

PART B SUBMISSION ON BEHALF OF THE PLANNING AUTHORITY

**Mornington Peninsula Planning Scheme Amendment C286morn
Ocean Beach Road Sorrento Built Form Review**

Sorrento Ocean Beach Road Commercial Precinct

Date: 5 May 2025

TABLE OF CONTENTS



1 INTRODUCTION..... 2

2 STRATEGIC JUSTIFICATION 5

3 APPLICATION AND PARAMETERS 12

4 GENERAL DRAFTING ISSUES 16

5 BUILDING HEIGHT CONTROLS 18

6 SETBACK CONTROLS 21

7 AMENITY IMPACTS 26

8 COUNCIL’S POSITION ON THE AMENDMENT..... 28

9 CONCLUSION 30

**MORNINGTON PENINSULA PLANNING SCHEME AMENDMENT C286MORN
OCEAN BEACH ROAD SORRENTO BUILT FORM REVIEW**

PLANNING AUTHORITY / COUNCIL	Mornington Peninsula Shire Council
SUBMITTERS	Submitter #12 – Kenneth Grenda Submitter #33 – Graham Reeve Submitter #47 – Nepean Conservation Group Inc Submitter #64 – Service Link Australia Pty Ltd Submitter #65 – Avner Klein
SUBJECT LAND / AMENDMENT AREA	Sorrento Ocean Beach Road Commercial Precinct

PART B SUBMISSION ON BEHALF OF THE PLANNING AUTHORITY

1 INTRODUCTION

- 1.1 This Part B Submission is made on behalf of Mornington Peninsula Shire Council (**Council**) in response to Directions 17 and 18 of the Panel's Directions issued dated 6 March 2025 (**Directions**).
- 1.2 Council is the Planning Authority for Planning Scheme Amendment C286morn (**Amendment**) to the Mornington Peninsula Planning Scheme (**Scheme**). The Amendment has been made at the request of Council.
- 1.3 On 16 April 2025, Council circulated its Part A Submission in accordance with Direction 10 of the Panel's Directions. The Part A Submission addressed several themes set out in the Panel's Directions. Council's Part A Submission is taken to be read and as forming a part of this submission.

Overview of the Amendment

- 1.4 The Amendment seeks to implement the recommendations of Council's adopted *Ocean Beach Road Sorrento Built Form Review* (May 2024) (**Built Form Review 2024**) by replacing interim Schedule 28 to the Design and Development Overlay (**DDO28**), which applies to Sorrento's Ocean Beach Road Commercial Precinct with a revised and permanent schedule comprising both mandatory and discretionary building height and setback controls.
- 1.5 A detailed overview of the Amendment is set out in Council's Part A Submission.
- 1.6 The proposed transition from the current (interim) DDO28 to the proposed DDO28 is shown in the below Figures 1 - 3.

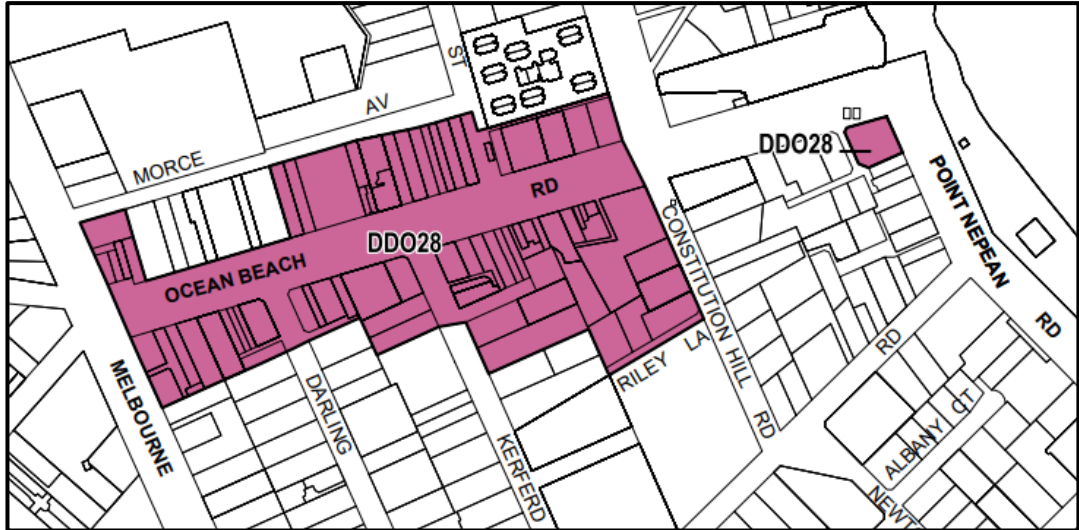


Figure 1: Map of existing (interim) DDO28.

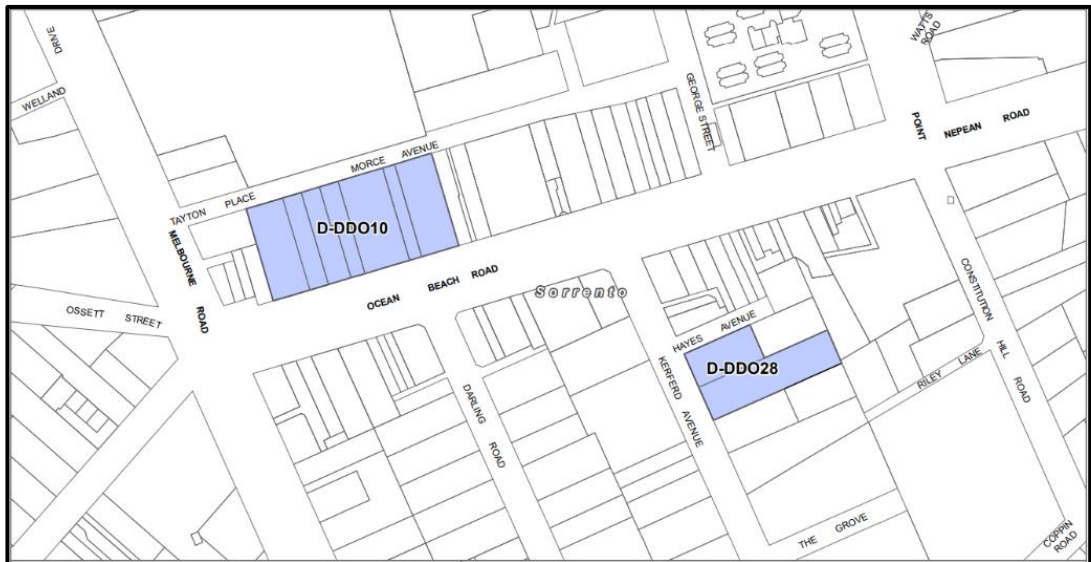


Figure 2: Extract of exhibited Map No. 22DDO showing areas proposed to be deleted from a DDO.

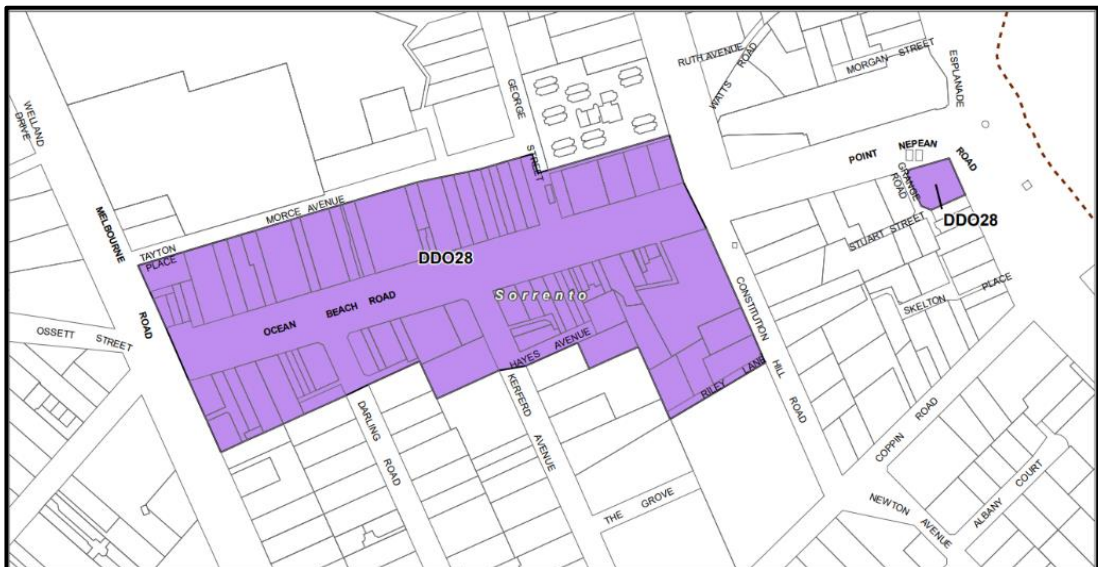


Figure 3: Extract of exhibited Map No. 22DDO showing areas proposed to be affected by DDO28.

Key Issues

- 1.7 In support of the Amendment, Council relies upon and adopts the:
- 1.7.1 town planning expert evidence of Mr John Glossop of Glossop Town Planning (**Mr Glossop's Expert Evidence**); and
 - 1.7.2 urban design expert evidence of Mr Alastair Campbell of Hansen Partnership (**Mr Campbell's Expert Evidence**).
- 1.8 It is observed that the Submitters who are parties to this proceeding have opted to not engage and call expert evidence.
- 1.9 In accordance with Direction 18 of the Panel's Directions, this submission comprises:
- 1.9.1 Council's response to the issues raised in submissions to the Amendment, as supported by Mr Glossop's Expert Evidence and Mr Campbell's Expert Evidence; and
 - 1.9.2 Council's final position on the Amendment, including the further changes as proposed in the 'Day 1' Amendment documentation.
- 1.10 This submission provides a detailed response to the issues raised in submissions to the Amendment, arranged under the following themes:
- 1.10.1 strategic justification;
 - 1.10.2 application and parameters;
 - 1.10.3 general drafting issues;
 - 1.10.4 proposed building height controls;
 - 1.10.5 proposed setback controls; and
 - 1.10.6 amenity impacts.
- 1.11 A summary of the changes supported to the Amendment documentation are set out at section 8 of this submission. These changes, limited to Schedule 28 to Clause 43.02 – Design and Development Overlay and Clause 11.03 – Planning for Places, and reflect Council's response to the submissions, Mr Glossop's Expert Evidence and Mr Campbell's Expert Evidence.
- 1.12 Council's final position in respect of the Amendment will, of course, have regard to the Panel's recommendations, when received.
- 1.13 In summary, Council submits that the Amendment provides for the sustainable and appropriate growth of the Ocean Beach Road Commercial Precinct. More particularly, the Amendment will:
- 1.13.1 replace the current (interim) DDO28 which was introduced by Planning Scheme Amendment C204morn (**Amendment C204morn**) to the Scheme on the condition that the DDO28 was to be applied on an interim basis until such time as further strategic justification was provided to warrant the application of permanent, mandatory height and setback controls in the area. This strategic justification has now been completed and forms the basis of the Amendment;
 - 1.13.2 apply permanent controls to the Ocean Beach Road Commercial Precinct that reflect the design objectives and mandatory design controls recommended by a detailed body of strategic work comprised in the:
 - (a) *Built Form Review 2024*; and

- (b) *Ocean Beach Road Sorrento Heritage Policy – For Planning Applications for Places in the Heritage Overlay* (September 2015) prepared by HLCD Pty Ltd (**Heritage Policy**);

1.13.3 apply permanent controls, to ensure that:

- (a) new development protects and enhances the unique heritage and built form character of the precinct; and
- (b) identified built form values are not eroded over time through the cumulative impact of inappropriate development.

