



**Bass Coast Planning Scheme**

**Amendment C151**

**Cowes Activity Centre Plan Implementation**

**Position Paper**

**August 2018**

**Bass Coast Shire Council**

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# **I. SUMMARY**

This Position Paper has been prepared to provide clarity regarding Council's current position on the form and content of Bass Coast Planning Scheme Amendment C151.

During the exhibition of the amendment Council received 31 submissions, comprised of feedback from affected property owners, community groups and businesses.

This Position Paper provides some context for the issues raised in the submissions, a response to the issues and where appropriate, recommendations for changes to Amendment C151.

# **2. POSITIVE FEEDBACK**

It is important to note that six of the 31 submissions provided some level of support for the Amendment.

Submission 2 states:

*"We believe the Activity Centre Plan is a positive initiative to make Cowes commercial area more compact and attractive. As the consultant report states, the town presently has no recognisable character and there is no consistency in building heights, setbacks, building styles and shop verandah treatments and so on."*

Submission 27 acknowledges the work undertaken and outlines support, stating:

*"Firstly, we acknowledge the work undertaken by the Shire to this stage of the planning process to implement the Cowes Plan which has been ongoing for close on ten years.*

*We have reviewed the Amendment documentation and generally support the broad objectives of urban consolidation for (the) Cowes."*

### 3. INTRODUCTION

Amendment C151 seeks to introduce the policy changes into the Bass Coast Planning Scheme which are required to encourage the planning aspirations of the *Cowes Activity Centre Plan 2015* (Cowes ACP).

Council resolved to commence Amendment C151 in August 2017.

As exhibited, the Amendment proposes to:

- Amend Clause 21.08 Moderate Growth Settlements to revise previous provisions pertaining to Cowes and introduce new provisions based on the Cowes Activity Centre Plan 2015
- Amend Clause 21.10 Reference Documents to include the Cowes Activity Centre Plan 2015 and the Phillip Island and San Remo Visitor Economy Strategy 2035 (Visitor Economy Strategy) as reference documents
- Make minor amendments to Schedule 1 to Clause 32.08 (General Residential Zone) to reflect the requirements of the Ministerial Direction on the Form and Content of Planning Schemes
- 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 applies the Schedule to the former Warley Hospital site
- Rezone various parcels of land to the Mixed Use Zone (Clause 32.04) and Commercial 1 Zone (Clause 34.01)
- Delete Schedule 1 to Clause 43.02 (Design and Development Overlay) from various parcels of land
- Delete Schedule 3 to Clause 43.02 (Design and Development Overlay)
- Amend Schedule 4 to Clause 43.02 (Design and Development Overlay), by deleting references to Cowes
- Introduce a new Schedule 11 to Clause 43.02 (Design and Development Overlay)
- Introduce new Schedules 26 and 27 to Clause 43.04 (Development Plan Overlay) and apply the Schedules to the former Isle of Wight and Warley Hospital sites respectively

The Amendment was placed on public exhibition between Thursday, 14 June 2018 and Friday, 27 July 2018. It attracted 31 submissions, of which five submissions have some level of support for various aspects of the proposal.

The issues raised in submissions are provided below.

## **4. ISSUES**

### **4.1. WARLEY HOSPITAL SITE PREFERRED HEIGHT**

#### **4.1.1. Issue**

The amendment proposes to apply the Development Plan Overlay Schedule 27 (DPO27) to land at the former Warley Hospital site in order to set preferred built form outcomes consistent with the intentions of the *Cowes Activity Centre Plan 2015*.

#### **4.1.2. Response**

The proposal would allow for areas identified as W1 to develop to seven storeys (or 23 metres, whichever is lesser) and areas identified as W2 to develop to three storeys (or 11 metres, whichever is lesser). The current planning controls set a maximum building height for a dwelling or residential building of 11 metres and three storeys, and allow for discretion when considering all other types of development.

Seventeen submissions argue that setting a preferred building height of seven storeys for the former Warley Hospital Site (land at 6 -12 Warley Avenue) would be inappropriate given the elevation of the site, its abuttal to low rise residential areas and the potential for it to dominate the landscape.

