3 Presentation of officer reports

3.1 Submission to the Victoria Government Residential Aged Care Facilities Planning Reform

Abstract

The Department of Environment, Land, Water and Planning (DELWP) is seeking feedback on the proposed Residential Aged Care Development Victoria Planning Provisions reforms. The proposed reforms were released on 14 December 2017 and feedback is due by 18 February 2018.

The proposed reforms (Attachment 1) would mean the development of a residential aged care facility (RACF) would no longer be considered under the residential zones and undergo a Clause 55 (ResCode) assessment. Instead, a RACF would be considered under a new particular provision (Clause 52) that provides a more streamlined assessment process through a limited range of assessment criteria and exemptions from notice and review provisions, if certain requirements are met.

Council’s Strategic and Statutory Planners have reviewed the proposed reforms including the draft RACF particular provision. Officers oppose the proposed reforms given the lack of strategic justification and considering the ‘one-size-fits-all’ approach of the proposed planning controls has the potential to detrimentally impact the amenity and character of established residential areas. In particular, officers have identified the following key concerns:

- Lack of strategic justification;
- Removal of consideration of RACF from the relevant zone and introduction of a particular provision;
- Introduction of a mandatory height limit of 13.5 metres;
- Ability to exceed the mandatory height limit;
- Failure to include a number of important Clause 55 Standards including Clause 55.07 and Clause 58 Apartment Development Standards;
- Exemption from notice and review provisions; and
- Lack of adequate decision guidelines to allow a comprehensive assessment of RACF including neighbourhood character.

Officers have prepared a draft submission (Attachment 2) which addresses the key concerns and specific drafting issues for consideration by the Urban Planning Special Committee (UPSC). The draft submission also includes specific recommendations for changes to the draft RACF particular provision (Appendix 1 to the draft submission). These suggested changes are not an indication of support but are provided to improve the particular provision and development outcomes in case the Minister for Planning decides to proceed with the reform in the manner proposed.
Officers' recommendation

That the Urban Planning Special Committee resolve to:

1. Adopt the submission prepared by officers in Attachment 2 to the Victorian Government’s opposing the proposed Residential Aged Care Development Victoria Planning Provisions reform.

2. Lodge the adopted submission with the Department of Environment, Land, Water and Planning.

3. Provide delegated authority to the Director City Planning to undertake administrative changes to the draft submission contained at Attachment 2 that do not change the overall intent of the submission.
1. **Purpose**

The purpose of this report is to:

1. Inform the Urban Planning Special Committee (UPSC) of the proposed reforms to the Victoria Planning Provisions (VPP) to facilitate the development of Residential Aged Care Facilities (*Attachment 1*) and the opportunity to provide feedback on the proposed reforms to the Department of Environment, Land, Water and Planning (DELWP).
2. Seek the UPSC’s adoption of the draft submission at *Attachment 2* prepared by Strategic and Statutory Planning Officers on behalf of the City of Boroondara.

2. **Policy implications and relevance to council plan**

**Council Plan 2017-2021**

The Council Plan 2017-21 identifies ‘ensuring liveability and amenity’ as one of Council’s key directions by "...striving for the protection and enhancement of the natural and built environments".

If implemented as proposed, the new planning provisions could have significant detrimental impacts on the amenity and neighbourhood character of properties and areas surrounding such facilities.

**Boroondara Community Plan 2017-27**

The Boroondara Community Plan 2017-27 sets out the 10 year vision for Boroondara’s future based on values, aspirations and priorities important to the community.

The proposed reforms to the Residential Aged Care Facilities planning provisions are of relevance to Strategic Objective 4 of the Plan: ‘Protect the heritage and respect the character of the City to maintain amenity and liveability while recognising the need for appropriate, well-designed development for future generations’.

If implemented as proposed, the new planning provisions could have significant detrimental impacts on the character and amenity of the properties surrounding such facilities.

Specifically, the proposed reforms could undermine the following strategy:

- **Strategy 4.1** - ‘Encourage the planning of well-designed new development that is appropriately located and does not negatively impact on established residential streets and valued neighbourhood character’.

Making a submission to the Victorian Government on the proposed reforms would be consistent with Strategy 4.2 to advocate to the State Government and opposition parties for greater control over planning decisions.
3. **Background**

**Plan Melbourne 2017-2050**

Plan Melbourne 2017-2050 is the Victorian Government’s Metropolitan Planning Strategy which sets the vision for the city guided by principles and outcomes.

Outcome 2 of Plan Melbourne is to ensure that ‘Melbourne provides housing choice in locations close to jobs and services' with the following directions also of relevance:

- Direction 2.4 - Facilitate decision-making processes for housing in the right locations.
- Direction 2.5 - Provide greater choice and diversity of housing.

To implement this outcome and associated directions, Action 31 of the Melbourne Implementation Plan identifies streamlining the approvals process for specific housing types such as aged-care accommodation as a short-term action.

**Managing Residential Development Advisory Committee**

The Managing Residential Development Advisory Committee (MRDAC) was established by the Minister for Planning in November 2015 to report on the application of zones that provide for residential development in metropolitan Melbourne and the four regional cities, having regard to managing growth, proximity to transport and jobs, housing affordability and diversity. The MRDAC held a public hearing in April/May 2016 to hear the submissions received and provided its report to the Minister in July 2016. The report was subsequently released to the public.

As part of its considerations, the MRDAC considered a number of submissions relating to RACF and development limitations in the residential zones at the time (Chapter 10.7 of the report). The key issue raised in the submissions with regard to RACF was the limitation that mandatory building heights present in the Neighbourhood Residential Zone (NRZ) (8m mandatory at the time) and General Residential Zone (GRZ) (9m at the time). The MRDAC report predates the reforms to the residential zones approved by the Minister for Planning in March 2017 which resulted in increased height limits (9m mandatory in the NRZ and 11m mandatory in the GRZ).

In its discussion of the issue, the MRDAC noted the strong policy support to facilitate the provision of RACF to meet existing and future needs and acknowledged that RACF will have different built form outcomes due to their role and function differing from a normal residential dwelling.

In this context, the MRDAC recommended the NRZ, GRZ, Residential Growth Zone (RGZ) and Township Zone (TZ) be amended to exempt RACF from the maximum building height requirements for dwellings and residential buildings. The MRDAC made no other specific recommendations with regards to RACF.
Current consideration of RACF

Currently, the definition of a RACF sits under ‘Residential Building’ at Clauses 74 Land Use Terms and 75 Nesting Diagrams of the VPP.

