

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

Panel Report

Planning and Environment Act 1987

17 June 2025

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

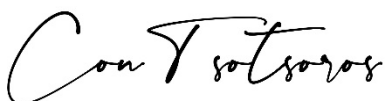
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Mornington Peninsula Planning Scheme Amendment C286morn

Ocean Beach Road Sorrento Built Form Review

17 June 2025



Con Tsotsoros, Chair



Dianne King, Member

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Glossary and abbreviations

the Activity Centre	Sorrento Activity Centre
the Amendment	Mornington Peninsula Planning Scheme Amendment C286morn
Built Form Review	Ocean Beach Road Sorrento Built Form Review (May 2024)
Council	Mornington Peninsula Shire Council
DDO	Design and Development Overlay
Design Guidelines	Heritage Design Guidelines: Sorrento Historic Precinct (Expires 30 June 2026)
the heritage study	Ocean Beach Road Commercial Precinct Sorrento Heritage Policy (September 2015)
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Mornington Peninsula Planning Scheme

Note: A number following a planning scheme overlay code refers to a schedule number

Overview

Amendment summary

The Amendment	Mornington Peninsula Planning Scheme Amendment C286morn
Common name	Ocean Beach Road Sorrento Built Form Review
Brief description	Implements the Ocean Beach Road Built Form Review recommendations
Subject land	Ocean Beach Road commercial precinct, Sorrento (see Figure 1)
Planning Authority	Mornington Peninsula Shire Council
Authorisation	20 May 2022, with conditions
Exhibition	July to October 2022, re-exhibited: July to September 2024
Submissions	82 submissions from 77 submitters

Panel process

The Panel	Con Tsotsoros (Chair) and Dianne King
Supported by	Chris Brennan, Senior Project Officer
Directions Hearing	By video conference, 28 March 2025
Panel Hearing	Mornington Peninsula Shire Office, Rosebud, with online video
Site inspections	Unaccompanied, 6 May 2025
Parties to the Hearing	<ul style="list-style-type: none"> - Mornington Peninsula Shire Council represented by David Vorchheimer and Sonia Narduzzo of Russell Kennedy Lawyers, who called expert evidence on: <ul style="list-style-type: none"> - planning from John Glossop of Glossop Town Planning - urban design from Alastair Campbell of Hansen Partnership - Nepean Conservation Group Inc represented by Ursula de Jong - Service Link Australia Pty Ltd represented by Eliza Minney of Best Hooper Lawyers - Kenneth Grenda represented by Carly Robertson of Counsel, instructed by Arnold Bloch Leibler - Graham Reeve - Avner Klein
Citation	Mornington Peninsula PSA C286morn [2025] PPV
Date of this report	17 June 2025

Executive summary

The Sorrento Activity Centre (the Activity Centre) is located about 55 road kilometres from Frankston and about 102 kilometres from Melbourne's Central City. At about 3 kilometres from the tip of the Mornington Peninsula (Point Nepean National Park), the Activity Centre is constrained by the Sorrento Ocean Beach sand dunes about 600 metres to its west and Sorrento Beach about 200 metres to its east.

In 2019, Council started reviewing its preferred built form for the Sorrento Activity Centre which resulted in the Ocean Beach Road Built Form Review report. Council sought to protect and maintain Sorrento's heritage fabric while enabling modest infill development in the western portion of Ocean Beach Road where this is presently lower scale development and fewer heritage buildings.

An interim Design and Development Overlay Schedule 28 was introduced into the Planning Scheme until Council completed further strategic work to justify the permanent provisions including mandatory maximum building heights and mandatory minimum setbacks.

Mornington Peninsula Planning Scheme Amendment C286morn (the Amendment) seeks to implement the Ocean Beach Road Built Form Review recommendations by among other changes, applying a revised Design and Development Overlay Schedule 28 to the Sorrento Activity Centre. The Amendment was exhibited in 2022 and received 73 submissions. It was re-exhibited in 2024 and received nine further submissions, of which four were from original submitters.

Key issues raised in submissions related to the Design and Development Overlay Schedule 28 provisions regarding the design objectives, definitions, amenity provisions, Ocean Beach properties, sites abutting any other street, and the 3293-3295 Point Nepean Road site. Submissions also requested new provisions, raised concern about traffic and parking, and wind impact resulting from new development.

Strategic issues

The Built Form Review approach, including the mix of recommended mandatory and discretionary provisions that informed the Design and Development Overlay Schedule 28 provisions is generally appropriate. Council is commended for its approach to exploring and identifying its preferred built form which included three-dimensional modelling to test the potential impacts.

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

Design and Development Overlay Schedule 28

Design objectives

The design objectives are generally appropriate for achieving what is sought through Design and Development Overlay Schedule 28. However, there is insufficient justification to protect views from the foreshore to:

- all heritage buildings, noting this outcome will be achieved by the existing 40-metre-wide road reservation and proposed low scale mandatory maximum building heights and minimum setbacks
- 'Quamby', at 3317 Point Nepean Road because it is a contributory building to a broader heritage precinct that does not warrant view protection.

It is appropriate and justified to protect views from the corner of Point Nepean Road and Esplanade to the Continental Hotel tower. The fourth design objective should be revised to refer to protecting views from this corner to the Intercontinental Hotel tower rather than relying on a broader reference to the entire foreshore.

Definitions and amenity provisions

Design and Development Overlay Schedule 28 should:

- not define Building Height, Ground Floor Level, Level 1, Level 2 or Abutting
- add the relating storey number to each reference to building level
- refer to building elements and a threshold for exempting the need for a permit.
- relocate building height exclusions from Definitions to Mandatory Requirements (Entire DDO28 area).

The proposed amenity provisions that:

- differ to the comparable Clause 55 provisions are generally appropriate for what is sought to be achieved in the Sorrento Activity Centre
- replicate the Clause 55 objectives and standards (pre-Amendment VC267 or current) should be excluded so that they do not duplicate the Commercial 1 Zone decision guidelines.

Ocean Beach Road properties

The Built Form Review modelling justifies the mandatory maximum building height of 12 metres and 4 metre minimum upper level setback for non-heritage buildings.

The discretionary setbacks, including no setback to property boundary, in the final version of Design and Development Overlay Schedule 28 are appropriate and respond to heritage buildings. Fixtures should be enabled within the mandatory upper level setback of 4 metres with a design guideline to consider potential visual impact of such fixtures.

Sites abutting any other street (excluding Grange Road)

The setback requirement for sites abutting any other street should be revised to a front setback the same distance of the existing building on the adjoining lot, or 4 metres, whichever is the lesser.

3293–3295 Point Nepean Road site

It is appropriate and justified to apply Design and Development Overlay Schedule 28 to the 3293-3295 Point Nepean Road site. The re-exhibited mandatory maximum building height requirement for sites fronting Point Nepean Road should also apply to sites fronting Grange Road to ensure a consistent built form approach across the 3293-3295 Point Nepean Road site.

Design and Development Overlay Schedule 28 should include a new decision guideline to support discretion regarding setbacks from Point Nepean Road and views to the Continental Hotel tower.

Requests for new DDO28 provisions

Design and Development Overlay Schedule 28 should not include additional provisions relating to building materials, signage or setback exemptions for named lanes.

Other issues

The Amendment will not result in negative traffic, parking or wind impacts.

Design and Development Overlay Schedule 28 will restrict development capacity through its mandatory built form provisions compared to planning provisions before its interim version was introduced into the Planning Scheme. This will result in less potential traffic volume in the local road network. A permit application proposing development in the Sorrento Activity Centre will be assessed against Clause 52.06 to consider car parking and the potential impact on the surrounding road network.

The proposed planning provisions will enable low scale built form that will result in negligible wind impact along the 40-metre-wide Ocean Beach Road reservation.

Drafting

It is appropriate to not progress the proposed changes to Clause 11.03 because existing Mornington Peninsula Planning Scheme provisions make them unnecessary.

Design and Development Overlay Schedule 28 would benefit from drafting changes that improve its clarity and operation.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Mornington Peninsula Planning Scheme Amendment C286morn be adopted as exhibited subject to the following:

1. **Delete all changes proposed to Clause 11.03.**
2. **Amend Design and Development Overlay Schedule 28, as shown in, Appendix B, to accept the re-exhibited changes and to:**

DESIGN OBJECTIVES

- a) **revise the fourth design objective regarding heritage buildings to refer to protecting views from the corner of Point Nepean Road and Esplanade to the Continental Hotel tower**

BUILDINGS AND WORKS

- b) **delete the definitions for Building Height, Ground Floor Level, Level 1, Level 2 and Abutting**
- c) **move the building height exclusions and parameters from Definitions to Mandatory Requirements**
- d) **add new residential interface provisions**
- e) **delete amenity provisions that duplicate the Clause 55 standards**
- f) **refer to current Clause 55 standard numbers**
- g) **revise the mandatory requirements for sites fronting Ocean Beach Road to allow fixtures in the setback area provided that they are no more than 2 metres in length**
- h) **revise the general requirements to specify a front setback the same distance of the existing building on the adjoining lot, or 4 metres, whichever is the lesser**

- i) **revise the mandatory maximum building height requirement for sites fronting Point Nepean Road to also apply to sites fronting Grange Road**

DECISION GUIDELINES

- j) **revise the decision guideline regarding the upper level setbacks to consider how fixtures in the setback area respond to the streetscape**
- k) **add a new decision guideline to consider whether setbacks from Point Nepean Road are in keeping with the streetscape character and whether they will impact views from the corner of Point Nepean Road and Esplanade to the Continental Hotel tower**

GENERAL DRAFTING

- l) **make drafting changes that improve its clarity and operation**
- m) **structure the mandatory and general requirements in a clearer and more intuitive format.**

3. **Amend the *Heritage Design Guidelines: Sorrento Historic Precinct (Expires 30 June 2026)* to delete the proposed “New buildings should not exceed twelve metres in height”.**

1 Introduction

1.1 The Amendment

(i) Amendment description

Morningside Peninsula Planning Scheme Amendment C286morn (the Amendment) seeks to implement the recommendations of the Ocean Beach Road Sorrento Built Form Review (May 2024) (the Built Form Review) by applying permanent design and development provisions to the commercial precinct of Sorrento.

Specifically, the Amendment proposes to:

- revise local policy at Clause 11.03-1L-01 (Activity centres - Morningside Peninsula) to exempt the Sorrento Activity Centre (the Activity Centre) from the policy guidelines
- revise the existing Design and Development Overlay (DDO28) for the Ocean Beach Road Commercial Precinct to:
 - reflect the design objectives and mandatory design provisions recommended by the Built Form Review
 - remove the existing expiry date
 - incorporate relevant provisions from existing Design and Development Overlay Schedule 10 (DDO10)
- remove DDO28 from 52 and 48A-50 Kerferd Avenue, Sorrento
- delete DDO10 to avoid duplication of planning provisions
- revise Section 2.2 of the *Heritage Design Guidelines: Sorrento Historic Precinct* (expires 30 June 2026) incorporated document (the Design Guidelines) to state that “*New buildings should not exceed 12 metres in height*”
- revise the Clause 72.04 Schedule to include the amended incorporated document into the Planning Scheme
- revise the Clause 72.08 Schedule to reference the Built Form Review
- make associated changes to the Clause 74.01 Schedule and Planning Scheme maps.

(ii) The subject land

The Amendment applies to land in the Activity Centre shown as ‘Exhibited Amendment’ in Figure 1. The Activity Centre is located towards the western end of the municipality, about 100 kilometres by road (about 62 aerial kilometres) from Melbourne’s Central City.

The Commercial 1 Zone applies to the Activity Centre and the Heritage Overlay applies to about half of it.

As shown in Figure 1, the subject land and its defined sub-precincts changed between the interim provisions and exhibited and re-exhibited Amendment (see Table 1 – Chronology of events) as follows:

- 118 to 154 Ocean Beach Road did not form part of the interim provisions and were included in the exhibited Amendment (North-West Sub-Precinct).
- 48A-50 and 52 Kerferd Avenue in the Central Sub-Precinct of the interim provision were not included in the exhibited Amendment.

