with as a requirement under Clause 2.0 ‘buildings and works’
- delete the note relating to the former Isle of Wight site.

8.4 Development Plan Overlay Schedule 26
As discussed in Chapter 5, the Panel’s view is that the site should be subject to a Design and Development Overlay. In turn, there should be clearly articulated design objectives included in the schedule as well as reference to design features and design outcomes, such as massing and site layout, architectural quality, active frontages, vehicular access and car parking.

As with the reference to preferred heights in Schedule 11, the height should be expressed in metres in the first instance and include reference to natural ground level. As with Schedule 11, there should also be a requirement for a site analysis and urban context report to justify a departure from the preferred heights or other built form controls. This analysis should detail how a proposed development satisfies design objectives and outcomes for the site.

8.5 Development Plan Overlay Schedule 27
As discussed in Chapter 5, the Panel’s view is that the site should be subject to a Design and Development Overlay. The schedule should include clearly articulated design objectives as well as reference to design features and design outcomes, such as massing and site layout, architectural quality, landscaping, vehicular access and car parking. Heights should be expressed in metres in the first instance and include reference to natural ground level. The Schedule should include an application requirement for a site analysis and urban context report to justify a departure from the preferred built form controls, similar to the Design and Development Overlay schedule for the Isle of Wight site and the Design and Development Overlay Schedule 11.

8.6 Post-exhibition changes
As noted in Chapter 1.4, Council proposed a series of post-exhibition changes. The substantive post-exhibition changes have been discussed and dealt with in the consideration of issues in various chapters in this Report. The issues that have not already been dealt with previously, most of which are drafting issues and corrections of errors, are addressed in
Appendix D, which includes a table providing a consolidated list of the proposed post-exhibition changes and the Panel’s recommendation in relation to each change.

8.7 Recommendations
The Panel recommends:

Changes to the exhibited version of Clause 21.08-5
Update the clause to read as a stand-alone policy, providing clearly articulated objectives and outcomes for the Activity Centre without reliance on references to the Plan.
Update the colours for the designation of different areas on Map 2 of Clause 21.08-5.

Changes to the text of the Design and Development Overlay Schedule 11
Provide precinct specific design objectives.
Amend the second set of dot points in Clause 2.0 to:
   a) Delete the first dot point and replace with:
      “An application that does not meet the built form requirements in Table 1 must be accompanied by a site analysis plan and a written urban context report documenting how the development will achieve the design objectives and outcomes of this schedule.”
   b) At the second dot point, specify all locations where continuous awnings are sought, and delete “except where awnings would interfere with the heritage fig tree on the corner of The Esplanade and Bass Avenue” from the first dash point.
   c) Amend the third dot point to clearly articulate what is intended.

Changes to the Table 1 in Design and Development Overlay Schedule 11
Express the preferred height in metres in the first instance.
Delete the first note and replace with:
   “Preferred maximum height is metres in the first instance, measured from natural ground level”
Delete the note with the Asterix.
Delete the note referring to the former Isle of Wight site.

Development Plan Overlay Schedule 26 (the former Isle of Wight site)
Replace the exhibited Development Plan Overlay Schedule 26 with a new Design and Development Overlay schedule that includes:
   a) Design objectives.
   b) Design features and outcomes, as relevant, such as massing and site layout, architectural quality, active frontages, vehicular access and car parking.
   c) Height expressed in metres in the first instance and include a reference to natural ground level.
d) The following requirement:

“An application that does not meet the built form requirements in this schedule must be accompanied by a site analysis plan and a written urban context report documenting how the development will achieve the design objectives and outcomes of this schedule.”

Development Plan Overlay Schedule 27 (the former Warley Hospital site)

Replace the exhibited Development Plan Overlay Schedule 27 with a new Design and Development Overlay schedule that includes:

a) Design objectives.

b) Design features and outcomes, as relevant, such as massing and site layout, architectural quality, landscaping, vehicular access and car parking.

c) Height expressed in metres in the first instance and include a reference to natural ground level.

d) The following requirement:

“An application that does not meet the built form requirements in this schedule must be accompanied by a site analysis plan and a written urban context report documenting how the development will achieve the design objectives and outcomes of this schedule.”