Five submissions have stated that encouraging five storeys would be a more appropriate development response. Submission 29 from the landowner of 6-12 Warley Avenue has also stated that a change to five storeys would be appropriate.

#### **4.1.3. Recommendations**

It is our recommendation that the preferred maximum height for W1 be reduced to five storeys, and no change be made to W2.

When the *Cowes Activity Centre Plan 2015* was drafted, dwelling and residential building heights in the General Residential Zone were discretionary pursuant Clause 55 of the Bass Coast Planning Scheme. Amendment VC110 (gazetted March 2017) set maximum building heights for dwellings and residential buildings in the General Residential Zone of 11 metres and 3 storeys. There are no maximum building heights for any other types of development.

Regardless of this change in policy, it is still the intent of the *Cowes Activity Centre Plan 2015* to increase building heights within the area for the following reasons:

- To attract more people to live and visit Cowes
- To provide an incentive to the development community to deliver higher quality development
- To introduce a more consistent built form in the area
- To allow for the capitalisation of views and vistas to the foreshore and ocean

## **4.2. CAR PARKING IMPACTS ASSOCIATED WITH DEVELOPMENT OF THE WARLEY HOSPITAL SITE**

### **4.2.1. Issue**

Use of the St John's Uniting Church (next door to the former Warley Hospital site) for car parking, particularly during busy times, was raised as an issue, with the submitter concerned that development of the former Warley Hospital site would exacerbate existing conditions. The submission requests that "at a minimum we would expect two parking spaces were allowed per unit of residence".

### **4.2.2. Response**

Any development of the former Warley Hospital site will be subject to the provisions of the Bass Coast Planning Scheme and will be required to meet car parking requirements accordingly.

### **4.2.3. Recommendations**

No changes recommended.

## **4.3. ISLE OF WIGHT SITE PREFERRED HEIGHT**

### **4.3.1. Issue**

The proposed Development Plan Overlay Schedule 26 *Former Isle of Wight Site* (DPO26) identifies a preferred built form height of seven storeys fronting The Esplanade (I1) and four storeys for the lots which front Bass Avenue, (I2), Figure 1.

The current provisions of the Design and Development Overlay Schedule 3 - *Cowes Foreshore Precinct* set a maximum building height of seven storeys.

There are concerns regarding the preferred max height for the former Isle of Wight site, particularly regarding character, aesthetics and the impact on the streetscape, precedence for surrounding areas and also traffic impacts.

There has also been a submission from the landowner seeking an extension of the area for which seven storeys is encouraged (an extension of the I1 area).

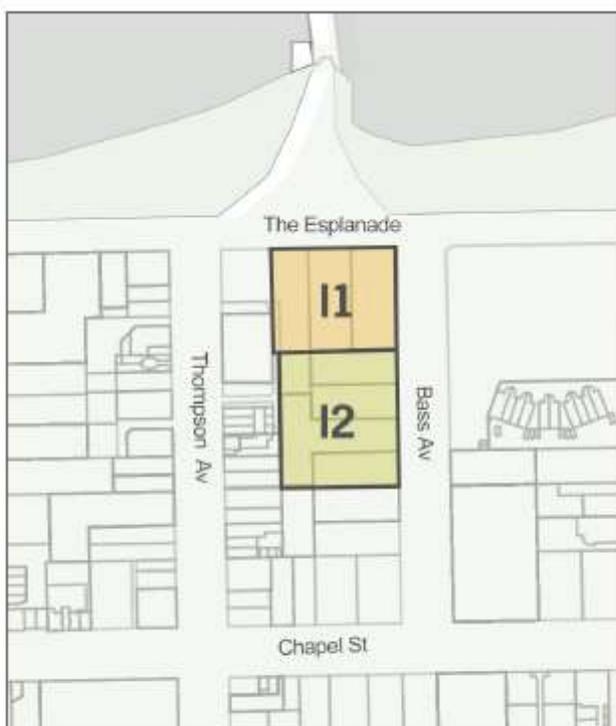


Figure 1: Areas subject to built form controls as proposed by DPO26

#### **4.3.2. Response**

The current planning controls (specifically, the Design and Development Overlay Schedule 3) allow for a maximum of seven storey development across the entire Isle of Wight site. So effectively, Amendment C151 seeks to reduce this provision in the area identified for three storeys (I2). The preferred maximum height of seven storeys and three storeys outlined in the proposed DPO26 are derived from the Cowes ACP, which took into account the height of street trees to determine an appropriate preferred built form outcome for the site.