- The exhibited North-West, South-West and Central sub-precincts were consolidated into one area (Properties Abutting Ocean Beach Road) in the re-exhibited Amendment, excluding side street properties that are defined as a separate area.

Figure 1 Subject land and sub-precincts/areas

Version	Area
<p data-bbox="199 465 414 499">Interim provisions</p> 	<ul style="list-style-type: none"> <li data-bbox="1177 521 1356 589">A North-West sub-precinct <li data-bbox="1177 600 1356 667">B South-West sub-precinct <li data-bbox="1177 678 1356 745">C Central sub-precinct <li data-bbox="1177 757 1356 824">D East sub-precinct
<p data-bbox="199 857 462 891">Exhibited Amendment</p> 	<ul style="list-style-type: none"> <li data-bbox="1177 925 1356 992">E North-West sub-precinct <li data-bbox="1177 1003 1356 1070">F South-West sub-precinct <li data-bbox="1177 1081 1356 1149">G Central sub-precinct <li data-bbox="1177 1160 1356 1227">H East sub-precinct
<p data-bbox="199 1249 502 1283">Re-exhibited Amendment</p> 	<ul style="list-style-type: none"> <li data-bbox="1177 1305 1388 1417">I Properties Abutting Ocean Beach Road <li data-bbox="1177 1429 1356 1496">J Side Street Properties <li data-bbox="1177 1507 1356 1619">K 3293-3295 Point Nepean Road Site

1.2 Background

Table 1 Chronology of events

Background summary	
Pre 2021	
15 Dec 2016	Interim DDO28 introduced into the Planning Scheme [Amendment C203morn]
25 Jan 2018	A revised interim DDO28 was introduced [Amendment C204morn]
2019	Ocean Beach Road Sorrento Built Form Review started
31 Jul 2019	Interim DDO28 extended by 6 months [Amendment C264morn]
22 Jan 2020	Interim DDO28 extended by 2 years [Amendment C268morn]
2021	
Nov	Ocean Beach Road Sorrento Built Form Review ended
13 Dec	Council resolved to: <ul style="list-style-type: none"> - adopt the Ocean Beach Road Sorrento Built Form Review (Nov 2021) - request authorisation of Amendment C286morn (the Amendment)
2022	
28 Jan	Interim DDO28 extended by 18 months [Amendment C242morn]
20 May	Department of Transport and Planning, under ministerial delegation, authorised the Amendment
28 Jul	Amendment exhibition started
24 Oct	Amendment exhibition ended – Council received 73 submissions
2023	
Mar	Council officers commission an urban design and planning review of the Amendment
22 Jun	Interim DDO28 extended by 1 year [Amendment C299morn]
Apr	Review and refresh of Built Form Review document and the Amendment started
2024	
28 May	Council resolved to: <ul style="list-style-type: none"> - adopt the refreshed Ocean Beach Road Sorrento Built Form Review (May 2024) - re-exhibit the revised Amendment
18 Jul	Interim DDO28 extended by 1 year to July 2025 [Amendment C305morn]
25 Jul	Revised Amendment re-exhibition started
6 Sep	Revised Amendment re-exhibition ended – Council received 9 submissions
2025	
25 Feb	Council resolved to request the Minister for Planning appoint a Planning Panel to consider unresolved issues in submissions to the Amendment
25 Mar	Council lodged a request to extend the interim DDO28 expiry date by 1 year [Amendment C310morn]

1.3 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has had to be selective in referring to the more relevant or determinative material in the Report. The Panel has considered all submissions and materials in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Strategic issues
- Design and Development Overlay Schedule 28
- Other issues
- Drafting.

DDO28 versions

Any reference to DDO28 in this report refers to the proposed DDO28 unless specified otherwise. It does not refer to the existing interim DDO28 in the Planning Scheme.

The following versions are referred to in this report:

- Exhibited – exhibited July to October 2022, receiving 73 submissions
- Re-exhibited – exhibited July to September 2024, receiving 5 supplementary submissions and 4 new submissions
- Adopted version – additional proposed changes to the re-exhibited version adopted by Council on 25 February 2025 (Document 18)
- Version 1 – circulated by Council on 5 May 2025 (Document 33)
- Version 2 – circulated by Council on 9 May 2025 (Document 51)
- Final version – circulated by Council on 15 May 2025 (Document 53).

The Panel has considered issues raised in the exhibited and re-exhibited Amendment. For the purposes of this report, the Panel has based its recommended provisions on the re-exhibited version.

2 Strategic issues

2.1 Planning context

This chapter identifies planning context relevant to the Amendment.

Table 2 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the PE Act
Municipal Planning Strategy	- Clause 02.01 (Context) - Clause 02.02 (Vision) - Clause 02.03-1 (Settlement) - Clause 02.03-2 (Environmental and landscape values) - Clause 02.03-5 (Built environment and heritage) - Clause 02.03-6 (Economic development) - Clause 02.04 (Strategic framework plan)
Planning Policy Framework	- Clause 11 (Settlement) - Clause 12 (Environmental and Landscape Values) - Clause 13 (Environmental Risks and Amenity) - Clause 15 (Built Environment and Heritage) - Clause 16 (Housing) - Clause 17 (Economic Development) - Clause 18 (Transport) - Clause 19 (Infrastructure)
Other planning strategies and policies	- Morrington Peninsula Activity Centres Strategy 2018 - Morrington Peninsula Localised Planning Statement - Sorrento Commercial Precinct Statement of Significance - Ocean Beach Road Commercial Precinct Sorrento Heritage Policy - Heritage Design Guidelines Sorrento Historic Precinct - Plan for Victoria - Plan Melbourne 2017-2050
Planning scheme provisions	Zones and overlays that applying to, or near, the subject land: - Commercial 1 Zone - Design and Development Overlay - Environmental Significance Overlay - General Residential Zone - Heritage Overlay - Public Park and Recreation Zone - Public Use Zone - Transport Zone 2 - Transport Zone 3

Planning scheme amendments	<ul style="list-style-type: none"> - Amendment C203morn – Applied built form provisions for Ocean Beach Road Commercial Precinct - Amendment C204morn – Applied heritage policy for Ocean Beach Road Commercial Precinct through updated DDO28 (still interim) - Amendment C219morn – Implemented <i>Mornington Peninsula Housing and Settlement Strategy: Refresh 2030 - 2036</i> (July 2020) - Amendment C262morn – <i>Implemented Mornington Peninsula Heritage Review: Area 3</i> (including Sorrento) - Amendments C264morn, C268morn, C242morn, C299morn, C305morn and C310morn (proposed) – Extend expiry for interim built form provisions for Ocean Beach Road Commercial Precinct
Ministerial directions	<ul style="list-style-type: none"> - Ministerial Direction 7(5) (Form and Content of Planning Schemes) - Ministerial Direction 11 (Strategic Assessment of Amendments) - Ministerial Direction 17 (Localised Planning Statements)
Planning practice notes	<ul style="list-style-type: none"> - Planning Practice Note 46 (Strategic Assessment Guidelines) - Planning Practice Note 58 (Structure Planning for Activity Centres) - Planning Practice Note 59 (The Role of Mandatory Provisions in Planning Schemes) - Planning Practice Note 60 (Height and Setback Controls for Activity Centres)

2.2 Built form review approach

(i) The issue

The issue is whether the review approach that informed the built form provisions is appropriate.

(ii) Built Form Review approach

Physical context

The Built Form Review considers the Activity Centre’s physical context including:

- urban structure
- spatial enclosure
- built form character
- environmental considerations
- recent development.

Opportunities and constraints

It then analysed key opportunities and constraints:

Opportunities

- Creating a consistent sense of spatial containment and streetscape experience.
- Improving the design of new development (including its proportions, form, siting, materiality and detailing) and its respect for the existing character.
- Providing some opportunities for growth and change to ensure the Activity Centre continues to adequately cater for existing and future residents and visitors.

Constraints

- The strategic designation for Sorrento as a low growth area.
- Protecting views to the significant sand dunes to the west from the Activity Centre.
- Protecting the local heritage buildings, including views to the Continental Hotel tower.
- Protecting the fine grain, low scale character in Ocean Beach Road.
- The high visibility and the interface to the foreshore for the site at 3293-3295 Point Nepean Road.
- Providing an appropriately scaled and designed gateway to the Activity Centre from the foreshore / Point Nepean Road.
- Protecting the reasonable standards of amenity for existing dwellings adjacent to the Activity Centre.
- The Environmental Significance Overlay at 3293-3295 Point Nepean Road.
- The designation of surrounding land as bushfire prone.
- Congested / limited road access.

Built form testing

Design Urban Pty Ltd conducted built form testing including three-dimensional modelling to determine the balance between the preferred character and the desired spatial enclosure. The Built Form Review explains the modelling adopted generous floor-to-floor heights to respond to the character of older buildings in Ocean Beach Road. Specifically, it applied:

- 4.5 metres for the ground floor ceiling height
- 2.7 metres for upper levels
- allowance for building structure and a 1 metre parapet.

After testing scenarios for different building heights and upper level setbacks, the Built Form Review recommended the following planning provisions for buildings abutting Ocean Beach Road:

- Street wall height – must not exceed 9 metres or two storeys measured from the centre of the site's frontage
- Overall building height – must not exceed 12 metres and only three levels of the building may be visible from the footpath directly opposite the relevant site in Ocean Beach Road
- Non-heritage building upper levels – any third level must be set back a minimum of 4 metres from Ocean Beach Road.

The Built Form Review explains:

These parameters are intended to produce a street wall scale which perpetuates the existing street wall character and allow modest growth in a way which protects this character yet provides improved spatial enclosure.

(iii) Evidence and submissions

Mr Campbell's evidence:

- The underpinning urban rationale is appropriate for Sorrento.
- Regarding the rationale:
 - urban design is about the relationship between spaces and buildings and how people inhabit and relate to them
 - many urban design principles of scale relate to either the 'human scale' or proportions and apply to designing good streets or the spaces between buildings
 - it is appropriate for the Built Form Review to apply such international precedents and principles in Sorrento.

- The Built Form Review analysis found:
 - the eastern portion of Ocean Beach Road is the most enclosed with a ratio of 1:2.6
 - two heritage buildings (Continental Hotel and Stringers store) in the eastern portion significantly contribute to Sorrento's character through their visual prominence
 - the streetscape ratio increases as it goes further west along Ocean Beach Road, reaching up to 1:12.5
 - the sense of openness and enclosure varies significantly despite the same approximately 40-metre road reservation in the township.
- Buildings that better enclose and define the edge of the streetscape are the most valued streetscape portions.
- The proposed built form provisions:
 - seek to protect and maintain Sorrento's heritage fabric
 - will enable modest infill development in the western portion of Ocean Beach Road where this is presently lower scale development and fewer heritage buildings
 - will enable a more consistent streetscape in terms of its sense of enclosure along Ocean Beach Road.
- The three-dimensional mass modelling of potential built form scenarios:
 - is appropriate for considering and assessing the merits of the proposed planning provisions
 - is consistent with the approach and methodology for Dromana that was successfully implemented through Amendment C224morn
 - represents the existing built form condition of the township with white, detailed massing which contain architectural details, such as building facades, parapets, verandahs and roof forms
 - shows potential future massing form in an envelope manner without architectural detail
 - is intended to visually demonstrate the maximum potential built form massing outcome for each scenario
 - excludes other details such as landscaping and planting.

Mr Glossop's evidence:

- Supported the proposed DDO28 mandatory provisions.
- The DDO28 mandatory provisions:
 - are justified by the Activity Centre's physical and policy context
 - meet most of the mandatory provision criteria set out in Planning Practice Note 59
- Mandatory maximum building heights are strategically justified to:
 - preserve views to the Continental Hotel tower from the west
 - maintain reasonable views to the sand dunes west of the Activity Centre.

Submissions:

- The Built Form Review did not account for:
 - views of the sides of buildings especially where they are the original limestone
 - having places of interest to gather
 - variation in the streetscape with buildings of different height, bulk and appearance.
- The proposed two storey / three storey recommendations would negatively impact Sorrento's character.

(iv) Discussion

Council is commended for its Built Form Review approach. The Review relied on evidence-based data, predominantly three-dimensional modelling, to better understand the potential impact of new built form on existing heritage buildings and key vantage points.

