



Town Planning Evidence Statement

Amendment C286morn to the Mornington Peninsula Planning Scheme
instructed by Russell Kennedy for Mornington Peninsula Shire Council

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INTRODUCTION

- 1 My name is John Glossop and I am the Director of Glossop Town Planning.
- 2 I received instructions from Russell Kennedy acting on behalf of the Mornington Peninsula Shire Council (Council) to prepare a statement of planning evidence in relation to Amendment C286morn (the Amendment) to the Mornington Peninsula Planning Scheme (the Planning Scheme) for the upcoming Panel Hearing.
- 3 A copy of my instructions is attached at **Appendix A**.
- 4 The Amendment concerns the Ocean Beach Road Commercial Precinct in Sorrento (the Commercial Precinct) and seeks to implement the *Ocean Beach Road Sorrento Built Form Review (May 2024)* (the Built Form Review). The Built Form Review is proposed to be implemented by way of an amended Design and Development Overlay – Schedule 28 (Ocean Beach Road Commercial Precinct) (DDO28). My office collaborated in the preparation of the Built Form Review and DDO28, along with the Council and Design Urban Pty Ltd.
- 5 My involvement in this matter commenced in March 2023 when I was asked to undertake a peer review of an earlier version of Amendment C286morn (the first exhibited version). At that time, the Amendment was based on the *Ocean Beach Road Sorrento Built Form Review (November 2021)*, prepared by Design Urban Pty Ltd. This material (including a previous version of DDO28) was exhibited between 28 July 2022 and 24 October 2022¹.
- 6 Amendment C262pt2 ran concurrently with Amendment c286morn. That amendment sought to apply Heritage Overlays to new individual heritage places and six heritage precincts in Portsea and Sorrento. In particular Amendment C262pt2 sought to apply a Heritage Overlay (HO501) to cover a significant portion of the Commercial Precinct (i.e. a large portion of the area subject to the Amendment). The first exhibited version of Amendment C286morn was predicated on the assumption that almost all of the land within the Precinct had heritage value.

¹ I understand that 73 submissions were received to this amendment.






Ultimately, the extent of heritage controls proposed by Amendment C262mornpt2 was significantly reduced from this original proposed extent and even within its final application, a number of buildings were found to have no heritage value.

- 7 Relevantly, Amendment C262pt2 changed the planning context for the Commercial Precinct. Partly due to this outcome of the heritage amendment, I concluded that the first exhibited Amendment was not strategically justified. I also felt that there were other notable local and environmental features, which should inform built form outcomes within the Precinct, and that these were not adequately explored in the background material. My two Memorandums of Preliminary Advice are contained in **Appendix E**.
- 8 Following that advice, the Council engaged me (in collaboration with Design Urban Pty Ltd) to help it to resolve these matters. That engagement ultimately culminated in the current Built Form Review and the second exhibited version DDO28, which were exhibited between 25 July 2024 and 6 September 2024. My evidence is based on this version of the Amendment, although I also refer to the version of DDO28 which was adopted by Council at its meeting on 25 February 2025 where relevant.
- 9 The exhibited Built Form Review was principally authored by my office² but also contains input of Council planning staff (both in text and ideas) and the intellectual input of Design Urban Pty Ltd. It is fair to say that my office relied on the urban design expertise of Design Urban Pty Ltd as that is a skill that my firm does not specialise in. To that extent, the report does not reflect 'my opinion' but I was certainly professionally comfortable to have my firm's logo displayed in the report's inside front cover.
- 10 In preparing this statement I have:
 - Inspected the site and its environs several times, most recently on 13 April 2025.
 - Reviewed a brief of documents as itemised in the Index to Brief of Materials, which form part of my instructions.

² I was assisted by Edwina Laidlaw, a Senior Associate of my firm, in its preparation.



- 
- Considered the Mornington Peninsula Planning Scheme (the Planning Scheme) and relevant incorporated and background documents (**refer Appendix D**).
 - Considered relevant Practice Notes and Ministerial Directions.

11 My opinion on the Amendment is in Section 2 of my statement and my conclusion at Section 3 summarises my opinion.





PLANNING OPINION


What is the background to this amendment?

- 12 An interim version of DDO28 has been in place for some time.
- 13 Relevantly, interim DDO28 was included in the planning scheme before both versions of the Built Form Review were prepared. The parameters of the current interim DDO28 were based on *Ocean Beach Road Commercial Precinct Sorrento Heritage Policy – September 2015 – HLCD Pty Ltd* (the Heritage Policy).
- 14 The Heritage Policy, and subsequently interim DDO28, assumed that the entire Commercial Precinct had heritage significance. The Council was ultimately unable to substantiate its preferred extent of heritage controls for the precinct. This outcome removed part of the strategic justification for the first exhibited version of DDO28 and necessitated a new review.
- 15 Before turning to the factors which underpin the proposed DDO28 which is the subject to the Amendment, the other background matter to explain is Amendment C204. Amendment C204 originally sought to impose a permanent (mandatory) DDO28 to the Commercial Precinct, which effectively matched the interim DDO28. The Planning Panel considering Amendment C204 recommended (among other things) that the proposed mandatory controls be replaced with discretionary controls because it was considered that the mandatory controls were not strategically justified. At that time (i.e. before Amendment C262pt2), the strategic basis for the application of mandatory controls was principally heritage related.
- 16 The findings of the Panels in Amendment C204 and C262pt2 led Council to undertake a broader urban design and town planning review of the Commercial Precinct, and this work now underpins the proposed controls.

What does this amendment seek to do?

- 17 The Commercial Precinct comprises the main shopping area in the township of Sorrento, as well as a discrete ‘gateway’ parcel of land located at the bend in Point Nepean Road (at 3293-3295 Point Nepean Road). The Precinct is included in the Commercial 1 Zone (C1Z) and is





mostly developed with commercial activity (mostly in the form of shops and food and drinks premises) at ground level and sometimes residential or office uses above.

- 18 The planning for the Commercial Precinct has been in flux some time, with an interim version of DDO28 first applied by way of Amendment C203 on 15 December 2016. Interim DDO28 was applied by the then Minister for Planning who exempted himself from the usual notice requirements of Section 20(4) of the *Planning and Environment Act 1987*. Consequently, interim DDO28 was not subject to public review or an independent panel process.
- 19 As is so often the case in activity centres, the interim control was applied while the detailed strategic work necessary to establish a permanent control was completed. DDO28 has been extended a number of times due to the influence of other town planning changes³.
- 20 The Amendment seeks to capitalise on the qualities and character of the Commercial Precinct while providing built form certainty for landowners and the community regarding development expectations. This approach is reflected through the application of discretionary and mandatory building height and setback controls within the overlay, complemented by the application of modest building heights suitable for a lower order activity centre context. These controls are justified by the physical and strategic context of the Sorrento activity centre, which will be discussed in detail below.
- 21 Proposed DDO28 introduces changes to the interim DDO28, including adjustments to its structure, objectives and built form parameters. The new control permits larger buildings by increasing potential building heights from 11m to 12m (in most cases) and reducing upper level setbacks from 8m to 4m. These modifications are based on a thorough physical and policy review and detailed built form modelling.

³ Amendment C264morn, C268morn, C242morn, C299morn, C305morn and C310morn



What is the strategic context of the Commercial Precinct?

22 Sorrento is located at the western end of the Mornington Peninsula and is around 100km from Melbourne's Central Business District. While it has a small, permanent population, it is perhaps more well known as a popular holiday / tourism destination.

23 The Mornington Peninsula is an environmentally sensitive location. In July 2014, the Victorian Government prepared and approved a Localised Planning Statement (LPS)⁴. The LPS identifies the Peninsula as one of Melbourne's greatest assets; the character and role of which is sought to be protected. Under the sub-heading 'The role and value of the Mornington Peninsula to the State of Victoria', it says:

The Mornington Peninsula will be planned as an area of special character and importance with a role clearly distinct from and complementary to metropolitan Melbourne and designated growth areas.

The Mornington Peninsula is one of Melbourne's greatest assets, characterised by contained townships, a substantial and diverse local economy, and areas of national and international conservation significance. The Mornington Peninsula is critical to the future liveability, sustainability and prosperity of the wider metropolitan region.

As an area near to, but with a role distinct from, the growing metropolitan area there are ever increasing pressures and demands placed on the Mornington Peninsula. For this reason it is necessary to put in place clear policy directions for the long term benefit of both local communities and the wider Melbourne population⁵.

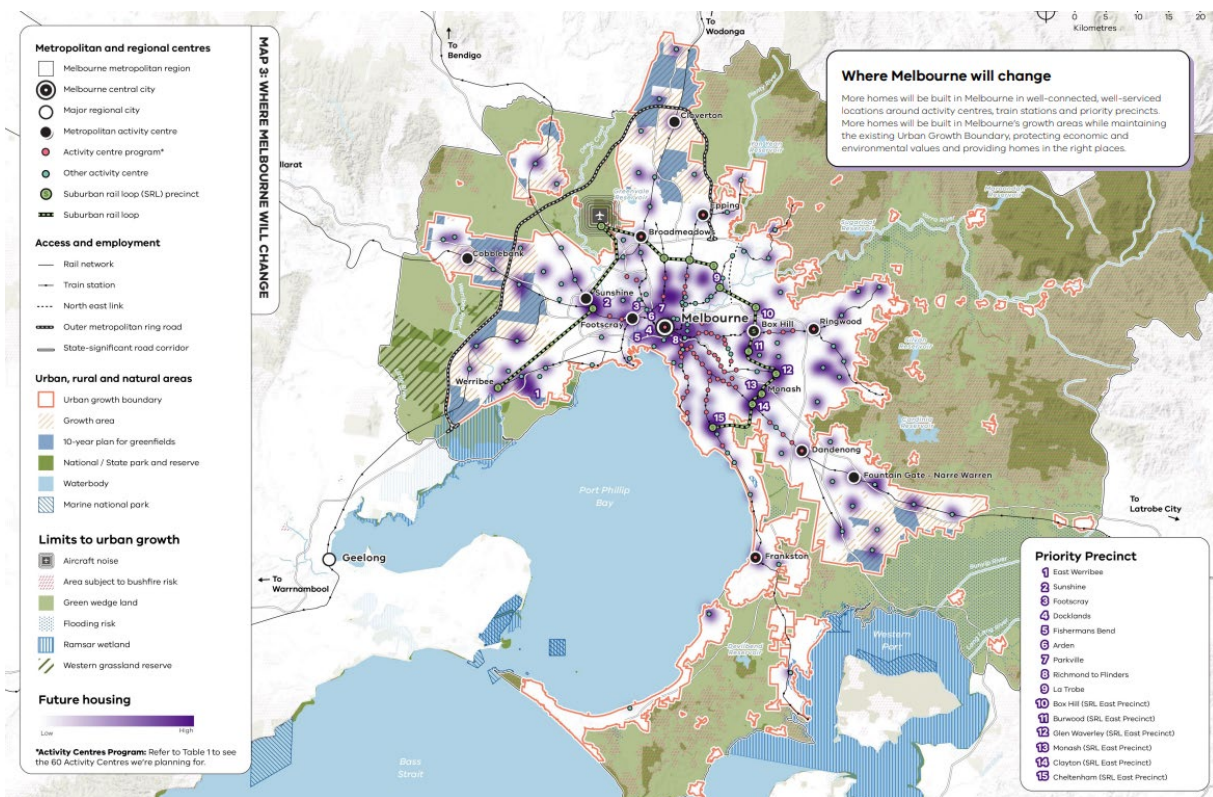
24 The LPS establishes that the townships within the Peninsula are expected to accommodate only low to moderate growth, with smaller towns and villages accommodating 'very limited' further development. Strategies within the LPS seek to establish a strong and consistent policy framework to manage development, including through 'the use of mandatory controls and

⁴ https://www.planning.vic.gov.au/_data/assets/pdf_file/0025/635236/Mornington-Peninsula-Localised-Planning-Statement.pdf

⁵ Page 1.

standards where necessary' to manage the particular local pressures on the Peninsula's landscapes, coasts, towns and villages⁶.

25 This strategic direction is reflected in Plan for Victoria⁷, which, except for Mornington, indicates 'low' future housing growth within the Mornington Peninsula. The housing target for Mornington Peninsula as set out in Plan for Victoria is 24,000. This is the third lowest target in Metropolitan Melbourne (behind Nillumbik and Hobsons Bay).



Excerpt from Plan for Victoria

26 Council is currently progressing its Housing and Settlement Strategy Refresh (2020-36) (the Strategy Refresh) by way of Amendment C219morn⁸. The Strategy Refresh plans for relatively low levels of local housing and population growth. It proposes to designate the commercial

⁶ Page 4.

⁷ Released in 2025

⁸ This amendment is seriously entertained although recent changes to the Victoria Planning Provisions (Amendments VC267 and VC276) might inform the weight that can be given to this amendment.

and residential parts of Sorrento as ‘minimal change’. At present, the residential areas around the Commercial Precinct have a mandatory two storey height limitation (pursuant to Design and Development Overlay – Schedules 2 and 3).