Post-exhibition changes

Make the further post-exhibition changes to the Amendment documentation outlined in Appendix D of this Report.
## Appendix A  Submitters to the Amendment

<table>
<thead>
<tr>
<th>No.</th>
<th>Submitter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Islander Caravan Park</td>
</tr>
<tr>
<td>2</td>
<td>National Trust of Australia (Victoria) - Bass Coast Branch</td>
</tr>
<tr>
<td>3</td>
<td>Ross Lloyd</td>
</tr>
<tr>
<td>4</td>
<td>Stephanie Dal Castello</td>
</tr>
<tr>
<td>5</td>
<td>Susan Barclay</td>
</tr>
<tr>
<td>6</td>
<td>Sue Saliba</td>
</tr>
<tr>
<td>7</td>
<td>Phil Wright</td>
</tr>
<tr>
<td>8</td>
<td>Linda Cuttriss</td>
</tr>
<tr>
<td>9</td>
<td>Morgan and Griffin on behalf of Con Alevras</td>
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<tr>
<td>10</td>
<td>Ken Hailey</td>
</tr>
<tr>
<td>11</td>
<td>Patricia Hunt</td>
</tr>
<tr>
<td>12</td>
<td>Fastnet Consulting on behalf of the owners of the Isle of Wight site</td>
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<tr>
<td>13</td>
<td>Carolyn and Geoff Mellor</td>
</tr>
<tr>
<td>14</td>
<td>Cowes Yacht Club</td>
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<td>15</td>
<td>Morgan Ward and Claire Sawatzky</td>
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<tr>
<td>16</td>
<td>Maurice Schinkel</td>
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<td>17</td>
<td>Robin Lick</td>
</tr>
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<td>St John’s Uniting Church</td>
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<td>Spiros Haldas</td>
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<td>20</td>
<td>Lorraine Hailey</td>
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<td>21</td>
<td>Anne Davie</td>
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<td>22</td>
<td>Margaret Hancock</td>
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<td>23</td>
<td>Chris Whyte</td>
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<td>24</td>
<td>Save our Beaches</td>
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<td>25</td>
<td>Daniel Hatch</td>
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<td>26</td>
<td>Bernie McComb</td>
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<td>27</td>
<td>David Heenan</td>
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<td>David and Heather Stewart</td>
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<td>29</td>
<td>Darrin Hoddinott</td>
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<td>30</td>
<td>Phillip Island Conservation Society</td>
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<tr>
<td>31</td>
<td>CLP Lawyers on behalf of Owners Corporation of 1 The Esplanade, Cowes</td>
</tr>
<tr>
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<td>Name</td>
</tr>
<tr>
<td>------</td>
<td>----------------------------------------------------------------------</td>
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<tr>
<td>32</td>
<td>Jim and Jill Brown</td>
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<td>33</td>
<td>Steller on behalf of purchasers of the Island Caravan Park</td>
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<td>34</td>
<td>Rae and Craig Hoath</td>
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<td>35</td>
<td>Barry and Beth Magann</td>
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<td>36</td>
<td>Annette and Roy Harding</td>
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<td>37</td>
<td>Stuart Horsburgh</td>
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## Appendix B  Parties to the Panel Hearing

<table>
<thead>
<tr>
<th>Submitter</th>
<th>Represented by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bass Coast Shire Council</td>
<td>Ms Kate MacDougall and Ms Jasmine Butler</td>
</tr>
<tr>
<td>National Trust Bass Coast Branch</td>
<td>Mr Greg Buchanan</td>
</tr>
<tr>
<td>Owners of the Isle of Wight site</td>
<td>Mr Stephen Bitmead, Fastnet Consulting</td>
</tr>
<tr>
<td>Maurice Schinkel</td>
<td></td>
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<tr>
<td>Patricia Hunt</td>
<td></td>
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<tr>
<td>The Waves Apartments Owners Corporation</td>
<td>Susan Barclay</td>
</tr>
<tr>
<td>Susan Barclay</td>
<td></td>
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<tr>
<td>Margaret Hancock</td>
<td></td>
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<tr>
<td>The Phillip Island Conservation Society</td>
<td>Margaret Hancock</td>
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<tr>
<td>Interest in the Islander Caravan Park</td>
<td>Mr Andrew Bromley, Steller</td>
</tr>
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</table>
### Appendix C  Document list