1.14 Council notes the issues raised by the submitters, who have an interest in the sustainable growth and liveability of Sorrento. The submissions raised various concerns regarding protecting Sorrento's village character, proposed building heights and setback controls, amenity, and scale and the extent of built form change. Ultimately:

striking the right balance between permitting sensitive infill development opportunities and maintaining valued characteristics and heritage fabric is the inevitable challenge and a very important one in a context such as Sorrento.¹

1.15 Council submits that the Amendment is supported by detailed strategic work which strikes an appropriate balance between the delivery of necessary permanent built form controls to land within the Commercial 1 Zone (**C1Z**) whilst being respectful to land adjacent to and in the vicinity of the Amendment area.

2 STRATEGIC JUSTIFICATION

2.1 A key threshold issue in the assessment of a planning scheme amendment is whether what is proposed is strategically justified.

2.2 Council submits that the Amendment is consistent with the objectives of planning in Victoria identified in section 4(1) of the *Planning and Environment Act 1987* (Vic) (**PE Act**) as it will:

- 2.2.1 allow for infill development within the Ocean Beach Road Commercial Precinct that is compatible with the role and function of the Sorrento township;
- 2.2.2 ensure that new development protects and enhances the identified unique heritage and built form character of this sensitive coastal township;
- 2.2.3 introduce mandatory and discretionary built form requirements to ensure that these outcomes are achieved; and
- 2.2.4 provide greater clarity and certainty to the community about development expectations in the precinct.

2.3 The Amendment has been considered and assessed against all relevant aspects of the applicable legislation and planning policy (State and Local). In this regard, it is noted that the explanatory report and the Part A Submission provide an assessment of the strategic basis of this Amendment, and more specifically by reference to the relevant State and local policies as well as the other background material which strategically supports the Amendment.

2.4 However, the need for strategic support for an amendment is not a requirement that is set out in any rule or the PE Act. Rather the need for an amendment to be strategically supportable is a practice which is firmly embedded in the objective of orderly planning.

¹ Mr Campbell's Expert Evidence, page 11 at [41].

- 2.5 In further analysing strategic justification for the Amendment, the detailed list of considerations prescribed by *Ministerial Direction No. 9 – Metropolitan Strategy (Ministerial Direction No. 9)*, *Ministerial Direction No. 11 – Strategic Assessment of Amendments (Ministerial Direction No. 11)* and *Ministerial Direction No. 17 – Localised Planning Statements (Ministerial Direction No. 17)* are all relevant. Council submits that the Amendment is consistent with and supports these Ministerial Directions as it:
- 2.5.1 maintains and enhances the character and role of the settlements, towns and villages on the Mornington Peninsula, both individually and as part of the hierarchy of settlements, and to effectively manage future growth and change;
 - 2.5.2 assists with the conservation of sites and areas of recognised historic, scientific and cultural value;
 - 2.5.3 provides careful consideration and attention to achieving good design which is appropriate to the character and function of the Ocean Beach Road Commercial Precinct, in understanding the balance between built form and scale, access and connectivity, environmentally sensitive design, heritage, streetscape and landscape values, and retention of vegetation within the Sorrento township; and
 - 2.5.4 provides consideration and protection of the heritage values of the Sorrento township.
- 2.6 Furthermore, the Amendment is consistent with *Planning Practice Note 46 – Strategic Assessment Guidelines (PPN46)*, *Planning Practice Note 58 – Structure Planning for activity centres (PPN58)*, *Planning Practice Note 59 – The Role of Mandatory Provisions in Planning Schemes (PPN59)* and *Planning Practice Note 60 – Height and setback controls for activity centres*.
- 2.7 PPN46 provides guidance on preparing and evaluating planning scheme amendments. It sets out the various strategic considerations which must form part of each assessment. Each strategic consideration is the subject of several questions, which as the Panel will be aware, give structure to the explanatory reports which accompany amendments.
- 2.8 The Explanatory Report for re-exhibition of the Amendment complies with the requirements of the PE Act and provides a sound reference to the underlying basis of the purpose of the Amendment. It notes that:
- 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.
- 2.9 One of the questions listed in PPN46 is whether an Amendment is supported by or is it a result of any strategic study or report. The Explanatory Report references both the *Built Form Review 2024* and the *Heritage Policy*, being the key underlying strategic documents for the Amendment. These documents are explored in further detail below.
- 2.10 PPN58 provides guidance to councils on the activity centre structure planning process. Although PPN58 is relevant in so far as Sorrento is recognised as a Small Township' in the hierarchy of town centres on the Mornington Peninsula at Clause 11.03-1S, careful consideration of the weight given to PPN58 is necessary as it is currently under review.
- 2.11 PPN59 recognises that there will be locations where a mandatory provision will provide certainty and ensure a preferable and efficient outcome. It suggests that this may include areas of “*high heritage value, strong and consistent character themes or sensitive environmental locations such as along the coast*”.
- 2.12 PPN60 states that mandatory height and setback controls will only be considered in exceptional circumstances. It is submitted that the exceptional circumstances listed in PPN60 are relevant to the Ocean Beach Road precinct and this Amendment, including:
- 2.12.1 “sensitive coastal environments where exceeding an identified height limit will unreasonably detract from the significance of the coastal environment” and,

2.12.2 “significant heritage places where other controls are demonstrated to be inadequate to protect unique heritage values”.

2.13 On this basis, Council submits that the inclusion of mandatory controls as proposed are consistent with both PPN59 and PPN60.

Heritage Policy

2.14 The Explanatory Report recognises the *Heritage Policy* as a key underlying strategic document for the Amendment. In explaining why the Amendment is required, the Explanatory Report notes that:

The controls also reflect the Ocean Beach Road Sorrento Heritage Policy – For Planning Applications for Places in the Heritage Overlay (September 2015, HLCD Pty Ltd) which provided the original basis for the height and setback requirements within the current DDO28 applying to the Ocean Beach Road commercial precinct. The Policy provides guidance for the future conservation and development of the precinct to protect its cultural heritage significance, comprising key design considerations and requirements for each identified sub-precinct.

The current DDO28 was introduced by Amendment C204 on 17 June 2018. The amendment was approved on the condition that DDO28 be applied on an interim basis until such time as further strategic justification is provided to warrant the application of permanent, mandatory height and setback controls in the area.

2.15 The *Heritage Policy* sets out the history of Sorrento and provides a summary of the key local heritage buildings whilst providing guidance for the development of new buildings. In doing so, the *Heritage Policy* nominates a series of sub-precincts, which currently form the basis of the existing DDO28.

2.16 The Heritage Policy aims:

...to provide guidance for the future conservation and development of this area to protect the cultural heritage significance of the Ocean Beach Road Commercial Heritage Precinct. The Ocean Beach Road Heritage Policy has been written to assist owners undertaking works and Council officers assessing planning approvals for new development or alterations to existing properties.²

2.17 The study area included within the *Heritage Policy* concerns a more expansive area than the Amendment area, and a now-outdated Statement of Significance. Notably, the Heritage Policy sets out:

The history of the study area and describes how the area has changed and why it appears as it does today. This, along with the physical survey contained on the individual data sheets, contributes to an understanding of the cultural significance of the area. The policy addresses conservation of existing buildings and design of new development for the assessment of planning approvals.

2.18 The *Heritage Policy* recognises that the precinct is of:

2.18.1 local significance to residents and visitors;

2.18.2 historical significance for the role the precinct has played in the early development of the township of Sorrento as well as the establishment of Sorrento as a tourist resort;

2.18.3 aesthetic significance for its large collection of intact limestone buildings dating from the 1870s through to 1915;

2.18.4 social significance as a locational marker for residents and visitors of Sorrento, landmarked by the Continental Hotel, Koonya Hotel and Stringer's Stores; and

2.18.5 commercial significance as a community hub.

² *Ocean Beach Road Sorrento Heritage Policy – For Planning Applications for Places in the Heritage Overlay* (September 2015) prepared by HLCD Pty Ltd, page 4.

- 2.19 Ultimately, the *Heritage Policy* establishes various policies to deal with planning permit applications in each sub-precinct, which has gradually permitted respectful development to occur within Sorrento.
- 2.20 Although some aspects of the *Heritage Policy* are outdated, Council submits that the *Heritage Policy* is a key, strategically sound document which provides a detailed analysis of the history of Sorrento and particular places of heritage significance, whilst guiding planning permit applications for new development or alterations to existing properties, which are respectful of the precinct's context.³

Built Form Review 2024

- 2.21 The Explanatory Report recognises the *Built Form Review 2024* as being of particular importance to the underlying basis of the Amendment. In explaining why the Amendment is necessary, the Explanatory Report notes that:

The Amendment is required to apply permanent controls to the Sorrento commercial precinct that reflect the design objectives and mandatory design controls recommended by the *Ocean Beach Road Sorrento Built Form Review* (May 2024). The controls include mandatory requirements that limit the height and scale of future development within the precinct. The controls are necessary to ensure that new development protects and enhances the unique heritage and built form character of the precinct, and that identified built form values are not eroded over time through the cumulative impact of inappropriate development.