Previous development approvals (planning permit 021186a, now expired) included seven storey development of the site, which was supported by the Victorian Civil and Administrative Tribunal (VCAT) as an appropriate design outcome for the landmark site.

In response to the request to increase the preferred height, this is not the intent of the Cowes ACP which seeks to reinforce the site as a land mark site within the Cowes township. Further, such a change at this point in the process would be transformation of the amendment and would require re-exhibition because it increases the scale of development.

#### **4.3.3. Recommendations**

No changes recommended.

## **4.4. PROTECTION OF MORETON BAY FIG TREE**

### **4.4.1. Issue**

The issue is whether Amendment C151 provides an appropriate response and level of protection for the Moreton Bay Fig tree through the proposed DPO26.



*Figure 2: Moreton Bay Fig tree on the north-east corner of the Isle of Wight site.*

### **4.4.2. Response**

The Moreton Bay Fig tree is not currently protected through a Vegetation Protection Overlay (VPO) or a Heritage Overlay (HO). It is on the National Trust register which does not hold any statutory weight.

The DPO26 outlines a requirement for an arborist report to provide recommendations for the protection and maintenance of the tree as a requirement of a Development Plan application.

However the DPO26 also sets out a preferred maximum street setback of 4m from Bass Avenue. In the absence of an arborists report at this stage, it is difficult to determine whether the maximum 4m setback to Bass Avenue will be problematic to achieve. As can be seen in Figure 3, the tree extends well into the site.

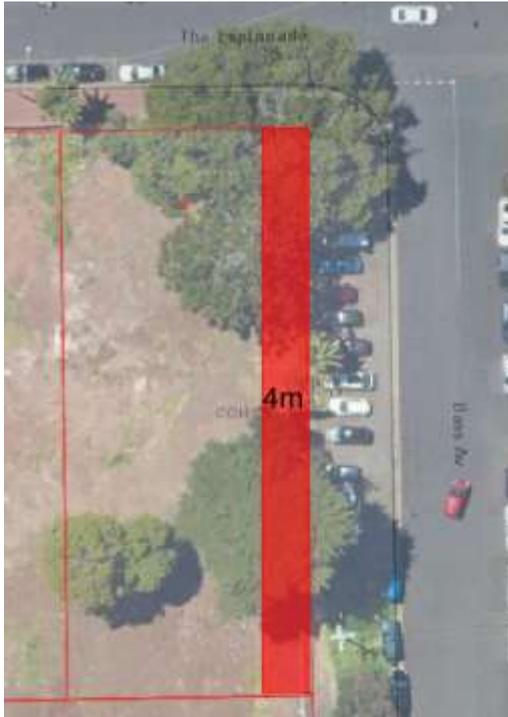


Figure 3: Isle of Wight site showing trees and 4m setback area.

#### **4.4.3. Recommendations**

It is recommended that Council obtain an independent arborist report to determine exactly what would be required in terms of a tree protection zone for the tree.

This can then be used to develop a more rigorous response to protect the tree in the proposed DPO26 and presented as Council's position at the independent planning panel.

#### **4.5. REMOVAL OF VEGETATION PROTECTION OVERLAY FROM SITE**

*This matter was not raised by any submissions, but has been identified during the process.*

##### **4.5.1. Issue**

The removal of the Vegetation Protection Overlay Schedule 2 (VPO2) from the Former Isle of Wight site was not included as part of Amendment C151.

##### **4.5.2. Response**

The intent of the developing the two Schedules to the Development Plan Overlay was to consolidate the superfluous planning controls affecting the Former Isle of Wight and Former Warley Hospital Sites.

The VPO2 currently applies to the former Isle of Wight site despite the DPO26 being drafted to include provisions for vegetation protection.