The Amendment appropriately applies mandatory provisions to circumstances that meet the criteria set out in Planning Practice Note 59. For example, applying mandatory maximum building heights to appropriately respond to surrounding heritage buildings and key vantage points. The three-dimensional modelling demonstrated how exceeding these heights would most likely result in an acceptable design response to the Activity Centre.

The Built Form Review explains why the 4-metre upper level setback will preserve views to the sand dunes while achieving a proportional response to a sense of streetscape enclosure. It does not explain why the 4-metre upper level setback is sought to be applied only to non-heritage buildings. The Panel does not comment further on this matter because this streetscape response was not raised in any submission.

(v) Conclusion

The Panel concludes the Built Form Review approach, including the mix of recommended mandatory and discretionary provisions that informed the Design and Development Overlay Schedule 28 provisions is generally appropriate.

2.3 Strategic justification**(i) Evidence and submissions**

Council submission – the Amendment is:

- consistent with the PE Act section 4(1) planning objectives because it will:
 - allow for infill development in the Ocean Beach Road Commercial Precinct that is compatible with the role and function of the Sorrento township
 - ensure that new development protects and enhances the identified unique heritage and built form character of this sensitive coastal township
 - introduce mandatory and discretionary built form requirements to ensure that these outcomes are achieved
 - provide greater clarity and certainty to the community about development expectations in the precinct
- strategically supported by State and local policies (summarised in Chapter 2.1 of this report).

Submissions:

- Future development seeking to achieve growth will negatively impact Sorrento's character.
- Disagree with the Built Form Review that "*there must be room for growth*" along Ocean Beach Road.

Mr Campbell's evidence – The strategic planning and design process is well-considered and legitimate.

Mr Glossop's evidence:

- The Amendment is strategically justified.

- DDO28 is strategically justified by the accompanying Built Form Review.
- The proposed low levels of built form change are acceptable.

(ii) Discussion

The Panel agrees with Council and Mr Glossop that the Amendment is strategically justified.

The Planning Scheme designates Sorrento as a Small Township Activity Centre that services a population of between 5,000 to 10,000 people with a leasable floor area of 3,000 to 10,000 square metres. This reflects the Activity Centre's constrained location:

- just over 3 kilometres east of Point Nepean National Park (near the tip of the Mornington Peninsula)
- about 600 metres northeast of the Sorrento Ocean Beach sand dunes
- about 200 metres west of Sorrento beach
- without regular convenience public transport as an alternative to a private vehicle.

The Amendment appropriately responds to policy objectives and locational constraints by proposing planning provisions that will enable a low level of growth in the Activity Centre. The Panel considers these provisions in more detail in this report.

(iii) Conclusions

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by and implements the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Design and Development Overlay Schedule 28

3.1 Design objectives

(i) The issue

The issue is whether the proposed design objectives are appropriate for implementing the intended built form outcomes.

(ii) Evidence and submissions

Submissions to the original exhibited Amendment in 2022:

- The proposed DDO28 provisions and restrictive covenant on 3317 Point Nepean Road (Quamby) seek to achieve a low-scale built form that 'steps down' with the land topography.
- The Design objectives should protect important views and vistas including Quamby and the Continental Hotel.
- The design objectives should provide guidance on the impact of built form on the reasonable sharing of views.
- There are no design objectives relating to roof design or signage.
- The revised design objectives are too broad and poorly drafted.

Mr Glossop's evidence:

- The re-exhibited design objectives accurately summarise the preferred built form character.
- The DDO28 (Version 1) fourth design objective is not supported because:
 - 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.

Mr Campbell's evidence:

- Supported the proposed building heights and setbacks to deliver an appropriate protection of views to Quamby, the Continental Hotel and Stringers Stores.
- Landscape planting diminishes the current views towards these three heritage buildings.
- Comfortable with DDO28 (Version 1) which includes both Quamby and the Continental Hotel in the fourth design objective.
- The north-east corner would be a fair and reasonable location to reference the protection of views, but the view location does not need to be specified.

Council submission – the DDO28 design objectives:

- provide sufficient guidance for the future development
- are not too broad or poorly drafted

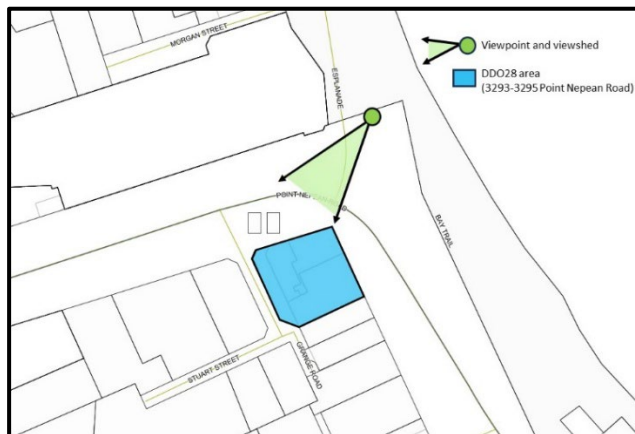
- provide a framework for achieving a desired outcome in the built environment so that development is well-designed and contributes positively to the community
- act as guiding principles and specify the expected design characteristics and qualities
- help create accessible, safe, diverse, enjoyable places
- accommodate various needs, while also respecting the existing character of the area
- as re-exhibited, are appropriate but the fourth objective could be revised to reference maintaining views to the heritage-listed Quamby building.

The DDO28 (Final version) fourth design objective was revised to:

To protect views from Ocean Beach Road to 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 Continental Hotel tower and 'Quamby' (3317 Point Nepean Road).

DDO28 (Final version) also included a new Diagram 4 to support this objective:

Figure 2 DDO28 (Final version) Diagram 4



(iii) Discussion

The design objectives generally provide a balanced approach to guiding future development and delivering what is sought to be achieved through the Built Form Review.

The fourth design objective aims to protect views towards natural features and the heritage listed Continental Hotel. DDO28 (Version 1) also seeks to protect views to all heritage buildings in the Activity Centre including Quamby.

The Panel considers the fourth objective will be achieved:

- because of the extraordinarily 40-metre-wide road reservation that provides an uninterrupted view towards the Activity Centre buildings when standing west in front of the large row of trees along the foreshore
- through the restrictive mandatory maximum building heights and setbacks proposed in DDO28.

However, the fourth design objective:

- does not have evident strategic justification to support such a broad objective or associated planning provisions
- should be redrafted to improve clarity, focus and effectiveness in delivering the preferred built form outcomes.

On the first issue, there is no clear support in the Built Form Review or adopted heritage study referenced in the Planning Scheme to justify protecting the view to all heritage buildings and for singling out the Quamby building. Singling out Quamby would elevate it to the same importance as the Continental Hotel. For reasons explained below, this is inappropriate.

All the contributory buildings in the Ocean Beach Road heritage precinct are clearly visible from the public realm when travelling through the Activity Centre. This includes the Continental Hotel, Morningson Hotel (now Koonya Hotel) and Stringers stores which the heritage study regard as landmark buildings. People can readily appreciate the historic streetscape that has existed since Victoria's early history. However, no document can clearly explain why these buildings must be viewed from the foreshore at a significantly diminished scale up a steep escarpment.

As noted by the Panel at the Hearing, its inspection along the foreshore next to the review area confirmed that views of Quamby and the Continental Hotel tower:

- were largely impeded by the pines along Point Nepean Road, and the landscaping further up Point Nepean Road to the west
- opened up between trees due east of Point Nepean Road at its bend, and as you left the foreshore area along the northern footpath of Point Nepean Road and at its intersection with Esplanade.

No party or expert at the Hearing disputed this.

Council preferred to protect views of the heritage buildings from the eastern gateway by vehicle and by foot. This is reflected in DDO28 (final version) which includes a viewshed from the north-east corner of Point Nepean Road and Esplanade within the decision guidelines.

The Panel considers that most visitors to the foreshore will have their attention directed towards the water and the pier. Protecting views from the foreshore, being a large-and-difficult area to define, is too ambiguous and does not reflect the desired viewing locations nominated by Council in the DDO28 (Final version) and supported by Mr Campbell at the Hearing.

Another issue is that DDO28 does not apply to properties between the foreshore, other than 3293-3295 Point Nepean Road and Constitution Hill Road properties. This means DDO28 including the fourth objective would not apply to most properties within the foreground of views towards the Activity Centre.

The reference to views from the foreshore to heritage buildings should be deleted. The Design Objectives provide enough guidance about views to heritage buildings. Chapter 3.6 discusses what specific views should be protected in the development of the corner site.

Council relied on the *Ocean Beach Road Commercial Precinct Sorrento Heritage Policy* (the heritage study) to justify views towards Quamby. This document is a heritage study, not a policy, and is referred once as a decision guideline in the interim DDO28. It is largely untested to determine whether its content is suitable to be referred to in the Planning Scheme. The Panel has weighted this document accordingly. This is another issue discussed in Chapter 3.6 of this report.

The heritage study categorises 3317 Point Nepean Road (Quamby) as a contributory property within a broader heritage place – the Ocean Beach Road Commercial Heritage Precinct. Unlike the Continental Hotel, it is not an individually significant heritage place.

The Built Form Review does not specifically seek to protect of views to Quamby. Rather, when referring to the appropriate setbacks for streetscape character, it states:

'the design response will moderate built form at the site and also protect views to the heritage listed 'Quamby' (at 3317 Point Nepean Road) from the foreshore.'

Without relevant strategic work, there is insufficient justification to protect views to Quamby or to specifically reference it in a design objective.

For reasons outlined above, the Panel agrees with Mr Glossop regarding the fourth design objective. The outcome sought through this objective is excessive when considering:

- the existing sweeping views of the township from the wide road reservation that will never be built out
- there is no strategic reason to protect such an extensive view, including Quamby which is not an individually significant heritage place.

There is considerable documentation to support views towards the state heritage protected and individually listed Continental Hotel. It was designed as a landmark with a tower to be viewed at a distance, particularly from the foreshore. The re-exhibited building height and setback provisions will not result in a loss of views to the Continental Hotel tower as demonstrated in the built form modelling. The Panel supports protecting views to its tower and referencing it in the fourth design objective, as it reflects what the built form provisions are intended to achieve.

The design objective should be revised to clarify which views to the Continental Hotel tower are sought to be protected.

The Panel considers that building heights and setbacks in Tables 1 and 2 will appropriately protect the Continental Hotel tower, as demonstrated by the built form modelling. However, discretionary minimum setbacks at 3293-3295 Point Nepean Road may have implications on those views dependant on the viewpoint. The viewpoint shown in DDO28 (Final version) from the corner of Point Nepean Road and Esplanade is appropriate.

The Stringers Stores building is an individually significant heritage place that can be appreciated through its high exposure at the corner of Ocean Beach Road and Point Nepean Road. While there is no strategic basis to protect a view of it from the foreshore, the steep topography will achieve this outcome. Having said that, it would be inappropriate for the fourth objective to refer to the Stringers Stores building because DDO28 does not apply to any property between it and the foreshore along the northern side of Ocean Beach Road.

(iv) Conclusions and recommendation

The Panel concludes:

- The design objectives are generally appropriate for achieving what is sought through Design and Development Overlay Schedule 28.
- There is insufficient justification to protect views from the foreshore to all heritage buildings, noting this outcome will be achieved by the existing 40-metre-wide road reservation and proposed low scale mandatory maximum building heights and minimum setbacks.
- There is insufficient justification to protect views from the foreshore to 'Quamby' at 3317 Point Nepean Road because it is a contributory building to a broader heritage precinct that does not warrant view protection.
- The fourth design objective should be revised to refer to protecting views from the corner of Point Nepean Road and Esplanade to the Intercontinental Hotel tower rather than relying on a broader reference to the entire foreshore.

The Panel recommends:

Amend Design and Development Overlay Schedule 28, as shown in, Appendix B, to revise the fourth design objective regarding heritage buildings to refer to protecting views from the corner of Point Nepean Road and Esplanade to the Continental Hotel tower.

3.2 Definitions

(i) The issues

The issues are whether it is appropriate for DDO28 to define:

- Abutting
- Building Height
- Ground Floor Level.