- 2.22 The *Built Form Review 2024* replaces the *Ocean Beach Road Sorrento Built Form Review* (November 2021) (***Built Form Review 2021***), which formed the key strategic basis for changes originally sought by the Amendment, as evident in the initial exhibition period. The *Built Form Review 2024* recognises that the primary objective of the Amendment remains to retain the two storey streetscape character of Ocean Beach Road, while permitting some additional height. At a high level, the re-exhibited proposed DDO28 was amended to clarify this intent and provide enhanced protection for the local built and natural environment.

- 2.23 In this regard it is noted that the *Built Form Review 2024* details that:

Sorrento is considered to be a sensitive location for new development.

...

Both the Council's Housing Strategy and AC Strategy reinforce that little growth is foreseen locally. This is further supported by the Localised Planning Statement, which also specifically identifies that mandatory controls may be necessary to adequately protect coastal towns and villages.

More restrictive planning controls can be applied in this context. However, planning must still anticipate, and provide for, some growth and change consistent with practitioner guidance and the strategic directions within the Planning Scheme.

This project is derived from a detailed analysis of the existing urban environment, which has identified opportunities to build upon and improve the Centre's existing conditions.⁴

- 2.24 The *Built Form Review 2024* sets out a Built Form Framework which analyses the contexts comprised within the precinct, clearly identifying specific approaches for particular contexts, rather than applying a broadbrush precinct-based approach. The Built Form Framework considers these contexts in light of built form testing and modelling prepared by Council in partnership with the Department of Transport and Planning (**DTP**) and Design Urban Pty Ltd, undertaken at various locations to understand the implications of different height and setback controls.

³ *Ocean Beach Road Sorrento Heritage Policy – For Planning Applications for Places in the Heritage Overlay* (September 2015) prepared by HLCD Pty Ltd, page 5.

⁴ *Ocean Beach Road Sorrento Built Form Review* (May 2024), page 43.

- 2.25 Based on the Built Form Framework, the *Built Form Review 2024* provides that:
- The Built Form Framework set out within Section 6 of this report outlines that further built form direction is required within the Planning Scheme to guide development within the Sorrento Activity Centre.⁵
- 2.26 Ultimately, the *Built Form Review 2024* recommends that the Scheme be amended by:
- 2.26.1 amending Schedule 28 to Clause 43.02 – Design and Development Overlay to provide built form guidance in accordance with the report; and
- 2.26.2 making consequential changes to Clause 11.03-1L-01 (Activity centres – Mornington Peninsula) to exempt the Sorrento Activity Centre from the policy guidelines.
- 2.27 The Amendment delivers on these objectives by proposing an amended Schedule 28 to Clause 43.02 – Design and Development Overlay and Clause 11.03 – Planning For Places, alongside other consequential changes to the Scheme.
- 2.28 Having regard to the *Built Form Review 2024*, Council submits that the DDO28 as proposed by the Amendment is the most appropriate control to provide built form guidance for the precinct, and that such guidance is appropriate and necessary for directing future development outcomes within a sensitive location.

Veracity of the strategic work

- 2.29 Submissions #17, #21, #23, #29, #32, #33, #40, #42, #44, #45, #46, #49, #50, #51, #52, #55, #59, #60, #62, #69 and #72 contended that the Amendment was not strategically justified and will impact the existing streetscape and character of the Sorrento township. These submissions queried the assumptions and application of the proposed built form controls adopted in the *Built Form Review 2024*.
- 2.30 In response to these submissions, Council submits that the *Built Form Review 2024* provides sufficient strategic justification for the Amendment. The adopted *Built Form Review 2024* provides the robust strategic rationale required to support the permanent built form controls sought by Amendment. Without the Amendment and the application of permanent controls, the precinct would not be subject to built form controls that otherwise provide an appropriate response to the environmental and heritage sensitivities of the Sorrento township. A lack of permanent controls would expose the precinct to inappropriate development outcomes when the existing interim controls expire.
- 2.31 The *Built Form Review 2021* was prepared in response to the Minister for Planning's conditional approval of Amendment C204morn (which implemented the Heritage Policy), and formed the basis of the strategic work required to justify permanent mandatory controls for the proposed DDO28. After initial exhibition of the Amendment, Council officers commissioned an independent peer review of the Amendment from both a planning and urban design perspective to explore how submitter issues might potentially be resolved.
- 2.32 In response to the peer review, Council officers then commissioned a 'refresh' of the *Built Form Review 2021* to ensure it provided sound strategic justification to support the application of permanent mandatory built form controls. The refresh was undertaken by Glossop Town Planning, in partnership with Design Urban (the original author of the *Built Form Review 2021*) and with input from Council's external heritage advisor, Landmark Heritage.
- 2.33 Council submits that the refresh of the key strategic work underlying the Amendment, demonstrates Council's willingness and desire to appropriately respond to submitter issues based on advice from expert consultants, and provide an appropriate, strategically justified regime of built form controls for Sorrento.
- 2.34 Council also submits that the *Built Form Review 2024* is evidently a more detailed document. The refresh produced an updated document, which includes a comprehensive analysis of the precinct's planning and physical context to identify overlay opportunities and constraints that inform potential growth and future built form outcomes.

⁵ *Ocean Beach Road Sorrento Built Form Review* (May 2024), page 57.

- 2.35 The refresh also produced a more detailed Built Form Framework, when compared against the *Built Form Review 2021*, which addressed various components of the precinct. The *Built Form Review 2024* is based on extensive 3D modelling and testing carried out by Council. It is recognised that the *Built Form Review 2024* relies on, to some extent, international precedents and principles. To this end, Council submits that these precedents and principles are relevant and useful for assessment purposes, although clearly the Australian context, and more particularly the context within Sorrento, differs to international scenarios where development is older and generally more confined.⁶
- 2.36 The *Built Form Review 2024* modelled and tested a series of building heights, setbacks and massing arrangements which visually demonstrate the need for mandatory controls to protect the historic character and built form of the precinct. Notably, the testing was carried out at various locations within the precinct to understand the implications of different height and setback controls, as shown in some examples of the modelling figures at Figure 4 below.



⁶ Mr Campbell's Expert Evidence, page 14 at [57] – [58].

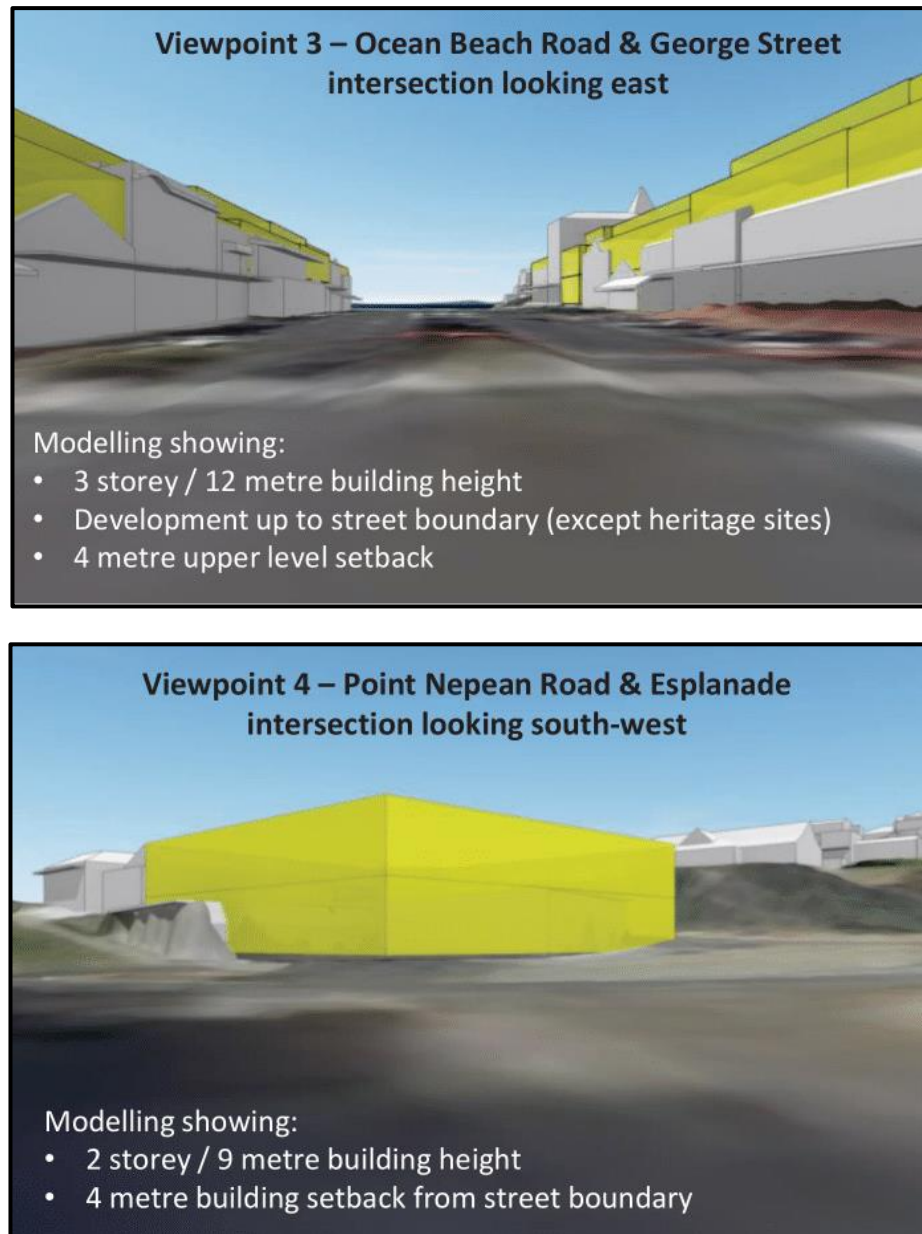


Figure 4: Extract of figures showing important view lines with built form modelling included in the *Built Form Review 2024*.

- 2.37 It is submitted that the veracity of this modelling is evident given the further recommendations that emerged from the *Built Form Review 2024*, for example, revising the proposed DDO28 with consolidated design objectives and modified mandatory height and setback requirements reflecting the outcomes of the modelling, and removing the need for mandatory built form controls for 52 and 48A-50 Kerferd Avenue, Sorrento which are zoned Public Use Zone 1 & 6 respectively.
- 2.38 For the reasons outlined above, Council submits that the *Built Form Review 2024* and the other strategic work undertaken by Council in informing this work, provide sufficient strategic justification for the Amendment. The Amendment has considered the views of relevant expert consultants and submitters alike, to comprehensively analyse and produce a built form framework to guide respectful and appropriate future development within the precinct, in a manner wholly consistent with expectations of growth for Sorrento as outlined in the Scheme.