Furthermore, the VPO2 is not generally applied to Mixed Use areas throughout Cowes due to the intent of the zone to encourage a higher density of development.

### **4.5.3. Recommendations**

It is recommended that Council updates the Amendment C151 documents to remove the VPO2 from the Isle of Wight site.

## **4.6. USE OF THE DEVELOPMENT PLAN OVERLAY FOR KEY REDEVELOPMENT SITES**

### **4.6.1. Issue**

There is concern that the introduction of the Development Plan Overlay (DPO) for the two 'key redevelopment sites' (the former Isle of Wight and former Warley Hospital sites) will remove the community's ability to have their say on development outcomes.

There is a perception that this would allow development applications to bypass normal planning procedures associated with a planning permit application – public advertising and VCAT review for third parties.

This matter was raised in eight submissions, and also attracted a great deal of media and community interest during the exhibition of Amendment C151.

### **4.6.2. Response**

Both the former Isle of Wight and former Warley Hospital sites have been identified in the Cowes ACP as 'key redevelopment sites.' Both have a long history of vacancy and there are no existing approvals or current applications for redevelopment of the sites.

Both sites are currently subject to multiple planning controls (Table 1). Some design objectives for the former Isle of Wight site are included in the Municipal Strategic Statement (MSS) of the Bass Coast Planning Scheme. For Council, developers and the community, this can be confusing and does not encourage redevelopment of these sites.

The proposed Development Plan Overlays (DPO's) are essentially a consolidation of the two current Design Development Overlays and the Vegetation Protection Overlay. They are intended to achieve improved and consistent built form outcomes consistent with the objectives of the Cowes Activity Centre Plan.

The purpose of the proposed Development Plan Overlay is to ensure the sites are planned and developed in a holistic manner. This will ensure the sites are utilised and designed to their full potential.

*Table 1: Existing and proposed planning controls*

<b>Site</b>	<b>Planning controls</b>	<b>Cowes ACP proposes:</b>
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Isle of Wight	<p>Mixed Use Zone</p> <p>Design and Development Overlay Schedule 3 – Cowes foreshore precinct</p> <p>Vegetation Protection Overlay Schedule 2 – Phillip Island</p> <p>Site objectives included in the MSS</p>	<p>Mixed Use Zone</p> <p>Development Plan Overlay Schedule 26 – Former Isle of Wight site</p>
Warley Hospital	<p>General Residential Zone</p> <p>Design and Development Overlay Schedule 1- Residential areas near the coast</p> <p>Design and Development Overlay Schedule 3 – Cowes foreshore precinct</p> <p>Objectives for Warley Avenue included in the MSS</p>	<p>General Residential Zone, Schedule 3</p> <p>Development Plan Overlay Schedule 27 – Former Warley Hospital site</p>

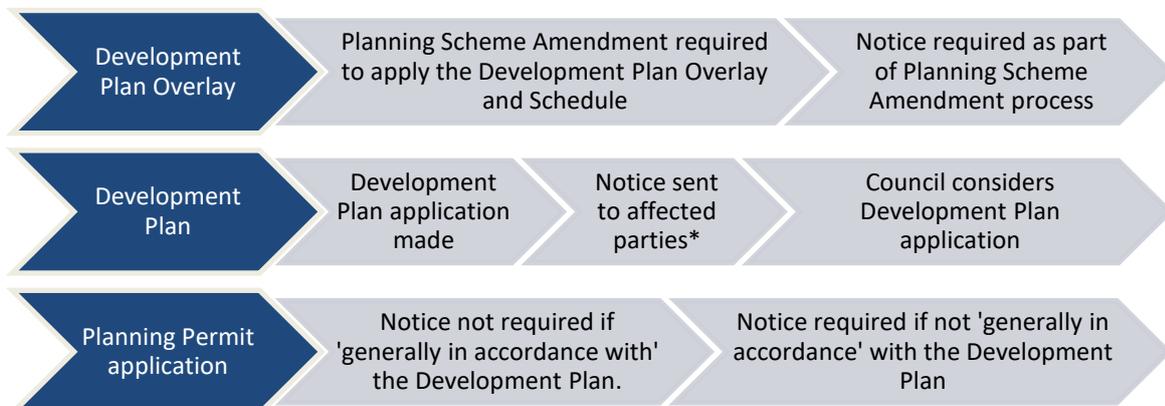
The DPO’s were developed through extensive consultation undertaken for the Cowes ACP in late 2014 and early 2015. The Planning Scheme Amendment process allows for major issues to be considered, such as the proposed preferred built form and provides a level of certainty to the community about how the site can be developed before detailed design work is undertaken.