(ii) Background

The re-exhibited DDO28 includes definitions for Heritage Building, Ground Floor Level, Level 1 and Level 2, Any Other Street and:

Abutting means a building on or within 200mm of a boundary.

Building height has the definition set out at Clause 73.01. 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
- The combined floor area of such features does not exceed 10% of the top storey of a building; and
- They are setback at least 2 metres from the edge of the roofline on which they are located.

(iii) Evidence and submissions

Mr Glossop's evidence:

- Supported using the building height definition of Clause 73.01.
- Recommended enclosed stairwells be removed from the exclusions given this would constitute an additional 'storey'.
- The definition of Ground Floor Level in DDO28 (Version 1) appeared to not achieve its desired outcome, instead reflecting the definition for Ground Level within Clause 73.01.

Mr Campbell's evidence:

- It is appropriate to provide parameters for exclusions to the mandatory maximum building height for architectural features as proposed in the building height definition.
- The Version 1 definition for ground floor level is incorrect and suggests that the level would follow the slope of the land.

Council's submission: – DDO28 (Version 1) revised the re-exhibited version to:

- delete the definition for Abutting to clarify that a building more than 200 millimetres from the front boundary does not need to comply with the mandatory height provisions
- delete the definition for building height to avoid unnecessary duplication with the general definition in Clause 73.01
- move the building height exclusions to the mandatory provisions at Table 1
- add a new definition:

Ground Floor Level means the natural level of a site at any point.

DDO28 (final version) deleted the definition for Ground Floor Level and added:

Ground Floor means the building level closest to the natural ground of the Ocean Beach Road frontage.

(iv) Discussion

The re-exhibited built form provisions rely on the Clause 73.01 definition for building height. The Panel supports DDO28 (final version) which removes the building height definition to avoid duplication with other provisions. This approach is consistent with drafting advice in the Practitioner's Guide.

The Panel agrees with Mr Campbell that it is appropriate to apply building height exclusions such as architectural features that can exceed the mandatory maximum building height so that the DDO28 design objectives can be achieved. The exclusions should be separate to, but reference the mandatory provisions in DDO28 Table 1.

The Panel agrees with Mr Glossop to the extent that allowing a room for a stairwell would mean an additional storey for that portion of the roof. However, DDO28 appropriately recognises the need for necessary building infrastructure including lift overruns, plant and stairwells. The definition specifies each exclusion so all other spaces such as rooms would be prohibited. DDO28 also applies further parameters such as a maximum height and setbacks to ensure an appropriate design response. The Panel therefore agrees with Mr Campbell that the proposed building height exclusion parameters are appropriate.

The Panel agrees with DDO28 (Version 1) which deleted the 'Abutting' definition. This definition is unnecessary because the re-exhibited DDO28 does not vary from the general understanding of the term, being a property or building that shares a common boundary.

The DDO28 (Version 1) definition of Ground Floor Level adds confusion to the schedule's operation, as it appears to refer to the natural ground level.

Planning Scheme Clause 73.01 does not define Ground Floor, Level 1 or Level 2, however ground floor is commonly referred to in planning schemes throughout Victoria, most commonly with regard to activating ground floor levels in commercial zones.

The DDO28 definition for Ground floor, Level 1 and Level 2 has been applied to provide clarity for visibility of levels and setbacks of upper levels in the mandatory provisions for sites abutting Ocean Beach Road.

For consistency and clarity, DDO28 should adopt the approach taken in the other Morningside Peninsula Planning Scheme DDO schedules, including DDO13, which refer to storeys and levels in the built form provisions. Diagram 1 helps to interpret the built form provisions by labelling each level.

(v) Conclusions and recommendations

The Panel concludes that Design and Development Overlay Schedule 28 should:

- not define Building Height, Ground Floor Level, Level 1, Level 2 or Abutting
- add the relating storey number to each reference to building level
- refer to building elements and a threshold for exempting the need for a permit

- relocate Building height exclusions from Definitions to Mandatory Requirements (Entire DDO28 area).

The Panel recommends:

Amend Design and Development Overlay Schedule 28, as shown in, Appendix B, to:

- delete the definitions for Building Height, Ground Floor Level, Level 1, Level 2 and Abutting**
- move the building height exclusions and parameters from Definitions to Mandatory Requirements.**

3.3 Amenity provisions

(i) The issue

The issue is whether the DDO28 provisions that include Clause 55 types of standards are appropriate and justified.

(ii) Background

The Built Form Review recommended the following Clause 55 amenity related standards B17, B19, B20, B21, B22 and B24 be reflected in DDO28 as discretionary provisions.

The re-exhibited DDO28 included:

All buildings (irrespective of land use) which have an abuttal to land in a residential zone should achieve the following standards set out at Clause 55.04 of the Planning Scheme:

- Standard B17 Side and rear setbacks
- Standard B19 Daylight to existing windows
- Standard B20 North facing windows
- Standard B21 Overshadowing open space
- Standard B22 Overlooking
- Standard B24 Noise impacts.

DDO28 (Version 1) and subsequent versions included discretionary provisions that replicated or were similar to the Clause 55 standards without referring to the standards elsewhere in the Planning Scheme.

(iii) Evidence and submissions

Submissions:

- The proposed provisions for Ocean Beach Road properties may impact the amenity of neighbouring properties between George Street and Point Nepean Road.
- Rear building setbacks are needed to respond to amenity such as overshadowing.

DDO28 (Version 1) introduced in General Requirements:

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 metre for every metre of height over 6.9 metres. Setbacks are demonstrated in Diagram 2.

...

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.

Council submission:

- The DDO28 (from Version 1) amenity provisions are discretionary and will sufficiently protect residential properties from unreasonable amenity impacts such as overshadowing.
- The overlooking, overshadowing and north-facing window provisions should be written in DDO28 rather than referring to the relevant Clause 55.04 standards because they reflect standards that existed before Amendment VC267.
- Land abutting land in a residential zone should achieve standards set out in Clause 55.04 of the Planning Scheme.
- The proposed setback provisions for these types of properties are appropriate.

Mr Glossop's evidence:

- DDO28 contains requirements that apply Clause 55 style side and rear setbacks where land directly abuts residential land or abuts a laneway that has an abuttal to residential land.
- DDO28 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.
- DDO28 will ensure an acceptable built form relationship through these requirements.
- DDO28 should be revised to reflect the Clause 55 requirements wording introduced through Amendment C267.
- DDO28 provisions should be updated to reflect the revised Clause 55 requirements, particularly the standards names, introduced through Amendment VC267.
- Council Officer's preference to not duplicate the Clause 55 standards in DDO28 is supported.
- It is sufficient to simply refer to the Clause 55 standards themselves.

(iv) Discussion

The amenity provisions proposed for the DDO28 General Provisions form an appropriate framework for assessing the potential amenity impact of future development proposals. The Built Form Review broadly supports these amenity provisions. Many of them reflect, or are a revised version of, existing residential amenity standards in Planning Scheme Clause 55.

The discretionary Clause 55 amenity provisions have been applied for decades. One of them includes Standard B2-3 (formerly B17) regarding side and rear setbacks which has an objective:

To ensure that the height and setback of a building from a boundary responds to the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings or small second dwellings.

Standard B4-3 (Overshadowing and secluded open space) and Standard B4-4 (Overlooking) are different from the exhibited DDO28 version but are appropriate within the Activity Centre context.

The amenity provisions that vary to those found in similar Clause 55 standards should be expressed independently in DDO28. Council's reasons for replicating amenity provisions that seek to achieve the same outcomes as those in Clause 55 are the same reasons why the Panel considers they should not be repeated in DDO28.

The Commercial 1 Zone applies to all land affected by DDO28 and, includes the following decision guidelines for buildings and works that require a planning permit (except for minor works or façade alterations):

The objectives, standards and decision guidelines of Clause 54, Clause 55 and Clause 57. This does not apply to an apartment development.

DDO28 should exclude amenity provisions that do not differ from the Clause 55 objectives and standards to avoid duplicating the Commercial 1 Zone decision guidelines or creating inconsistencies with potential future Clause 55 revisions.

(v) Conclusions and recommendations

The Panel concludes:

- The amenity provisions that differ to the comparable Clause 55 provisions are generally appropriate for what is sought to be achieved in the Sorrento Activity Centre.
- The amenity provisions that replicate the Clause 55 objectives and standards (pre Amendment VC267 or current) should be excluded so that they do not duplicate the Commercial 1 Zone decision guidelines.

The Panel recommends:

Amend Design and Development Overlay Schedule 28, as shown in, Appendix B, to:

- a) add new residential interface provisions**
- b) delete amenity provisions that duplicate the Clause 55 standards.**

3.4 Ocean Beach Road properties

(i) The issues

The issues are whether, for buildings abutting Ocean Beach Road excluding heritage buildings, it is appropriate and justified for DDO28 to specify:

- no setback from the street boundary
- a maximum building height of 12 metres
- a Level 2 (third floor) setback of at least 4 metres from Ocean Beach Road except for heritage buildings.

(ii) Background

The interim DDO28 that exists in the Planning Scheme specifies a mandatory:

- minimum upper level setback of 8 metres
- maximum building height of 11 metres.

The re-exhibited DDO28 includes the following mandatory provisions:

For all buildings 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 three building levels may be visible from directly opposite the relevant site in Ocean Beach Road.

For all buildings abutting Ocean Beach Road excluding heritage buildings:

- Any Level 2 must be set back a minimum of 4 metres from Ocean Beach Road.

(iii) Evidence and submissions

Council submission:

- The current interim DDO28 already allows development of up to 11 metres (three storeys).
- The Built Form Review states:

At three storeys overall, the scale presents a better enclosed streetscape and sense of spatial containment. A two storey street wall, supported by a setback at the upper level, would also retain view lines towards the sand dunes and the tower at the Continental Hotel.

The degree of setback of the upper level needs to be carefully managed. 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. Equally though, a third storey with no or minimal setbacks results in a dominant built form that starts to block important view lines towards the sand dunes and overwhelms the historic buildings in Ocean Beach Road.

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.

Views to the western sand dunes from within the Activity Centre play a crucial role in defining the character and sense of place of this area. The 4m upper level setback for non heritage buildings will ensure that the shape and form of the dunes are not lost over new buildings, particularly from the footpath on either side of Ocean Beach Road at George Street. This setback also suitably balances the retention of dune views with the desired enclosure of the streetscape discussed in this report.

- The re-exhibited DDO28 responds to the Built Form Review justification by applying a 4-metre upper level setback on non-heritage buildings that abut Ocean Beach Road.

Submissions:

- The mandatory provisions including the maximum 12-metre building height should be expressed as discretionary provisions.
- The proposed provisions for Ocean Beach Road properties may result in overdevelopment of the Stringers Stores sites (2-8 Ocean Beach Road).
- The existing interim 8-metre upper level setback should be retained rather than applying the proposed 4-metre setback.

Mr Campbell's evidence – The proposed DDO28 provisions will:

- achieve the objectives of maintaining Sorrento's low-rise built form character along Ocean Beach Road
- enable limited infill development opportunities above and behind the shop fronts
- enable upper level activities for residents and visitors to enjoy Sorrento's attributes and attractions
- aid passive public realm surveillance and walkability in and around the Activity Centre.

At the Hearing, Mr Campbell confirmed on a map of the Activity Centre that views towards the sand dunes from Ocean Beach Road would start emerging from the Continental Hotel.

Mr Glossop's evidence:

- A balance will always need to be struck between retaining and responding to certain features and allowing change in a context that is, to an extent, facilitative.
- The combination of DDO28 provisions will ensure an acceptable built form relationship is achieved for new development along Ocean Beach Road.

(iv) Discussion

The Built Form Review explains why a sense of enclosure is important to the streetscape and for people who use the Activity Centre. Its associated modelling demonstrates why certain heights and setbacks better respond to achieving this outcome without impacting on other values it seeks to achieve such as views towards the sand dunes. The proposed height and setback provisions faithfully translate the Built Form Review findings.