3 APPLICATION AND PARAMETERS

Choice of overlay

- 3.1 Following the preparation of the *Built Form Review 2021* and the Council Meeting held on 13 December 2021, Council resolved to seek authorisation from the Minister for Planning to prepare the Amendment.
- 3.2 On 20 May 2022, the Amendment was authorised under delegation from the Minister for Planning, subject to ensuring the DDO28 was drafted in accordance with the Ministerial Direction on form and content of planning schemes. Council has satisfied this condition of the Minister for Planning's authorisation.
- 3.3 It is noted that since authorisation of the Amendment, several planning scheme amendments have extended the expiry date of the interim DDO28 control,⁷ whilst the Amendment process has been on foot.
- 3.4 Having regard to the Minister for Planning's authorisation, Council has consistently maintained throughout the Amendment process that the permanent controls for the Ocean Beach Road Commercial Precinct are most appropriately confined to the DDO28.

Choice of the Amendment Area

- 3.5 As detailed in Council's Part A submission, the Amendment applies to land located in the Ocean Beach Road Commercial Precinct, shown below in Figure 5. More particularly, this includes the following properties:
- 3.5.1 2-8 to 174 Ocean Beach Road (even numbers);
 - 3.5.2 1-21 to 157-163 Ocean Beach Road (odd numbers);
 - 3.5.3 848 Melbourne Road;
 - 3.5.4 854 Melbourne Road;
 - 3.5.5 3293-3295 Point Nepean Road;
 - 3.5.6 21 Constitution Hill Road;
 - 3.5.7 19 Constitution Hill Road;
 - 3.5.8 Lot 1 TP223941 (1-17 Constitution Hill Road);
 - 3.5.9 8 Riley Lane;
 - 3.5.10 1 Hayes Avenue;
 - 3.5.11 2 Hayes Avenue;
 - 3.5.12 6 to 60 Kerferd Avenue;
 - 3.5.13 45 to 49 Kerferd Avenue; and
 - 3.5.14 37 Darling Road,
- (together, the **Amendment Area**).

⁷ Refer to Planning Scheme Amendments C203morn, C204morn, C264morn, C268morn, C242morn, C299morn, C305morn and C310morn.



Figure 5: Aerial view of the Amendment Area.

3.6 The Amendment Area:

- 3.6.1 includes those properties which are currently affected by Schedule 10 to Clause 43.02 – Design and Development Overlay (**DDO10**) at 108-164 Ocean Beach Road, Sorrento (even numbers), shown below in Figure 6. As part of the Amendment, DDO10 is proposed to be deleted to ensure consistency across the Ocean Beach Road Commercial Precinct and avoid the duplication of planning controls;
- 3.6.2 applies permanent controls to those properties which are currently affected by the DDO28 to ensure these properties continue to be subject to height, setback and design controls, shown below in Figure 6;
- 3.6.3 excludes 1 Esplanade, 48A Kerferd Road and 50 Kerferd Road consistent with the conditions of authorisation received under delegation from the Minister for Planning. The application of the DDO28 to these properties is not supported by the Minister for Planning as the properties were not included in the *Built Form Review 2021* nor the *Built Form Review 2024*. Council acknowledges that strategic justification has not been undertaken to otherwise support inclusion of these properties in the proposed DDO28; and
- 3.6.4 is entirely within the C1Z, shown below in Figure 7. The purpose of the C1Z is to implement the Municipal Planning Strategy and the Planning Policy Framework, create vibrant mixed use commercial centres, and provide for residential uses at densities complementary to the role and scale of the commercial centre. The Amendment Area captures all properties within the C1Z in the immediate vicinity except for the land at 1 Esplanade and 3360-3374 Point Nepean Road.

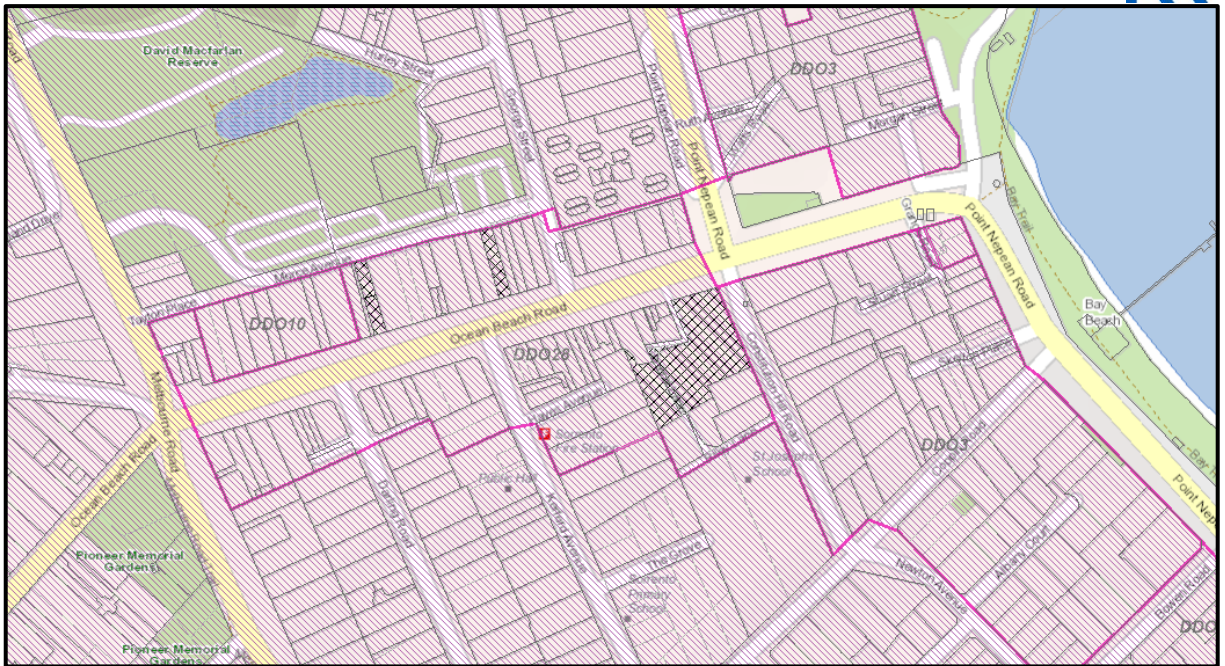


Figure 6: VicPlan map showing the current DDO overlay for the Amendment Area and immediate surrounds.

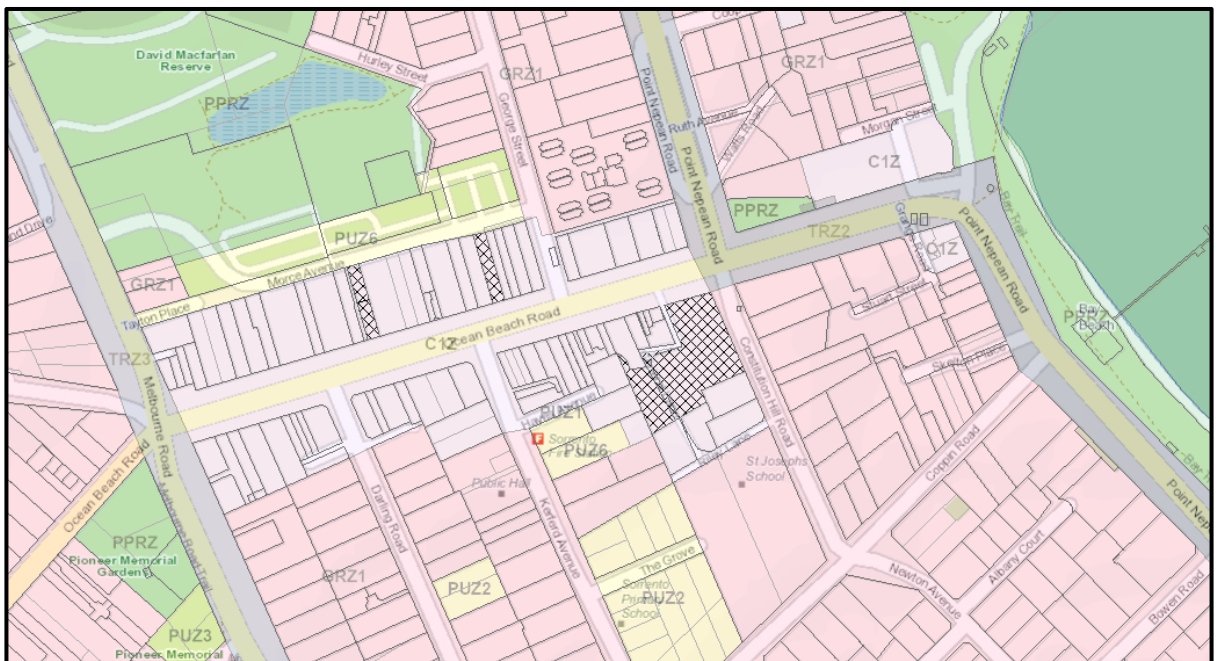


Figure 7: VicPlan map showing zoning for the Amendment Area and immediate surrounds.

3.7 Several submissions received have queried the application of the proposed DDO28 in relation to specific properties. These are dealt with in turn below.

3293-3295 Point Nepean Road

3.8 The majority of submissions to the re-exhibition relate to the 3293-3295 Point Nepean Road site, known locally as “Rusty’s Corner”, which is identified as the east sub-precinct in the current DDO28. This property is identified within the Amendment Area. 3293-3295 Point Nepean Road is located at a “highly prominent intersection with an immediate interface to the foreshore”.⁸

3.9 Submitter #31 contends that 3293-3295 Point Nepean Road should be removed from the Amendment entirely.

⁸ Mr Glossop’s Expert Evidence, page 11 at [33].

