

**From Christine Ferguson to Penny Hawe on 11 November 2025 at 12.46pm**

Hello Penny,

To close this one off.

We have now received technical advice in relation the question posed by the Friends of Lorne about the opportunity to retain part of the Coop under Clause 63 Existing Uses. The advice is as follows:

*For Clause 63 Existing Uses (inclusive of Clauses 63.01-63.12) to be relevant to the site, an existing use right must be established.*

*This requires proof of a minimum 15 years of continuous use and during this period, does not cease for more than 2 years or for a seasonal use, does not cease for 2 years in succession.*

We understand that the Lorne Historical Society was operating out of the co-op building since 2019 (less than 15 years) and before that the seafood restaurant (operated for more than 15 years but has been closed for more than 2 years).

Due to the time periods, these previous activities do not qualify for existing use rights.

Regarding the specific reference to Clause 63.10, this Clause is for damaged or destroyed buildings or works. It states:

*That if 50% or more of the gross floor area of a building is damaged or destroyed so that the use cannot continue, the land must then be used in accordance with the Planning Scheme.*

Eg. retaining more than 50% of a building could allow an existing use right to continue, but as discussed above, an existing use right for the previous restaurant or exhibition space is not able to be established.

Importantly there is also a range of legislation that the project must respond to, not just the Planning Scheme.

Most relevant to this query is the Marine and Coastal Act and Policy which requires:

- *Buildings (new or modified/renovated) to be as small as possible to enable efficient use of Coastal Crown Land.*
- *Buildings and works to respond to coastal hazards.*

Whilst there is no existing use right for the co-op building, even if there was it would not necessarily allow a larger building footprint given the legislative requirements.

To summarise:

1. Existing Use Rights Requirements are Not Met:
  - Requires 15+ years of continuous use with no more than 2-year cessation
  - Lorne Historical Society: Operating at the site since 2019 (insufficient duration)

- Previous seafood restaurant: Operated 15+ years but closed for more than 2 years (too long a gap)
- Neither qualifies for existing use rights
- 2. Clause 63.10 Explanation:
  - Applies to damaged/destroyed buildings
  - If 50%+ of building is damaged, site must comply with current Planning Scheme
  - Retaining 50%+ could potentially preserve existing use rights, but this is moot since no existing use right was established
- 3. Additional Legislative Constraints:
  - Marine and Coastal Act and Policy also applies
  - Requires buildings on Coastal Crown Land to be as small as possible
  - Buildings must respond to coastal hazards, ie. be built in locations outside the coastal erosion and inundation zones

**Conclusion:**

No existing use rights exist for the site, and even if they could be established, other legislation would still restrict building size and scope.

We are confident that what is proposed for the site is respectful to the historical section of the Coop and will deliver great new facilities and experiences for visitors to Point Grey.

And ultimately, be a project that can obtain planning approval and be delivered next year - something I don't need to tell you is something that has been far too long in the making for Lorne.

I hope this is of assistance to you and your members.