The Panel carefully considered issues in submissions regarding these provisions but could not see how they would negatively impact surrounding properties or intended outcomes. Of note, these built form provisions form part of a framework for considering future permit applications. A future permit will only be issued where it meets the necessary policy objectives and associated provisions. This means that not all properties are likely to be developed to the full extent possible.

The Built Form Review modelling demonstrates that views to the sand dunes are predominantly from the public realm, being the more central part of the 40-metre-wide Ocean Beach Road reservation. As confirmed by Mr Campbell, when walking westerly, these views start to emerge at some point around the Continental Hotel. The modelling shows no perceptible difference in the viewshed towards the sand dunes between the 4-metre and 8-metre upper level long Ocean Beach Road properties. Accordingly, there is no justification to apply a setback greater than 4 metres.

The Panel agrees with Council's submission that exceeding the proposed mandatory provisions would result in unacceptable outcomes in most instances, but not for reasons relating to sand dune views. It should be applied as a mandatory provision to achieve the appropriate sense of streetscape enclosure and consistent street wall along Ocean Beach Road.

The DDO28 drafting does not enable non-intrusive fixtures such as balustrades to edge of balconies or other lower fixtures within the 4-metre upper level setback. If this is not the intended outcome, Council should consider redrafting the DDO28 provisions to exempt such fixtures and to introduce a new decision guideline that seeks to consider the visual impact of any protrusion in the upper level setback.

(v) Conclusions and recommendations

The Panel concludes:

- The Built Form Review modelling justifies the mandatory maximum building height of 12 metres and 4 metre minimum upper level setback for non-heritage buildings.
- The discretionary setbacks, including no setback to property boundary, in the final version of Design and Development Overlay Schedule 28 are appropriate and appropriately respond to heritage buildings.
- Fixtures should be enabled within the mandatory upper level setback of 4 metres with a design guideline to consider potential visual impact of such fixtures.

The Panel recommends:

Amend Design and Development Overlay Schedule 28, as shown in, Appendix B, to:

- a) revise the mandatory requirements for sites fronting Ocean Beach Road to allow fixtures in the setback area provided that they are no more than 2 metres in length**
- b) revise the decision guideline regarding the upper level setbacks to consider how fixtures in the setback area respond to the streetscape.**

3.5 Sites abutting any other street (excluding Grange Road)

(i) The issue

The issue is whether the discretionary built form provisions proposed for sites abutting any other street (excluding Grange Road) are appropriate and justified.

(ii) Background

The exhibited DDO28 included the Constitution Hill Road properties in the Central sub-precinct. The re-exhibited DDO28 designated the Constitution Hill Road properties within the Side Streets group.

Table 3 Central sub-precinct and re-exhibited Side streets provisions

Requirement	DDO28 version		
	Interim (Central sub-precinct)	Exhibited (Central sub-precinct)	Re-exhibited (Side Streets)
Maximum street wall height	8 metres/2 storeys (mandatory)	9 metres/2 storeys (mandatory)	9 metres/2 storeys (discretionary)
Maximum building height	11 metres/3 storeys (mandatory)	12 metres/3 storeys (mandatory)	12 metres (mandatory)
Minimum building setback	8 metres from the front building line of the second storey below (mandatory) For site on a corner with a named road or lane: 3 metres from the side street building line or the second storey below (mandatory)	0 metres for first two levels (mandatory). 4 metres for third storey (mandatory). 4 metres for third storey from Morce Avenue boundary. (mandatory). * These provisions do not apply to unnamed lanes.	4 metres from the street above level 1 (discretionary)

(iii) Evidence and submissions

Submissions – 19 Constitution Hill Road should be exempt from the mandatory 0 metre upper level mandatory street setback because it was more in a residential setting with existing landscape setbacks than a commercial setting.

Mr Glossop’s evidence:

- Agreed with Council that a small front setback could be an acceptable built form outcome along Constitutional Hill Road, particularly if the abutting property is set back from the street.
- Recommended the requirement be reworded to:
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.

Mr Campbell's evidence:

- Supports discretionary setback provisions to Constitution Hill Road properties.
- A 0 metre setback at 19 Constitution Hill Road would look out of place.

Council officers adopted Mr Glossop's evidence and included a new general requirement in DDO28 (Version 1):

Buildings 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.

(iv) Discussion

The re-exhibited DDO28 does not specify a mandatory 0 metre setback, but it includes a discretionary street wall height and a setback of 4 metres above Level 1. This suggests an outcome of a street wall built to the property boundary. These provisions apply to any other street.

DDO28 applies to three properties that front Constitution Hill Road. One being the Continental Hotel on the corner of Ocean Beach Road, followed to the south by a relatively recent apartment development which provides a landscaped setback to Constitution Hill Road, and the remaining (undeveloped) land at 19 Constitution Hill Road currently occupied by a Sorrento exchange building. These provisions are therefore likely to only impact the Sorrento exchange site.

The setback requirements for 'Any other street' also apply to two properties behind Constitution Hill Road off Riley Lane, four properties fronting Kerferd Avenue, one property fronting Kerferd Avenue and two properties fronting Melbourne Road. All properties sit within a similar context to Constitution Hill Road, being at the periphery of the Activity Centre and adjoining a residential zone with a streetscape character of landscaped street setbacks.

Constitution Hill Road's character comprises landscaped setbacks in the commercial and residential zoned land. A 0 metre upper level setback on the remaining undeveloped parcel would be at odds with the existing streetscape character. DDO28 (Version 1), which adopts Mr Glossop's recommendations, will result in an appropriate outcome for the streetscape.

(v) Conclusion and recommendation

The Panel concludes the setback requirement for sites abutting any other street should be revised to a front setback the same distance of the existing building on the adjoining lot, or 4 metres, whichever is the lesser.

The Panel recommends:

Amend Design and Development Overlay Schedule 28, as shown in, Appendix B, to revise the general requirements to specify a front setback the same distance of the existing building on the adjoining lot, or 4 metres, whichever is the lesser.

3.6 3293-3295 Point Nepean Road site

(i) The issues

The issues are:

- whether DDO28 should apply to the 3293-3295 Point Nepean Road site (former East sub-precinct)
- whether the Point Nepean Road provisions should also apply to Grange Road (and exclude Grange Road from the provisions for any other street)
- whether the proposed maximum building heights and minimum setbacks are appropriate and justified.

(ii) Background

The exhibited and re-exhibited DDO28 included the mandatory requirements for the East sub-precinct shown in Table 4. The re-exhibited DDO28 renamed the properties forming the East sub-precinct to '3293-3295 Point Nepean Road Site'.

Table 4 East sub-precinct and 3293-3295 Point Nepean Road site provisions

Mandatory requirement	DDO28 version		
	Interim	Exhibited	Re-exhibited
Maximum street wall height	8 metres (2 storeys)	9 metres (2 storeys)	Requirement deleted
Maximum building height	8 metres (2 storeys)	12 metres (3 storeys)	9 metres (2 storeys)
Street setback for ground and second storey	Match the setback of the building on the adjoining lot or the average of the setback the buildings on either side of the lot	0 metre	Replaced with a general requirement for new buildings to be set back to match the building setback on the adjoining lot or 4 metres, whichever is greater
Setback for third storey	-	4 metres	-

(iii) Evidence and submissions

Submissions to the original exhibited Amendment in 2022 regarding 3293-3295 Point Nepean Road:

- DDO28 and its proposed discretionary provisions are supported.
- The proposed maximum building heights and minimum setbacks are inappropriate and disproportionate with adjacent heritage buildings and foreshore area.
- A two-storey maximum building height with a large setback is appropriate.
- Any development must not diminish the view to Arthur's Seat and the rest of the peninsula.
- Protrusions should not be permitted above the maximum building height.
- There should be guidance for using and developing the land next to and within Grange Road, Sorrento.

Mr Glossop's evidence:

- There is a good planning case to apply DDO28 to 3293-3295 Point Nepean Road.
- The Built Form Review says 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 Road.'
- Originally recommended that DDO28 not apply to the site, mainly due to concern with the prospect of it being developed with a three storey building.
- Later supported DDO28 applying to the site based on the revised parameters set out in schedule – a two storey height limit and appropriate setback requirements.
- The site is physically separated from the main shopping strip but plays a role in framing the arrival experience for visitors to the activity centre.
- Planning Practice Note 58 states that when setting an activity centre boundary, 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 exist.'
- The same Planning Practice Note 58 principle could be applied to 3293-3295 Point Nepean Road, even though it is zoned Commercial 1.

Mr Campbell's evidence:

- The discretionary street setback provisions are appropriate to the site context, being remote from the Ocean Beach Road precinct, its position on the inside 'elbow of the gateway' and will assist in maintaining views towards the Continental Hotel and Quamby.
- The two-storey form compliments and bookends the form of the Koonya Hotel on the opposite corner.
- Supported changes to apply the mandatory two-storey and 9-metre height provisions to built form fronting Grange Road.
- The increase from 8 metres to 9 metres is appropriate because it allows for desired character elements including a pitched roof.
- It is appropriate to not specify a vantage point for protecting views to enable discretion.
- If a specific vantage point was nominated, it would be fair and reasonable to nominate views from the north-east corner of Point Nepean Road and Esplanade.

Council submission:

- Applying DDO28 to 3293-3295 Point Nepean Road is consistent with the adopted Ocean Beach Road Built Form Review.
- Not applying DDO28 could expose the site to inappropriate development.
- The built form testing justifies the proposed building heights and setbacks, considering surrounding built form character, the site's prominence and the need to maintain the prominent views to the activity centre including the Continental Hotel Tower.
- The increase in building height between the interim DDO28 and the re-exhibited DDO28 from 8 metres to 9 metres is appropriate to allow slightly more generous floor to ceiling heights and roof forms that reflect the area's heritage character.
- DDO28 (final version):
 - applied the mandatory building height requirements for 'sites abutting Point Nepean Road' to sites with a Grange Road frontage

- excluded Grange Road from the mandatory building height requirements for 'sites abutting any other street'
- excluded Grange Road from the discretionary provisions for 'sites abutting any other street'.

(iv) Discussion

The Panel supports applying DDO28 (Final version) to 3293-3295 Point Nepean Road.

The Built Form Review identifies the site as a visually and functionally significant gateway site in the Activity Centre. While it is physically detached from the main retail area, Planning Practice Note 58 supports including such land where it plays a contextual or functional role in framing the Activity Centre.

The DDO28 provisions, particularly the highly restrictive mandatory maximum two-storey building height, can appropriately manage built form while considering adjoining and nearby built form and heritage character. There is no supporting information or planning policy to restrict development beyond what is proposed.

The mandatory maximum building height of 9 metres (two storeys) and discretionary minimum setbacks appropriately enables design flexibility within built form parameters.

The maximum building height of two storeys rather than three storeys is appropriate because:

- it is supported by the Built Form Review
- the site is separated from the three-storey Ocean Beach Road precinct and surrounded by one and two storey built form limited by the adjoining DDO3
- it will appropriately bookend the site as a gateway to the Activity Centre.

The mandatory maximum building height of 9 metres (re-exhibited DDO28) rather than 8 metres (interim DDO28) is appropriate because:

- it will enable appropriate built form character including pitched roof elements, parapets and floor to ceiling heights that reflects the commercial heritage character, consistent with typical floor-to-ceiling measures in contemporary developments
- the built form modelling demonstrates the additional metre will not impact views of the Continental Hotel tower.

Revising the 0 metre setback (exhibited) to a context responsive discretionary setback that matches adjoining setbacks or defaults to 4 metres (re-exhibited) provides a more sensitive interface with adjacent buildings and reinforces visual and heritage character of this important gateway site.

The Panel has already found there is no strategic basis to protect views from the foreshore to all heritage buildings in the Activity Centre including Quamby. Future development at 3293-3295 Point Nepean Road will not impact views towards the Continental Hotel tower from the proposed vantage point at the corner of Point Nepean Road and Esplanade. Within this context, most proposals not in accordance with a mandatory setback could achieve acceptable outcomes. Any potential impact to the Continental Hotel tower is likely to be from development on land on the southern side of Point Nepean Road outside DDO28 between 3293-3295 Point Nepean Road and the Continental Hotel.