<table>
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<th>No.</th>
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<th>Description</th>
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<tr>
<td>1</td>
<td>12/11/18</td>
<td>Media release</td>
<td>Mr Schinkel</td>
</tr>
<tr>
<td>2</td>
<td>12/11/18</td>
<td>Council’s Part B submission</td>
<td>Ms MacDougall, Bass Coast Council</td>
</tr>
<tr>
<td>3</td>
<td>12/11/18</td>
<td>National Trust submission</td>
<td>Mr Buchanan</td>
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<tr>
<td>4</td>
<td>12/11/18</td>
<td>Suggested wording for requirement to exhibit a Development Plan</td>
<td>Mr Buchanan</td>
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<tr>
<td>5</td>
<td>13/11/18</td>
<td>Church of England ownership details</td>
<td>Ms Hancock</td>
</tr>
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<td>6</td>
<td>13/11/18</td>
<td>Isle of Wight submission</td>
<td>Mr Bitmead, Fastnet Consulting</td>
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<tr>
<td>7</td>
<td>13/11/18</td>
<td>Aerial photograph</td>
<td>Mr Bitmead</td>
</tr>
<tr>
<td>8</td>
<td>13/11/18</td>
<td>Aerial photograph with lot boundaries</td>
<td>Mr Bitmead</td>
</tr>
<tr>
<td>9</td>
<td>13/11/18</td>
<td>Plan of survey</td>
<td>Mr Bitmead</td>
</tr>
<tr>
<td>10</td>
<td>13/11/18</td>
<td>Extract from Council 2018/19 budget</td>
<td>Mr Schinkel</td>
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<tr>
<td>11</td>
<td>13/11/18</td>
<td>Submission</td>
<td>Mr Schinkel</td>
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<tr>
<td>12</td>
<td>13/11/18</td>
<td>Submission</td>
<td>Ms Hunt</td>
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<td>13</td>
<td>13/11/18</td>
<td>Waves Complex submission</td>
<td>Ms Barclay</td>
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<td>14</td>
<td>13/11/18</td>
<td>PowerPoint presentation</td>
<td>Ms Barclay</td>
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<td>13/11/18</td>
<td>Steller submission in relation to the Islander Caravan Park</td>
<td>Mr Bromley, Steller</td>
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<td>16</td>
<td>13/11/18</td>
<td>Aerial photograph</td>
<td>Mr Bromley</td>
</tr>
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<td>17</td>
<td>13/11/18</td>
<td>Post-exhibition notification letter sent by Council to owners and occupiers</td>
<td>Ms Butler, Bass Coast Council</td>
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<td>18</td>
<td>13/11/18</td>
<td>Existing and proposed zoning map</td>
<td>Ms Butler</td>
</tr>
<tr>
<td>19</td>
<td>13/11/18</td>
<td>Bundle of maps – pre VC110 heights, existing heights and Amendment C151</td>
<td>Ms Butler</td>
</tr>
<tr>
<td>20</td>
<td>14/11/18</td>
<td>Council’s right of reply (followed verbal submission provided at the hearing)</td>
<td>Ms Butler</td>
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</table>
### Appendix D  Consolidated recommendations regarding post-exhibition changes

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Post-exhibition change</th>
<th>Panel’s recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Clause 21.08 (Cowes)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deleted the statements:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protect areas of distinct and highly valued urban character from development that detracts from that character</td>
<td>- Reinstall statement</td>
<td>- Drafting error, reinstall statement</td>
</tr>
<tr>
<td>Retain and protect the existing Moreton Bay Fig on the Isle of Wight site</td>
<td>- Reinstall statement</td>
<td>- Agree, reinstall statement</td>
</tr>
<tr>
<td>Undertake a feasibility study to determine the requirements of facilitating a north-south link road as indicated in the Thompson Avenue Precinct Plan below</td>
<td>- Reinstall statement</td>
<td>- Delete statement (refer to Chapter 5.3 for reasons)</td>
</tr>
<tr>
<td><strong>Clause 21.08-5 – Cowes Activity Centre</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under the heading ‘Specific Implementation’, add:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Develop a Parking Precinct Plan for the Cowes Central Activity Area and preferred locations for higher density development</td>
<td>Amend to read: Develop a Parking Precinct Plan for the Cowes Activity Centre area and preferred locations for higher density development</td>
<td>Amend to read: Develop a Parking Precinct Plan for the Cowes Activity Centre area and other locations that are designated in Map 1 as preferred locations for higher density development</td>
</tr>
<tr>
<td><strong>Objective 5</strong></td>
<td></td>
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</tr>
<tr>
<td>Did not reference the Cowes Activity Centre Plan</td>
<td>Amend to read: To facilitate the reconfiguration of car parking areas within the Activity Centre in accordance with planned land uses, built form and activation objectives including those identified in the Cowes Activity Centre Plan.</td>
<td>The Panel does not agree that the Cowes Activity Centre Plan should be a reference document. As such, any identified car parking areas should be detailed explicitly</td>
</tr>
<tr>
<td>Strategies did not reference the Cowes Transit Centre and all day car park</td>
<td>Include a third dot point to read: Facilitate the development of the Cowes Transit Centre and all day car park</td>
<td>Agree</td>
</tr>
</tbody>
</table>
### Exhibited Post-exhibition change Panel’s recommendations