- 3.10 Notably, the evidence of both Mr Glossop and Mr Campbell support the inclusion of 3293-3295 Point Nepean Road within the Amendment Area, as follows:
- 3.10.1 Mr Glossop gives weight to the property's role in "framing the arrival experience for visitors to the activity centre", and considers the revised parameters of a two storey height limit and appropriate setback requirements as set out in the proposed DDO28 appropriate;⁹ and
- 3.10.2 Mr Campbell notes that the proposed controls could "hold this corner in unison with the 2 storey form and scale of the Koonya Hotel ... which has held the corner since 1876 and effectively 'bookends' the approach from the Sorrento front beach".¹⁰
- 3.11 Further to the expert evidence of Mr Glossop and Mr Campbell, Council submits that 3293-3295 Point Nepean Road should remain as part of the Amendment Area as:
- 3.11.1 although the property at 3293-3295 Point Nepean Road is physically separated from the 'main' part of the Ocean Beach Road Commercial Precinct, this property forms an important gateway to both the Sorrento foreshore and Point Nepean Road;
- 3.11.2 in the context of Sorrento being recognised as a 'Small Township' in the hierarchy of town centres on the Mornington Peninsula at Clause 11.03-1S of the Scheme, the property is a key place holder which has a "strong functional interrelationship" with the balance of the Amendment Area;¹¹
- 3.11.3 the *Built Form Review 2024* includes a detailed assessment of this property including 3D built form modelling. Based on the assessment and modelling, the *Built Form Review 2024* ultimately recommends that appropriate height and setback controls be mandated for the property; and
- 3.11.4 removing this property from the Amendment Area would create significant risk of inappropriate development. Without appropriate planning controls,¹² there is a real risk that 3293-3295 Point Nepean Road could be overdeveloped with detrimental amenity impacts to its neighbouring properties, and setting of a poor precedent as the gateway to the Ocean Beach Road Commercial Precinct. The built form outcomes on this property are crucial in maintaining the low-scale character of the Sorrento township.

Interfaces to the Amendment Area

- 3.12 Submitters #34, #37, #76 and #77 contend that future development within the Amendment Area may have an impact on the amenity of neighbouring residential properties (specifically development on the north side of Ocean Beach Road, between George Street and Point Nepean Road).
- 3.13 The Amendment Area is wholly located within the C1Z. The Amendment Area is surrounded by land in the following zones:
- 3.13.1 General Residential Zone – Schedule 1 (GRZ1);
- 3.13.2 Public Use Zone – Schedule 1 (PUZ1 – Service and Utility);
- 3.13.3 Public Use Zone – Schedule 6 (PUZ6 – Other Public Use);
- 3.13.4 Public Park and Recreation Zone (PPRZ);
- 3.13.5 Transport Zone 2 (TRZ2 – Principal Road Network); and
- 3.13.6 Transport Zone 3 (TRZ3 – Significant Municipal Road).

⁹ Mr Glossop's Expert Evidence, page 24 at [62].

¹⁰ Mr Campbell's Expert Evidence, page 16 at [77].

¹¹ PPN58: Structure planning for activity centres.

¹² It is noted that the existing interim DDO28 is currently due to expire in July 2025 until such time as Amendment C310morn is gazetted.

- 3.14 Council acknowledges that interfaces with land in a residential zone needs to be carefully managed to ensure that an appropriate level of amenity is maintained. It is noted that ultimately, planning provisions help balance competing needs and interests in any community by establishing clear objectives, strategies and policies to guide the use and development. These strategies are implemented through the application of zone and overlay controls to address specific features and/or issues in particular areas. Council maintains that the Amendment will allow sustainable growth to occur within the Ocean Beach Road Commercial Precinct that is respectful of surrounding land uses.
- 3.15 To this end, Council submits that the proposed DDO28 has regard to amenity concerns by reflecting the amenity standards comprised in Clause 55.04 – External Amenity of the Scheme. The proposed DDO28 circulated as part of the ‘Day 1’ version of the Amendment documentation reflects the recent changes to Clause 55.04 made by Planning Scheme Amendment VC267 on 31 March 2025. This change is explored in more detail, alongside other changes made since re-exhibition, at section 8 of this submission.
- 3.16 Council otherwise submits that the application of the Amendment to the Amendment Area is appropriate. On this basis, it is submitted that no further changes are necessary to the Amendment in responding to interfaces with the Amendment Area.

4 GENERAL DRAFTING ISSUES

- 4.1 At the outset, it is recognised that the controls included within the proposed DDO28 have been drafted with the intention of ensuring that new development responds appropriately to the low-scale, coastal and historical character of the Ocean Beach Road Commercial Precinct and protects views of significant heritage buildings and coastal dunes.¹³
- 4.2 However, ultimately, Council submits that this intention must be balanced against the need to allow reasonable growth to occur appropriate to the Sorrento township’s role and function. It is submitted that the Amendment seeks to implement well-drafted controls having regard to:
- 4.2.1 design objectives; and
 - 4.2.2 removal of the sub-precincts.

Design objectives

- 4.3 A number of submissions, including Submitters #12, #31, #47 and #49, contend that the design objectives of the revised DDO28 are too broad and poorly drafted.
- 4.4 Council respectfully disagrees that the design objectives are too broad and poorly drafted. In Victorian planning, a design objective provides a framework for achieving a desired outcome in the built environment, ensuring developments are well-designed and contribute positively to the community. Design objectives act as guiding principles, specifying the design characteristics and qualities that are expected. Essentially, design objectives help create places that are accessible, safe, diverse, enjoyable, and accommodate various needs, while also respecting the existing character of the area.
- 4.5 Although Council submits that the design objectives as re-exhibited are appropriate, it notes that the fourth design objective could be refined to include reference to maintaining views to the heritage listed ‘Quamby’ building (3317 Point Nepean Road) to be necessary. The proposed changes to the design objectives are shown in tracked changes below:

To ensure development makes a positive contribution to the fine-grain, low-scale character of the Ocean Beach Road commercial precinct, while also allowing for limited growth opportunities.

To support a well proportioned and consistent building interface to Ocean Beach Road, with two generous storeys creating a street wall (outside of heritage places) and up to one recessive upper level.

¹³ Mr Glossop’s Expert Evidence, page 14 at [44].

To ensure development responds to the proportions, form, siting, materiality and detailing of intact heritage buildings, including the existing limestone buildings and the converted former dwellings at the western end of Ocean Beach Road.

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 ~~Inter~~Continental Hotel tower and 'Quamby' (3317 Point Nepean Road) ~~views from the foreshore.~~

To ensure development makes a positive contribution to the public realm and enhances the local sense of a coastal village.

- 4.6 Subject to the amendments as detailed above, Council submits that the design objectives included in the proposed DDO28 circulated as part of the 'Day 1' version of the Amendment documentation, provide sufficient guidance for the future development of the Amendment Area.

Removal of the sub-precincts

- 4.7 Submitter #12 contends that the removal of sub-precincts from DDO28 is problematic, and that a map-based approach should be adopted in the DDO28 instead of the proposed written format to avoid confusion.
- 4.8 At present, the DDO28 comprises a mix of mandatory and discretionary building height and setback requirements for the various sub-precincts as identified in Figure 8 below.

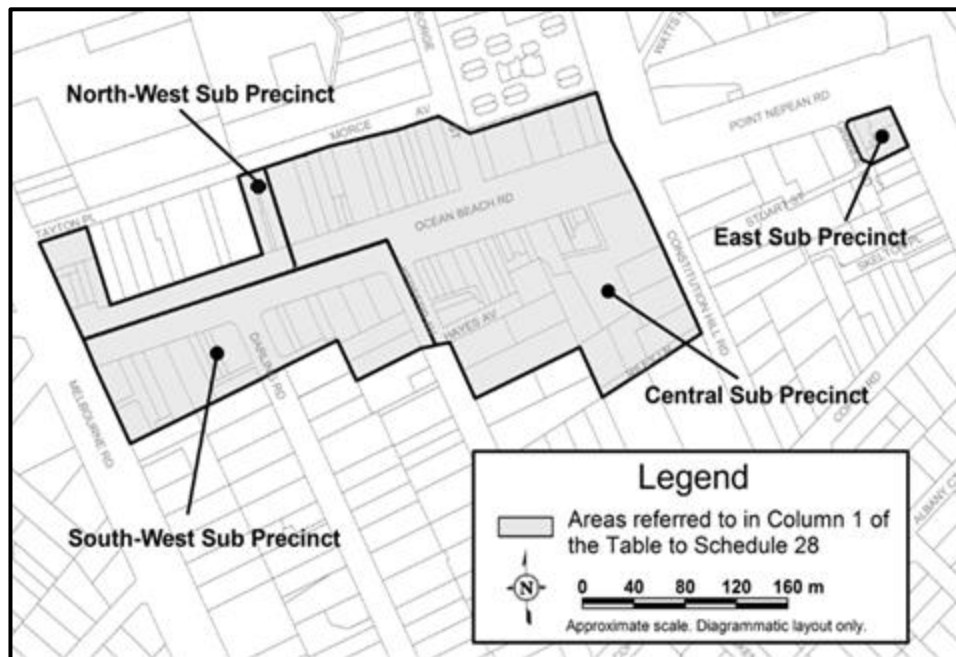


Figure 8: Extract of Map 1 to Schedule 28 to Clause 43.02 - Sub Precincts of Ocean Beach Road as comprised in the existing DDO28.

- 4.9 Following the original exhibition, Council engaged Mr Glossop to undertake a peer review of the Amendment documentation. As part of his peer review, Mr Glossop prepared a Memorandum of Advice dated 19 September 2023 (**Mr Glossop's Peer Review**), and noted that:

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-precinct 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.¹⁴

- 4.10 In response to submissions received and peer review advice, Council amended the proposed DDO28 prior to re-exhibition to remove the individual sub-precincts. This change was made to make the proposed DDO28 clearer and simpler to interpret, as well as removing unnecessary duplication across the sub-precincts. Council maintains that this amendment is a positive drafting change for the proposed DDO28 and will assist in the interpretation and application of the controls.
- 4.11 Based on the above, it is submitted that the proposed DDO28 as detailed in the 'Day 1' version of the Amendment documentation is well drafted, easily interpreted and capable of straightforward application.

5 BUILDING HEIGHT CONTROLS

- 5.1 The proposed DDO28, reflected in the 'Day 1' version of the Amendment documentation, seeks to introduce mandatory building height controls for new buildings and works in the Amendment Area:
- 5.1.1 abutting Ocean Beach Road;
 - 5.1.2 with frontage to Point Nepean Road; and
 - 5.1.3 abutting Morce Avenue or any other street.
- 5.2 The mandatory nature of the building height controls is supported by a further requirement that:

A permit must not be granted for new buildings, including the replacement of an existing building, and/or works which exceed the maximum building heights specified above. The maximum building height excludes architectural features, masts, building services (including lift overruns) or stairwells provided:

- They do not exceed the height limits by more than 4 metres; and

...