A discretionary minimum setback would enable Council to assess permit applications proposing areas and structures such as outdoor dining and balconies within the specified setback that appropriately respond to the site's gateway corner site in a commercial setting.

A new decision guideline should be introduced to support discretion in determining appropriate setbacks for this corner site. It should seek to consider the streetscape character and the impact of development on views to the Continental Hotel tower from the corner of Point Nepean Road and Esplanade.

The re-exhibited Amendment intended to apply the mandatory maximum building height of 9 metres (two storeys) to all of the 3293-3295 Point Nepean Road site. The site also fronts Grange Road so referencing this road would remove any doubt about where this requirement applies. This will ensure a consistent built form approach across the entire site. For clarity, DDO28 should clarify that Grange Road is excluded from mandatory and discretionary requirements for sites abutting any other street.

There was no supporting information to explain what views of Arthur's Seat are available from the Activity Centre or how they might be impacted by the proposed built form provisions. The Panel is satisfied that Objective 4 references appropriate views for protection, consistent with what is sought by the Built Form Review.

(v) Conclusions and recommendations

The Panel concludes:

- It is appropriate and justified to apply Design and Development Overlay Schedule 28 to the 3293–3295 Point Nepean Road site.
- The re-exhibited mandatory maximum building height requirement for sites fronting Point Nepean Road should also apply to sites fronting Grange Road to ensure a consistent built form approach across the 3293–3295 Point Nepean Road site.
- Design and Development Overlay Schedule 28 should include a new decision guideline to support discretion regarding setbacks from Point Nepean Road and views to the Continental Hotel tower.

The Panel recommends:

Amend Design and Development Overlay Schedule 28, as shown in, Appendix B, to:

- a) revise the mandatory maximum building height requirement for sites fronting Point Nepean Road to also apply to sites fronting Grange Road**
- b) add a new decision guideline to consider whether setbacks from Point Nepean Road are in keeping with the streetscape character and whether they will impact views from the corner of Point Nepean Road and Esplanade to the Continental Hotel tower.**

3.7 Requests for new DDO28 provisions

(i) The issues

The issues are whether it is appropriate and justified to add provisions that:

- require development to be constructed in materials similar to heritage buildings
- require signage to protect the heritage and street character
- exempt the named lanes from the setback provisions.

(ii) Evidence and submissions

Submissions:

- DDO28 should include:
 - additional requirements for new development to use materials similar to heritage buildings such as limestone
 - additional signage requirements to protect heritage and street character
- Buildings abutting some named lanes should be exempt from the setback provisions.

Council submissions:

- A discretionary requirement in DDO28, alongside an existing design objective and the decision guidelines will ensure building facades respect existing heritage fabric.
- Provisions will ensure new buildings and works will respond to the materiality, colours and proportions of existing buildings.
- The Heritage Overlay, which applies to most of the Activity Centre, already requires a permit to construct or display a sign.
- The Commercial 1 Zone and Clause 52.05 (Signs) require consideration of the impact of signs on the character of an area.
- The Built Form Review suggested that a setback exemption for named lanes would result in less cohesive development.
- The proposed design provisions will maintain a consistent built form in the Activity Centre.

Mr Glossop's evidence:

- The DDO28 drafting could be improved to clarify specific building design and materiality outcomes being sought, including a general requirement and clearer design objectives regarding responding to coastal themes, vertical proportions and colour schemes.
- The Built Form Review does not provide strategic justification to apply signage provisions through DDO28 and further work would be required to do so.
- There is also local policy which requires consideration of the impact of signage (Clause 15.01-1L)
- There is no justification to include signage provisions in DDO28 at this time.

(iii) Discussion

In response to a recommendation in the Built Form Review, Council included the following requirement in the re-exhibited DDO28:

Buildings 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.

Beyond this, the Panel was not presented with strategic justification for additional DDO28 requirements regarding building materials. The proposed DDO28 and existing Heritage Overlay provide a sufficient framework for Council to assess permit applications with regard to materiality and building design that is appropriate to the heritage context of Ocean Beach Road.

The need for additional signage provisions has also not been demonstrated. Existing Planning Scheme provisions account for this, including the Heritage Overlay, Commercial 1 Zone, Clause 52.05 (Signs), and local policy as noted by Mr Glossop. The Planning Scheme has considerable provisions to properly assess the impact of signage in the Activity Centre.

A setback exemption for some named laneways is not supported. The Panel agrees with the finding of the Built Form Review that exempting some sites to allow greater growth opportunities would be illogical and potentially lead to less cohesive development. Mr Glossop and Mr Campbell did not identify the need for any changes to setback requirements in this regard.

(iv) Conclusion

The Panel concludes that no further changes are required to Design and Development Overlay Schedule 28 to include additional provisions relating to building materials, signage or setback exemptions for named lanes.

4 Other issues

4.1 Traffic and parking

(i) The issue

The issue is whether the DDO28 provisions will enable development that will result in reasonable traffic and transport impacts.

(ii) Evidence and submissions

Submissions:

- Existing delays and bottlenecks during the peak holiday season makes it almost impossible for local residents to access any of Sorrento's villages and constrains the area's amenity.
- Development should be restricted to two storeys because Sorrento has existing traffic congestion.
- The Amendment will enable development that will increase traffic and the need for more car parking in the Sorrento township.
- The proposed maximum building heights will enable built form that will have negative pedestrian and traffic safety outcomes.
- New development should include car parking because Sorrento has a parking shortage.

Council submission:

- Traffic and car parking issues are beyond the scope of the Amendment.
- A planning permit application for land in the Amendment Area must be assessed against Clause 52.06 (Car Parking) of the Planning 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, while ensuring car parking does not negatively affect amenity.
- Council continues to investigate initiatives to assist in resolving existing traffic and car parking related issues in Sorrento.
- The Amendment will not have unreasonable or significant impacts on traffic and car parking in the Amendment Area and immediate vicinity.
- No changes are required to the Amendment in response to traffic and car parking concerns.

(iii) Discussion

The Amendment will not increase traffic and parking issues through further development. Before interim DDO28 was introduced in December 2016, the Activity Centre had less restrictions than what is proposed through DDO28 provisions. The Amendment will therefore reduce development capacity thereby reducing the extent of traffic that would have otherwise been permitted.

The Activity Centre will experience modest growth because:

- the DDO28 provisions will restrict development within building envelopes comprising mandatory maximum building heights and minimum setbacks

- not every property owner will take the opportunity to develop land to that extent.

This extent of traffic associated with future development is unlikely to result in notable impacts to the road network.

Having said that, the Panel agrees with Council that a planning permit application in the Activity Centre will have to be assessed against Clause 52.06. The application would need to demonstrate how car parking and traffic generation can be accommodated without negatively affecting amenity. Council will be able to monitor traffic and parking matters through these ongoing assessments.

(iv) Conclusions

The Panel concludes:

- Design and Development Overlay Schedule 28 will restrict development capacity through its mandatory built form provisions compared to planning provisions before its interim version was introduced into the Planning Scheme, resulting in less potential traffic volume in the local road network.
- A permit application proposing development in the Activity Centre will be assessed against Clause 52.06 to consider car parking and the potential impact on the surrounding road network.

4.2 Wind

(i) The issue

The issue is whether the proposed DDO28 planning provisions will enable built form that will result in unreasonable wind impact along Ocean Beach Road.

(ii) Evidence and submissions

Submission – The Amendment did not consider the impact of wind along Ocean Beach Road from future three-storey development enabled by DDO28.

Council submission – The maximum building heights specified in DDO28 are unlikely to have any significant or unreasonable wind impact at this location.

Mr Davies did not respond to this issue in his expert report. At the Hearing, he agreed that DDO28 would not enable built form of the scale that would require any wind assessment.

(iii) Discussion

The Panel agrees with Council and Mr Davies. Ocean Beach Road has a 40-metre-wide road reservation, while DDO28:

- restricts building heights to 12 metres (only one metre taller than the maximum height of the General Residential Zone)
- requires upper level setbacks
- will not enable any tower which may result in the need to assess wind impact.

(iv) Conclusion

The Panel concludes the proposed Design and Development Overlay Schedule 28 planning provisions will enable low-scale built form that will result in negligible wind impact along the 40-metre-wide Ocean Beach Road reservation.

5 Drafting

5.1 DDO28

The DDO28 provisions need to be drafted to align with the Ministerial Direction 7(5) and to include provisions enabled by the head provisions in the parent DDO.

5.1.1 Structure

The Practitioner's Guide states:

6.5.6 Using tables in a schedule – Defining land areas and specifying conditions

Where specified, tables can be used in schedules to define particular land and specify requirements that relate to the land.

The existing interim DDO28: Includes Table 1 which groups provisions by sub-precinct then by provision type (maximum building heights and minimum setbacks).

Re-exhibited DDO28: Grouped provisions by provision type (mandatory and discretionary).

DDO28 (Final version): Grouped provisions by provision type (mandatory and discretionary) with a table for each that groups provisions by location.

At the Hearing, the Panel referred to DDO28 which separates requirements for a property into two locations – mandatory and general requirement. The Panel asked Council whether the requirements could be structured more clearly and provided a sample DDO28 table structure for Council to consider. Council agreed that a tabulated form was easier to navigate. It included a table structure in DDO28 (Version 2) which continued to separate requirements for a property in two different locations.

The Panel considers DDO28 should be structured so that a permit applicant can easily navigate through the provisions. This can be achieved by grouping the provisions by location so the information for a property is one place. Grouping them by whether they are mandatory or discretionary requires having to browse different parts of DDO28 to find provisions for the same property.

The table format for the mandatory and discretionary provisions (Tables 1 and 2) is clearer and therefore faster to navigate. However, it does not assist with finding provisions for a property in one place like DDO26 (Rosebud Activity Centre) of the Planning Scheme does.

Council's preferred format exists in some other DDO schedules in the Planning Scheme and in other planning schemes. This does not mean the format in those schedules is the best way to communicate the DDO28 provisions or they should be applied as the benchmark for consistency across future DDO schedules.

5.1.2 New Diagram 4

DDO28 (Final version) included a new Diagram 4 (see Figure 2 of this report).

At the Hearing, there was considerable discussion regarding the broad requirement to consider the view of heritage buildings including 'Quamby' from the foreshore. As drafted, it appeared that a view from any point along the foreshore should be considered. Council subsequently proposed a new Diagram 4 that indicated a single viewpoint and viewshed towards where the Quamby building is located.

If the Panel found the view towards Quamby to be justified, the new Diagram 4 would have been helpful to explain where to measure the visual impact from. The previous broad reference to the foreshore was unhelpful. Diagram 4 helped explain the viewpoint was in fact not from the foreshore, as sought by the DDO28 design objectives, but rather from the corner of Point Nepean Road and Esplanade. Nonetheless, with the benefit of seeing this location in the proposed Diagram 4, the Panel considers it more easily described in the provisions without the need for a map.

5.1.3 Building and works

DDO28 includes in 2.0 (Buildings and works):

An application for buildings and works that does not meet a General Requirement must demonstrate how the development will meet the relevant Design Objectives and Decision Guidelines.

A heritage building is defined as “*a building graded as either ‘contributory’ or ‘significant’ in a Heritage Overlay*”.

In this instance, the first application requirement already requires an application to demonstrate how the proposal achieves the design objectives. It is not appropriate for a permit application to demonstrate how it meets the decision guidelines because they apply to the responsible authority (Council). Any decision guideline would relate to a provision elsewhere in DDO28 so there is no need to duplicate it in Clause 2.0 (Buildings and works).

Regarding a heritage building, Council has understandably applied the term ‘graded’ that appears in Planning Practice Note 1. However, Planning Practice Note 1 incorrectly regards ‘contributory’ and ‘significant’ as gradings. A contributory property is one which contributes to the precinct’s overall heritage significance whereas a non-contributory does not but new development may impact the surrounding heritage fabric. These are not grades so the Panel suggests referring to them as ‘categories’.

5.1.4 Decision guidelines

Regarding decision guidelines, the Practitioner’s Guide states:

Sets out, in policy neutral terms, matters that, if relevant, should be considered by the decision-maker when exercising a discretion.

...