Should the proposed DPO’s be implemented through C151, there will be a further opportunity for community consultation when Development Plan applications are made for the two sites.

*Approvals process under the DPO*

Generally, a planning permit for use and development of a site with a DPO can only be applied for once a Development Plan has been approved (there are some exceptions for matters which wouldn’t compromise long-term use and development of the site).

The process is as follows:



*Figure 4: Planning approvals process when a Development Plan Overlay is applied*

Applying DPO's to the Isle of Wight and Warley Hospital sites in Cowes, as proposed by C151, would introduce an additional approval process through a Development Plan application, which is not required under the current planning controls.

Once a Development Plan is approved (which can only be decided upon by Council), planning permits which are 'generally in accordance with' an approved Development Plan are exempt from notice requirements. This is because the planning scheme amendment process of introducing a DPO, as well as the subsequent Development Plan application process, are both opportunities for community input and for key matters to be resolved.

In regard to third party interests, the DPO provides a better opportunity to resolve big picture issues than the standard planning permit process. The provisions of the DPO26 and the detailed 'requirements for a development plan' provide some certainty as to the form of proposed development that can be expected in a Development Plan application.

#### **4.6.3. Recommendations**

No changes recommended.

### **4.7. THE WAVES COMPLEX PROPOSED REZONING TO MIXED USE ZONE**

#### **4.7.1. Issue**

The land on the corner of Steele Street and the Esplanade is currently in two zones. The northern portion of the property is in the Mixed Use Zone, and the southern portion of the property is in the General Residential Zone 1. Amendment C151 seeks to extend the Mixed Use Zoning across the entire property.

There is concern that the proposed rezoning will:

- Spoil the amenity of the street as a result of additional opportunities being made available for businesses or shops on the eastern end of the Esplanade.
- Contribute to parking issues as a result of allowing more commercial activities.

#### **4.7.2. Response**

The amendment provides an opportunity to tidy up the anomaly in the zoning of the site. A small range of commercial uses are already available under the existing general residential zoning of the site. Any application to use the site for a commercial use would be assessed on its merits.

In response to potential parking issues, there is a statutory requirement under the Bass Coast Planning Scheme to provide a certain number of car parking spaces when considering introducing a new land use to a property (the exact number of spaces is dependent on the land use proposed). While the amendment would facilitate more commercial activities to take place on the land and potentially contribute to a higher demand for parking, this would be addressed at planning permit stage.

#### **4.7.3. Recommendations**

No changes recommended.

### **4.8. HOLLYDENE COURT PROPOSED REZONING TO GENERAL RESIDENTIAL ZONE**

#### **4.8.1. Issue**

The amendment proposes to change the existing zoning of Hollydene Court from Commercial I Zone to General Residential Zone I in order to:

- Reflect the existing residential land use and development pattern; and
- Consolidate the commercial core of Cowes, in accordance with the objectives of the *Cowes Activity Centre Plan 2015*.

There is concern amongst submitters that the rezoning would have a negative economic impact for the following reasons:

- Properties in Hollydene Court were purchased with an understanding of the opportunities for land use and development available under the Commercial I Zoning.
- The proposed General Residential Zoning would remove commercial development options.
- The proposed General Residential Zoning would devalue property.
- Rezoning would be contrary to the Economics Report provided as an appended to the *Cowes Activity Centre Plan 2015* which suggests that the area between Church Street and Settlement Road will be required to host a sizeable retail footprint.

Concern has also been raised that rezoning the land to General Residential Zone I would impact on the future development potential of the particular properties due to garden area, boundary construction and height limitations which do not exist under the existing Commercial I Zone.