The use of land for a RACF is as-of-right under the NRZ, GRZ, RGZ, Mixed Use Zone (MUZ) and TZ. This means no planning permit is required to use a particular site for a RACF. However, due to its nesting under ‘Residential Building’ a planning permit is required for buildings and works associated with a RACF. A RACF development therefore is subject to any (mandatory) height limits, garden area or other requirement set out in the zone as well as a full Clause 55 (ResCode) assessment.

4. Outline of key issues/options

The proposed reform

The proposed VPP reforms comprise two key components:

1. Relocate the definition of ‘Residential aged care facility’ from under ‘Residential Building’ to under ‘Accommodation’ and remove ‘Nursing home’ as a defined use. This means that a RACF remains an as-of-right use but a planning permit would no longer be required for buildings and works under the various residential zones. As a result, a full ResCode assessment would also no longer be required and the mandatory building height and minimum garden area requirement would not be applicable.

2. Introduce a new particular provision at Clause 52 with a new planning permit trigger for buildings and works associated with a RACF in the NRZ, GRZ, RGZ, MUZ and TZ.

The proposed particular provision sets out the requirements for RACF in the relevant zones and includes the following key requirements:

- Mandatory height limit of 13.5 metres that can be increased;
- Car parking rate of 0.3 spaces per lodging room;
- Site coverage of 80%;
- A limited number of Clause 55 (ResCode) development standards;
- Ability to apply for a variation or waiver of any of the mandatory requirements;
- Exemption from notice and review provisions, if the proposed development meets all the mandatory requirements as listed above. If an application proposes to vary or waive any of the requirements, the responsible authority can determine whether notice of the application is required; and
- Decision guidelines that Council has to consider as part of their assessment.

A more detailed summary of the proposed reforms and supporting information brochure are provided at Attachment 1.
Key concerns

Officers have reviewed the proposed reforms including the draft particular provision and have identified a number of key concerns that are summarised below.

The draft submission contained at Attachment 2 also includes a track-changes version of the draft particular provision. As noted in the draft submission, the changes recommended to the draft particular provision are not an indication of support for the proposed reforms. Rather the changes are intended to improve the particular provision and provide a more robust assessment process in the case that the Minister for Planning proceeds with the reforms in the manner proposed.

Lack of strategic justification

Officers consider that the proposed reforms have not been strategically justified and lack the necessary evidence that would demonstrate a need to streamline the planning process for RACFs.

While the supporting information brochure (Attachment 1) references an increase in ageing population as the catalyst for the change and the need to make the development of aged care facilities easier, no specific analysis has been provided to demonstrate that this is the type of accommodation that is required or in demand.

An analysis undertaken by Council's Community Planning and Development Officers does not support the proposition that there is a need to simplify the planning permit application process and effectively remove the community (and in part Council) from decision-making in regards to these types of facilities.

Council officer analysis does not show an unmet demand in unsubsidised nursing home beds in the municipality with only approximately 1,082 additional people requiring nursing home beds over the next 20 years.

The proposed reforms therefore are considered to be a heavy-handed approach that is not supported by proper justification.

Removal from consideration under relevant Residential Zones

As detailed above, the proposed reform includes relocating the definition of a ‘residential aged care facility’ from ‘residential building’ to ‘accommodation’ at Clauses 74 Land Use Terms and 75 Nesting Diagrams. This means the consideration of a RACF is removed from the relevant residential zones and shifted to the new proposed particular provision.

Officers do not support this approach. The assessment of a RACF proposed to be located in an established residential area should be subject to the same considerations as other residential development and not a select, limited number of development standards. Given the scale of development allowed under the new particular provision (refer to discussion below), a RACF could have significant impacts on the surrounding residential areas. It should therefore be subject to the same requirements and rigorous assessment as any other residential dwelling.
The reforms also mean that all land within the NRZ, GRZ, RGZ, MUZ and TZ is considered an ‘appropriate location’. This is entirely inappropriate as not every location can successfully accommodate a RACF.

**Building height limit**

The draft particular provision sets a 13.5m (approximately four storey) height limit that can be exceeded. In practical terms, this means the 13.5m building height is set as a universally acceptable height for a RACF irrespective of the site’s context. Officers do not support this position as it does not present a site and context-specific approach. There will be instances where a height of 13.5m would be inappropriate and result in unacceptable development outcomes that will detrimentally impact the amenity and character of the surrounding residential area.

Officers therefore suggest replacing the currently proposed 13.5m building height with a mandatory provision that limits the building height of a RACF to the same height of adjoining existing buildings facing the same street. In instances where the adjoining buildings have a different height, the building height of the RACF should be one-storey above the lower adjoining building. For example, if adjoining buildings are single-storey and three-storey respectively, the RACF should be two-storeys. The draft particular provision contained at **Attachment 2** includes wording to achieve this built form outcome.

This approach to setting the building height would allow for a more site and context-responsive design and building scale, while also acknowledging that RACF have different built form requirements and outcomes.

**ResCode standards**

Clause 52.xx-3 of the proposed draft particular provision requires a RACF to meet a number of Clause 55 (ResCode) Standards. However, the list of ResCode Standards to be included is limited with some significant gaps. Most notably, none of the apartment design standards at Clause 55.07 (for apartment-style buildings below five storeys) and Clause 58 (five or more storeys) are included in the list. This is surprising given the height limit set and the ability to exceed this height limit which could result in apartment-style developments of five or more storeys. The draft particular provision contained at Appendix 1 to the draft submission has been updated to include relevant additional Clause 55.07 and Clause 58 ResCode standards.

As noted above and in the draft submission at **Attachment 2**, a RACF should be considered under the provisions of the relevant residential zone which would involve an assessment against all ResCode Standards. This would allow for a far more rigorous assessment of RACF applications than currently proposed.

In the event that the particular provision remains DELWP’s preferred implementation method, officers recommend additional ResCode Standards be included in the particular provision. This would enable a more comprehensive assessment process and ultimately lead to better outcomes.
Ability to vary or waive requirements

Clause 52.xx-3 states that the ‘requirements must be met’ which seems to indicate these requirements are mandatory and cannot be waived or varied. However, Clause 52.xx-4 allows for variation to any of the ‘mandatory’ requirements set out in the previous clause.

Officers have two concerns with this approach:

1. The use of mandatory terminology (‘must’) when the control is clearly discretionary is confusing and lacks transparency.

   Officers suggest that, if the ability to vary a requirement is to be retained in the final approved version, the use of discretionary terminology (i.e. ‘should’, ‘preferred building height’) would be more transparent and result in a less ambiguous planning control.

2. The 13.5m blanket building height limit is excessive and does not allow for a site and context-responsive design (refer to discussion above). Allowing this height limit to be further exceeded is entirely inappropriate. This results in an unbalanced planning framework that heavily favours the facilitation of RACF at the expense of neighbourhood character and amenity considerations.