- 5.3 Council recognises that Submitters #31, #42, #46, #49, #50, #51, #52, #55, #59 and #69 have concerns regarding the exemption which allows for service infrastructure to exceed the maximum height limit by no more than 4 metres. Council acknowledges that this exemption is included in the existing interim DDO28 and is commonly used in other DDOs across the municipality. Council submits that the exemption provides for a sensible and reasonable level of design flexibility to incorporate service infrastructure and other architectural elements. Although exempted from the mandatory building height limits, such features will nevertheless be assessed for appropriateness against the objectives and decision guidelines of the DDO28. It is submitted that this is a reasonable and appropriate approach and will ensure that view lines are adequately managed and protected into the future.

¹⁴ Refer to Appendix E of Mr Glossop's Expert Evidence to access Mr Glossop's Peer Review.

Frontage to Point Nepean Road (3293-3295 Point Nepean Road)

- 5.4 The existing (interim) DDO28 sets a maximum building height of 8 metres and no more than two storeys for the property at 3293-3295 Point Nepean Road. Whereas the proposed DDO28 relevantly provides as follows:

For new buildings and works on sites fronting with a frontage to Point Nepean Road:

- The overall building height must not exceed two storeys or 9 metres.

- 5.5 In simple terms, new buildings and works with a frontage to Point Nepean Road must not exceed an overall building height of two storeys or 9 metres.

- 5.6 Submitters #3, #4, #5, #6, #12, #14, #15, #18, #19, #20, #21, #24, #28, #30, #31, #33, #38, #39, #40, #41, #42, #46, #47, #48, #49, #50, #51, #52, #53, #54, #55, #56, #58, #59, #60, #61, #62, #65, #66, #67, #69, #70 and #73 contend that the proposed height controls are inappropriate, should be restricted to 2 storeys / 8 metres, and potential development could block sightlines to both other buildings and for vehicles using Point Nepean Road.

- 5.7 Particular note is given to the submission lodged by Submitter #12 who has an interest in the land at 3317-3333 Point Nepean Road ('Quamby') and 3335 Point Nepean Road, both of which are affected by a Heritage Overlay. Submitter #12 is concerned that the proposed DDO28 will promote built form which will adversely impact on the area surrounding 3293-3295 Point Nepean Road. Submitter #12 is concerned that the increased building height proposed (i.e. 1 metre) will obscure views to important landmarks.

- 5.8 The *Built Form Review 2024* recommends that a two storey or 9 metres height limit, which is generally in accordance with the existing interim DDO28 which identifies two storey and 8 metres for this site. The intention of the additional 1 metre in height is to permit two storey developments, albeit with a slightly more generous floor plate / ceiling heights.

- 5.9 Council submits that the proposed building height increase of 1 metre is appropriate for 3293-3295 Point Nepean Road as:

- 5.9.1 the control is "reflective of its built form context as well as its coastal interface location", and affords an appropriate level of flexibility without compromising or significantly impeding on sightlines for vehicles or view lines to the existing township and foreshore;¹⁵ and
- 5.9.2 the two-storey built form that may emerge is complementary to the two-storey form of the existing Koonya Hotel;¹⁶ and
- 5.9.3 the proposed controls will sufficiently maintain view lines from 3293-3295 Point Nepean Road up slope towards the heritage buildings at 3317-3333 Point Nepean Road ('Quamby'), the Continental Hotel and the Stringers store (views which are noticeably obscured by significant landscape planting).¹⁷

Abutting Ocean Beach Road

- 5.10 The proposed DDO28 as detailed in the 'Day 1' version of the Amendment documentation, relevantly provides as follows:

For all new buildings and works on sites abutting Ocean Beach Road:

- The street wall height must not exceed two storeys or 9 metres measured from the centre of the site's frontage in Ocean Beach Road.
- The overall building height must not exceed 12 metres and only the Ground Floor Level, Level 1 and Level 2 ~~only three building levels~~ may be visible when viewed from

¹⁵ Mr Glossop's Expert Evidence, page 20 at [53].

¹⁶ Mr Campbell's Expert Evidence, page 16 at [77].

¹⁷ Mr Campbell's Expert Evidence, page 16 at [78].

1.6 metres above natural ground level at the street boundary of the site (or sites) directly opposite the centre of the subject site, as shown in Diagrams 1. If there is no site directly opposite (if there is a road) the view line should be taken from what would be the continuation of the street boundary from directly opposite the relevant site in Ocean Beach Road.

- 5.11 In essence, new buildings and works abutting Ocean Beach Road must not exceed:
- 5.11.1 an overall building height of 12 metres (with only the Ground Floor, Level 1 and Level 2 visible); and
- 5.11.2 an overall street wall height of two storeys or 9 metres.
- 5.12 In other words, new buildings must not be higher than two storeys or 9 metres at their street frontage (to Ocean Beach Road) and may contain recessive upper levels, provided that these levels are setback (at least 4 metres) behind either the two storey street wall or any retained heritage fabric.
- 5.13 Submitters #2, #7, #8, #9, #10, #11, #13, #15, #16, #19, #22, #23, #24, #28, #33, #34, #35, #39, #42, #43, #46, #47, #48, #49, #50, #51, #52, #55, #57, #59, #60, #63, #64, #69 and #72 contend that the building height controls for development abutting Ocean Beach Road will result in an overdevelopment of sites that should otherwise be restricted to 2 storeys, and that the proposed building height of three storeys / 12 metres is inappropriate and should be reduced to two storeys / 8 metres.
- 5.14 It is noteworthy that the interim DDO28 currently allows for development up to three storeys / 11 metres. Again, the proposed control represents an additional 1 metre in the maximum height for properties abutting Ocean Beach Road.
- 5.15 Council submits that the proposed building height control for properties abutting Ocean Beach Road is appropriate because:
- 5.15.1 the combination of the proposed building height controls “will enable limited infill development opportunities to occur above and behind the town centre’s commercial shop fronts. This typology of mixed use development or ‘shop top’ development is entirely appropriate for coastal centres, such as Sorrento and is already evident within the streetscape. It will enable upper level activities, and residents and visitors to enjoy Sorrento’s attributes and attractions”.¹⁸ Council submits that this is the type of use that is well supported by its municipal strategy, without compromising amenity of surrounding land uses; and
- 5.15.2 it will assist in providing passive surveillance opportunities for the public realm;¹⁹
- 5.15.3 the combination of the proposed building height controls for properties abutting Ocean Beach Road and other overlays affecting the Amendment Area and immediate surrounds will provide a sufficient level of control and prevent inappropriate future development.

Abuttal to Morce Avenue or any other street

- 5.16 The proposed DDO28 as detailed in the ‘Day 1’ version of the Amendment documentation, relevantly provides as follows:
- For new buildings and works on sites that abutting Morce Avenue or any other street:
- The overall building height must not exceed 12 metres.
- 5.17 In essence, the building height for new buildings and works abutting Morce Avenue or any other must not exceed 12 metres. In other words, there is no restriction on the number of storeys specified.
- 5.18 Again, various submitters contend that the proposed building height of three storeys / 12 metres is inappropriate and should be reduced to two storeys / 8 metres.

¹⁸ Mr Campbell’s Expert Evidence, page 15 at [70].

¹⁹ Mr Campbell’s Expert Evidence, page 15 at [70].

- 5.19 Similar to the above discussion for properties abutting Ocean Beach Road, Council submits that the proposed building height control for properties with an abuttal to Morce Avenue or any other street is appropriate.
- 5.20 For properties with an abuttal to Morce Avenue, the primary constraint is whether any part of a new building is visible from Ocean Beach Road.²⁰ It is for this reason that the control does not specify the number of storeys that the building height must meet. On this basis, Council submits that the building height controls included in the proposed DDO28 will provide an appropriate and acceptable outcome.

6 SETBACK CONTROLS

- 6.1 Council acknowledges that the Ocean Beach Road Commercial Precinct comprises various buildings with differing setbacks to the street. It is these types of attributes which contribute to the unique character of the precinct. On this basis the proposed DDO28 as reflected in the 'Day 1' version of the Amendment documentation, seeks to introduce a series of mandatory and discretionary setback controls for new buildings and works within the Amendment Area:

- 6.1.1 abutting Ocean Beach Road;
- 6.1.2 with a frontage to Point Nepean Road; and
- 6.1.3 abutting any other street;
- 6.1.4 abutting land in a residential zone; and
- 6.1.5 abutting an unnamed laneway in a residential zone.

- 6.2 The nature of the proposed setback controls is set against an exemption specifying that the maximum building height excludes architectural features and services infrastructure provided those elements are set back at least 2 metres, as follows:

A permit must not be granted for new buildings, including the replacement of an existing building, and/or works which exceed the maximum building heights specified above. The maximum building height excludes architectural features, masts, building services (including lift overruns) or stairwells provided:

_____...

- They are setback at least 2 metres from the edge of the roofline facing the street frontage or any side street/s on which they are located.

- 6.3 Further to the submissions expressed at paragraph 5.3 above, Council recognises the concerns of Submitters #31, #42, #46, #49, #50, #51, #52, #55, #59 and #69 regarding this exemption. However, Council submits that this is a reasonable exemption to set back controls which will ensure that view lines are adequately managed into the future.

Frontage to Point Nepean Road (3293-3295 Point Nepean Road)

- 6.4 The proposed DDO28 as reflected in the 'Day 1' version of the Amendment documentation, relevantly provides that:

New buildings and works on sites that front 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.

²⁰ Mr Glossop's Expert Evidence, page 20 at [53].

- 6.5 In essence, new buildings and works that front Point Nepean Road should be set back the greater of either:
- 6.5.1 the same distance as the setback of the front wall of the existing building lot, or
- 6.5.2 4 metres.
- 6.6 Submitters #2, #3, #4, #6, #12, #14, #18, #19, #20, #21, #24, #28, #30, #31, #33, #38, #39, #41, #42, #46, #47, #48, #49, #50, #51, #52, #53, #54, #55, #56, #58, #59, #60, #61, #62, #65, #66, #67, #69 and #70 contend that the proposed setback controls are inappropriate, disproportionate to the nearby heritage buildings and foreshore area, and the mandatory control requiring development to be built to the street boundary should be removed.
- 6.7 The *Built Form Review 2024* noted that new buildings should be set back appropriately to respect and maintain the prevailing building setback of residential and heritage properties fronting Point Nepean Road. More specifically, the east façade should match the setback of 3291 Point Nepean Road, while the north façade should be set back to a similar degree in the order of 4 metres in response to design objectives. The *Built Form Review 2024* also stated that there is a need to maintain the prominence of views towards the precinct including to the Continental Hotel tower. Ultimately, the *Built Form Review 2024* recommended setback controls consistent with the wording included in the proposed DDO28.
- 6.8 Council submits that the proposed setback control for 3293-3295 Point Nepean Road is appropriate because:
- 6.8.1 the control seeks to adapt in the event this property is developed in parts in the future;²¹
- 6.8.2 a discretionary set back is appropriate in circumstances where the ultimate built form outcome at this property is unclear. As noted in Mr Glossop's Expert Evidence, "the setback controls are discretionary since there are various built form outcomes which may prove suitable at this property";²² and
- 6.8.3 the proposed setback control is appropriate "as this corner site is remote from the Ocean Beach Road precinct, which contains primarily 0m setbacks and given its position on the inside elbow of a 'gateway' leading into Sorrento".²³

Abutting Ocean Beach Road

- 6.9 The proposed DDO28 as reflected in the 'Day 1' version of the Amendment documentation relevantly provides as follows:

For all new buildings and works on sites abutting Ocean Beach Road excluding heritage buildings:

- Any Level 2 must be set back a minimum of 4 metres from ~~Ocean Beach Road~~ the front wall of the Ground Floor Level and Level 1 below.