27 Pursuant to Clause 02.04 (Strategic Framework Plan), Sorrento is a ‘Small Township’, which according to Clause 02.03-1 (Settlement) is characterised by the following:

Neighbourhood activity centre sub-level	Service population	Leasable floor area (LFA)	Commercial land uses
Small Township Activity Centre: <ul style="list-style-type: none"> ■ Mount Martha ■ Martha Cove ■ Sorrento ■ Balnarring 	5,000 to 10,000 ppl	3,000 to 10,000 sqm	Typically include: <ul style="list-style-type: none"> ■ A medium-size supermarket (LFA from 1,000 to 2,000 sqm) ■ Few office-based services ■ No restricted retail premises

28 I have also given some weight to the Mornington Peninsula Activity Centre Strategy (2018), which (although somewhat dated) identifies low retail occupancy in the Commercial Precinct, and which provides the following ‘general outlook’:

Sorrento has a high-quality street-based shopping environment which is expected to continue to perform strongly over coming years. The level of activity is strongly seasonal, reflecting Sorrento’s attraction for visitors, and which is supported by the location of the Sorrento/Queenscliffe (sic) ferry terminal. Although residential growth in the Sorrento catchment is expected to be relatively limited, and no additional commercial land is considered necessary, current development proposals demonstrate that there is still scope for infill/re-development based particularly on mixed use and visitor oriented development.


The primary challenge in this context is to ensure that new development is appropriate to the historic and coastal character of Sorrento, which is its greatest competitive advantage. The Ocean Beach Road Commercial Precinct Sorrento Heritage Policy - September 2015, provides appropriate guidance in this regard.

- 
- 29 More broadly, there is State policy which seeks to ensure an appropriate supply of land for residential, commercial, retail, industrial, recreational, institutional and other community uses (Clause 11.02-1S) and to concentrate a range of development within activity centre locations (Clause 11.03-1S). These strategic objectives are somewhat tempered by Clause 11.03-1L-01 (Activity Centres – Mornington Peninsula) which seeks to ensure new commercial floor area is commensurate to the role of an activity centre and to ‘limit retail and office development in Small Township Activity Centres’.
- 30 It is important to note that there are heritage constraints affecting parts of the Commercial Precinct. Heritage Overlay – Schedule 501 (HO501) applies to approximately half of the Precinct and around half of the buildings within HO501 are of ‘contributory’ heritage value (the rest are of ‘non-contributory’ heritage value). There are also five site specific Heritage Overlays within the Precinct. These sites are Stringers Store (HO517), the Athenaeum (HO408), the Continental Hotel (HO257), the former Oriental Coffee Place (HO519) and the former Sorrento Post and Telegraph Office (HO518). Relevantly, both the Athenaeum and Continental Hotel also appear on the Victorian Heritage Register. Notably, the Continental Hotel features an attractive tower element, which is also one of the highest local features with long range views and acts as an urban marker.
- 31 Buildings of heritage significance are identified on the image below. The character of these buildings varies although some of the more notable features include a one to two storey scale (apart from the Continental Hotel), relatively high floor to ceiling heights, a high proportion of solid facades (i.e. with less glazing) and the regular use of limestone. There is a row of single storey, pitched roofed dwellings at the western end of the Precinct (north side), which have been converted for commercial use, and which form an interesting and unique character element.




Excerpt Figure 4 of the Built Form Review (Sorrento Historic Precinct Commercial Precinct Map)

- 32 The environmental qualities of the Sorrento setting are relevant when considering the activity centre's development potential and inform the proposed built form settings. Unlike most other activity centres in metropolitan Melbourne, the experience within the Commercial Precinct is coastal. This experience is influenced by the visible presence of sand dunes to the west of the Precinct and (particularly when standing in Point Nepean Road) by expansive views to the foreshore and bay. The alignment of the Precinct allows a good appreciation of these features. Relevantly, modelling shows that this experience could be diminished by inappropriate development. It follows that these view lines are critical to the local amenity and experience and warrant a high level of protection through DDO28.
- 33 The coastlines to Bass Strait and Port Phillip Bay are protected by Environmental Significance Overlays – Schedules 24 and 25 respectively (ESO24 and ESO25). The latter also effects the property at 3293-3295 Point Nepean Road, which forms part of the Amendment (as well as land extending up the hill to Ocean Beach Road). Broadly these overlays seek to ensure the protection of cultural and natural features associated with the coast. The overlays illustrate the value of these coastal features. ESO25 is also relevant when considering the future development of 3293-3295 Point Nepean Road, which is located at a highly prominent intersection with an immediate interface to the foreshore.

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- 34 The Mornington Peninsula, including Sorrento and part of the Commercial Precinct, is designated as a bushfire-prone area.
- 35 Sorrento also lacks fixed rail services and has limited road access points. During the summer months, traffic on Point Nepean Road and Melbourne Road often becomes heavily congested, frequently resulting in stationary conditions at the entrances to Ocean Beach Road.
- 36 Collectively, these factors are important in understanding the strategic role of this centre and influence its capacity for growth. The factors I have described above have all influenced the settings and parameters which are set out in the proposed DDO28. The key features of the control are discussed below.

What is the basis for the specific parameters of the proposed DDO28?

- 37 To some extent, DDO28 is similar to interim DDO28 in that the overarching objective remains the same: namely protecting the prevailing two storey street wall and the coastal interfaces and to achieve more responsive design detailing. However, in light of the broader policy context described above, it is unreasonable to prevent new development above two storeys and an appropriate balance needs to be struck.
- 38 Activity centres are preferred locations for growth in policy and while there are obvious constraints in this case, the built form testing indicates that some development can occur which would positively enhance the local experience. Furthermore, the activity centre needs to continue to meet the needs of workers, shoppers, residents and visitors. Even with the Council's low growth expectations locally, the low occupancy rates in the Commercial Precinct means that over the next 15 years (as required by Clause 11.02-1S) there may be a shortage of commercial floor space. DDO28 is designed to strike an appropriate balance between the need for growth and the importance of retaining / responding to important built form character elements.
- 39 It should also be noted that just because three (or four) storeys are permitted, I would not expect that each and every site will be developed to this level, particularly not in the short or even medium term. The disparity in heritage forms within the street will also continue to create



an interesting diversity. The objective in identifying a mandatory height is to prevent development which is known to detrimentally diminish the integrity of the context. Complementing these mandatory controls are a range of qualitative design requirements which will inform the responsible authority's exercise of discretion. Relevantly, DDO28 also includes a range of clear objectives and decision guidelines which will assist and guide decision making (along with State, regional and local planning policy).

40 In terms of the architecture of the provision itself, the main structural change to DDO28 has seen the deletion of precincts to define built form outcomes. I have nothing against the idea of precincts, but in this case I felt that a precinct based control merely resulted in needless repetition and in any case, there was no clear distinction between areas, particularly in Ocean Beach Road. I also felt that properties with either a single or secondary abuttal to Morce Avenue did not need to be restricted in the same way as other lots in the Precinct. This is because this context is more 'robust' and can support more built form change than other areas.


Are mandatory controls justified?

41 For several decades, the Victorian planning system tended to prefer discretionary controls over mandatory controls. While that preference remains, it is clear to me that there are times where mandatory controls are appropriate. That said, they are to be used judiciously and must be strategically justified.

42 I have previously described the various influences which have combined to explain the drafting of DDO28. Some of these influences are significant enough to justify the application of mandatory controls, including:

- Overall building heights:
 - In Ocean Beach Road (12m with only the ground floor, Level 1 and Level 2 visible).
 - In Point Nepean Road⁹ (9m or two storeys).

⁹ Meaning 3293-3295 Point Nepean Road

- 
- In Morce Avenue (12m).
 - Additionally, in Ocean Beach Road:
 - Street wall height (two storeys or 9m).
 - Any Level 2 setback from Ocean Beach Road (excluding heritage building) (4m).

43 When considering whether these mandatory controls are justified, I have had regard to *Planning Practice Note 59: The role of mandatory provisions in planning schemes* (August 2023) (PPN59). PPN59 sets out criteria that can be used to decide whether a mandatory provision is appropriate. *Planning Practice Note 60: Height and setback controls for activity centres* (September 2018) (PPN60) is also relevant¹⁰.


44 While this practice guidance is not a 'template', the extent of mandatory controls proposed by DDO28 responds to this guidance. The mandatory provisions are intended to primarily protect what are the most sensitive parts of the Commercial Precinct being Ocean Beach Road and 3293-3295 Point Nepean Road. They will allow for an acceptable level of built form change to ensure the Precinct continues to accommodate the commercial and residential needs of the locals and visitors, while preserving the local coastal experience.

45 PPN59 states:

While mandatory provisions only provide fixed planning outcomes, there are circumstances where they are warranted. Mandatory provisions provide greater certainty and ensure a preferred outcome and more efficient process. Although mandatory provisions are the exception, they may be used to manage:

- *areas of high heritage value*
- *areas of consistent character*
- *sensitive environmental locations such as along the coast*
- *building heights in some activity centres.*

¹⁰ I note that the Departmental website says that this practice note is 'under review'.



46 PPN60 says:

Mandatory height and setback controls (that is, controls that cannot be exceeded under any circumstance) will only be considered where they are supported by robust and comprehensive strategic work or where exceptional circumstances warrant their introduction. Mandatory height or setback controls should only be applied where:

- *Exceptional circumstances exist; or*
- *council has undertaken comprehensive strategic work and is able to demonstrate that mandatory controls are appropriate in the context, and*
- *they are absolutely necessary to achieve the preferred built form outcomes and it can be demonstrated that exceeding these development parameters would result in unacceptable built form outcomes.*

47 In the case of PPN60, exceptional circumstances are described as:

Exceptional circumstances may be identified for individual locations or specific and confined precincts, and might include:

- *sensitive coastal environments where exceeding an identified height limit will unreasonably detract from the significance of the coastal environment*
- *significant landscape precincts such as natural waterways, regional parks and areas where dense tree canopies are the dominant feature*
- *significant heritage places where other controls are demonstrated to be inadequate to protect unique heritage values*
- *significant physical features, such as views to or from the activity centre or topography, where it can be demonstrated that discretionary controls would be inadequate to deliver the desired built form objectives or outcomes for the activity centre*
- *sites of recognised State significance where building heights can be shown to add to the significance of the place, for example views to the Shrine of Remembrance and major waterways*

- *helicopter and aeroplane flight paths and other aeronautical needs.*

Where exceptional circumstances are identified, mandatory height and setback controls should only be applied where they are absolutely necessary to achieve the built form objectives or outcomes identified from the comprehensive built form analysis. Where mandatory controls are proposed, it will need to be demonstrated that discretionary controls could result in an unacceptable built form outcome.

48 It is relevant that this is a lower order activity centre in a sensitive coastal environment. It is also a centre that contains important heritage assets. To me, that context is one where mandatory controls can be contemplated. While there are heritage controls across part of the centre, these do not contain specific height and setback controls such as proposed.

49 PPN60 also says that:

Where mandatory controls are proposed, a council will be assessed against all of the following:

- ***Consistency with state and regional policy:*** *A council will need to be able to demonstrate that any proposed controls are visionary in nature and propose a preferred future character for the activity centre that aligns with the aspirations of the metropolitan planning strategy and state and regional policies included in the VPP.*
- ***Currency of work:*** *Any supporting structure plan or comprehensive built form analysis should be no more than five years old. A council will need to be able to demonstrate that the built form analysis undertaken to support any proposal for mandatory height or setback controls is contemporary, takes account of recent trends and has been subject to a program of public consultation.*

50 A detailed consideration of proposed DDO28 against the criteria contained in PPN59 is provided below:

Criterion	Response
Does the proposed mandatory provision have a solid strategic objective while having regard to the planning objective?	YES - The objective of the mandatory controls is to protect the environmental and historical context of the Commercial Precinct, by generally maintaining the existing building line and in turn views out of the Precinct to the coastal environs.
Does the proposed mandatory provision implement planning policy (state, regional or local)?	YES - The mandatory provision is supported by the LPS and balances State and regional planning policy, which seeks to direct growth to activity centres location with policy that designates Sorrento for low change.
Will most proposals that contravene the proposed mandatory provision lead to unacceptable planning outcomes?	YES - Built form testing, which formed part of the Built Form Review indicated that departures from the proposed parameters will impact the experience within the Commercial Precinct. This includes impacts on view lines to the coastal environs. In my view, these impacts are unacceptable.
Has the proposed mandatory provision been drafted to limit any unnecessary loss of the flexibility and opportunity available through a performance-based approach?	YES – Additional growth opportunities have been allowed where such buildings will not impact upon the primary spine of Ocean Beach Road / Point Nepean Road. This includes lots fronting Morce Avenue and side streets. While height is still capped in these locations, this is to ensure buildings remain suitable within what is mostly otherwise a two and three storey (mandatory) context in residential and commercial areas of Sorrento.