   Officers therefore recommend that the ability to exceed the 13.5m height limit (if it is to be retained) be limited to those circumstances where both buildings on abutting sites facing the same street (including a corner site) already exceed this height limit. This approach would be consistent with building height exemptions currently included in the NRZ and allow for some flexibility based on a site’s immediate context.

Exemption from notice and review

The draft particular provision provides an exemption from notice and review provisions for applications that meet the requirements set out at Clause 52.xx-3. Where any of the requirements is to be varied or waived, the responsible authority will have the discretion to consider the appropriateness of the variation and determine whether notice of an application is required to be given.

This means an application that seeks to exceed the 13.5m height limit would need to be advertised and objectors would be able to appeal any decision by the responsible authority to VCAT.

Officers are concerned about the removal of notice and review provisions even in the more limited circumstances proposed.

A 13.5m high RACF could cause significant material detriment to owners and occupiers of adjoining and nearby properties yet would not be required to be advertised (if all other requirements are met). It is therefore considered entirely inappropriate for the material detriment test established under Clause 52 of the Planning and Environment Act 1987 to be ignored for RACF.
Decision guidelines

The draft particular provision contains a limited number of decision guidelines for the responsible authority to consider when assessing a RACF application. The decision guidelines are vague and general in nature and do not provide a sufficiently strong and clear assessment framework. Most notably, the decision guidelines fail to address neighbourhood character and potential impacts as a result of a RACF. The decision guidelines also provide very limited guidance on how to assess an application that seeks to vary/waive any of the requirements set out at Clause 52.xx-3.

In the event the ability to vary any of the requirements is retained in the final approved version, the draft particular provision must include stronger guidance on how such an application is to be assessed. Most importantly, additional decision guidelines are required that allow consideration of neighbourhood character impacts.

The draft particular provision contained in the draft submission at Attachment 2 includes some additional decision guidelines to strengthen the assessment process and improve development outcomes.

5. Consultation/communication

Council’s Strategic and Statutory Planning Department have collaborated in the preparation of the submission contained in Attachment 2. Additional support was provided by Council’s Community Planning and Development Department.

No consultation was undertaken with local residents on the proposed reforms.

6. Financial and resource implications

Costs associated with the preparation of the draft submission have been met from the Strategic Planning Operating Budget 2017/18.

7. Governance issues

The officers responsible for this report have no direct or indirect interests requiring disclosure.

The implications of this report have been assessed and are not considered likely to breach or infringe upon, the human rights contained in the Victorian Charter of Human Rights and Responsibilities Act 2006.

8. Social and environmental issues

If approved in the form proposed, the new RACF particular provision could have significant social and environmental impacts. While there is a need for more RACF to allow aging in place, the proposed planning controls seek to facilitate RACF development at the expense of amenity and neighbourhood character considerations.

Manager: Zoran Jovanovski, Strategic Planning

Report officer: Christian Wilmsen, Team Leader Strategic Planning
Feedback is invited on proposed changes to the Victoria Planning Provisions (VPP) to facilitate the development of Residential Aged Care Facilities (RACF).

**Purpose**

The Minister for Planning has requested the Department of Environment, Land, Water and Planning to prepare draft changes to the VPP and all planning schemes to support appropriately designed and located RACF developed in established residential areas to cater for an ageing population.

**The need for change**

By 2051 it is estimated that 27% of all Victorians will be older than 60. The middle and outer suburban areas of metropolitan Melbourne will experience the largest proportion of this projected change.

The responsibility for the planning, delivery and funding of health and ageing services is a shared responsibility between all levels of government, the private sector and the not-for-profit sector.

Victoria’s primary policy objective is to ensure that access to aged care services is available for all those who need them within the communities which they live.

**Policy context**

In March 2017, the Victorian Government released the housing strategy, *Homes for Victorians* to provide certainty in planning and housing supply and to coordinate cross-government issues to achieve housing affordability, access and choice. *Homes for Victoria* complements *Plan Melbourne 2017 – 2050* which focuses on the need to streamline approvals processes for specific housing types including RACF development to ensure that future community needs are met.

In July 2016, the *Managing Residential Development Advisory Committee – Residential Zones Review* identified the need for residential zones to provide greater support and flexibility. The Committee concluded that:

- There is strong planning policy support at a State level to facilitate RACF development and to enable ‘ageing in place’.
- The maximum building height controls in the current suite of residential zones do not support State planning policy support for facilitating RACF development.
- RACFs should be excluded from mandatory maximum building height requirements and some ResCode requirements.
- A working group, with representatives from industry, peak bodies, councils and state government, has been established to provide advice in developing new RACF planning controls to ensure their timely and cost effective delivery.
How are RACFs currently considered in the VPP?

The State Planning Policy Framework via Clause’s 16.02-3 and 16.02-4 outline the following objectives with regard to RACFs:

- To facilitate the timely development of RACFs to meet existing and future need; and
- To encourage well-designed and appropriately located RACFs.

An RACF is defined at Clause 74 of the VPP as:

“Land used to provide accommodation and personal or nursing care for the aged. It may include recreational, health or laundry facilities and services for residents of the facility.”

The RACF definition is nested under ‘Residential building’ and includes ‘nursing home’ within the overarching ‘Accommodation’ group of land use terms.

A RACF is also defined by the Building Code of Australia as a Class 9c building, with the following general description outlined in Practice Note 2014-30 issued by the Victorian Building Authority:

“RACF buildings may house children, disabled or aged persons, who need physical assistance in conducting their daily activities, and help to evacuate the building during an emergency. The BCA classification will depend on the building size, population and resident characteristics.”

The use of land for a RACF does not require permit (as-of-right) within the following residential zones (the zones):

- Neighbourhood Residential Zone
- General Residential Zone
- Residential Growth Zone
- Mixed Use Zone
- Township Zone

Currently a permit is required for the building and works component of a RACF proposal due to its definitional relationship with ‘Residential building’ within the zones. As a result, a RACF proposal must be assessed under the full building and works requirements of the zones which include assessment against the requirements found in ResCode (Clause 55) of the VPP and any mandatory building height, minimum garden area, or any other requirement outlined within the zones.

A RACF proposal is a section 2 use (permit required) within the Low Density Residential Zone. A permit for buildings and works is required for any section 2 use.

What changes are proposed?

The following reforms are proposed to the VPPs and all planning schemes:

1. At Clauses 74 and 75, relocate the definition of ‘Residential aged care facility’ from under ‘Residential Building’ to under ‘Accommodation’ and remove ‘Nursing home’ as a defined use.

2. Introduce a new RACF focused Particular Provision at Clause 52 (the draft provision).

Why relocate the definition?