Decision guidelines should relate to the schedule objectives that they serve and any statement of significance, if one is present. They may refer to a document but only if the document is incorporated in the scheme. A decision guideline should not refer to a background document.

A decision guideline should not include an informal referral requirement.

Practitioner’s Guide section 6.5.11 provides examples of correct and incorrect decision guidelines:

- Correct: Whether the siting, height and appearance of a building or works detrimentally affect the landscape qualities of the area.
- Incorrect: The impact of the development on coastal scenic vantage points.

The Panel notes Council’s changes to DDO28 to avoid duplication with other provisions and to align with current drafting practice. Similarly, the Panel considers the decision guideline “*The impact of the proposal upon the amenity of land in a residential zone*” should be deleted because it duplicates:

- the Commercial 1 Zone which includes a decision guideline to consider:

The interface with adjoining zones, especially the relationship with residential areas.

- Clause 65 (Decision guidelines) which requires a responsible authority to consider:
The effect on the environment, human health and amenity of the area.

The decision guidelines should be redrafted to:

- align with the drafting advice in the Practitioner’s Guide by expressing them in policy neutral terms
- not include any diagrams.

5.2 Other drafting

5.2.1 2015 heritage study

The interim DDO28 requires a permit application to demonstrate how the proposal “*achieves the design objectives and the requirements of this schedule and set out in the background document Ocean Beach Road Commercial Precinct Sorrento Heritage Policy – For Planning Applications for Places in the Heritage Overlay – September 2015 by HLCD Pty Ltd*”.

The re-exhibited Amendment excluded reference to this heritage study from DDO28.

The 2015 heritage study was referred to often during the Hearing. Having reviewed its contents, the Panel questioned this document being referred to as ‘policy’. Council noted the document is not proposed to be an incorporated or background document in the Planning Scheme.

The Panel acknowledges the Amendment will delete reference to the 2015 heritage study once the revised DDO28 is introduced into the Planning Scheme. This is a good outcome because the 2015 heritage study provides content that is typically found in similar studies. It includes further explanatory information and guidance in sections titled ‘Policy’. However, this content does not present as policy. Accordingly, referring to the document as policy can mislead people into thinking it includes policy content and that it has some statutory weight.

5.2.2 Clause 11.03

The re-exhibited Amendment proposed to revise local policy at Clause 11.03-1L-01 (Activity centres - Mornington Peninsula) to exempt the Activity Centre from the policy guidelines. Council subsequently proposed to not progress these changes. It submitted:

- the current Planning Scheme wording is adequate, and the previously proposed changes are no longer necessary
- this resulted from the changes introduced by Planning Scheme Amendment C271morn which simplified the wording of this policy exemption.

The Panel agrees with Council’s proposal to no longer revise Clause 11.03 for reasons set out in its submission.

5.2.3 Heritage Design Guidelines

In response to a Panel question, Council confirmed that adding “*New buildings should not exceed twelve metres in height*” was not needed because the proposed mandatory maximum building height of 12 metres would not enable such an outcome. The Panel agrees.

5.3 Recommendations

The Panel recommends:

Delete all changes proposed to Clause 11.03.

Amend Design and Development Overlay Schedule 28, as shown in, Appendix B, to:

- a) make drafting changes that improve its clarity and operation**
- b) structure the mandatory and general requirements in a clearer and more intuitive format.**

Amend the Heritage Design Guidelines: Sorrento Historic Precinct (Expires 30 June 2026) to delete the proposed “New buildings should not exceed twelve metres in height”.

Appendix A Document list

No	Date	Description	Presented by
2025			
1	6 Mar	Panel Directions Hearing notice letter	Planning Panels Victoria (PPV)
2	28 Mar	Panel Directions and Hearing Timetable (version 1)	PPV
3	3 Apr	Submitter location map (Confidential for Panel use only)	Mornington Peninsula Shire Council (Council)
4	10 Apr	Hearing Timetable (version 2)	PPV
5	16 Apr	Part A submission with attachments (see Documents 6 to 24)	Council
6	16 Apr	D5 Attachment A – Exhibited Planning Scheme Map No. 22DDO Sheets	Council
7	16 Apr	D5 Attachment B – Amendment C286morn Submissions 1 to 35 (Redacted)	Council
8	16 Apr	D5 Attachment C – Amendment C286morn Submissions 36 to 77 (Redacted)	Council
9	16 Apr	D5 Attachment D – Submissions summary and officers' response	Council
10	16 Apr	D5 Attachment E – Response to key submission themes	Council
11	16 Apr	D5 Attachment F(a) – Mornington Peninsula Activity Centres Strategy (May 2018)	Council
12	16 Apr	D5 Attachment F(b) – Mornington Peninsula Activity Centres Strategy Appendices (May 2018)	Council
13	16 Apr	D5 Attachment G – Ocean Beach Road Sorrento Built Form Review (May 2024)	Council
14	16 Apr	D5 Attachment H – Ocean Beach Road Sorrento Built Form Review (November 2021)	Council
15	16 Apr	D5 Attachment I – Minister for Planning's authorisation letter (20 May 2022)	Council
16	16 Apr	D5 Attachment J – Statement of Significance: Sorrento Commercial Precinct (February 2022)	Council
17	16 Apr	D5 Attachment K – Council meeting minutes (25 February 2025)	Council
18	16 Apr	D5 Attachment L – Council adopted Design and Development Overlay Schedule 28 (DDO28) (post re-exhibition track changes)	Council
19	16 Apr	D5 Attachment M – Council meeting minutes (13 December 2021)	Council
20	16 Apr	D5 Attachment N – Ocean Beach Road Sorrento Commercial Precinct heritage policy (September 2015)	Council

No	Date	Description	Presented by
21	16 Apr	D5 Attachment O – Summary document of proposed built form and design provisions (undated)	Council
22	16 Apr	D5 Attachment P – Summary document of key changes to proposed DDO28 (undated)	Council
23	16 Apr	D5 Attachment Q – Department of Transport and Planning's informal comments (19 July 2024)	Council
24	16 Apr	D5 Attachment R – Summary of permit applications and permits	Council
25	17 Apr	Site inspection plan	Council
26	23 Apr	Hearing Timetable (version 3)	PPV
27	24 Apr	Email – with Addendum to Heritage Victoria submission	Council
28	28 Apr	Expert report – John Glossop	Council
29	28 Apr	Expert report – Alastair Campbell	Council
30	5 May	Part B submission	Council
31	5 May	Version 1 – Clause 11.03 (Planning for Places) [further changes from re-exhibition shown in track]	Council
32	5 May	Version 1 – Design and Development Overlay Schedule 10 (DDO10) [no change from re-exhibition]	Council
33	5 May	Version 1 – DDO28 [further changes from re-exhibition shown in track]	Council
34	5 May	Version 1 – Clause 72.04 Schedule (Incorporated Documents) [no change from re-exhibition]	Council
35	5 May	Version 1 – Clause 72.08 Schedule (Background Documents) [no change from re-exhibition]	Council
36	5 May	Version 1 – Clause 74.01 Schedule (Application of Zones, Overlays and Provisions) [no change from re-exhibition]	Council
37	5 May	Version 1 – Incorporated Document - Heritage Design Guidelines [no change from re-exhibition]	Council
38	5 May	Version 1 – Background Document - Ocean Beach Road Sorrento Built Form Review Report May 2024 (Appendix A - Built Form Modelling) [no change from re-exhibition]	Council
39	5 May	Version 1 – Background Document - Ocean Beach Road Sorrento Built Form Review (Morningson Peninsula Shire, May 2024) [no change from re-exhibition]	Council
40	5 May	Version 1 – Explanatory Report [no change from re-exhibition]	Council
41	5 May	Version 1 – Instruction Sheet [no change from re-exhibition]	Council
42	5 May	Version 1 – Map Sheet No 22DDO (amend areas which are affected by DDO28) [no change from re-exhibition]	Council

No	Date	Description	Presented by
43	5 May	Version 1 – Map Sheet No 22DDO (showing areas to be deleted from DDO10 and DDO28) [no change from re-exhibition]	Council
44	6 May	Presentation – John Glossop	Council
45	6 May	Panel site inspection photos	PPV
46	7 May	Hearing submission	Kenneth Grenda
47	8 May	Hearing submission	Nepean Conservation Group Inc
48	8 May	DDO28 – Panel draft	PPV
49	8 May	Mornington Peninsula Planning Scheme Amendment C204 Panel Report	Council
50	9 May	Part C closing submission	Council
51	9 May	DDO28 (Version 2)	Council
52	15 May	Email with attachments (see Documents 53 to 55)	Council
53	15 May	DDO28 (Final version) – tracked changes	Council
54	15 May	DDO28 (Final version) – clean	Council
55	15 May	Extract, Council meeting minutes dated 12 October 2025 regarding Sorrento Heritage Policy 2015	Council

Appendix B Panel recommended DDO28

The Panel recommended changes are based on the re-exhibited version of the planning provisions and are shown as:

[Tracked Added](#)

~~Tracked Deleted~~

SCHEDULE 28 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO28**.

OCEAN BEACH ROAD COMMERCIAL PRECINCT

1.0 Design objectives

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.

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 corner of Point Nepean Road and Esplanade to](#) ~~heritage buildings including the InterContinental Hotel tower~~ [views from the foreshore](#).

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

2.0 Buildings and works

This overlay contains Mandatory Requirements, which must be met and General Requirements, which should be met.

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 in any of the following circumstances:

- The building is listed on the Victorian Heritage Register.
- Alterations or additions to a lawfully existing building that exceeds the height limits set out in this overlay, provided the existing maximum building height is not increased and the development is consistent with the Design Objectives and Decision Guidelines of this schedule.
- The reconstruction of heritage buildings and features.
- [The construction of g](#)Ground floor verandahs over the footpath.

~~An application for buildings and works that does not meet a General Requirement must demonstrate how the development will meet the relevant Design Objectives and Decision Guidelines.~~

Definitions

~~**Abutting** means a building on or within 200mm of a boundary. Building height has the definition set out at Clause 73.01. 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~~
- ~~• The combined floor area of such features does not exceed 10% of the top storey of a building; and~~
- ~~• They are setback at least 2 metres from the edge of the roofline on which they are located.~~

Heritage building means a building ~~graded~~categorised as either ‘contributory’ or ‘significant’ in a Heritage Overlay.

~~**Ground Floor Level** means the natural level of a site at any point.~~

~~**Level 1** means the second floor of a building or the first floor above ground level.~~

~~**Level 2** means the third floor of a building or the second floor above ground level.~~

Any other street refers to a side street or named laneway but excludes Ocean Beach Road, Point Nepean Road, Grange Road and Morce Avenue.