New buildings and works on sites abutting Ocean Beach Road should be built to the street boundary. ~~except for~~ For sites adjoining a heritage building, ~~where~~ the front walls of new buildings ~~and works abutting Ocean Beach Road~~ should be set back to match the front walls street setback of the adjoining heritage building. Where a site is adjoining a heritage building on both sides, the front setback of the new building or works from Ocean Beach Road should match the setback of the greater of the two front walls street setbacks of the adjoining heritage buildings.

New buildings and works on sites abutting Ocean Beach Road ~~and that are~~ situated at a corner should have a setback from any side street above Level 1 to express and respond to the primary two level character of Ocean Beach Road.

²¹ Mr Glossop's Expert Evidence, page 20 at [53].

²² Mr Glossop's Expert Evidence, page 20 at [53].

²³ Mr Campbell's Expert Evidence, page 16 at [75].

- 6.10 In essence, new buildings and works abutting Ocean Beach Road:
- 6.10.1 any Level 2 must be set back at least 4 metres from the front wall of the Ground Floor Level and Level 1 below (excluding heritage buildings);
 - 6.10.2 should be built to the street boundary (for sites that do not adjoin a heritage building)
 - 6.10.3 should be set back to match the front wall of any adjoining heritage building (for sites that adjoin a heritage building);
 - 6.10.4 the front setback from Ocean Beach Road should match the greater of the two front setbacks of the adjoining buildings (for sites that adjoin a heritage building on both sides); and
 - 6.10.5 should be set back from any side street above Level 1 to express and respond to the primary two-level character of Ocean Beach Road (for sites situated on a corner).
- 6.11 Submitters #34, #37, #39, #40, #42, #46, #47, #48, #49, #50, #51, #52, #55, #57, #58, #59, #60, #61, #69, #72, #73, #76 and #77 contend that more generous rear building setbacks are necessary to respond to amenity concerns, the proposed requirement for new development to be built to the ground level boundary is of concern, and the existing 8 metre upper storey setback should be retained instead of the proposed reduction to a 4 metre setback.
- 6.12 The proposed controls distinguish between properties abutting Ocean Beach Road that do not adjoin a heritage building, those that adjoin a heritage building, and those that adjoin a heritage building on both sides. In so doing, Council submits that the controls appropriately respond to the differing streetscape elements within the precinct by recognising the context of each particular property to ensure appropriate development occurs and providing flexibility for sites where a requirement to bring a building towards the street boundary may not achieve an appropriate outcome for the streetscape.
- 6.13 In relation to the 4 metre upper level setback for properties abutting Ocean Beach Road (excluding heritage buildings), Council submits that this proposed control is appropriate as:
- 6.13.1 the *Built Form Review 2024* supports a 4 metre upper level setback for properties abutting Ocean Beach Road (excluding heritage properties). Notably, the *Built Form Review 2024* provides that:
 - The built form testing demonstrates that a deep (8m) setback results in a third storey element being visually recessive from the street, which fails to enclose and contain the streetscape in a similar manner as a two storey scale ...
 - A setback of 4 metres for upper level additions on non-heritage buildings has been shown to balance these objectives and still provides passive surveillance, interaction with the street, and improves the streetscape's height to width ratio.²⁴
 - 6.13.2 as noted in Mr Glossop's Expert Evidence, "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";²⁵
 - 6.13.3 as noted in Mr Glossop's Expert Evidence, the newly inserted discretionary front setback requirement for side streets is an appropriate inclusion;²⁶ and
 - 6.13.4 the controls seek to protect the row of converted dwellings at the northwestern end of the precinct by introducing a requirement that new buildings are built in line with the footpath. It is acknowledged that this is a discretionary requirement as there may be circumstances in which another response also achieves an appropriate development outcome at these properties.

²⁴ *Ocean Beach Road Sorrento Built Form Review* (May 2024), page 47.

²⁵ Mr Glossop's Expert Evidence, page 19 at [53].

²⁶ Mr Glossop's Expert Evidence, page 20 at [53].

- 6.14 Having regard to the proposed setback controls relevant to adjoining heritage buildings, Council submits these controls are appropriate as:
- 6.14.1 the proposed DDO28 includes an additional general requirement that upper level additions to heritage buildings should be set back behind the primary roof form of the building; and
- 6.14.2 the combination of the proposed DDO28 controls and other overlays (including the Heritage Overlay) will provide a sufficient level of control to ensure sites of heritage significance are not subject to inappropriate development in the future.
- 6.15 It is submitted that the proposed setback controls for properties abutting Ocean Beach Road will ensure that new buildings and works respect the existing neighbourhood character and adequately retain view lines.

Abutting any other street

- 6.16 The proposed DDO28 as reflected in the 'Day 1' version of the Amendment documentation relevantly provides that:
- New Buildings and works on sites abutting any other street should have:
- A street wall height not exceeding two storeys or 9 metres.
 - A 4 metre street setback to any level above Level 1.
 - A front set back the same distance of the existing building on the adjoining lot, or 4 metres, whichever is the lesser.
- 6.17 In essence, new buildings and works abutting any other street should have:
- 6.17.1 a street setback of 4 metres from Level 2 onwards; and
- 6.17.2 a front setback the greater of either the same distance as the existing building on the adjoining lot, or 4 metres.
- 6.18 The *Built Form Review 2024* addresses side streets (including Constitution Hill Road) noting that they are less sensitive areas in terms of heritage and character as compared to Ocean Beach Road and Point Nepean Road. The *Built Form Review 2024* did not recommend a street level setback for buildings on side streets, and instead recommended the controls shown in the proposed DDO28 above (except for those changes marked in track). The further changes marked in tracked changes represents a further recommendation made by Council officers following re-exhibition at the Council Meeting held on 25 February 2025 in response to submissions received.
- 6.19 Submitters #7, #8, #9, #10, #11, #13, #22, #23, #36, #43 raised issues regarding Constitution Hill Road in particular, with concerns that the requirement for new development to be built to the road boundary on Constitution Hill Road is inappropriate compared with existing buildings. Particular regard is given to the issues raised by Submitter #64, a party to this proceeding and owner of the property at 19 Constitution Hill Road.
- 6.20 Council acknowledges that the existing built form on the eastern side of Constitution Hill Road is generally set back from the street boundary, which contrasts with the commercial properties on the eastern side of Constitution Hill Road.
- 6.21 Council submits that the proposed setback control for properties abutting any other street (including Constitution Hill Road) is appropriate as:
- 6.21.1 the drafted controls provide flexibility on side streets so that future development more appropriately responds to streetscapes that differ from Ocean Beach Road;
- 6.21.2 the general requirement will not require development on side streets to be built to the street boundary; and

- 6.21.3 the drafted controls allow opportunity for an appropriate design outcome to be achieved by factoring in that an 'active' frontage within a side street does not require a traditional shop front response, but could provide for a more discrete outcome that provides better interaction at ground level.²⁷

Abutting land in a residential zone and abutting an unnamed laneway in a residential zone

- 6.22 The proposed DDO28 as reflected in the 'Day 1' version of the Amendment documentation relevantly provides for properties abutting land in a residential zone, as follows:

New buildings and works above 4.5 metres in height on sites which abut land in a residential zone should be set back from the side or rear boundary 1 metre, plus 0.3 for every metre of height over 4.5 metres up to 6.9 metres, plus 2 metres for every metre of height over 6.9 metres. Setbacks are demonstrated in Diagram 2.

and for properties abutting an unnamed laneway in a residential zone, as follows:

New buildings and works on sites abutting an unnamed laneway which abut land in a residential zone should be setback from the boundary between the laneway and the land in the residential zone, at least 1 metre, plus 0.3 for every metre of height over 4.5 metres up to 6.9 metres, plus 2 metre for every metre of height over 6.9 metres. Setbacks are demonstrated in Diagram 3.

- 6.23 In essence, new buildings and works which abut land in a residential zone and / or an unnamed laneway in a residential zone should be set back from the side or rear boundary:
- 6.23.1 1 metre where the building is above 4.5 metres;
- 6.23.2 plus an additional 0.3 metres for every metre of height (or part thereof) over 4.5 metres and up to 6.9 metres;
- 6.23.3 plus an additional 2 metres for every metre of height (or part thereof) over 6.9 metres.
- 6.24 Submitters #34, #37, #76 and #77 raise concerns that rear building setbacks are required to respond to amenity concerns of neighbouring residential properties.
- 6.25 Further to submissions received, Mr Glossop's Peer Review Advice identified that the rear building setbacks intend to achieve no new shadowing across residential land to the south of the precinct at the winter solstice. However, Mr Glossop was of the view that this requirement was problematic as it did not account for instances where laneways separate the commercial land within the Amendment Area to residential land.²⁸
- 6.26 In response to issues raised about potential impacts on residential land resulting from future commercial development and peer review advice received, Council has amended the proposed DDO28 by:
- 6.26.1 inserting an additional requirement to include those properties within the Amendment Area that directly abut land in a residential zone and / or an unnamed laneway in a residential zone; and
- 6.26.2 inserting Diagrams 2 and 3 which demonstrate the discretionary setbacks.
- 6.27 Council is of the view that these additional requirements provide a sufficient level of protection to any such properties from unreasonable amenity impacts such as overshadowing. It is acknowledged that land which has an abuttal to land in a residential zone should achieve the ResCode Standards set out at Clause 55.04 of the Scheme. Accordingly, Council submits that the proposed setback controls for these types of properties are appropriate.

²⁷ Mr Campbell's Expert Evidence, page 17 at [85].