The current location of the RACF definition of Clause 75.01 under ‘Residential building’, means an assessment against Clause 55 (ResCode) is required for buildings and works within the zones.

Relocating the RACF definition to under ‘Accommodation’ will mean that the use will remain as-of-right and an assessment of the buildings and works component is moved from the zones to the draft provision.

What is the scope of the draft provision?

The draft provision will apply to the use and development for a RACF:

- as defined at Clauses 74 and 75 of the VPP; and
- within the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone, Mixed Use Zone or Township Zone.

The draft provision will override other requirements in a planning scheme where a similar requirement is outlined in a zone or an overlay except where the following overlays apply:

- Heritage Overlay
- Floodway Overlay
- Land Subject to Inundation Overlay
- Special Building Overlay
- Bushfire Management Overlay

Other requirements outlined in a zone or overlay, such as vegetation or buffer protections etc, will continue to apply.

How will a RACF be considered under the draft provision?

A planning permit will be required for buildings and works associated with a RACF. A RACF will be required to meet a suite of requirements which are aimed at reducing impacts on neighbouring amenity and other matters which include:

- maximum front fence height
- maximum building heights not exceeding 13.5 metres
• car parking provided at 0.3 car spaces to each lodging room
• site area covered by buildings, including driveways, pedestrian path and area set aside for car parking, not exceeding 80 per cent of the site area
• meeting the following standards from ResCode (Clause 55):
  • B6 ‘Street setback’ (excludes porte cochere)
  • B17 ‘Side and rear setbacks’
  • B18 ‘Walls on a boundary’
  • B19 ‘Daylight to existing windows’
  • B20 ‘North facing windows’
  • B21 ‘Overshadowing open space’
  • B22 ‘Overlooking’
  • B24 ‘Noise impacts’
  • B27 ‘Daylight to new windows’
• building entry point (including a porte cochere) to:
  • have direct access from a street
  • be sheltered from the weather
  • have convenient access from on-site car parking
• accessways designed to the satisfaction of the relevant road authority.

A permit may be granted to vary any of these requirements.

How have these requirements been determined?
In 2012, a working group provided advice to the then Minister for Planning on the proposed requirements to streamline RACF within the VPPs. That working group and overall process undertook a thorough assessment of the requirements contained within Clause 55 of the VPP in consultation with the RACF industry and local government to determine what requirements where needed for appropriate consideration and assessment of RACFs.

In September 2017, the project working group was reformed to reconsider those conclusions and other matters that have since emerged to inform the draft provision.

Exemption from notice and review
The Planning and Environment Act 1987 requires a responsible authority to decide whether to give notice of a permit application unless the planning scheme directs otherwise.

The draft provision proposes to exempt notice of an application being given if all requirements listed in the draft provision are met.

Where a requirement is to be varied, the responsible authority will have the discretion to consider the appropriateness of the variation and determine whether notice of an application is required to be given.

How do I provide feedback?
The Minister for Planning will consider stakeholder feedback in deciding whether to introduce the reforms to the Victoria Planning Provisions and all planning schemes.

For more information on the proposed reforms, copies of the draft provision and to provide feedback visit: www.planning.vic.gov.au/residential-aged-care

Feedback must be provided by 5:00pm Friday, 16 February 2018.

For more information, please email: planning.systems@delwp.vic.gov.au. Or call the Victorian Government Contact Centre: 1300 366 356.
RESIDENTIAL AGED CARE FACILITY

Purpose

To facilitate the development of Residential aged care facilities.
To recognise that Residential aged care facilities have a different scale and built form to the surrounding neighbourhood.
To ensure Residential aged care facilities do not adversely impact on the amenity of adjoining neighbours.

Scope

This clause applies to the construction of a building or the construction or carrying out of works associated with a Residential aged care facility in a:
- Neighbourhood Residential Zone
- General Residential Zone
- Residential Growth Zone
- Mixed Use Zone
- Township Zone

If a zone, overlay or schedule specifies a different requirement from any requirement in this clause, the requirements in this clause apply except where a Heritage Overlay, Floodway Overlay, Land Subject to Inundation Overlay, Special Building Overlay or a Bushfire Management Overlay applies.

Permit requirements

A permit is required to construct a building, or construct or carry out works associated with a Residential aged care facility.

Requirements to be met

The following requirements must be met:
- A front fence within 3 metres of a street must not exceed 1.5 metres in height.
- The building height must not exceed 13.5 metres.
- Car parking must be provided at the rate of 0.3 car spaces to each lodging room.
- The site coverage, including a driveway, pedestrian path, and an area set aside for car parking, must not exceed 80 per cent of the site area.
- The following standards found at Clause 55 of this scheme:
  - B6 ‘Street setbacks’ (does not include a porte cochere.)
  - B17 ‘Side and rear setbacks’
  - B18 ‘Walls on a boundary’
  - B19 ‘Daylight to existing windows’
  - B20 ‘North facing windows’
  - B21 ‘Overshadowing open space’
  - B22 ‘Overlooking’
  - B24 ‘Noise impacts’
  - B27 ‘Daylight to new windows’
- The main entry to a building (including a porte cochere) must be designed to:
  - Have direct vehicle and pedestrian access from a street.
  - Be sheltered from the weather.
CONSULTATION DRAFT

- Have convenient pedestrian and vehicle access from on-site car parking.
  - Access ways designed to the satisfaction of the relevant road authority.

**52.XX-4 Variation to a requirement**

A permit may be granted to vary any of the requirements of Clause 52.XX-3.

**52.XX-5 Information requirements**

An application must be accompanied by the following information as determined by the responsible authority:

- A design response which explains how the proposed development responds to the site and context description and responds to the requirements of this clause.
- A copy of title for the subject land and a copy of any registered restrictive covenant.
- A proposed site and layout plans, drawn to scale and fully dimensioned showing:
  - Site shape, size, orientation and easements.
  - Existing levels of the site and the difference in levels between the site and surrounding properties.
  - Location of existing buildings to be retained.
  - The location of buildings, secluded private open space and habitable room windows of surrounding properties which have an outlook to the site within 9 metres.
  - Proposed levels of the site and the difference in levels between the site and surrounding properties.
  - The location and layout of all proposed buildings, habitable room windows including finished floor levels and setbacks.
  - Proposed landscaping and open space areas.
  - Proposed crossovers, driveways, onsite car parking, service and delivery areas.
  - All external storage, waste areas and services.
- An elevation plan, drawn to scale showing the height, colour and materials of all buildings and structures.
- Shadow diagrams showing proposed shadows.