Criterion	Response
Have all other relevant performance-based provision options been explored?	YES – The built form testing considered various built form outcomes with only one option constituting an appropriate strategic balance. In light of these findings, and in order to provide certainty to the local community, mandatory controls are appropriate.
Would policy or performance-based measures lead to the outcome prescribed by the proposed measure in most cases?	NO – With evident development pressure in the area, there is too great a risk that performance based measures will continually erode the important features of the Commercial Precinct.
Is there evidence of adverse existing or proposed use or development that justifies the proposed control?	YES – The recent development at 77 Ocean Beach Road and 45-49 Kerferd Avenue is an inappropriate precedent for future development, because it constitutes four levels, highly visible from Ocean Beach Road, which is considered to be out of scale with its context. Should future development adopt such a scale, this would be to the detriment of the Precinct.
Is the proposed mandatory provision limiting? Does it only lead to one outcome from a number of suitable ones that would deliver on related planning policy?	NO - As described above, in the case of the Commercial Precinct testing has highlighted that there is only a limited number of appropriate outcomes for future development. In this light, the Amendment provides certainty and clarity rather than simply a limitation, which is appropriate.



Criterion	Response
Does the proposed mandatory provision avoid the risk of adverse outcomes in a way that a performance-based approach cannot?	YES – For the reasons described above.

51 In relation to PPN60, the practice guidance does not require the preparation of a structure plan for lower order centres (such as neighbourhood activity centres)¹¹. Instead, a comprehensive built form analysis is sufficient. I also note that the Council has undertaken a housing strategy which examines its future housing needs¹² and that the role of the Sorrento centre is already well established in the planning scheme.

52 It follows from my analysis that I support the use of mandatory controls, as reflected in the proposed DDO28 in the Commercial Precinct.

53 In terms of the parameters themselves, I largely defer to urban design expert evidence as the justification for metrics is essentially design based. I do, however, make the following remarks:

- In Ocean Beach Road, the intention is to achieve a two storey street wall, comprising two generous floor plates, with up to one additional, recessed level. The extent of the upper level setback is generally equivalent to one room and is not intended to hide this level from view. Some visibility of any upper level is considered helpful in enclosing what is currently an expansive street reservation and will help to create a slightly more intimate and inviting public realm. These buildings and works requirements will ensure buildings respect the existing character and retain views to the features in and outside the Precinct.

¹¹ See page 2.


¹² See Amendment C219morn.

- In Ocean Beach Road, the intention is that new buildings are built flush to the footpath except for where an adjoining heritage building is set back. The objective is to protect the setting of the row of converted dwellings at the northwestern end of the Precinct, although this is a discretionary requirement as there may be several appropriate responses at such interfaces.
- In Morce Avenue, the primary constraint is whether any part of a new building is visible from Ocean Beach Road. Accordingly, the control does not prescribe the number of levels provided the building height sits below the height of a development in Ocean Beach Road.
- The building height at 3293-3295 Point Nepean Road is to be (mandatorily) limited to two storeys, which is reflective of its built form context as well as its coastal interface location. New buildings facing either the north or east extents of Point Nepean Road are to be setback to match the setback of an existing building on an adjoining lot or 4m. I note that the adjoining lot to the west (3305-3315 Point Nepean Road) is currently vacant, which would mean a 4m setback at this interface if a building was proposed today. The same setback would also be required to the east given the dwelling at 3289 Point Nepean Road is setback less than 4m. The controls seek to adapt in the event this parcel is developed in parts in the future. These setback controls are discretionary since there are various built form outcomes which may prove suitable.
- Development fronting other streets within the Commercial Precinct is subject to a discretionary two storey / 9m street wall height with a discretionary 4m upper level setback. I note that the version of DDO28 adopted by Council at its meeting on 25 February 2025 now includes a (discretionary) front setback requirement for buildings in side streets, to be setback the same distance of the existing building on the adjoining lot or 4m, whichever is the lesser. I have no objection to this on town planning grounds (I further consider drafting matters below).
- Discretionary requirements are included to manage the interface between land inside the Commercial Precinct and adjacent residential land. These requirements will ensure adequate protection for existing residents abutting the Precinct.

Is the drafting of DDO28 appropriate?

54 Proposed DDO28 has five design objectives, which accurately summarise the preferred built form character. It includes buildings and works requirements, application requirements and





decision guidelines. The drafting is generally consistent with the Ministerial Direction The Form and Content of Planning Schemes.

55 My office provided input into the structure and content of DDO28. Although there have been some changes, I still consider it is generally appropriate. I have had regard to submissions made to the Amendment as well as the changes Council adopted at its meeting on 25 February 2025. In that context, I make the following comments:

- I note Council has modified design objective four¹³, as follows:

To protect views from Ocean Beach Road to the surrounding environs, including the back beach sand dunes to the west and the foreshore to the east, and [views from Ocean Beach Road and the foreshore to heritage buildings including the InterContinental Hotel tower and 'Quamby' \(3317 Point Nepean Road\)](#) views from the foreshore.


I prefer the original drafting, for the following reasons:

- Protecting all views from Ocean Beach Road and the foreshore to all heritage buildings appears excessive. It also has potential to significantly impact development outcomes in a manner which is unclear.
- In terms of Quamby, it is evident from the completed modelling that views to the gable of Quamby will be available from the opposite side of the intersection in Point Nepean Road (refer Figure 45 of the Built Form Review). More views would be available from further west. From a town planning perspective, this seems like adequate protection for a locally significant dwelling.
- Council has adopted the following amended General Requirement:

New buildings [and works on sites that front](#) in Point Nepean Road should be set back the same distance as the setback of the front wall of the existing building on the adjoining lot, or 4 metres, whichever is greater.

I do not support this change since it does not capture side setbacks, and I understand setbacks from both frontages are sought for any new building. In this light, I suggest:

¹³ I am instructed this change has been made in response to issues raised in submissions.



New buildings and works on sites that front in Point Nepean Road should be set back from Point Nepean Road the same distance as the setback of the front wall of the existing building on the adjoining lot, or 4 metres, whichever is greater.

Comments on the remaining Amendment documentation

56 I have reviewed the Explanatory Report, which is well drafted and consistent with practitioner guidance.

57 The Amendment also seeks to make the following consequential changes to the Planning Scheme:

- Amendment is required to the policy guidelines at Clause 11.03-1L-01 (Activity centres – Mornington Peninsula), as it includes general built form guidance which would differ from DDO28. I note a discrepancy between the wording currently in the Planning Scheme and the wording in the recently exhibited version of Clause 11.03-1L-01.

The clause currently reads:

Policy guidelines

Consider as relevant:

- Except for land in the Commercial 1 Zone and Mixed Use Zone that has an approved strategic plan or built form planning provisions, otherwise development proposals should accord with the following activity centre design standards:
 - For development in the Commercial 1 Zone, provide a landscaped open space or pedestrian precinct area that consists of:

While the exhibited, track change version of this clause reads:


Policy guidelines

Consider as relevant:

- Except for land in the Commercial 1 Zone and Mixed Use Zone that are located in the Major Activity Centres of Mornington, Hastings and Rosebud, as well as the Large Township Activity Centres of Dromana, Rye and ~~Sommerville~~, Somerville, the Small Township Activity Centre of Sorrento, and Local Activity Centre of Baxter, development proposals should accord with the following activity centre design standards:
 - For development in the Commercial 1 Zone, provide a landscaped open space or pedestrian precinct area that consists of:

It is evident more words are being inserted, and I am unsure of the reason for this.

In terms of Sorrento, the inserted words will mostly resolve any ambiguity. I did wonder whether there could be a dispute as to whether this also exempted the C1Z portion of land adjoining the foreshore (to the north of 3293-3295 Point Nepean Road). It might



be preferable to insert the words ‘except for land... subject to Design and Development Overlay – Schedule 28’.

- The Amendment seeks to amend Section 2.2 of the *Heritage Design Guidelines: Sorrento Historic Precinct* (an existing incorporated document) to state that “New buildings should not exceed 12 metres in height”. Within the Commercial Precinct these guidelines only apply within HO501 and they have an existing expiration date of 30 June 2026. From my review, they present no other conflict with DDO28, and this change is appropriate.
- Clauses 72.04 and 72.08 are proposed to be amended to reference the new Heritage Design Guidelines and to enter the Built Form Review as a background document. This is an appropriate status for this document, as it contains mostly contextual information that explains how DDO28 was derived. The Built Form Review was not written with the express intention of it being an incorporated document.

Response to issues raised in submissions

58 Attachment 12 to the 25 February 2025 Council report divides submissions into themes and I have adopted that approach below. These themes are:

- Theme 1: Support for the amendment¹⁴
- Theme 2: Issues with the proposed controls for the East Sub-Precinct (3293-3295 Point Nepean Road)
- Theme 3: Issues with the Central Sub-Precinct
- Theme 4: Issues with other sub precincts and the overall amendment
- Theme 5: Issues with the proposed controls that apply to Constitution Hill Road

59 I do not propose to respond to each and every issue raised in submissions but provide the following comments and observations. Moreover, some of the issues raised are outside of my area of expertise (such as urban design, traffic and heritage). The following comments address issues that are relevant to my speciality.

¹⁴ No further analysis is required.



Theme 2

60 Most of the issues identified in Theme 2 are urban design related and one issue is traffic related. An issue that crosses into ‘my territory’ is whether 3293-3295 Point Nepean Road should be included in DDO288 at all. The Built Form Review says that this site is:

..... a gateway site into the Activity Centre and provides a sense of arrival from the Queenscliff-Sorrento Ferry Terminal and for vehicles and pedestrians travelling along Point Nepean Road¹⁵.

61 In my preliminary review of the Amendment I recommended that this site be excluded from DDO28. This finding was principally due to my concern with the prospect of this site being developed with a three storey building, as initially proposed. On the basis of the revised parameters set out in DDO28 I support its inclusion. Most particularly, the proposed DDO28 includes a two storey height limit and appropriate setback requirements.

62 I note that while the site is physically separated from the main shopping strip, it does play a role in framing the arrival experience for visitors to the activity centre itself. PPN58 *Structure planning for activity centres* (September 2018) says that when setting a boundary for an activity centre, it can be appropriate to include:


... residential areas that are integrated into the activity centre or surrounded by other uses that have a strong functional interrelationship with the activity centre even where limited development opportunities exist¹⁶.

63 While the land in question is zoned Commercial 1 (and is not residential), I think that the same principle can be applied to the land at 3293-3295 Point Nepean Road. Overall, I think that there is a good planning case to apply proposed DDO28 to this land.

Theme 3

¹⁵ Page 53.

¹⁶ Page 2.



64 Some submissions have raised concerns about the extent of growth that could occur as a consequence of the Amendment. While I ultimately defer to the urban design evidence on matters of detail, in general terms the DDO allows for relatively low scale growth given its activity centre context. A balance will always need to be struck between retaining / responding to certain features and allowing change in a context that is, to an extent, facilitative.


65 An issue raised is whether new development along Ocean Beach Road could affect the amenity of residential land between George Street and Point Nepean Road. To begin with, it is appropriate to point out that proposed DDO28 allows for only low levels of built form change given the zoning of the land (Commercial 1) and its activity centre context. DDO28 contains requirements that apply Clause 55 style side and rear setbacks where land directly abuts residential land or abuts a laneway that have an abuttal to residential land¹⁷. Furthermore, the control requires new buildings and works to achieve Clause 55 standards for daylight to new windows, setbacks from north facing windows, overshadowing open space, overlooking and noise impacts. In combination, these requirements will ensure an acceptable built form relationship is achieved.

66 Finally, it is worth noting that Amendment VC267 has changed the wording of the Clause 55 requirements. In particular the names of the standards have been changed. I recommend that the control be updated to reflect the current standards. It also follows that I support the Council Officer's preference to not (effectively) duplicate these standards in the control. It is sufficient in my view to simply refer to the standards themselves.

Theme 4

67 I have already said that the Amendment is strategically justified and that, from a town planning perspective, the controls allow low levels of built form change, which I consider to be acceptable.

¹⁷ I support the Council's approach to applying the side and rear setback control in DDO28.



68 Some submissions have raised heritage related comments. While I make no comment on those matters (as I am not a heritage expert) the wording of this control has endeavoured to separate heritage from non-heritage design matters. While this is a not completely possible (i.e. the heritage setting necessarily informs what the built form setting should or can be), my view is that the DDO is not a defacto heritage control and that heritage issues (where they are relevant) should be assessed under the Heritage Overlay and/ or heritage policy.

69 The Built Form Review does not provide the strategic justification for the application of signage controls as part of DDO28 and further work would be required to justify such a change. I note that Council Officers have formed the view that the Planning Scheme already provides for an appropriate level of control for advertising signage. Some of the activity centre is affected by a Heritage Overlay, which requires a planning permit for signage. At present, the vast majority of signage is business identification signage. The Panel should also be aware that Clause 15.01-1L (Urban design Mornington Peninsula) contains the following signage strategies:

Avoid signs that protrude above the height of the building, including any parapet.

Give preference to freestanding pole signs over signs attached to buildings.

Encourage signs that relate to the address, business name or type of business conducted on the premises.


Avoid animated signs such as those with flashing or moving lights.

Avoid bunting signs except for use in display yards or as a temporary sign.