#### **4.8.2. Response**

The *Cowes Activity Centre Plan 2015* sets out to consolidate the commercial core of Cowes, and more generally, Amendment C151 provides an opportunity to ensure that the existing land use and development pattern is reflected in the zoning.

It would not be appropriate to leave the land as Commercial I Zone given the existing pattern of residential development and the potential for conflicting land uses which could arise in the Commercial Zone, and what we want to achieve in terms of consolidation with Cowes ACP.

However, the introduction of General Residential Zoning would imply that the land is residential and suitable for such a use, not acknowledging the siting of a service station in close proximity or existing businesses within the court (albeit low-scale).

The Mixed Use Zone would offer an opportunity to retain a small scale commercial nature in the Court whilst ensuring that the impacts on adjoining residential properties are considered through the planning permit process.

### 4.8.3. Recommendations

It is recommended that Amended CI5I be updated to rezone the Hollydene Court area to a Mixed Use Zone with a maximum height scheduled in for three storeys (which reflects the current height provisions). The DDO11 should also be extended to reflect the change.

## 4.9. ISLANDER CARAVAN PARK - REQUESTED EXTENSION OF THE COMMERCIAL ZONE

### 4.9.1. Issue

The land at 137-143 Thompson Avenue, Cowes, is currently in two zones (Figure 5 – property shown in red). The front portion of the property is Commercial I Zone and the rear of the property is General Residential Zone. A submission from the landowner has requested that Council extend the Commercial I Zone a further 50 metres to the east.

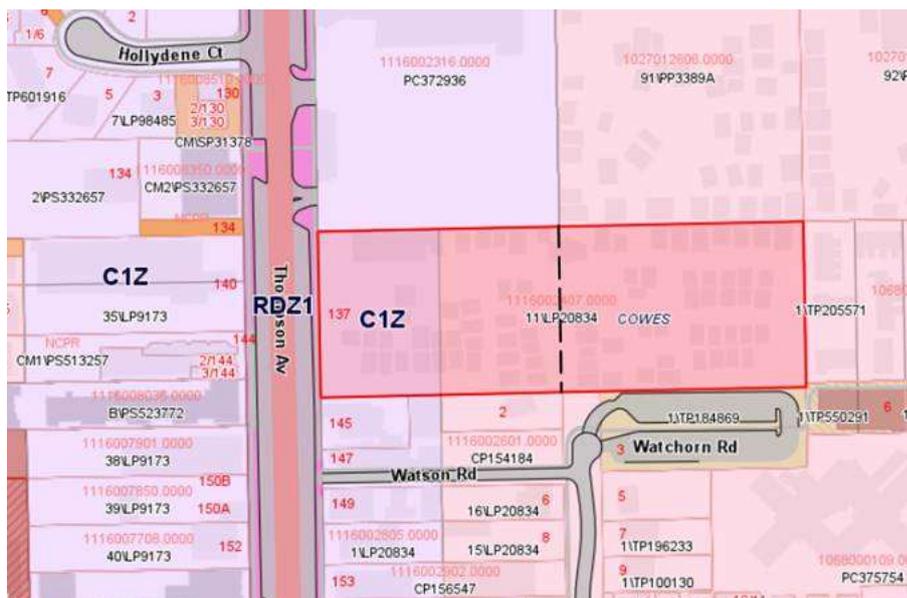


Figure 5: Requested extension of the Commercial I Zone (purple – Commercial I Zone, pink – General Residential Zone, black dashed line – requested extension of the Commercial I Zone)

#### 4.9.2. Response

The front of the property has been affected by two zones for an extended period of time and has previously been considered by Council through Amendment C88, which was approved in August 2010. Prior to Amendment C88, the land was already affected by two zones, being the Mixed Use Zone and the previous Residential I Zone (now the General Residential Zone). Amendment C88 rezoned the Mixed Use Zone area to the Business I Zone (now the Commercial I Zone) – Figure 6.

It is understood that the land was rezoned in this manner, with the two different zones applied, in order to encourage subdivision of 137-147 Thompson Avenue in line with properties to the south which front Thompson Avenue - Figure 6.