**52.XX-6 Exemption from notice and review**

An application which meets all of the requirements of Clause 52.XX-3 is exempt from the notice requirements of section 52(1) (a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

**52.XX-7 Decision guidelines**

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Whether the permit requirements outlined in Clause 52.XX-3 have been met.
- How the proposed development responds to the site and context description.
- The impact of any building height above 13.5 metres, when viewed from the street and/or a side street.
- The impact of any reduced on-site car parking on neighbouring streets and associated traffic management.
- The impact on the amenity of existing dwellings and proposed amenity for future residents.
Facilitating Residential Aged Care Development - Proposed reforms to the Victoria Planning Provisions

Submission by the City of Boroondara

12 February 2018
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Appendix 1 Draft Residential Aged Care Facilities Particular Provision
1. INTRODUCTION

The City of Boroondara welcomes the opportunity to comment on the draft Residential Aged Care Facility (RACF) Particular Provision.

The *Boroondara Housing Strategy 2015* (BHS) recognises the need for aged care facilities to cater for the needs of an ageing population. Specifically, it encourages the provision of non-private residential accommodation, such as aged care and student housing in areas close to services and amenities. However, the BHS also places a strong emphasis on preserving neighbourhood character and the development of RACF facilities should not be to the detriment of our established residential areas.

In this context Council fundamentally opposes the proposed RACF reforms. No evidence or strategic justification has been provided to demonstrate a need for the proposed reforms. The proposed RACF Particular Provision adopts a one-size-fits-all approach to the development of RACF while ignoring or inadequately addressing other important planning considerations such as residential amenity and neighbourhood character. This reform seeks to introduce planning controls that ignore local circumstances in order to facilitate development. The reforms also propose to remove the local community’s rights with respect to notice and appeal of planning permit applications. The impact of these reforms will be borne by the local residents and communities.

The proposed reform goes too far and will have significant detrimental impacts on the amenity and character of our established and highly valued residential areas. In fact, the proposed reform goes beyond what was recommended by the Managing Residential Development Advisory Committee (MRDAC) as discussed in Chapter 2.2 of this submission.

Council’s submission is structured around the various sub-clauses of the proposed particular provision proceeded by some general comments. Council’s key concerns regarding the proposed reforms to the consideration of RACF can be summarised as follows:

- Lack of strategic justification;
- removal of consideration of RACF from the relevant zone and introduction of a particular provision;
- introduction of a preferred height limit of 13.5 metres;
- ability to vary the mandatory height limit and other requirements;
- failure to include a number of important Clause 55 Standards including Apartment Development Standards at Clauses 55.07 (less than 5 storeys) and 58 (five or more storeys);
- lack of adequate decision guidelines to allow a comprehensive assessment of RACF including neighbourhood character; and
- exemption from notice and review provisions.

A version of the draft RACF Particular Provision showing Council’s suggested changes is contained at Appendix 1 of this submission. Council would like to highlight that the changes shown in the attached document should not be seen as Council endorsing the particular provision and the proposed reform. Council suggests the changes shown at Appendix 1 as a way to improve the draft provision and address some of its flaws and failings should the particular provision remain the preferred implementation method.
Council would welcome the opportunity to be further involved in the process and engage in meaningful and productive discussion with the Department of Environment, Land, Water and Planning about the proposed reform.

2. GENERAL COMMENTS

2.1. Lack of strategic justification

Council questions the need for the proposed planning reforms and fundamentally disagrees with the strategic justification for the proposed planning reforms. While the supporting information material provided references an increase in ageing population as the catalyst for the change and the need to make the development of aged care facilities easier, there is no specific analysis that supports whether in fact this is the type of accommodation that is required or in demand.

There is also the further question as to why the age of 60 onwards has been categorised as the appropriate age where residential aged care facilities become the appropriate housing choice. In an age where people work longer, live longer and prefer to age in place, this benchmark of 60 years plus seems an extremely arbitrary figure, particularly given that the current retirement age of Australians is 65 and likely to rise into the future.

Council agrees that residential aged care facilities (or otherwise referred to as nursing homes) contribute to the mix of housing opportunities for the elderly. However, analysis undertaken by Council’s Community Planning and Development Officers does not support the proposition that there is a need to simplify the planning permit application process and effectively remove the community (and in part Council) from decision-making in regards to these types of facilities.

At the 2016 Census, 94% of Boroondara residents counted as living in nursing homes were aged 70 years and over (and 76% were aged over 80 years). According to the Australian Department of Health, there were 2,069 residential aged care places in Boroondara in 2016. This is equivalent to 1 place per 9 Boroondara residents aged 70 years and over (while the Victorian ratio is 1 place per 12 residents aged 70 years and over).

Boroondara’s population is ageing, with people aged 70 years and over forecast to increase by 9,740 between 2017 and 2037, and from 11.1% of the population in 2017 to 14.5% of the population in 2037. However, Council is not seeing unmet demand in unsubsidised nursing home beds in Boroondara (although vacant lower cost places can be difficult to find). Assuming that the increase in demand will need to be catered for, the forecast population increase translates into approximately 1,082 additional people that would require nursing home beds in Boroondara over the next 20 years (based on a rate of 1 nursing home bed per 9 people aged 70 years and over).

This does not take into account the fact that for permanent residential aged care, age-specific usage rates in Australia have decreased since 20001, while usage rates for respite residential aged care

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have increased slightly. The Australian Institute of Health and Welfare (AIHW) suggests that this decrease may be, in part, related to the increasing availability and use of community-based care. Boroondara (for example) is home to a large number of retirement villages (these were last counted in 2015, when there were 34 retirement villages in Boroondara).

Council therefore suggests that there are several alternative options for meeting the demand for residential aged care facilities that do not require such substantial changes and intervention into the planning system by the Victorian Government.

Firstly, existing aged care providers may choose to expand to meet market demand for new residential aged care spaces. Two examples include Samarinda Ashburton Aged Services and Lynden Aged Care in Camberwell which have recently expanded to accommodate more residents.

Secondly, the number of small dwellings in Boroondara is expected to increase further into the future which will cater for an ageing population. The number of one and two bedroom dwellings in Boroondara has increased from 18,501 in 2006 to 20,279 in 2016.

Thirdly, recent consultations with our residents as part of the development of the Boroondara Community Plan 2017 have revealed that our older population want to remain in their own homes as long as possible. Enhanced in-home support offerings may therefore be a preferable way to meet any increase in demand, or at least to delay the shift to residential aged care.

Council therefore considers that the fundamental principle that a change to the planning provisions for residential aged care facilities is required is not supported by its experience.

Council therefore strongly opposes the proposed reforms and submits that the amendment process for changes to the Residential Aged Care Facilities planning provisions should be abandoned.