Avoid the use of fluorescent or reflective paints that result in visually obtrusive effects.

70 It follows that there is no justification to include signage controls at DDO28 at this time.

71 I support the exemption in DDO28 that allows service infrastructure to exceed height limits by 10%. It is worth remembering that these elements are not exempt from the need for planning permission, which means that the responsible authority can still control their location and design. It is a reasonable and sensible exemption and one that I support.



72 I make no comments on submissions that express concerns over traffic and parking issues or whether there should be a different decision making process employed at the Council.

Theme 5

73 The main issue seems to whether or not new development should be built to the street boundary or setback. The Council officers have recommended a new General requirement for front setbacks on streets other than Ocean Beach Road or Point Nepean Road that says:

A front setback the same distance of the existing building on the adjoining lot, or 4 metres, whichever is the lesser.

74 I think that this is acceptable, but recommend that the following wording be adopted:

A front setback that is the same distance as the lesser front wall setback of the existing buildings on the abutting allotments facing the front street or 4 metres, whichever is the lesser.

75 I agree with Council that a small front setback could be an acceptable built form outcome along Constitutional Hill Road particularly if the abutting property is setback from the street.



CONCLUSION

76 My key conclusions are as follows:


- The Amendment is required to protect the important attributes of the Ocean Beach Road Commercial Precinct by introducing permanent built form controls.
- Proposed DDO28 is strategically justified by the accompanying Built Form Review.
- The proposed balance of discretionary and mandatory controls within DDO28 is appropriate. The mandatory nature of some components of DDO28 are strategically justified by the physical and policy context of the site.
- The Amendment material is appropriately drafted subject to some minor wording changes I have recommended below.

77 I recommend that:

- Retain Design Objective four as it is currently drafted.
- Modify the General Requirement as follows:

New buildings and works on sites in Point Nepean Road should be set back from Point Nepean Road the same distance as the setback of the front wall of the existing building on the adjoining lot, or 4 metres, whichever is greater.
- Reconsider the wording of Clause 11.3-1L-01.
- DDO28 be updated to reflect the names of the standards currently found in Clause 55 of the Planning Scheme (i.e. post the approval of Amendment VC267).
- Amend the General requirement for front setbacks for streets other than Point Nepean Road and Ocean Beach Road to read:

A front setback that is the same distance as the lesser front wall setback of the existing buildings on the abutting allotments facing the front street or 4 metres, whichever is the lesser.



78 I have made all inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.



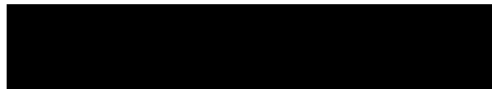
John Glossop FPIA
Director
Glossop Town Planning Pty Ltd
28 April 2025



REQUIREMENTS UNDER PPV PRACTICE NOTE PN01: Expert Evidence

Name and address John Glossop
Director, Glossop Town Planning
Level 5, 111 Cecil Street, South Melbourne VIC 3205

Qualifications



Experience

I have 28 years of experience as a town planner and have practiced in the following roles:

- Director, Glossop Town Planning (1997 – present).
- Director, ADDO Training (2015 – present)
- Sessional Member, Planning Panels Victoria (1997-2013).
- Member, ResCode Advisory Committee (2000).
- Strategic and Social Planning Manager, Melton Shire Council (1995-1997).
- Town Planner, Shire of Newham and Woodend (1994-1995).

I have been a sessional lecturer at Victoria University (1996-1999), Latrobe University (2000-2002) and RMIT University (2016-2021) in strategic and statutory planning and urban studies.

I have sat as Chairman or Member on several planning scheme amendments, dealing with a broad range of issues from high-rise housing in Williamstown, the redevelopment of Pentridge Prison and the application of flooding overlays in the Mornington Peninsula Shire.

Expertise to make this report

I have considerable experience in statutory and strategic planning and the drafting of new format planning schemes.

My expertise to make this statement is based on my experience working in metropolitan Melbourne and regional Victoria, an understanding of the site and my experience as a planner in both the private and public sectors.

Instructions

I received written instructions from Russell Kennedy acting on behalf of the Mornington Peninsula Shire Council; a copy of which is attached to this statement.





	I was engaged after the Amendment was first exhibited. We assisted in the preparation of the material which formed the second round of exhibition of the Amendment.
Facts matters and assumptions relied upon	The facts, matters and assumptions upon which I have relied are set out in the introduction of this statement.
Documents and other materials that I have considered	The documents and materials upon which I have relied are set out in the introduction of this statement.
Identity of the person who carried out any tests or experiments	There were no tests or experiments carried out in the preparation of this statement.
Identity of any other significant contributors to the report	I was assisted in this statement by Edwina Laidlaw, Senior Associate.



Appendix A - Letter of Instructions



David Vorchheimer

T [REDACTED]

E [REDACTED]

Sonia Narduzzo

T [REDACTED]

E [REDACTED]

11 March 2025

BY EMAIL [REDACTED]

John Glossop
Director
Glossop Town Planning
Level 5, 111 Cecil Street
South Melbourne VIC 3205

Dear John

**Brief to prepare expert evidence – Town Planning
Planning Scheme Amendment C286morn**

1. We act on behalf of Mornington Peninsula Shire Council (**Council**) in relation to the proposed Planning Scheme Amendment C286morn (**Amendment C286**). Council is the Planning Authority for Amendment C286.
2. Council first exhibited Amendment C286 from 28 July 2022 to 24 October 2022. At the 28 May 2024 Council Meeting, Council made the decision to re-exhibit Amendment C286 after changes were made to the amendment in response to submissions and input from a peer review.
3. Amendment C286 was re-exhibited from 25 July 2024 to 6 September 2024. A total of 77 submissions were received.
4. On 25 February 2025 the re-exhibited Amendment C286 went to Council, with Council resolving to refer Amendment C286 to Planning Panels Victoria.
5. Council has instructed us to obtain a fee proposal from you, with a view to you undertaking the work set out below and providing non-independent expert evidence to the Panel.

Background

6. Amendment C286 proposes changes to building design controls to the Ocean Beach Road Commercial Precinct in Sorrento to protect and enhance the valued character, heritage, and amenity of the area.
7. Amendment C286 applies to land located in the Ocean Beach Road Commercial Precinct.

8. Amendment C286 will replace existing building design controls within the Ocean Beach Road Commercial Precinct that are due to expire on 4 July 2025 with permanent new controls based on recommendations from the *Ocean Beach Road Sorrento Built Form Review*.

Brief of Materials

9. Please find **enclosed** to this letter an index of the materials for you to consider. The material is accessible via the links below:

[Amendment C286morn](#)

[Council's Amendment C286morn Built Form Review website](#)

10. In addition, please find **attached** the Council meeting agenda and report in relation to C286morn. The relevant section of the report is from pp p34 to 50.
11. Please note submissions in response to the Amendment are available from the Council website, however for convenience we have extracted the links below:

[Amendment-C286morn-Submissions-1-to-35-Redacted.pdf\(PDF, 121MB\)](#)

[Amendment-C286morn-Submissions-36-to-77-Redacted.pdf\(PDF, 246MB\)](#)

Instructions

12. Within the scope of your expertise, you are instructed to:
 - (a) conduct an in-depth review of the material supplied to you in relation to the Amendment C286;
 - (b) consider and formulate your own opinions, within the limits of your expertise, as to the appropriateness of the Amendment C286 as it relates to urban design matters;
 - (c) consider and respond (as appropriate) to any relevant submissions;
 - (d) consider any other matter that you deem appropriate; and
 - (e) prepare a report which sets out:
 - (i) your involvement with Amendment C286 and the conclusions which you reached in advising Council;
 - (ii) the basis upon which you have arrived at such conclusions, including any facts you have relied upon or assumption which you have made which form part of the reasoning by which you reach your conclusions; and
 - (iii) whether after considering the submissions your views have changed and the basis of any change.
13. The content, format and layout of your report, the manner of expression and the way in which you seek to address yourself to the tasks you have been engaged to undertake are all matters for you.

14. We **enclose** the link to [PPV Practice Note 1 – Expert Evidence](#). Your report should be prepared in compliance with this document and the duties outlined therein.
15. If you require any further information to complete the tasks you have been instructed to undertake, or if you require any assistance in understanding the nature of the tasks you have been asked to undertake, please contact us. Likewise, if you require any advice or material that is outside your scope of expertise in order to answer the above questions, please advise us.
16. Material supplied by us is confidential and is not to be copied or used for any purpose unrelated to our instructions or without the permission of our Client.

Proposed Key Dates

17. This matter is listed for a Directions Hearing **at 10:00am on Friday, 28 March 2025**. The purpose of the Directions Hearing is to consider procedural requirements and conduct for the Hearing, in addition to confirming key dates ahead of the Hearing.
18. At present, the Panel has proposed the following dates:

Time	Date	Action
12:00pm	26 March 2025	Parties to file <i>Request to be Heard</i> form
10:00am	28 March 2025	Directions Hearing
12:00pm	4 April 2025	Expert witness details for parties intending to call evidence
12:00pm	4 April 2025	Council must provide a submitter location map to the Panel only
12:00pm	16 April 2025	Council Part A (background and context) submission
12:00pm	23 April 2025	Expert witness report(s)
12:00pm	2 May 2025	Documents or material to be presented on Day 1 of the Hearing
All day	5 – 9 May 2025	Hearing (expected to run for up to 4 days)

19. Please let us know if any of the proposed dates present any issues. We will otherwise provide an update to you once procedural dates have been confirmed.

Final Evidence

20. Russell Kennedy will file and serve the evidence to be relied upon by Council in this proceeding. Pursuant to the proposed dates set out above, at this stage, expert witness reports are due to be circulated **by 12:00pm on 23 April 2025**.

Conclave

21. At this stage, it is not known whether a conclave will be required. If it is, it is likely that you as the background expert will be asked to coordinate and manage the conclave process. Please provide a provisional sum in your fee proposal for this task.

Fee estimate

22. Once you have the opportunity to review the brief, please provide a fee estimate and send to Sonia Narduzzo at [REDACTED]

Billing

23. We confirm that Council will be responsible for the payment of your fees. Accordingly, please direct all accounts quoting 'Amendment C286morn' to:

Mornington Peninsula Shire Council
C/- Sonia Narduzzo
Russell Kennedy
Level 18, 500 Bourke St
Melbourne VIC 3000

Next steps

24. In anticipation that your fee proposal will be accepted, we would like to organise a conference with you and Council in the week beginning **17 March 2025**. Please contact Sonia Narduzzo to indicate your availability for this conference.
25. If you require further information or have any questions, please contact David Vorchheimer on [REDACTED] or Sonia Narduzzo on [REDACTED]
26. Please let us know if you require any additional information.

Yours faithfully

RUSSELL KENNEDY

[REDACTED]

David Vorchheimer
Principal

Appendix 1 – Index of Brief of Materials



Document No.	Description
DTP Document Title	
1	Explanatory Report
2	Instruction Sheet
3	Clauses and Schedules
4	Map sheets
5	Incorporated documents
6	Supporting documents, clauses and schedules in track changes format
7	Background documents
Council Document Title	
8	Summary of Proposed Built Form and Design Controls
9	Amendment C286morn Built Form Modelling
10	Amendment C286morn FAQs Re-exhibition
11	Amendment C286morn Summary of Key changes Proposed DDO28
12	Ocean Beach Road Sorrento Built Form Review Report May 2024
13	Proposed DDO28 2024
14	Council Report dated 25 February 2025
15	Submissions
Panel Hearing	
16	Directions Hearing Notice dated 6 March 2025

INDEX TO BRIEF OF MATERIALS

Tab	Document
A. Subject Land	
1	Maps showing land affected by Amendment C286morn.
B. Ocean Beach Road Sorrento Built Form Review	
2	Ocean Beach Road Sorrento Built Form Review, prepared by Council, dated November 2021.
3	Ocean Beach Road Sorrento Built Form Review, prepared by Council, dated May 2024.
C. Council Meetings	
4	Council Planning Services Committee Meeting, dated 13 December 2021, including: <ul style="list-style-type: none"> Meeting Minutes.
5	Council Ordinary Meeting, dated 4 April 2023, including: <ul style="list-style-type: none"> Meeting Agenda; Meeting Minutes.
6	Council Ordinary Meeting, dated 28 May 2024, including: <ul style="list-style-type: none"> Meeting Agenda and Addendum Agenda; Meeting Minutes.
7	Council Ordinary Meeting, dated 25 February 2025, including: <ul style="list-style-type: none"> Meeting Agenda; Meeting Minutes.
D. Extensions of DDO28	
8	Amendment C242morn Gazettal, dated 28 January 2022, including: <ul style="list-style-type: none"> Explanatory Report; Instruction Sheet; Clauses and Schedules; Supporting documents, clauses and schedules.
9	Amendment C299morn Gazettal, dated 22 June 2023, including:

	<ul style="list-style-type: none"> • Explanatory Report; • Instruction Sheet; • Clauses and Schedules; • Supporting documents, clauses and schedules.
10	<p>Amendment C305morn Gazettal, dated 18 July 2024, including:</p> <ul style="list-style-type: none"> • Explanatory Report; • Instruction Sheet; • Clauses and Schedules; • Incorporated Documents; • Supporting documents, clauses and schedules.
E. Amendment C286morn	
11	<p>First Exhibition Documents, from 28 July 2022 – 24 October 2022, including:</p> <ul style="list-style-type: none"> • Explanatory Report; • Instruction Sheet; • Clauses and Schedules; • Map Sheets; • Supporting documents, clauses and schedules.
12	<p>First Exhibition Submissions, from July 2022 – October 2022, including:</p> <ul style="list-style-type: none"> • Submissions 1 – 73 (redacted).
13	<p>Council's Summary Documents, prepared by Council, including:</p> <ul style="list-style-type: none"> • Proposed Built Form and Design Controls Amendment C286morn Summary; • Built Form Modelling; • Re-Exhibition FAQs; • Summary of Key Changes to Proposed DDO28; • Proposed DDO28.
14	<p>Second Exhibition Documents, from 25 July 2024 – 6 September 2024, including:</p> <ul style="list-style-type: none"> • Explanatory Report; • Instruction Sheet;

	<ul style="list-style-type: none"> • Clauses and Schedules; • Map Sheets; • Incorporated Documents • Supporting documents, clauses and schedules; • Background Documents.
15	<p>Second Exhibition Submissions, from July 2024 – September 2024, including:</p> <ul style="list-style-type: none"> • Submissions 1 – 77 (redacted); • Further Submissions (not redacted). <p><i>Note: A further 9 submissions were received – some of which were supplementary submissions made by submitters from the original 2022 exhibition process.</i></p>
F. Panel Hearing	
16	<p>Directions, including:</p> <ul style="list-style-type: none"> • Directions Hearing Notice dated 6 March 2025.