#### Maps of Clause 21.08-5

| Area north of the golf course shown as ‘minimal change’ area on Map 1 | Amend map 1 – allocate incremental change to area north of the golf course as per the existing Strategic Framework Plan | This change is beyond the scope of the Amendment and should be addressed as part of the planning scheme review |
| Excluded part of the golf course from coloured green on Map 1 | Amend map 1 – extend green colour to the area west of the golf course to Coughlan Road | This change is beyond the scope of the Amendment and should be addressed as part of the planning scheme review |
| Hollydene Court shown on Map 2 as part of ‘core commercial area’ | Amend map 2 – designate Hollydene Court as a ‘mixed use area’ | Retain as part of ‘core commercial area’ (refer to Chapter 3.3 for reasons) |
| Map 2 did not show the Future Recreation Hub and Cowes Tourism Precinct | Amend map 2 – reinstate the Future Recreation Hub and the Cowes Tourism Precinct | Mapping error, agree |
| ‘Potential Transport Hub’ shown on Map 2 | Amend map 2 – replace the designation with ‘Future Transit Hub and All-day Car Park’ | Description change, agree |

#### Hollydene Court

| Rezone land to General Residential Zone Schedule 1 | - Apply the Mixed Use Zone Schedule 2 | Do not agree – retain Commercial 1 Zone |
| - Include in the Schedule a maximum building height of 3 storeys and 11 metres |

| Did not apply the Design and Development Overlay Schedule 11 to the land | Apply Design and Development Overlay Schedule 11 | Agree - apply Design and Development Overlay Schedule 11 and include in Precinct 2 |

#### 1 Genesta Street

| Included in Design and Development Overlay Schedule 11 | Remove the property from Design and Development Overlay Schedule 11 | Mapping error, agree |

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Page 69 of 74
## Exhibited

### Design and Development Overlay Schedule 11

<table>
<thead>
<tr>
<th>Clause 2.0 requires the following: Development must be in accordance with Table 1 and Map 1, unless it can be demonstrated that parameters can be varied on the basis of sound urban design and/or landscape architecture grounds, as demonstrated in a context analysis report prepared by a suitably qualified expert</th>
<th>Amend to include the requirement for the preparation of a context analysis report as an application requirement for development proposals which can not meet the parameters of Table 1 and Map 1</th>
<th>Generally support. Refer to specific recommendations in Chapter 8.7</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Correct street names in mapping</td>
<td>Agree</td>
</tr>
<tr>
<td></td>
<td>- Findlay Street is incorrectly located</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Steele Street is excluded from the map</td>
<td></td>
</tr>
<tr>
<td>Clause 2.0 requires the following: Development must provide continuous awnings: - At its frontage to Thompson Avenue, between the Esplanade and Church Street, with the exclusion of the church and community centre sites at the intersection of Thompson Avenue and Chapel Street</td>
<td>Correct the reference to Chapel Street to read: Development must provide continuous awnings: At its frontage to Thompson Avenue, between the Esplanade and Church Street, with the exclusion of the church and community centre sites at the intersection of Thompson Avenue and <strong>Church Street</strong></td>
<td>Agree, correction of a labelling error. Refer to Chapter 8.7 for more detailed recommendations relating to this requirement</td>
</tr>
</tbody>
</table>
### Former Isle of Wight site
#### Development Plan Overlay Schedule 26

<table>
<thead>
<tr>
<th>Exhibited</th>
<th>Post-exhibition change</th>
<th>Panel’s recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Amend Table 1 to include an additional location known as I3 ‘Moreton Bay Fig Tree Protection Zone’ and include the text: – no buildings and works within the 15 metres TPZ</td>
<td>- Agree, but in a Design and Development Overlay schedule rather than a Development Plan Overlay schedule (refer to Chapter 5.1 for reasons)</td>
</tr>
<tr>
<td></td>
<td>- Label the map at page 3 as ‘Map 1’ and include a new area labelled ‘I3’ and show the 15 metre Tree Protection Zone for the Moreton Bay Fig</td>
<td></td>
</tr>
</tbody>
</table>

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Include an additional requirement in Table 1 to read:

Before any changes may be permitted within the Tree Protection Zone, a suitably qualified consulting arborist (minimum Australian Qualifications Framework (AQF) level 5) should undertake any investigations necessary to determine impacts to the tree both above and below ground. The responsible authority should use this information when determining whether or not to permit the works.