2.2. Removal from consideration under relevant Residential Zones

Council does not support removing the consideration of RACF from the relevant residential zones.

Council submits if the only reason is to exempt RACF from the mandatory height limits (based on the MRDAC recommendation), then this would be better achieved through the zone rather than a separate particular provision. As will be discussed below, Council opposes exemptions to the mandatory building height requirements. However, if such an exemption was to be introduced, it believes the more appropriate way to facilitate this outcome is to amend the relevant residential zone provisions to exclude RACF from the need to comply with the mandatory height limit.

Council considers this approach would be far more consistent with the recommendations of the MRDAC than the removal of RACF from the considerations under the zone entirely and moving this to a new particular provision. As discussed in the following Chapter 2.2, the MRDAC did not recommend the use of a particular provision but instead recommended changes to the relevant zones to include an exemption from the mandatory maximum building height for RACF. The MRDAC did not deem it appropriate to exempt RACF applications from the consideration under the zone in its entirety.

Council is of the view a RACF proposed to be located in an established residential area should be subject to the same considerations as other residential development and not just a select number of
development standards. This is particularly the case in the Neighbourhood Residential Zone (NRZ) which have a highly consistent character and enjoy high levels of amenity that could be detrimentally impacted by the development of a RACF. Any special considerations (such as greater height limit) should be contained in the zone rather than a particular provision. This would be more closely aligned with the one-stop-shop approach advocated for in the recent Reforming the Victoria Planning Provisions Discussion Paper.

Council notes that RACF are being exempted from the need to comply with the minimum garden area requirement that was introduced by the Minister for Planning as part of the reformed residential zones in March 2017. Much has been made of this new requirement and it has been presented as being necessary to save the backyard. It therefore seems illogical to now exempt RACF from the need to comply with this requirement when it could result in better outcomes both for the adjoining residents and future occupants.

2.3. Consistency with the Managing Residential Development Advisory Committee’s recommendations

In its report the MRDAC considered a number of submissions that raised the impacts of the zones on residential aged care facilities (Chapter 10.7, p.107ff of the MRDAC Report). The key concern expressed in those submissions and by various presentations at the public hearing was the limitations imposed by the mandatory height limits predominantly in the NRZ (mandatory 8m at the time) and General Residential Zone (GRZ) (9m discretionary with some municipalities including Boroondara having a 9m mandatory height limit).

In its report the MRDAC notes the ‘clear, strong, state policy support to facilitate the provision of residential aged care facilities to meet existing and future needs’. Council acknowledges this need in the Boroondara Housing Strategy 2015. However, the MRDAC’s only recommendation relating to RACF related to amending the NRZ, GRZ, Residential Growth Zone (RGZ) and Township Zone (TZ) to exempt RACF ‘from the maximum building height requirement’. The recommendations did not include any changes to the Mixed Use Zone (MUZ).

Council therefore considers the proposed reforms go beyond the recommendations of the Minister’s own advisory committee that most recently considered the planning framework relating to RACFs. In fact, the Minister’s reforms to the residential zones in March 2017 have negated some of these issues to some extent through the introduction of greater height limits in the GRZ (11m mandatory) and NRZ (9m mandatory).

It should also be noted the MRDAC refers to the need to provide RACF in ‘appropriate locations’. The reforms proposed effectively mean that all land within the NRZ, GRZ, RGZ, MUZ and TZ is considered an ‘appropriate location’. This seems illogical and highlights the inappropriateness of the proposed reforms. Clearly not every location can successfully accommodate a RACF due the varying locational attributes. If one accepts the basic premise that not every site is suitable for a RACF, clear and strong decision guidelines are required to ensure an adequate assessment of a proposed RACF can be carried out. Unfortunately, the proposed particular provision fails to provide adequate assessment guidelines to determine whether a particular location is appropriate or not.
2.4. Proposed height limit

Council’s key concern is the setting of a blanket 13.5 metres maximum building height. This reform proposal is based on the MRDAC Report which recommended exempting RACF from the mandatory height limits contained in the NRZ, GRZ, RGZ and TZ.

However, the proposed reforms go beyond the MRDAC’s recommendations through the relocation of the definition of a RACF and the particular provision. There are a number of specific issues with the proposed approach. Firstly, Council considers the 13.5 metre blanket height limit is inappropriate as it does not allow for site and context responsive design. This will be discussed in more detail later in this Chapter. Secondly, the use of ‘must’ is confusing and lacks transparency as discussed in Chapter 3.3. Thirdly, Council opposes the provision that allows the height limit to be exceeded. This issue will be discussed in more detail in Chapter 3.4.

**Inappropriateness of the height limit**

The drafting of the particular provision sets 13.5m as a universally acceptable height for a RACF development irrespective of the site’s context. Council does not accept this proposition as there will be many instances where a building height of 13.5m would be highly inconsistent with the established character and have detrimental impacts. The inclusion of a blanket height limit will allow building heights that are potentially not site-responsive and detrimental to the neighbourhood character and residential amenity.

Council suggests a more performance based height limit be included that will allow for a mandatory height limit that provides an appropriate transition to the height of existing adjoining buildings. A RACF should be allowed to develop to the same height of adjoining existing buildings facing the same street (including corner blocks). In instances where the adjoining buildings have a different height, the building height of the RACF should be one-storey above the lower adjoining building. For example, if adjoining buildings are single-storey and three-storey respectively, the RACF should be two-storeys. Such an approach will provide for a site-responsive design without unreasonably impacting the neighbourhood character.

This approach is reflected in the changes to the draft particular provision contained at Appendix 1. As will be discussed below, Council submits that if this suggestion is accepted the ability to vary (i.e. exceed) the mandatory height limit is not required. This would provide greater certainty to all stakeholders and result in a more efficient assessment and decision making process.

3. RACF DRAFT PARTICULAR PROVISION

As noted above, Council does not support the proposed reform approach of relying on the particular provision as this would ultimately result in an inferior and less detailed assessment process. However, should the inclusion of a particular provision remain the adopted approach by DELWP, then Council recommends a number of specific changes and additions to the particular provision. The remainder of this submission is therefore based on the clause headings of the draft particular provision with a discussion of specific wording changes and additional requirements for inclusion listed.
3.1. Purpose of the proposed particular provision

Council notes the inclusion of an additional purpose statement recognising the need for the existing amenity of adjoining neighbours to not be adversely impacted. Earlier versions of the draft control did not contain this purpose and Council welcomes its inclusion.

However, Council submits that the purpose of the control must also recognise the importance of RACFs to respect or not detrimentally affect the established neighbourhood character. The built form outcomes envisaged for RACFs through this provision have the potential to result in development outcomes that will have detrimental impacts on the neighbourhood character. This is particularly the case in the NRZ with its 9 metres/2 storey mandatory height limit.