Appendix B - Site Photographs





3293-3295 Point Nepean Road



Koonya Hotel, 1 The Esplanade



Corner The Esplanade and Point Nepean Road (view towards 3293-3295 Point Nepean Road)



View from footpath corner The Esplanade and Point Nepean Road (view towards 3293-3295 Point Nepean Road)

Amendment C286Morn - Ocean Beach Road Sorrento Built Form Review

Photographs taken 13 April 2025



Koonya Apartments



From Ocean Beach Road looking towards coast (3293-3295 Point Nepean Road on right)

Amendment C286Morn - Ocean Beach Road Sorrento Built Form Review

Photographs taken 13 April 2025



View from picnic table looking towards the bay



Monte Vista 3375-3379 Ocean Beach Road



Constitution Hill Road



Constitution Hill Road

Amendment C286Morn - Ocean Beach Road Sorrento Built Form Review

Photographs taken 13 April 2025



19 Constitution Hill Road corner Riley Lane



19 Constitution Hill Road at rear



View west towards sand dunes from median strip corner Ocean Beach Road and Kerferd Road



View east towards The Continental tower from in front of 60 Ocean Beach Road

Amendment C286Morn - Ocean Beach Road Sorrento Built Form Review

Photographs taken 13 April 2025



From 108-118 Ocean Beach Road looking towards Darling Road



Converted dwelling at 140 Ocean Beach Road with infill development at rear



View from 172 Ocean Beach Road looking east



View from 153 Ocean Beach Road looking north east

Amendment C286Morn - Ocean Beach Road Sorrento Built Form Review

Photographs taken 13 April 2025



Tayton Place



Morce Avenue

Amendment C286Morn - Ocean Beach Road Sorrento Built Form Review

Photographs taken 13 April 2025



Morce Avenue looking east



9 Morce Avenue



15 Morce Avenue



Monte Vista, George Street

Amendment C286Morn - Ocean Beach Road Sorrento Built Form Review

Photographs taken 13 April 2025



Rear laneway from George Street



Corner George Street and Ocean Beach Road looking west

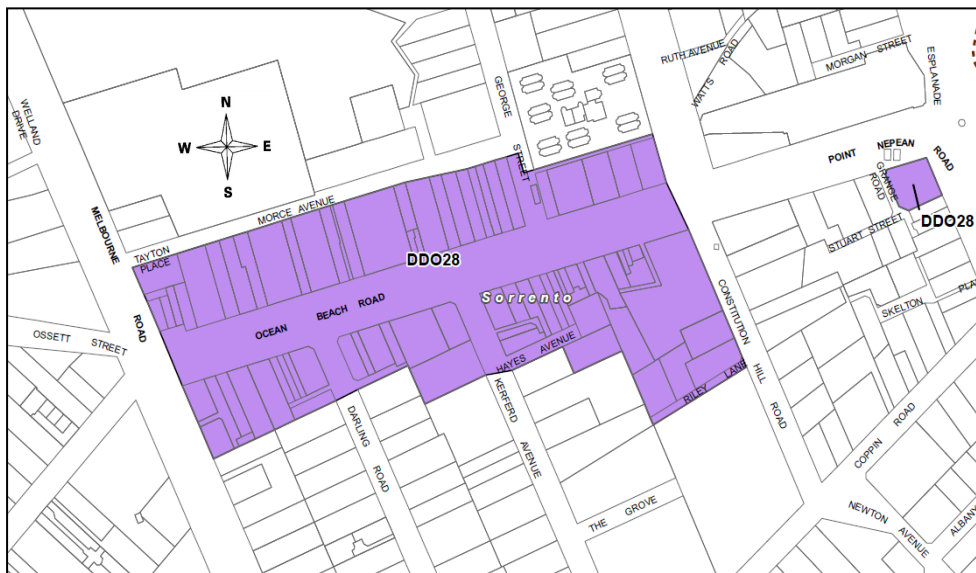
Appendix C – The Amendment

79 According to the exhibited Explanatory Report:

The amendment implements the recommendations of the Ocean Beach Road Sorrento Built Form Review (May 2024) by applying permanent design and development provisions to the commercial precinct of Sorrento.

It does this by amending the existing Schedule 28 to Clause 43.02 Design and Development Overlay (DDO28 – Ocean Beach Road Commercial Precinct) to reflect the design objectives and mandatory design controls recommended by the above review document, as well as removing the existing expiry date of the overlay to make the control permanent. It will also delete Schedule 10 to Clause 43.02 Design and Development Overlay (DDO10 – Ocean Beach Road, Sorrento) to avoid the duplication of planning controls.


80 DDO28 is proposed to be applied to the following land



Proposed DDO28

81 The Amendment also makes the following consequential changes to the Planning Scheme.

- Amends Clause 11.03-1L-01 (Activity centres - Mornington Peninsula) to exempt the Sorrento Activity Centre from the policy guidelines.

- 
- Amends Section 2.2 of the Heritage Design Guidelines: Sorrento Historic Precinct (Expires 30 June 2026) incorporated document to state “New buildings should not exceed 12 metres in height”.
 - Amends the Schedule to Clause 72.04 – Documents Incorporated into this Planning Scheme to include the Heritage Design Guidelines: Sorrento Historic Precinct.
 - Amends the Schedule to Clause 72.08 – Background Documents to include the Ocean Beach Road Sorrento Built Form Review (May 2024).



Appendix D – Key Policy Context

Municipal Planning Strategy

82 Within the Municipal Planning Strategy, I consider the following clauses to be particularly relevant to this matter:


- Clause 02.01 ‘Context’.
- Clause 02.02 ‘Vision’.
- Clause 02.03 ‘Strategic directions’, and in particular:
 - Clause 02.03-1 ‘Settlement’
 - Clause 02.03-2 ‘Environmental and landscape values’
 - Clause 02.03-5 ‘Built environment and sustainability’
 - Clause 02.03-6 ‘Economic development’.
- Clause 02.04 ‘Strategic framework plan’.

Planning Policy Framework

83 Within the Planning Policy Framework, I consider the following policies relevant to this matter:

- Clause 11 ‘Settlement’, and in particular:
 - Clause 11.01-1S ‘Settlement’
 - Clause 11.01-1R ‘Settlement – Metropolitan Melbourne’
 - Clause 11.01-1L-01 ‘Settlement – Mornington Peninsula’
 - Clause 11.02-1S ‘Supply of urban land’
 - Clause 11.03-1S - ‘Activity centres’
 - Clause 11.03-1L ‘Activity centres – Metropolitan Melbourne’
 - Clause 11.03-1L-01 ‘Activity centres – Mornington Peninsula’
 - Clause 11.03-4S ‘Coastal settlement’.
- Clause 12 ‘Environmental and Landscape Values’, and in particular:
 - Clause 12.02-1S ‘Protection of the marine and coastal environment

- 
- Clause 12.05-1S 'Environmentally sensitive areas'
 - Clause 12.05-2S 'Landscapes'.
 - Clause 13 'Environmental risks and amenity', and in particular:
 - Clause 13.01-1S 'Natural hazards and climate change'
 - Clause 13.02-1S 'Bushfire planning'
 - Clause 13.07-1S 'Land use compatibility'.
 - Clause 15 'Built environment and heritage', and in particular:
 - Clause 15.01-1S 'Urban design'
 - Clause 15.01-1R 'Urban design – Metropolitan Melbourne'
 - Clause 15.01-2S 'Building design'
 - Clause 15.01-4S 'Healthy neighbourhoods'
 - Clause 15.01-4R 'Healthy neighbourhoods – Metropolitan Melbourne'
 - Clause 15.01-5S 'Neighbourhood character'
 - Clause 15.03-1S 'Heritage conservation'
 - Clause 15.03-1L-01 'Heritage conservation – Mornington Peninsula'
 - Clause 15.03-2S 'Aboriginal cultural heritage'.
 - Clause 16 'Housing', and in particular:
 - Clause 16.01-1S 'Housing supply'
 - Clause 16.01-1R 'Housing supply – Metropolitan Melbourne'
 - Clause 16.01-1L-02 'Increased housing diversity areas'.
 - Clause 17 'Economic development; and in particular:
 - Clause 17.01-1S 'Diversified economy'
 - Clause 17.01-1L-01 'Diversified economy – Metropolitan Melbourne'
 - Clause 17.02-1S 'Business'
 - Clause 17.04-1S 'Facilitating tourism'
 - Clause 17.04-1R 'Tourism in Metropolitan Melbourne'
 - Clause 17.04-2S 'Coastal and maritime tourism and recreation'

- 
- Clause 18 'Transport', and in particular:
 - Clause 18.01-1S 'Land use and transport integration'.
 - Clause 18.01-2S 'Transport system'.
 - Clause 18.02-1S 'Walking'.
 - Clause 18.02-2S 'Cycling'.
 - Clause 18.02-3S 'Public transport'.
 - Clause 18.02-4L 'Road system'.
 - Clause 19 'Infrastructure'.

Other Documents

84 I have also had regard to the following in preparing my statement:

- Plan for Victoria
- Plan Melbourne 2017-2050
- Sorrento Commercial Precinct Statement of Significance February 2022
- Heritage Design Guidelines: Sorrento Historic Precinct
- Ocean Beach Road Commercial Precinct Sorrento Heritage Policy – For Planning Applications for Places in the Heritage Overlay – September 2015 – HLCD Pty Ltd



Appendix E – Memorandums of Preliminary Advice



Memorandum of Advice

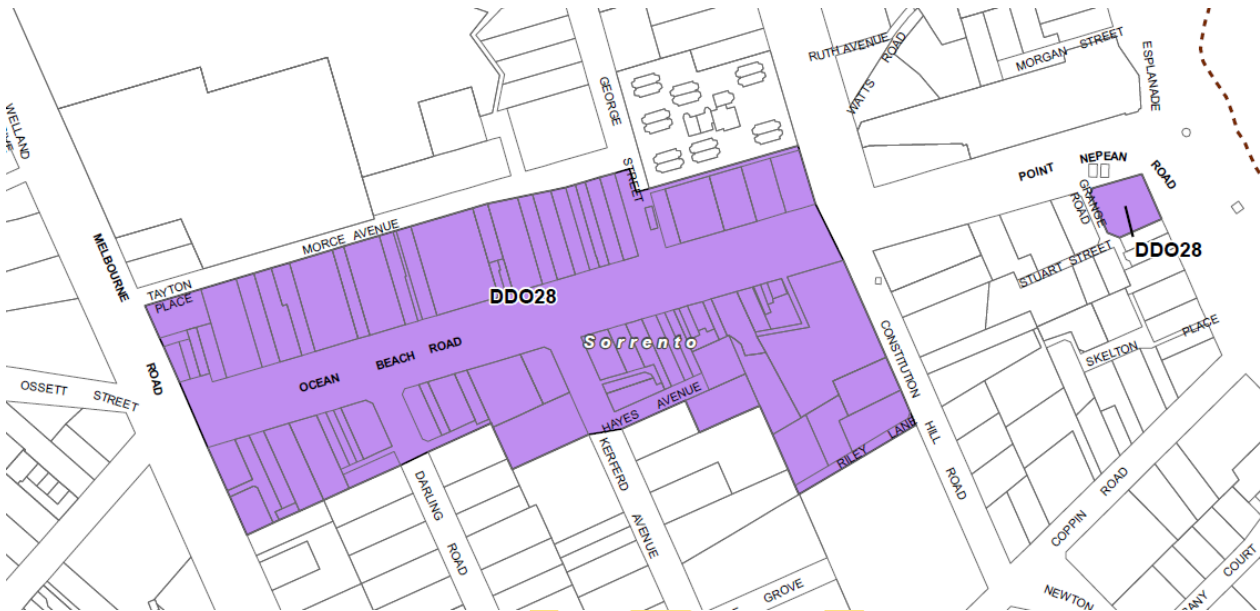
Project	Amendment C286morn to the Mornington Peninsula Planning Scheme
Date	23 March 2023
Subject	Planning opinion on the merits of the Amendment

Introduction

1. I received instructions from HWL Ebsworth, acting on behalf of Mornington Peninsula Shire Council (the **Council**) to undertake a peer review of Amendment C286morn (the **Amendment**) to the Mornington Peninsula Planning Scheme (the **Planning Scheme**) from a planning scheme.
2. The purpose of the peer review is to assist Council in identifying the strengths and weaknesses of the proposed controls.
3. This memorandum sets out my preliminary findings.
4. In preparing this memorandum, I have:
 - Reviewed the exhibited documents for the Amendment, including the explanatory report, the proposed Design and Development Overlay schedule and associated mapping.
 - Read the *Ocean Beach Road, Sorento Built Form Review* report prepared by DesignUrban and dated November 2021 (the **Built Form Review**).
 - Considered relevant practice guidance, including Planning Practice Notes 59 and 60.
 - Considered the Panel report for Amendment C204 to the Mornington Peninsula Planning Scheme.
5. I have not undertaken a site inspection. However, I am broadly familiar with the Amendment area.
6. I have not reviewed any submissions received by the planning authority or any other information not referred to in the list above.