²⁸ Refer to Appendix E of Mr Glossop's Expert Evidence to access Mr Glossop's Peer Review.

- 6.28 Further to the above analysis, Council submits that the setback controls included in the proposed DDO28 as reflected in the 'Day 1' version of the Amendment documentation, will provide an acceptable outcome, as relevant to the particular context of the relevant property in question.

7 AMENITY IMPACTS

- 7.1 Council submits that the Amendment otherwise produces acceptable outcomes having regard to heritage, neighbourhood character, traffic and carparking, and wind issues.

Heritage

- 7.2 Submitters #6, #36, #42, #46, #47, #48, #49, #50, #51, #52, #55, #56, #59, #61, #66, #69, #70 and #73 contend that the proposed DDO28 should require new development to be constructed in materials similar to existing heritage buildings.

- 7.3 The *Built Form Review 2024* recommends that additional guidance on materiality and detailing should be provided to ensure future development is appropriate having regard to the existing heritage context within the Sorrento township. In response, Council re-drafted the proposed DDO28 which, as per the 'Day 1' version of the Amendment documentation now reads:

New buildings and works on sites abutting Ocean Beach Road should respond to the materiality, colours and proportions (including glazing proportions and floor to floor heights) of existing buildings (particularly intact heritage buildings) in the street.

- 7.4 Council submits that this discretionary requirement, alongside the design objective which already exists, and the decision guidelines within the proposed DDO28, will ensure that building facades respect the existing heritage fabric of the streetscape. Requiring new buildings and works to respond to the materiality, colours and proportions of existing buildings will assist in reflecting the existing heritage character of the Sorrento township, whilst also avoiding an influx of misplaced modern components.

- 7.5 Council also acknowledges the following wording included in the proposed DDO28:

Any upper level additions to heritage buildings should be set back behind the primary roof form of the building.

- 7.6 Council submits that this discretionary requirement provides further protection in retaining heritage fabric and the existing Sorrento streetscape.

- 7.7 To this end, Mr Glossop's Expert Evidence recognises that:

the wording of this control has endeavoured to separate heritage from non-heritage design matters. While this is 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.²⁹

- 7.8 Council agrees with Mr Glossop that the proposed DDO28 appropriately responds to heritage issues within the remit of the Design and Development Overlay. However, the Heritage Overlay and related heritage policies ultimately provide further protections to retain and respect heritage fabric in the precinct. On this basis, it is submitted that the Amendment is respectful of heritage issues, whilst allowing for modest infill opportunities.

²⁹ Mr Glossop's Expert Evidence, page 26 at [68].

Character

- 7.9 Various submissions raise concerns about the Amendment having impacts on the existing character of the Sorrento township.
- 7.10 In response, Council submits that the Amendment will have a positive contribution on the character of the Amendment Area, as the Amendment:
- 7.10.1 provides social benefits to the township of Sorrento by protecting the valued heritage and built form character of Ocean Beach Road and the immediate surrounds;
 - 7.10.2 provides clear guidance to the community regarding expected built form outcomes for future infill development within the precinct;
 - 7.10.3 will appropriately limit the development potential of the Amendment Area in a manner commensurate with the role and function of the township and the need to protect highly valued and sensitive built form characteristics of Sorrento;
 - 7.10.4 will assist in protecting built form character and will maintain and enhance a strong 'sense of place' in the Sorrento township; and
 - 7.10.5 fosters a strong sense of place and will have economic benefits insofar as it will ensure the township remains an attractive, usable community hub for residents and visitors alike.

Traffic and Carparking

- 7.11 Submitters #33, #34, #36 and #57 contend that development permissible under the Amendment will lead to increased traffic and the need for more car parking in the Sorrento township.
- 7.12 It is respectfully submitted that traffic and car parking matters are beyond the scope of the Amendment. A planning permit application lodged in respect of a property within the Amendment Area must be assessed against Clause 52.06 – Car Parking of the Scheme. Clause 52.06 seeks to ensure the provision of an appropriate number of car parking spaces having regard to likely car parking demand, sustainable transport alternatives, the efficient use of car parking spaces, whilst ensuring car parking does not adversely affect amenity. Aside from its powers under the Scheme, Council continues to investigate initiatives to assist in resolving existing traffic and car parking related issues in Sorrento.
- 7.13 Council submits that the Amendment will not have unreasonable or significant impacts on traffic and car parking within the Amendment Area and immediate vicinity as:
- 7.13.1 the Amendment will not have a significant impact on the transport system, as defined by Section 3 of the *Transport Integration Act 2010*;
 - 7.13.2 there are no applicable statements of policy principles under section 22 of the *Transport Integration Act 2010*.
- 7.14 On this basis, it is submitted that no changes are required to the Amendment in response to traffic and car parking concerns.

Wind

- 7.15 Submitter #33 contends that there is no consideration of the impact of wind down Ocean Beach Road if the permitted height is increased to three storeys. In response, Council submits that the heights included in the proposed DDO28 are unlikely to have any significant or unreasonable impact on wind in this location.

8 COUNCIL'S POSITION ON THE AMENDMENT

8.1 In response to the submissions and evidence, Council supports the re-exhibited Amendment documentation subject to the following changes:

Schedule 28 to Clause 43.02 – Design and Development Overlay

- 8.1.1 updating the fourth design objective to include a reference to maintaining views to the heritage buildings including the 'Quamby' building (3317 Point Nepean Road);
- 8.1.2 refinement to the wording for "*Buildings and Works*" to confirm that a permit cannot be granted to construct a building or construct or carry out works which are not in accordance with a Mandatory Requirement except for "the construction of" ground floor verandahs over the footpath;
- 8.1.3 removing the definition of "*Abutting*" which means "*a building on or within 200mm of a boundary.*" This change will remove any potential ambiguity as a building slightly more than 200mm from the front boundary would not need to comply with the mandatory height controls;
- 8.1.4 removing the definition of "*Building height*" to avoid unnecessary duplication as this is a definition already included at Clause 73.01 – General Terms of the Scheme;
- 8.1.5 inserting a definition of "*Ground Floor Level*" which means "*the natural level of a site at any point*";
- 8.1.6 refinement to the wording for "*Mandatory Requirements*", including:
- (a) updating the mandatory overall building height requirement for sites abutting Ocean Beach Road to clarify how the visibility of three buildings levels will be measured. Practical application of this requirement is further illustrated by the inclusion of Diagram 1;
 - (b) updating Diagram 1 from the proposed DDO28 version adopted by Council at its Council Meeting on 25 February 2025 in response to Mr Campbell's Expert Evidence.³⁰ Changes made to the diagram include updated labels to improve readability and the inclusion of vertical dimensions for the street wall height (9 metres) and overall building height (12 metres). Despite Mr Campbell's Expert Evidence, Council does not agree with removal of the indicative natural ground level line. Council submits this should remain because Diagram 1 is intended to guide development on sites which may slope upward away from Ocean Beach Road (mostly on the southern side);
 - (c) refinements to the wording of several mandatory requirements to make it clear that these requirements apply to new buildings, as well as additions or renovations to existing buildings. For example, some requirements currently reference "*For all buildings...*", however the updated wording will now reference "*For all new buildings and works on sites...*";
 - (d) relocation and refinement of wording to confirm that a permit must not be granted for new buildings or the replacement of existing buildings that exceed the maximum building height, with some exemptions to this rule listed including architectural features (e.g., masts, building services (lift overruns), and stairwells). This exemption ensures that existing heritage-listed buildings with elements that already exceed the height requirements (e.g. the Continental Hotel) could be reconstructed if damaged;

³⁰ Mr Campbells' Expert Evidence, page 18 at [95] – [96].

- 8.1.7 refinement to the wording for “*General Requirements*”, including:
- (a) refinements to the wording of several general requirements to make it clear that these requirements apply to new buildings, as well as additions or renovations to existing buildings. For example, some requirements currently reference “*For all buildings...*”, however the updated wording will now reference “*For all new buildings and works on sites...*”;
 - (b) refinements to the general requirement for buildings and works on sites abutting Ocean Beach Road to increase clarity;
 - (c) adding a discretionary front setback requirement for side street sites. This provision states that buildings should have “*A front set back the same distance of the existing building on the adjoining lot, or 4 metres, whichever is the lesser*”.
 - (d) removing the reference to side and rear setback standard (Standard B17) which is now replaced with a separate general requirement (below) and two accompanying diagrams, Diagrams 2 and 3, which demonstrate setbacks that should be achieved under the two scenarios;
 - (e) inserting a new general requirement for side and rear setbacks by specifying that new buildings and works on sites which “*abut land in a residential zone*” or “*abuttin an unnamed laneway which abut land in a residential zone*” should be set back from the side or rear boundary in accordance with Diagram 2 or 3, whichever is applicable; and
 - (f) inserting wording which responds to the updated ResCode general requirements set out at Clause 55.04 of the Scheme.

Clause 11.03 – Planning For Places

- 8.1.8 removing changes previously proposed to Clause 11.03 will now be removed from the amendment. In other words, the Amendment no longer seeks any changes to Clause 11.03 as it currently stands. Council submits that the wording currently included in the Scheme is adequate and the changes previously proposed as part of the Amendment are no longer necessary. This is a result of the changes made by approved Planning Scheme Amendment C271morn which simplified the wording of this policy exemption. Council acknowledges that this represents a change in Council’s position previously communicated and is happy to further address this orally at the Panel Hearing as necessary.
- 8.2 Council submits that no further changes are necessary to balance of the re-exhibited Amendment documentation. In essence, it is submitted that the proposed DDO28 is similar to the existing interim DDO28 in protecting neighbourhood character, however, it is unreasonable to prevent new development above two storeys and an appropriate balance must be struck.³¹ Further, the Amendment “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 character of the Amendment Area and the local coastal experience”.³²
- 8.3 The changes described above are reflected in Council’s ‘Day 1’ version of the Amendment documentation, which has been separately filed in accordance with Direction 17 of the Panel’s Directions.

³¹ Mr Glossop’s Expert Evidence, page 12 at [37].

³² Mr Glossop’s Expert Evidence, page 14 at [44].

9 CONCLUSION

- 9.1 For the reasons outlined in this Part B Submission, and the expert evidence of Mr Glossop and Mr Campbell, Council submits that the Amendment provides a sustainable framework to guide future development within the Ocean Beach Road Commercial Precinct.
- 9.2 On this basis, Council respectfully submits that the Panel ought to recommend to the Minister for Planning that the Amendment be approved.

David Vorchheimer
Russell Kennedy
For and on behalf of the Planning Authority

5 May 2025