Delete from Clause 3.0 – Requirements for a development plan:

- An arborist’s report/statement providing recommendations for the protection and maintenance of the fig tree on the north eastern corner of the site

Agree with both proposed changes
<table>
<thead>
<tr>
<th>Exhibited</th>
<th>Post-exhibition change</th>
<th>Panel's recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 21.08 includes the following strategy: 4.2 Facilitate the redevelopment of the former Isle of Wight site (on the south western corner of The Esplanade and Bass Avenue) as a catalyst development focussed on tourism and mixed uses which contribute activity and architectural excellence to the Activity Centre</td>
<td>Duplicate requirement as an objective in Development Plan Overlay Schedule 26</td>
<td>Planning Practice Note 60 suggests avoidance of descriptive terms such as ‘catalyst development’. Include a design objective in the Design and Development Overlay Schedule for the Isle of Wight site that reads: To facilitate a landmark redevelopment with a high level of architectural excellence</td>
</tr>
<tr>
<td>Former Warley Hospital site</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Residential Zone Schedule 3</td>
<td>- Apply the Residential Growth Zone - Include height controls in the Schedule</td>
<td>Agree with both proposed changes (refer to Chapter 5.2 for reasons)</td>
</tr>
<tr>
<td>Development Plan Overlay Schedule 27</td>
<td>Amend the table so that the preferred maximum height for area ‘W1’ is 5 storeys and 17 metres</td>
<td>Agree, but in a schedule to the Design and Development Overlay (not the Development Plan Overlay). Refer to Chapter 5.2 for reasons</td>
</tr>
<tr>
<td>Clause 21.08 includes the following strategy: 4.3 Facilitate the redevelopment of the former Warley Hospital site as a large strategic site, with the opportunity to strengthen the Activity Centre through land use density, architectural excellence, and the location of land uses which benefit from access to the water and the core commercial area</td>
<td>Duplicate requirement as an objective in Development Plan Overlay Schedule 27</td>
<td>Do not agree – includes subjective references such as ‘strengthen activity centre’, and ‘uses that benefit from access to the water’. Include a design objective in the Design and Development Overlay Schedule for the former Warley Hospital site that reads: To facilitate a development with a high level of architectural excellence</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Correct the map to replace ‘Waverley Avenue’ with Warley Avenue</td>
<td>Agree, but the map should be included in a schedule to the Design and Development Overlay (not the Development Plan Overlay)</td>
</tr>
</tbody>
</table>
### Exhibited

<table>
<thead>
<tr>
<th>Clause 7.0 reads:</th>
<th>Post-exhibition change</th>
<th>Panel’s recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following decision guidelines apply to an application for a permit under Clause 32.08, in addition to those specified in Clause 32.08 and elsewhere in the scheme which must be considered as appropriate, by the responsible authority:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- whether the development provides an appropriate visual transition to residential properties in Schedule 1 to the General Residential Zone</td>
<td>Amend Clause 7.0 to read:</td>
<td>Agree, include as a decision guideline in the Design and Development Overlay Schedule</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2, 4, 6, 8, 10 and 12 Bass Avenue</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>54 Chapel Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part 1 The Esplanade (rear of the Waves apartment complex)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>89 Church Street (Coles car park)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vegetation Protection Overlay Schedule 2</td>
<td>Delete Vegetation Protection Overlay Schedule 2 from these properties</td>
<td>Agree (refer to Chapter 6.1 for reasons)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>224, 226, 228, 230 and 232 Settlement Road</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>26 Douglas Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Vegetation Protection Overlay Schedule 2</td>
<td>Apply the Vegetation Protection Overlay Schedule 2 to these properties</td>
<td>Council should undertake an arboricultural assessment to ascertain whether there is any vegetation on the properties that warrant protection and in turn the application of the Vegetation Protection Overlay</td>
</tr>
<tr>
<td>Exhibited</td>
<td>Post-exhibition change</td>
<td>Panel’s recommendations</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>2 Warley Avenue</td>
<td>Apply the General Residential Zone Schedule 2</td>
<td>Agree (refer to Chapter 3.5 for reasons)</td>
</tr>
<tr>
<td>18, 19, 20, 21 and 22 The Esplanade</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part 5 The Esplanade</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3, 6A, 7 and 7A Findlay Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 Steele Street</td>
<td>Apply the Residential Growth Zone</td>
<td></td>
</tr>
</tbody>
</table>