The Amendment

7. The Amendment proposes to apply Design and Development Overlay – Schedule 28 (DDO28) on a permanent basis to land shown in the map below.



Proposed DDO28 Map

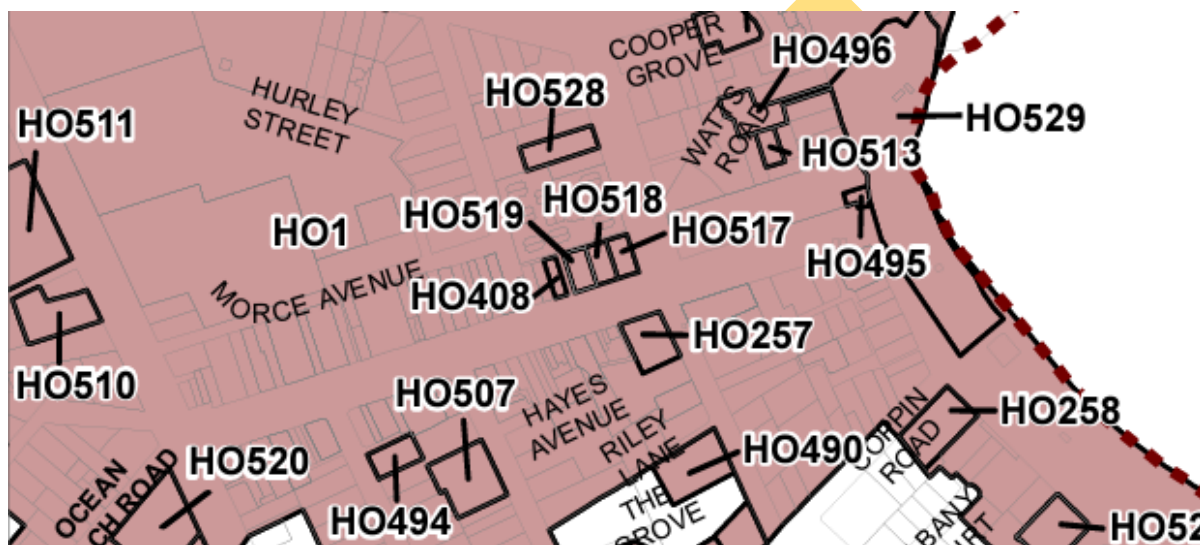
8. DDO28 currently applies on an interim basis with an expiry of 31 July 2023.
9. The exhibited DDO28 proposes mandatory height and setback controls, including:
- A mandatory 9 metre and 2 storey street wall height.
 - A mandatory 12 metre and 3 storey maximum building height.
 - A mandatory zero lot line setback in the east and central precincts, with a mandatory 4 metre setback for the third storey.
 - A mandatory 5 metre setback from Ocean Beach Road in the north west precinct, with a mandatory 4 metre setback for the third storey.

Analysis

10. In summary, my opinion is that the mandatory controls proposed in the Amendment do not satisfy the practice guidance set out in practitioner guidance, particularly Planning Practice Note No. 59: The Role of Mandatory Provisions in Planning Scheme and Planning Practice Note No. 60: Height and Setback Controls for Activity Centres.
11. My reasons are set out in the analysis that follows.
12. This is the second time that mandatory controls have been proposed for the Ocean Beach Road commercial precinct.
13. Mandatory controls were first proposed by Amendment C204 to the Mornington Peninsula Planning Scheme. I note that the Panel for that Amendment did not support mandatory controls on the basis that the criteria in PPN59 and PPN60 was not met. It concluded that discretionary controls could achieve the built form outcomes whilst maintaining the design flexibility inherent in a performance-based system.
14. Subsequent to the Panel report, Council (in partnership with DELWP) has undertaken further strategic work (in the Built Form Review), while DDO28 applied on an interim basis.
15. The controls proposed by this Amendment have their strategic justification in the Built Form Review. The Built Form Review includes built form testing of a range of scenarios, as recommended by DELWP.
16. My reading of the Built Form Review is that the justification for mandatory controls is almost entirely predicated / justified on the heritage significance of the precinct. In this respect, I note that the Built Form Review variously refers to the township's 'sensitive heritage context' and 'heritage buildings' which 'contribute significant character to Ocean Beach Road'.
17. Indeed, the report includes a section on the 'Rationale for Mandatory Height Limits'. It says:

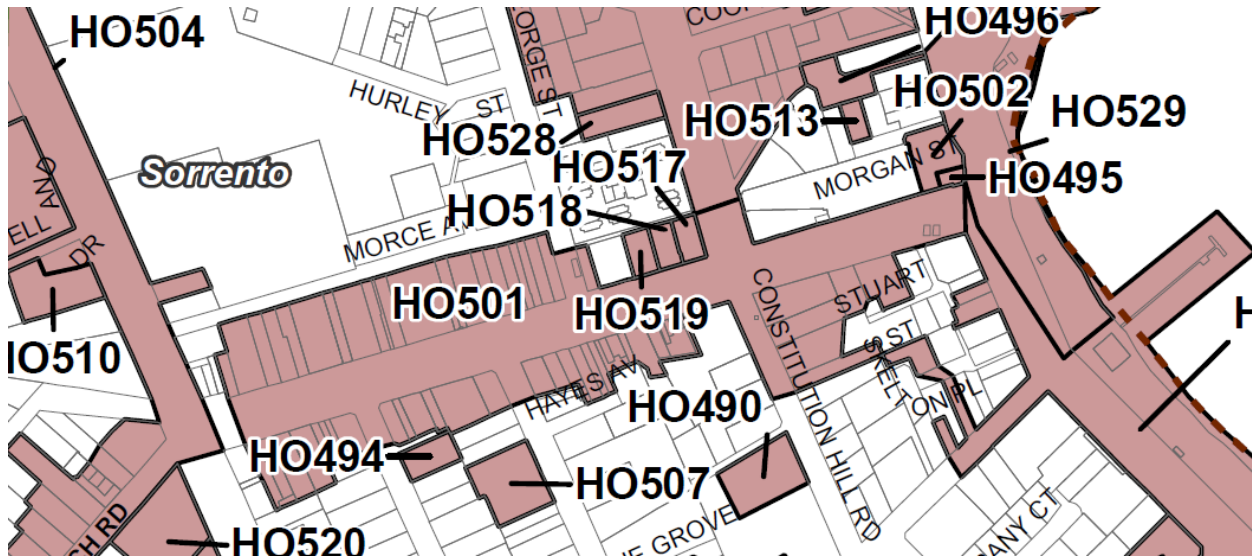
*One of the **key justifications** for mandatory height controls along Ocean Beach Road is the sensitive heritage context of the township and the heritage buildings which contribute significant character to Ocean Beach Road commercial precinct. **Mandatory controls are warranted in such scenarios as there is a high likelihood that a building with an inappropriate scale in the immediate context of the heritage building will detract from the significance of that building.** Similarly, as the majority of Ocean Beach Road is within a Heritage Precinct, the wider precinct will suffer as a result. As per PPN59, grounds for mandatory controls can be justified in such exceptional circumstances. This Built Form Review and the accompanying series of 3D built form tests provide the basis for the proposed planning controls, whilst the sensitive heritage and coastal context of the township provide the necessary justification for the height controls to be mandatoryⁱ.*

18. This extract would appear to confirm that the heritage significance and the extent of Ocean Beach Road within the Heritage Overlay provides the 'key' justification for the application of mandatory controls.
19. I separately observe that the "coastal context" provides a secondary justification, but no view shed analyses or built form tests have been taken from coastal vantage points (at either the Surf Beach or Bay Beach ends).
20. Critically, at the time that the Built Form Review was undertaken, all of Ocean Beach Road (and other parts of central Sorrento) were in the HO1 Heritage Precinct.



Heritage Overlay map prior to Amendment C262 (at the time the Built Form Review was undertaken)

21. Subsequently, Amendment C262 to the Mornington Peninsula Planning Scheme sought to implement the findings of the *Heritage Review Area 3* heritage study, applying to Blairgowrie, Sorrento and Portsea. That Amendment proposed to delete HO1 and apply HO501 to the north and south sides of Ocean Beach Road. The exhibited HO map is provided below.



Exhibited HO Map (Amendment C262)

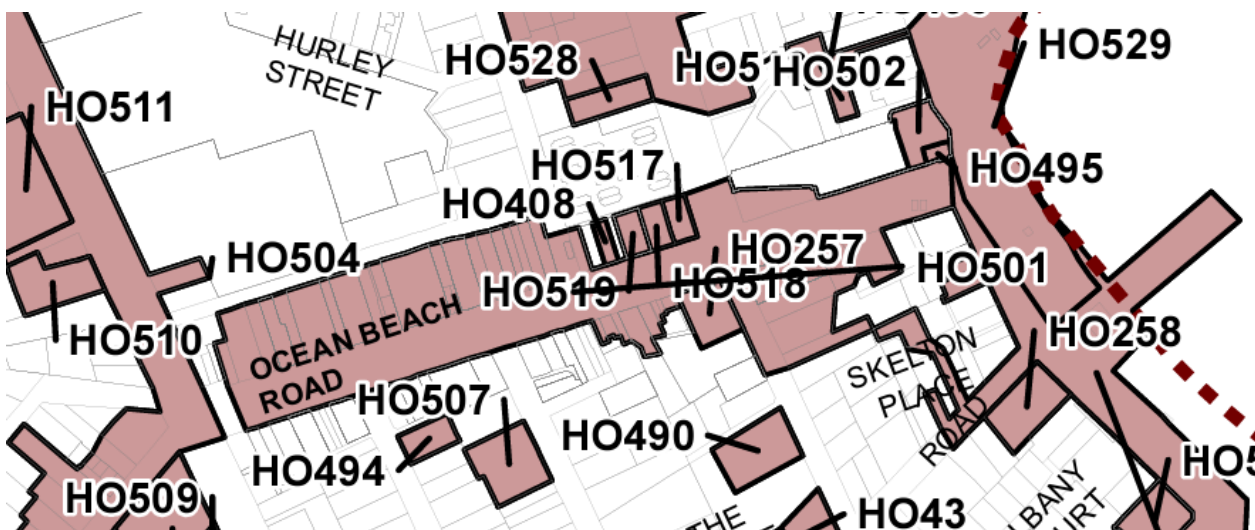
22. The significant, contributory and non-contributory buildings of the HO501 precinct are identified as follows:



HO501 Sorrento Historic Precinct Commercial Precinct Map

23. The Panel for Amendment C262 did not support the inclusion of land on the southern side of Ocean Beach Road (west of the contributory buildings) within HO501.
24. Amendment C262pt2 was gazetted on Thursday, 26 May 2022. Consistent with the Panel's findings, the southern side of Ocean Beach Road (west of the contributory buildings) was

removed from HO501. The current Heritage Overlay map within the Mornington Peninsula Planning Scheme is reproduced below.