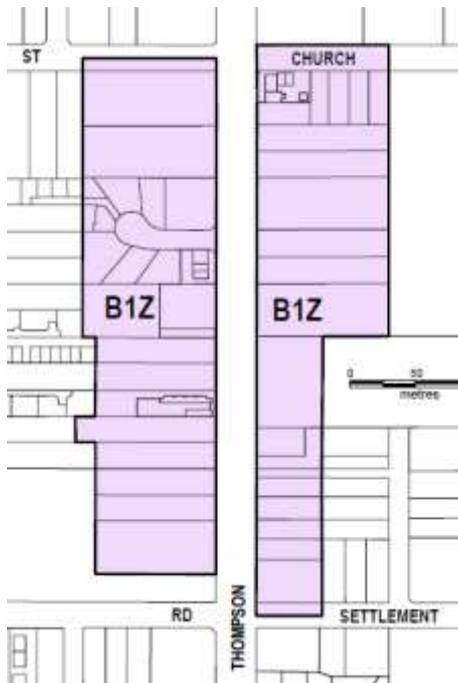


Figure 6: Application of the Business I Zone (now Commercial I Zone) as implemented by Amendment C88

Since this time, the landowner has obtained a planning permit to subdivide the property in line with the property boundary of the land to the north and with the areas requested to be rezoned to the Commercial I Zone (planning permit I10437). The permit was not acted upon and has since lapsed (but is within a six month grace period that is afforded to extension of time requests for planning permits). The Officers Report which approves planning permit I10437 does not make mention of the request to extend the Commercial I Zone, concluding that the subdivision could be permitted despite the creation of a lot with two zones. The report states:

*“The subject land falls within two zones being the Business I and Residential I Zones. The proposed subdivision occurs through the residentially zoned portion. At this stage, it is proposed to keep the existing use remaining, however the subdivision is required in order for the current owners to dispose of Lot 1.*

*Future uses (and subsequent development) of either allotment, separate from the current use, would require further planning consideration.”*

The requested extension of the Commercial I Zone does not align with the intent of the Cowes ACP, which seeks to consolidate the town centre. The request would also be likely to have amenity impacts on surrounding landowners which require further consideration, in particular, the residential areas to the south – Figure 5.

No commercial land supply evidence in support of extending the Commercial I Zone has been provided in support of the request.

Given that this matter has not previously formed part of Amendment C151, the proposed extension of the commercial areas has not been placed on public exhibition and would present a significant change to the use and development provisions of the land, the request is not supported.

#### **4.9.3. Recommendation**

No changes recommended.

### **4.10. CURRENT USE OF THE COWES ACP AND THE VISITOR ECONOMY STRATEGY PRIOR TO BEING PUT INTO THE PLANNING SCHEME**

#### **4.10.1. Issue**

The use of strategic documents for Council decisions prior to implementation into the planning scheme was raised as an issue.

#### **4.10.2. Response**

The Cowes ACP and Phillip Island and San Remo Visitor Economy Strategy are Council adopted documents, they do not need to be in the planning scheme to be Council's position on matters.

#### **4.10.3. Recommendations**

No changes recommended.

## **4.11. REFERENCES TO THE CAR FERRY IN REFERENCE DOCUMENTS**

### **4.11.1. Issue**

The Cowes ACP and the Visitor Economy Strategy refer to the proposed car ferry which is currently under consideration by Council and State Government. This has been raised as an issue in a number of submissions with fears that their inclusion in the planning scheme will influence the outcomes of current investigations.

### **4.11.2. Response**

The role of Reference Documents in planning schemes is to provide background information to assist in understanding the context within which a particular policy or provision has been developed. The Cowes ACP and Visitor Economy Strategy documents support the proposed rezonings and DPO's, which is why Amendment C151 proposes to introduce them as Reference Documents.

Reference Documents hold little weight when it comes to decision making in the statutory planning process, and no weight where there is no corresponding policy. There is no corresponding policy related to the car ferry being introduced by Amendment C151.

### **4.11.3. Recommendation**

No changes recommended.