The development of a 13.5 metres RACF can have significant detrimental impact considering also the 80% site coverage proposed to be permissible and lack of strategies that encourage provision of landscaping and retention of any established trees (refer to discussion later in this submission). There should be a requirement for RACFs to respond to their context, and therefore, a performance-based approach should be adopted to establish an appropriate design of such a facility.

3.2. Scope of the proposed particular provision

Clause 52.XX-1 of the draft new RACF Particular Provision states the requirements of this clause do not apply where a different requirement exists within a Heritage Overlay, Floodway Overlay, Land Subject to Inundation Overlay, Special Building Overlay or a Bushfire Overlay Management Overlay.

It is unclear why the list of overlays has been limited to those included in the draft particular provision. Council submits the same provision should apply to all overlays as these may contain design and/or development guidelines that should take precedence. Examples of overlays that should also be included in this list of overlays include the following:

- Design and Development Overlay
- Incorporated Plan Overlay
- Significant Landscape Overlay
- Environmental Significance Overlay
- Vegetation Protection Overlay

Council also considers the wording of this provision to be confusing and suggests some alternative wording in the attached document.

3.3. Requirements to be met

Use of terminology

With regards to the requirements to be met under the particular provision, Council considers the terminology used is misleading, lacks transparency and therefore results in confusion.

Clause 52.XX-3 states the ‘requirements must be met’ which seems to indicate that these requirements are mandatory and cannot be waived or varied. While this clearly would be Council’s preferred approach, Clause 52.XX-4 allows for variation to any of the ‘mandatory’ requirements set out in the previous clause.
This drafting approach has the potential to result in confusion about the intent of the control, and frustration for the community. Council understands the intent of this drafting approach and the exemption from notice and review provision for applications that do not seek to vary or waive any of the requirements, is to encourage applicants to stay within what is ultimately only a preferred rather than mandatory height limit. However, understanding this approach requires a detailed technical understanding of planning controls that residents generally do not have and should not be expected to have. Council will ultimately have to explain to residents how a mandatory height limit can be varied. This will result in unnecessary frustration and confusion for residents.

An alternate approach to address this issue is for the ability to vary or waive any of the requirements conferred through Clause 52.XX-4 be removed entirely or be amended to specifically exclude building height as a requirement that can be varied (i.e. exceeded). This latter approach is reflected in the changes to the draft particular provision at Appendix 1.

Alternatively, if the particular provision were to be introduced with the ability to vary/waive any requirement, a more transparent approach would be to use discretionary terminology such as ‘should’ and ‘preferred building height’ and removing Clause 52.XX-4. It would present a much clearer planning control without any ambiguity and would more appropriately communicate that Council has to consider an application that exceeds this height. It would achieve the same outcome in a more transparent manner. Ultimately though, Council strongly opposes a discretionary height limit.

The use of discretionary terminology would also necessitate stronger decision guidelines on how an application that seeks to vary the preferred outcome (e.g. increased building height) will be assessed. As will be discussed below, the current draft decision guidelines are too vague and non-specific and therefore do not provide adequate guidance on what outcomes may be acceptable.

**Site coverage**

The proposed allowable site coverage of 80% is considered excessive. RACF are likely to locate on larger sites (to maximise the number of units to be provided on site) and therefore have the capacity to provide for substantial landscaped areas to ensure any detrimental visual or neighbourhood character impacts can be mitigated or avoided. Council considers that the 60% site coverage currently contained in ResCode Standard B8 is appropriate. The draft particular provision at Appendix 1 proposes deletion of this requirement and inclusion of Standard B8 in the list of ResCode Standards that need to be met by any development.

The particular provision should also include requirements to maximise the provision of garden and open space areas as part of a RACF. The health and wellbeing benefits of landscaping are well documented and would be to be benefit of future residents of the facility. Currently, the particular provision seems focussed on maximising the dwelling yield. The purpose of the control should not be to simply create as many RACFs as possible but to provide high-quality facilities that meet the needs of future residents by providing a high level of amenity.

**ResCode standards**

As noted above, Council is of the view that a RACF should be considered under the provisions of the relevant residential zone which would involve an assessment against all ResCode Standards.
However, should the proposed particular provision remain the preferred approach, the following additional ResCode Standards need to be included as a minimum:

- **B8 - Site Coverage**: The proposed site coverage of 80% is excessive for the reasons noted above and the current ResCode Standard of 60% is more appropriate in residential settings.
- **B9 - Permeability**: Inclusion of this standard is necessary to address on-site management of stormwater infiltration.
- **B11 - Open space objective**: The provision of open space (communal and secluded) will play an important role in ensuring high quality RACFs that benefit future residents.
- **B13 - Landscaping objective**: Similar to Standard B11, the provision of landscaping as part of RACF will be integral to the quality and amenity of the development and ultimately be to the benefit of future occupants’ health and wellbeing. In the Boroondara context, the provision of new and retention of established trees and other vegetation is an important factor in ensuring that RACFs do not have a detrimental impact on the character of the neighbourhood.
- **B31 - Design Detail**: Irrespective of the scale of any buildings, the design detail of any RACF (including materials, finishes, articulation, roof form etc.) should fit the context. This could also be addressed through an additional decision guideline at Clause 52.XX-7.

Given the particular provision would allow for apartment-style developments, it is concerning to note the draft particular provision does not include any of the Apartment Development Standards of Clause 55.07 (for developments of less than five storeys) and Clause 58 (for developments of five or more storeys). This is particularly concerning given the blanket 13.5m height limit would allow for apartment-style developments of 4 storeys and developments above that height (i.e. five or more) are clearly envisaged through the inclusion of the ability to exceed the height limit. The current draft particular provision therefore does not allow a proper assessment of apartment-style developments against appropriate standards. This presents a major flaw of the proposed new particular provision exacerbated by the lack of adequate decision guidelines as discussed below in Chapter 3.7.

Council recommends that the following Clause 55.07 and Clause 58 Apartment Development Standards be included in the RACF particular provision to ensure a proper assessment is undertaken:

**Clause 55.07 (developments of less than five storeys)**

- **B36 - Communal Open Space**
- **B37 - Solar access to communal outdoor open space**
- **B38 - Deep soil areas and canopy trees**
- **B39 - Integrated water and stormwater management**
- **B40 - Noise impacts**
- **B41 - Accessibility (100% of dwellings should comply with the standard given that the occupants will be elderly and potentially mobility-challenged)**
- **B45 - Waste and recycling**
- **B48 - Windows**

**Clause 58 (developments of five or more storeys)**

- **D7 - Communal Open Space**
- **D8 - Solar Access to Communal Outdoor Open Space**
- D10 - Landscaping
- D13 - Integrated Water and Stormwater Management
- D14 - Building Setback
- D16 - Noise Impacts
- D17 - Accessibility (100% of dwellings to comply with the standard)
- D23 - Waste and Recycling
- D25 ‘Room depth’
- D26 ‘Windows’

**Accessways**

The last dot-point at Clause 52.XX-3 includes a requirement for any access ways to be designed to the satisfaction of the relevant road authority.