Heritage Overlay Map

25. Notably, the planning context for the Amendment area has changed since the Built Form Review was undertaken. Significant parts of the southern side of Ocean Beach Road have been removed from the Heritage Overlay, while the Heritage Review has identified that a number of properties on the northern side of Ocean Beach Road contain non-contributory buildings.
26. This change in context is significant and erodes the strategic justification set out in the Built Form Review.
27. I accept that PPN60 establishes criteria for exceptional circumstances. These criteria include:
 - *Sensitive coastal environments where exceeding an identified height limit will unreasonably detract from the significance of the coastal environment.*
 - *Significant heritage places where other controls are demonstrated to be inadequate to protect unique heritage values.*
 - *Significant physical features, such as views to or from the activity centre or topography, where it can be demonstrated that discretionary controls would be inadequate to deliver the desired built form objectives or outcomes for the activity centre.*
28. I also accept that there are some properties of heritage significance and the HO501 applies to approximately half of the area covered by the Amendment.
29. The coastal environment and views to and from the activity centre may also be reasons to justify mandatory controls.

30. However, it is my opinion that the Built Form Review, which is the sole strategic justification for the Amendment and for mandatory controls, does not present a compelling case for the introduction of mandatory controls *as exhibited*, having regard to PPN59 and PPN60.
31. The justification for mandatory controls was *more compelling* prior to the gazettal of Amendment C262pt2 (and at the time the Built Form Review was undertaken).
32. However, it is clear that the Built Form Review purports a level of heritage significance and intactness that is not reflected in the heritage controls that apply to the Amendment area.
33. On this basis, I find that there is insufficient justification for the introduction of the *extent* of mandatory controls proposed based on the information before me. It may be that following a review of that heritage context, a justification for mandatory controls on the north side could be made. The Council needs to re-visit its strategic justification for the application of mandatory controls having regard to the changes to the heritage landscape discussed above to determine if this case can be made out.

John Glossop
Glossop Town Planning

March 2023

ⁱ Emphasis added.



Memorandum of Advice

Project	Amendment C286morn to the Mornington Peninsula Planning Scheme
Date	19 September 2023
Subject	Response to List of Review Matters

Introduction

I have been asked to respond to a series of questions from the Council concerning Amendment C286morn (the Amendment) to the Mornington Peninsula Planning Scheme (the Planning Scheme). The Amendment seeks to impose permanent built form controls on the Sorrento Activity Centre by way of Design and Development Overlay – Schedule 28 (DDO28). DDO28 implements the Ocean Beach Road, Sorrento Built Form Review report prepared by Design Urban (November 2021) (the Review Report).

This memorandum follows my earlier memorandum dated 23 March 2023 where I was asked to provide a peer review of the Amendment. At that time, I concluded that there was insufficient justification for the introduction of the extent of mandatory controls proposed.

Mornington Peninsula Shire Council (Council) has subsequently embarked upon a ‘refresh’ of the adopted Review Report, which specifically considers:

- Recent changes to heritage controls in the Sorrento Township implemented by Amendment C262morn;
- Urban design advice prepared by Kinetica and my earlier memorandum of advice; and
- Issues raised in submissions to the exhibited version of the Amendment.

The specific matters set out in Council’s Built Form Review Refresh: List of Review Matters (the Review Matters) broadly call for a consideration of the strategic justification of the proposed:

- Built form provisions (the specific building height, setback, materiality and connectivity requirements);
- Mandatory nature of some of the controls; and
- Sub-precinct boundaries.

I consider each of the Review Matters in turn below, with reference to the additional considerations listed above. In preparing this advice I conducted a detailed inspection of the Sorrento Activity Centre on 24 August 2023 in the company of Council officers and Mr Steve Thorne, the author of the Review Report.



Analysis

My analysis follows the numbering system outlined in the aforementioned Review Matters document. I address each item where a response from myself is requested in turn below.

1. Strategic justification for mandatory controls

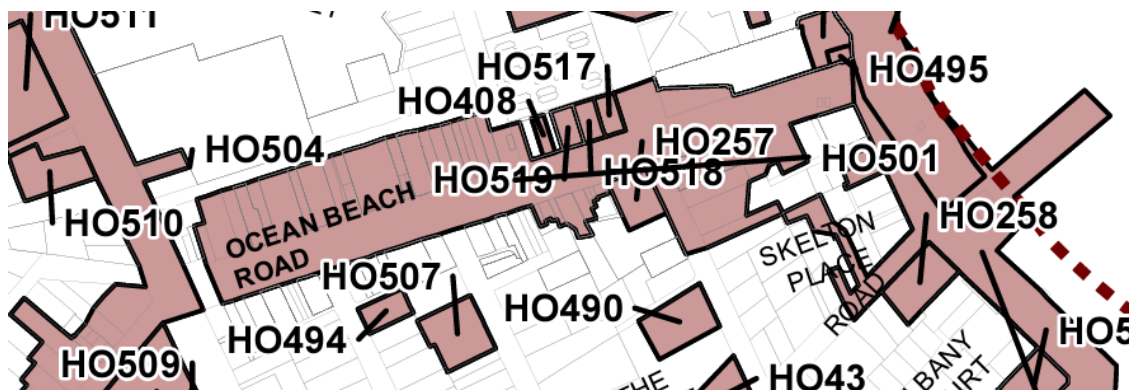
The Amendment seeks to impose mandatory built form controls as follows:

- Maximum building heights (in metres and storeys);
- Maximum street wall heights (in metres and storeys);
- Minimum upper level setbacks from a street boundary; and
- For the South West sub-precinct, a rear boundary setback.

My original position was that the extent of mandatory controls was not strategically justified. This was largely because the Review Report indicated they were based almost entirely upon heritage considerations and that since the Amendment was drafted, heritage controls have been removed from part of the Activity Centre and a number of buildings found to have no heritage value.

On the basis of further information which has come to light, I now support the mandatory controls due to a combination of the following factors:

- In areas of the Activity Centre subject to the Heritage Overlay (HO), Planning Practice Note 60 – Height and Setback Controls for Activity Centres (PPN60)¹ supports mandatory controls ‘*where other controls are demonstrated to be inadequate to protect unique heritage values*’. PPN60 therefore would provide part of the justification for mandatory controls in HO areas (refer map below).



Heritage Overlay Map

¹ I note this Practice Note is currently being reviewed



- Preserving views to the Intercontinental Hotel tower is sufficiently important to further warrant height controls for properties to the west of this site, to facilitate views from the northwest of the Activity Centre.



View to Intercontinental Hotel tower

- As a lower order bayside / coastal activity centre, views to the landscaped sand dunes to the west of the Activity Centre are an important part of its character and value. In order to maintain reasonable views, mandatory height controls are warranted towards the western end of the Centre on both sides of the street.

From my observations, extending buildings in these areas will restrict views to the dunes from the public realm in the Activity Centre. PPN60 supports the use of mandatory controls in 'exceptional circumstances', which it says might include:

- *significant landscape precincts such as natural waterways, regional parks and areas where dense tree canopies are the dominant feature;*

and to

- *significant physical features, such as views to or from the activity centre or topography, where it can be demonstrated that discretionary controls would be inadequate to deliver the desired built form objectives or outcomes for the activity centre.*

The sand dunes to the west of the Activity Centre, which are protected by Environmental Significance Overlay – Schedule 24 (Site of Scientific Significance) would constitute the type of



significant feature contemplated by these guidelines. In my opinion, potentially 'building out' the influence of the dunes upon the character of the Activity Centre would be to its detriment.



View to sand dunes from southwest corner of Ocean Beach Road and Kerford Avenue



View to sand dunes from northwest corner of Ocean Beach Road and George



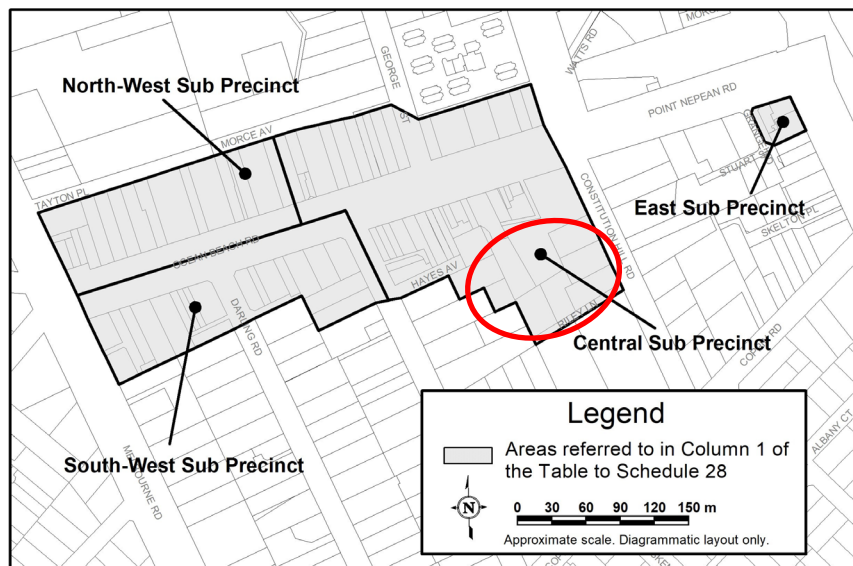
- The East sub-precinct is particularly sensitive given its relationship to the foreshore and warrants mandatory controls. PPN60 supports mandatory controls in sensitive coastal environment where exceeding an identified height limit will unreasonably detract from the significance of the coastal environment. I discuss this sub-precinct further under Review Matter 7 below.

Having reached these conclusions, I note that there may be some isolated areas of the Activity Centre where the case for mandatory controls is weaker. This includes where there is a row of non-contributory buildings in the HO on the north side of Ocean Beach Road (refer image below).




Map of heritage graded buildings

There is also a weaker case for mandatory controls for the parcels in the southeast corner of the Central sub-precinct, without an abuttal to Ocean Beach Road (refer image below).



Excerpt from proposed DDO28





Nonetheless, I think it would be illogical to allow greater growth opportunities here, since this could create an inconsistent environment, which could undermine the Activity Centre's broader values. For the lots in the southeast, most of these also appear to have been already developed.

I note that PPN60 identifies that planning for activity centres must ensure sufficient opportunity is provided for commercial (retailing, office, fringe retailing and other uses such as entertainment) activities needed over at least a 15 year timeframe and then into the 30 year horizon, as well as anticipated housing growth over the same timeframes. PPN60 further states:

In addition to this, where mandatory height and setback controls are proposed over most or the entire activity centre, rigorous strategic justification has to be provided and should include:

- *a Housing Strategy which examines the city's future housing needs and the role of activity centres (including neighbourhood activity centres) in accommodating these needs*
- *an activity centre/economic strategy which examines the role of the activity centre as part of a network of centres.*

The Sorrento Activity Centre is a 'small township' pursuant to the Mornington Peninsula Activity Centres Strategy (May 2018) (the AC Strategy). These are described by the AC Strategy as follows:

This centre classification describes centres serving medium-sized settlements on the Mornington Peninsula (5,000-plus people) and which meet most of the basic retail, commercial and other needs of their surrounding population. Small township centres typically comprise around 3,000m² to 10,000 m² of floorspace and are often an important focus for community interaction and local identity.

Sorrento specifically is described as follows:


Sorrento is a street-based activity centre located on both sides of Ocean Beach Road between Point Nepean Road and Melbourne Road. Many buildings of heritage value remain in the centre, which attracts significant tourist/visitor trade throughout the year. This is reflected in the large number of high-end fashion retail tenants and the considerable café and restaurant offering along the strip.

Approximately 15,000m² of retail and commercial floorspace is located in the Sorrento activity centre, including 12,000m² of shopfront floorspace. An IGA supermarket operates from a relatively new development at the southern end of the centre, in a tenancy formerly occupied by Coles for a brief period. Vacant floorspace accounts for just 2% of shopfront floorspace in the centre.

The 'general outlook' for Sorrento is as follows:

Sorrento has a high-quality street-based shopping environment which is expected to continue to perform strongly over coming years. The level of activity is strongly seasonal, reflecting Sorrento's attraction for visitors, and which is supported by the location of the Sorrento/Queenscliffe ferry terminal. Although residential growth in the Sorrento catchment is expected to be relatively limited, and no additional commercial land is considered





necessary, current development proposals demonstrate that there is still scope for infill/re-development based particularly on mixed use and visitor oriented development.

The primary challenge in this context is to ensure that new development is appropriate to the historic and coastal character of Sorrento, which is its greatest competitive advantage. The Ocean Beach Road Commercial Precinct Sorrento Heritage Policy - September 2015, provides appropriate guidance in this regard.

The AC Strategy appears to support limited local commercial growth.

In addition, the Mornington Peninsula Housing and Settlement Strategy Refresh (2020-36) (the Housing Strategy) anticipates little local residential growth. The Housing Strategy is sought to be introduced into the Planning Scheme by way of Amendment C219. I note the Panel convened to hear submissions on Amendment C219 recently recommended that before implementing the amendment Council determine the anticipated take-up of available land enables the provision of at least 15 years housing supply. This additional work may alter the exhibited version of the Housing Strategy and its associated zone and other Planning Scheme changes.

Nonetheless, according to the existing Housing Strategy, the townships of the Mornington Peninsula are expected to accommodate at most moderate and generally low levels of housing growth, with many smaller towns and villages intended to accommodate very limited further development. Accordingly, the residential areas of Sorrento are proposed to be rezoned to the Neighbourhood Residential Zone.