Mandatory Requirements

<u>Table 1: Buildings and works requirements</u>		
<u>Applies to</u>	<u>Mandatory requirements</u>	<u>General requirements</u>
<u>Entire DDO28 area</u>	<p><u>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 below. The maximum building height excludes architectural features, masts, building services (including lift overruns) or stairwells provided:</u></p> <ul style="list-style-type: none"> • <u>They do not exceed the height limits by more than 4 metres.</u> • <u>The combined floor area of such features does not exceed 10% of the top storey of a building.</u> 	<ul style="list-style-type: none"> • <u>Any upper level additions to heritage buildings should be set back behind the primary roof form of the building.</u> • <u>Existing pedestrian connections linking Ocean Beach Road to Morce Avenue should be maintained.</u> • <u>Buildings should provide an active interface at street level.</u> • <u>Building services including waste, loading, parking and service cabinets should be located away from streets and public spaces.</u>

	<ul style="list-style-type: none"> • <u>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.</u> 	
<p><u>Sites abutting Ocean Beach Road</u></p>	<ul style="list-style-type: none"> • <u>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.</u> • <u>The overall building height, as measured from the Ocean Beach Road frontage, must not exceed 12 metres and only three storeys may be visible when viewed from 1.6 metres above natural ground level at the street boundary of the site (or sites) directly opposite the centre of the subject site in Ocean Beach Road, as shown in Diagram 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 directly opposite the relevant site in Ocean Beach Road.</u> • <u>Excluding heritage buildings, any Level 2 (third storey) must be set back a minimum of 4 metres from the front wall of the Ground Floor and Level 1 below.</u> <p><u>Fixtures may extend into the setback area provided that they are no more than 2 metres in length.</u></p>	<p><u>Buildings:</u></p> <ul style="list-style-type: none"> • <u>should be built to the street boundary.</u> • <u>situated at a corner, should have a setback from any side street above Level 1 (second storey) to express and respond to the primary two level character of Ocean Beach Road</u> • <u>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.</u>
<p><u>Sites with a frontage to Point Nepean Road or Grange Road</u></p>	<p><u>The overall building height must not exceed two storeys or 9 metres.</u></p>	

<p><u>Sites with a frontage to Point Nepean Road</u></p>		<p><u>Buildings 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.</u></p>
<p><u>Sites that abut Morce Avenue or any other street</u></p>	<p><u>The overall building height must not exceed 12 metres.</u></p>	
<p><u>Sites adjoining a heritage building</u></p>		<ul style="list-style-type: none"> • <u>The front wall of building should be set back to match the front wall of the adjoining heritage building.</u>
<p><u>Sites adjoining a heritage building on both sites</u></p>		<ul style="list-style-type: none"> • <u>The front setback of the building from Ocean Beach Road should match the setback of the greater of the two front walls of the adjoining heritage buildings</u>
<p><u>Sites abutting any other street</u></p>		<p><u>Buildings should have:</u></p> <ul style="list-style-type: none"> • <u>a street wall height not exceeding two storeys or 9 metres.</u> • <u>a 4 metre street setback to any level above Level 1 (second storey).</u> • <u>a front set back the same distance of the existing building on the adjoining lot, or 4 metres, whichever is the lesser.</u>
<p><u>Sites which abut land in a residential zone</u></p>		<ul style="list-style-type: none"> • <u>Buildings above 4.5 metres in height 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 1 metre for every metre of height over 6.9 metres. Setbacks are demonstrated in Diagram 2.</u>
<p><u>Sites abutting an unnamed laneway which abut land in a residential zone</u></p>		<ul style="list-style-type: none"> • <u>Buildings 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 1 metre for every metre of</u>

		<p><u>height over 6.9 metres. Setbacks are demonstrated in Diagram 3.</u></p>
<p>Sites which abut land in a residential zone (or abut an unnamed laneway which abuts land in a residential zone)</p>		<p>Buildings should meet the following requirements:</p> <ul style="list-style-type: none"> • Standard B4-1 Daylight to existing windows • Standard B4-2 Existing north-facing windows • Standard B4-3 Overshadowing and secluded open space • Standard B4-4 Overlooking • Standard B5-6 Noise impacts

For all buildings 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 three building levels may be visible from directly opposite the relevant site in Ocean Beach Road.~~

For all buildings abutting Ocean Beach Road excluding heritage buildings:

- ~~Any Level 2 must be set back a minimum of 4 metres from Ocean Beach Road.~~

For buildings fronting Point Nepean Road:

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

For buildings abutting Morce Avenue or any other street:

- ~~The overall building height must not exceed 12 metres.~~

Diagram 1

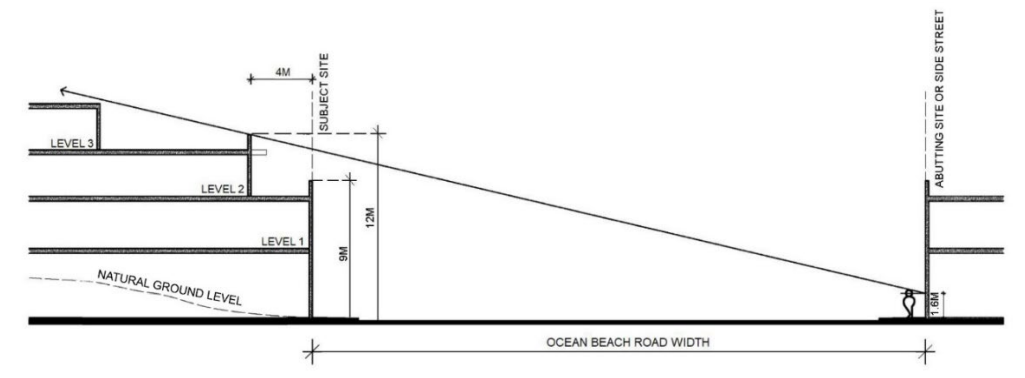


Diagram 2 – Setbacks for sites directly abutting residential land

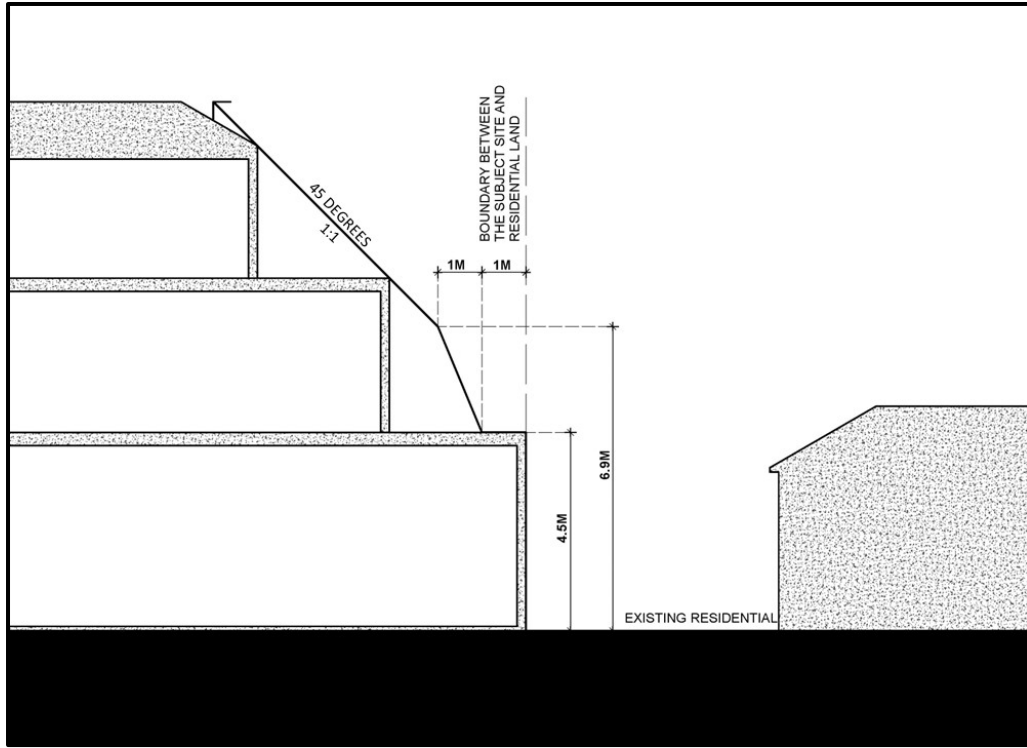
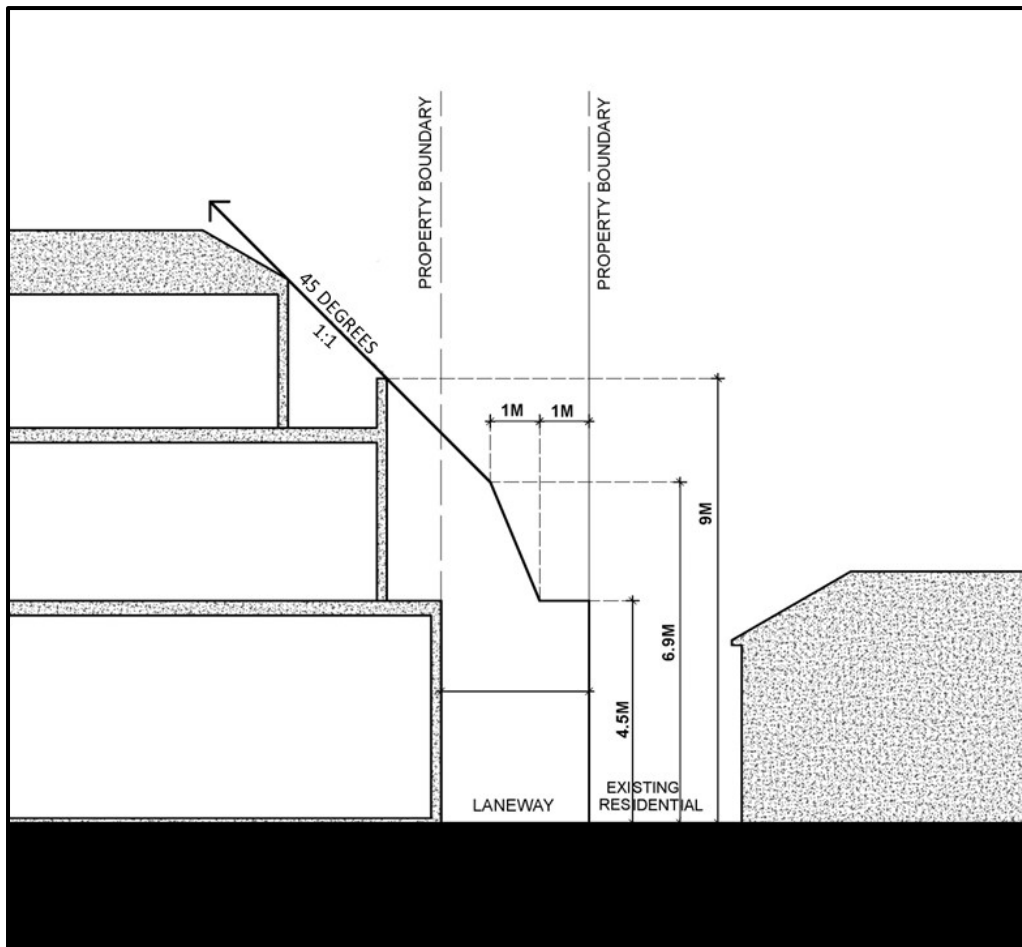


Diagram 3 – Setbacks for sites directly abutting unnamed laneway that directly abuts residential land



General Requirements

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

New buildings 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.

New buildings abutting Ocean Beach Road and 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.

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

Buildings 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.

~~The existing pedestrian connections linking Ocean Beach Road to Morce Avenue should be maintained.~~

~~Buildings 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.~~

~~All buildings (irrespective of land use) which have an abuttal to land in a residential zone should achieve the following standards set out at Clause 55.04 of the Planning Scheme:~~

- ~~• Standard B17 Side and rear setbacks~~
- ~~• Standard B19 Daylight to existing windows~~
- ~~• Standard B20 North facing windows~~
- ~~• Standard B21 Overshadowing open space~~
- ~~• Standard B22 Overlooking~~
- ~~• Standard B24 Noise impacts.~~

~~Buildings should provide an active interface at ground floor level to all streets.~~

~~Building services including waste, loading, parking and service cabinets should be located away from streets and public spaces.~~

3.0 Subdivision

None specified.

4.0 Signs

None specified.

5.0 Application requirements

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- A written report, site context analysis and design response report that demonstrates how the proposal achieves the design objectives and requirements of this schedule.
- Detailed plans, including a palette of materials and finishes.
- An accurate perspective image or photomontage showing the proposal in its streetscape context.

6.0 Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The detailing and proportions of the proposed Ocean Beach Road street wall (including the proportion of glazed versus solid finishes and the floor to floor heights) and its response to the characteristics of the street's valued, intact, early shopfronts.
- For buildings outside the Heritage Overlay whether a proposal will have an impact on heritage significance.
- Whether the setback of upper levels ~~s~~ additions to heritage of buildings ~~impacts~~ on view lines to the back beach sand dunes.
- The response of the material and colour palette to the local, coastal village character.

- ~~The impact of the proposal upon the amenity of land in a residential zone.~~
- The extent to which building features (architectural features, masts, building services, lift overruns, stairwells) and fixtures in upper level setbacks obscure views to the back beach sand dunes when viewed from both sides of the footpath ~~the pedestrian network~~ in Ocean Beach Road.
- Whether setbacks from Point Nepean Road are in keeping with the streetscape character and whether they will impact views from the corner of Point Nepean Road and Esplanade to the Continental Hotel tower.