It would seem to me that notwithstanding the outcomes of Amendment C219, future growth in Sorrento will be low. There is also a series of environmental factors limiting growth, including bushfire, access and flooding. I further note that Sorrento has a large supply of holiday, rather than permanent homes, meaning providing new housing opportunities will not necessarily accommodate the housing demand for owner / occupiers or even long term renters.

In light of the foregoing, I support the mandatory nature of the height controls.

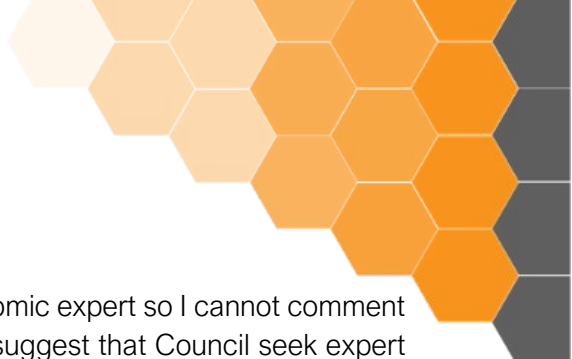
In relation to the street setback controls I defer to the advice from Design Urban. I consider the rear setback provision separately under Review Matter 2 below.

I note there is proposed to be additional mandatory requirement that (a) development not provide a retail frontage to Morce Avenue and (b) that all development be connected to reticulated services.

In terms of the question of retail frontages, I understand the concern to be that retailing facing Morce Avenue may threaten the commercial activity of tenancies in Ocean Beach Road. From the AC Strategy though, and my observations on site, there appears to be near full occupancy within the centre. I wonder therefore if this provision may be excessively limiting new retail opportunities, which might eventually be to the detriment of local residents. It might also be difficult to substantiate this mandatory provision and demonstrate that the Activity Centre is providing 'sufficient opportunity' for commercial activity over a 15 and 30 year timeframe².

I observed on site that the ground level interface of most buildings to Morce Street is at present poor regardless of land use. I see some benefit in activating Morce Street with commercial uses, including

² As required by PPN60



in providing surveillance of the car park. I am not however, an economic expert so I cannot comment on what impact that would have on the main street's viability, but I suggest that Council seek expert advice in this respect. At present though, I cannot support the mandatory nature of this aspect of DDO28.

In terms of the requirement that development be connect to reticulated services, this seems to me an obvious component of a new proposal, and I wondered if it was still a relevant inclusion in DDO28. If it is felt it is, I have no issue with it in principle.

2. Rear building setbacks

Proposed DDO28 includes a mandatory requirement for the South West sub-precinct that the upper two levels at the rear of a building (or any development above 3.6m) be setback within a 30 degree angle. I understand that the purpose of this requirement is to achieve no new shadowing across residential land to the south of the Activity Centre at the winter solstice. I believe this requirement is problematic since:

- It applies to rear setbacks even when they do not abut a residential boundary.
- It does not account for cases where laneways separate the commercial and residential land.
- It only applies to properties with a frontage to Ocean Beach, thus captures relatively few parcels.
- It is more onerous than would be required under Clause 54 / 55.

It is also not clear why it is only dwellings abutting the South West sub-precinct that have been afforded this protection (the policy is otherwise silent on zone interface issues).

I further note that some properties within DDO28 are likely to have a side residential abuttal rather than a rear abuttal, yet there are no shadowing obligations upon these sites. I believe this requirement needs to be reconsidered.

I note that in the Commercial 1 Zone (C1Z) which applies to the Activity Centre, the following Decision Guidelines are listed:

- *Consideration of the overlooking and overshadowing as a result of building or works affecting adjoining land in a General Residential Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.*
- *The objectives, standards and decision guidelines of Clause 54 and Clause 55. This does not apply to an apartment development.*
- *For an apartment development, the objectives, standards and decision guidelines of Clause 58.*

There are some 'gaps' in this framework namely:

- There are no controls around potential visual bulk associated with a wholly commercial buildings.
- For apartments, Standard B17 (Side and Rear Setback) would not be applicable even as a decision guideline.



- A guideline to provide ‘consideration’ of overlooking and overshadowing does not provide clarity or certainty as to the intended outcomes.

I would support the drafting of a General Requirement which seeks to manage the relationship to any residential properties outside the activity centre (not just adjacent to the South West sub-precinct). I do not believe the existing requirement (i.e. a setback within 30 degrees) provides a reasonable restriction though and would favour instead reference to the standards of Clause 54 / 55.

I note that DDO28 does not seek to manage the relationship between buildings within the Activity Centre. On the north side of Ocean Beach Road particularly, sites are long and relatively narrow. I observed on site a relatively modern apartment building with windows and balconies very near, or on, a side title boundary (refer image below). While I assume this development pre-dated Clause 58, Council may wish to consider whether additional guidance is required to manage common boundary arrangements.



68 Ocean Beach Road / 15 Morce Avenue

3. Building height definition

I observe that the topography of the Activity Centre is undulating although it broadly falls from the south towards the north. These features present challenges for measuring building height.

Proposed DDO28 allows buildings of up to three storeys and 12 metres and does not, at present, identify how building's ought to be measured. In such cases, the measurement of building height defaults to the definition provided at Clause 73.01 (General Terms) of the Planning Scheme, which defines building height as: *The vertical distance from natural ground level to the roof or parapet at any point.*



The standard definition would allow buildings to step up at the rear of the inclining slope on the south side of Ocean Beach Road, although when read together with the 3 storey limitation tempers the rear of built form on the downward slope on the north side of Ocean Beach Road.

I observed on site an example of the proposed response which would be facilitated by DDO28 on the corner of Ocean Beach Road and Kerford Road (refer image below). This building is only three storeys at any point yet uses the sloping topography to allow for what are four, visible building levels.




Compliant three storey building at the corner of Kerford Road

As we discussed on site, the scale of this building is emphasised by its detailing, particularly its colour scheme. Council should consider whether with better guidance in terms of materials and finishes in DDO28, this design response would be an appropriate one. If the view is that it is not, the alternative would be to prescribe within the DDO that building height must be measured from a specified location.

Within the City of Melbourne, there are various DDOs that require building height be measured from a point in the centre of a site's frontage³. Applying this method of measuring building height to the Sorrento Activity Centre will temper buildings on the south side of Ocean Beach Road and may only permit two storeys at the rear of some properties. Some of the affected properties though do not have an immediate residential interface to the rear meaning, that this two storey portion could abut a three storey, adjoining building, which may not be logical. Council should consider the costs and benefits of this approach in consultation with Design Urban.

³ For example, DDO2, DDO6, DDO9 and DDO10 among others



Turning to buildings on the north side of Ocean Beach Road, I believe here it would be more clearly appropriate to measure a building's height from the Ocean Beach footpath and to consequently allow four storeys at the rear. Specifically, I note:

- The three storey / 12 m limitation will allow the creation of the consistent street wall with recessed upper facing Ocean Beach Road.
- The development on Ocean Beach Road will screen views to any four storey elements permitted behind.
- The Morce Avenue streetscape is not sensitive to development, given its abuttal to a car park.
- There is an emerging context of four storey development in Morce Avenue.

Separately, I believe it is necessary for Council to consider how sites developed with heritage buildings are intended to be developed under DDO28. This factor is particularly pertinent for the single storey, former dwellings which make up part of the North West sub-precinct. The currently drafting of DDO28 does not provide guidance as to the expected outcomes for these properties.

Finally in relation to building height, I note that existing DDO28 allows some features above the prescribed height limitations (architectural features, masts, building services or enclosed stairwell). I would consider an enclosed stairwell as constituting a 'storey' so I wondered if 'unenclosed' was intended. Council might like to also consider whether a minimum setback from the building's edge to these exemption structures is warranted⁴.

4. Sub-precinct boundaries

I question the value in identifying sub-precincts within DDO28 since the precinct boundaries are not particularly clear on the ground and many of the existing requirements are replicated across precincts. I further note:

- The East sub-precinct should be excluded from DDO28 as discussed under the next heading.
- The justification for the boundary between the North West sub-precinct and the Central sub-precinct is not clear to me. It does not appear to align with the boundary of the former dwellings in Ocean Beach Road and the commercial building stock, which may have been more logical. Equally sites with dual frontages could have also conceivably formed a logical precinct.
- While the South West sub-precinct is entirely outside the Heritage Overlay, which would usually form a solid basis for a boundary, given its specified built form outcomes are the same as for the Central sub-precinct⁵ it does not appear to warrant a separately category.

On the whole, I do not see much value in the sub-precincts unless Council wanted to specifically include built form outcomes / guidelines specific to each precinct. The information as it stands in the current DDO28 I believe could be more clearly communicated by revised drafting of the General and Mandatory Requirements.

⁴ In the City of Melbourne, a 3m setback is required for features that exceed the maximum height

⁵ Outside of the 30 degree setback requirement, which I discuss elsewhere.



7. East sub-precinct

I believe the East sub-precinct ought to be excluded from DDO28 and instead be subject to Design and Development Overlay – Schedule 3 (Coast and Landscape Design) (DDO3).

To me, the East sub-precinct is clearly differentiable from the ‘main’ shopping strip and sensitively located at the coastal interface. While I am not an urban designer, my view is that a three storey building, with a hard two storey edge to the abutting streets would be an overly robust insertion in this location.



View down Ocean Beach Road from foreshore

DDO3 currently applies to the site immediately south of the East sub-precinct, as well as to the C1Z land on the opposite side of Point Nepean Road. It provides a mandatory maximum building height of 8m / two storeys, which would seem more appropriate and in keeping with development in the context of the East sub-precinct.

We note that DDO3 also includes a mandatory requirement that only one dwelling may be constructed on the land. Council may wish to consider whether this is appropriate to the East sub-precinct or indeed to any C1Z land.

16. Pedestrian connections

There is currently a General Requirement in DDO28 that says:

Where applicable, all new development within the North West and Central Sub Precincts should provide for pedestrian connections between Ocean Beach Road and Morce Avenue, to the satisfaction of the responsible authority.



A permit may be granted to vary this requirement provided the responsible authority is satisfied that the provision of a pedestrian connection on a specific site is not required.

This requirement constitutes a permit trigger (meaning a permit preamble must indicate when a dispensation has been granted) yet I believe it is problematic for the following reasons:

- The term 'where applicable' is not clear, unless accompanied by a plan indicating specifically where these links are proposed (meaning via which sites).
- What is meant by a 'pedestrian connection' is not explicit and there are no decision guidelines to assist the exercise of discretion. I assume a *public* pedestrian connection is sought however, what would and would not constitute an appropriate and safe connection point is not clear. Would it need to be open 24 hours a day? What sort of accessibility standards (widths, gradients, lighting) are required? Given this is a mandatory requirement these things need to be more explicit.
- It would not seem necessary that each and every site with a dual frontage provide such a connection point, particularly where heritage buildings exist. Setting land aside of this purpose may constitute inefficient use and / or an inappropriate design outcome.

I believe this requirement needs further consideration.

18. Building design and materiality

The drafting of DDO28 could be improved to clarify the specific building design and materiality outcomes which are being sought. This should include a General Requirement, as well as clearer Design Objectives, which seek to ensure buildings respond to the coastal themes, vertical proportions and colour schemes evident in the Activity Centre.

I observed that the local heritage buildings exhibit a lower proportion of glazing, to a more typical shopfront (refer images below).



Lower levels of glazing and more detailed window framing evident on heritage buildings





More typical, fully glazed shopfront (in centre)

I note that a requirement for a specified proportion of solid versus glazing would appear supportable by the local character although presents something of an awkwardness with the following exemption from the need for a permit in the C1Z:

- *An alteration to an existing building façade provided:*
 - *The alteration does not include the installation of an external roller shutter.*
 - *At least 80 per cent of the building facade at ground floor level is maintained as an entry or window with clear glazing.*


By requiring, for example, that all shopfronts are constructed of at least 20% (or more) solid materials, this would immediately trigger a requirement for a permit under the C1Z. While this is unusual, it is not necessarily problematic, since as drafted DDO28 would already require a planning permit for all buildings and works. I would therefore support a General Requirement along these lines, provided it was adequately strategic justified from an urban design perspective.

Other comments

In addition to the above, I have noted the following additional matters as part of my review:

- There is a mandatory requirement for a 5m setback in the North-West sub-precinct although I note that some buildings are not set back this amount. How would this be interpreted in such cases, particularly where there is more than one building in a row, not setback 5m. It might be more appropriate that buildings be setback at least to match the larger setback of an immediately adjacent building.
- As I have said above, DDO28 needs to acknowledge heritage buildings, particularly in the height and siting specifications. It is not clear to me how, for example, a single storey heritage building would be developed to accord with the policy.



- 
- As we discussed on site, I am unclear on why the C1Z land opposite the East sub-precinct was excluded from the Activity Centre planning although, if the East sub-precinct is to be excluded this becomes less problematic.

I hope that this advice is of assistance, if you have any questions please do not hesitate to contact my office.

John Glossop
Glossop Town Planning
19 September 2023