If the subject land is located adjacent to a Road Zone Category 1, VicRoads prior written consent should be an information requirement at 52.XX-5. While the requirements of Clause 52.29 Land adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road will continue to apply, the inclusion of this information requirement would speed up the decision on whether the application is exempt from notice and review rights. However, it is again emphasised that Council’s preference is not to exempt applications from the notice and review requirements.

### 3.4. Variation to a requirement

Council opposes the proposal to allow RACFs to vary or waive any of the requirements set out at Clause 52.XX-3 most notably the maximum building height. As previously discussed, Council opposes the blanket 13.5 metres height limit and favours a more context-responsive approach to building height (as discussed above and reflected in the changes to the draft particular provision at Appendix 1). In this context, Council does not consider it appropriate to allow for even greater heights as part of this sub-clause.

However, should the 13.5 metres height limit and ability to exceed this height be retained, Council suggests a more site-specific approach that would allow for an increased height limit above the 13.5m only in instances where existing development on all directly abutting sites facing the same street already exceeds this height limit. This approach would be consistent with current building height exemptions in the NRZ and present a more context-aware approach to the design of RACF. Council suggests the following alternative wording for inclusion at Clause 52.XX-4 in the event that this Clause is retained in the final approved version:

A permit may be granted to vary any of the requirements of Clause 52.XX-3 except for the building height requirement.

A permit to exceed the building height set out in Clause 52.XX-3 may only be granted if:

- There are existing buildings on both abutting allotments (including a corner allotment) that face the same street that exceed the height limit set out in Clause 52.XX-3 and the new building does not exceed the lower building height of the existing buildings on the abutting allotments.

Further, if the ability to vary/waive any requirements is retained, the decision guidelines require significant strengthening to ensure applicants provide adequate justification for such variations. This will be discussed in more detail in Chapter 3.7 below.
3.5. Information requirements

Council considers that there are a number of significant gaps in the application requirements that need to be addressed. This includes the lack of a neighbourhood and site description plan which is an essential step in preparing an appropriate design response that is sympathetic to the neighbourhood context.

The draft particular provision contained at Appendix 1 includes the additional information requirements Council considers necessary.

3.6. Exemption from notice and review

Council strongly opposes the proposed exemptions from notice requirements and review rights for applications that meet the requirements set out in the draft particular provision.

Council holds the view that even a three-storey RACF in an NRZ, GRZ or RGZ has the potential to cause significant material detriment to owners and occupiers of nearby properties. It is therefore entirely inappropriate for the material detriment test established under Clause 52 of the Planning and Environment Act 1987 to not apply.

3.7. Decision guidelines

Council considers the decision guidelines included in the draft particular provision to be too vague and general in nature. They do not provide sufficiently strong and clear guidance on how to assess a RACF application and what an acceptable outcome may be. This is particularly the case for applications that seek to vary/waive any of the requirements set out at Clause 52.XX-3. More specifically, there is only one decision guideline which would assist in the assessment of an application that seeks to exceed the building height limit. This decision guideline is limited to visual impacts and excludes consideration of any neighbourhood character impacts.

In the event the ability to vary any of the requirements is retained in the final approved version, the draft particular provision must include stronger guidance on how such an application is to be assessed. Council is of the view that neighbourhood character impacts are an important consideration and should be included in the decision guidelines irrespective of whether the building is lower or higher than 13.5m. The draft particular provision contained at Appendix 1 includes some additional decision guidelines to strengthen the assessment process and improve development outcomes.

Council is also unclear why a decision guideline relating to the impacts of reduced car parking provision is included. Clause 52.06 will continue to apply and the inclusion of this decision guideline is an unnecessary repetition. If the intention is that Clause 52.06 will not apply (and the material provided certainly does not give any indication that this is the case) then the proposed decision guideline is manifestly inadequate and will not allow proper consideration of issues related to parking and traffic management.
Appendix 1

Draft Residential Aged Care Facilities Reform - City of Boroondara suggested changes
52.XX RESIDENTIAL AGED CARE FACILITY

Purpose
To facilitate the development of high quality Residential aged care facilities that respect the established neighbourhood character.
To ensure Residential aged care facilities do not adversely impact on the amenity of adjoining neighbours.

52.XX-1 Scope
This clause applies to the construction of a building or the construction or carrying out of works associated with a Residential aged care facility in a:
- Neighbourhood Residential Zone
- General Residential Zone
- Residential Growth Zone
- Mixed Use Zone
- Township Zone
Where a requirement of this clause differs from or conflicts with a requirement set out in an overlay at Clauses 42 to 45 the requirements of the overlay take precedence.

52.XX-2 Permit requirements
A permit is required to construct a building, or construct or carry out works associated with a Residential aged care facility.

52.XX-3 Requirements to be met
The following requirements must be met:
- A front fence within 3 metres of a street must not exceed 1.5 metres in height.
- The building height must not exceed the height of immediately adjoining buildings that are of the same height and facing the same street (including corner sites). If the buildings either side of the subject land are of different height, the proposed building must not exceed the height of the lower of the two adjoining buildings by one storey.
- Car parking must be provided at the rate of 0.3 car spaces to each lodging room.
- The following standards found at Clause 55 of this scheme:
  - B6 ‘Street setbacks’ (does not include a porte cochere.)
  - B8 ‘Site coverage’
  - B9 ‘Permeability’
  - B11 ‘Open space objective’
  - B13 ‘Landscaping objectives’
  - B17 ‘Side and rear setbacks’
  - B18 ‘Walls on boundary’
  - B19 ‘Daylight to existing windows’
  - B20 ‘North facing windows’
  - B21 ‘Overshadowing open space’
  - B22 ‘Overlooking’
  - B24 ‘Noise impacts’
  - B27 ‘Daylight to new windows’
  - B31 ‘Design detail’
  - B36 ‘Communal open space’
CONSULTATION DRAFT - CITY OF BOROONDARA COMMENTS

- B37 ‘Solar access to communal outdoor open space’
- B38 ‘Deep soil areas and canopy trees’
- B39 ‘Integrated water and stormwater management’
- B40 ‘Noise impacts’
- B41 ‘Accessibility’ (100% of dwellings to comply with the standard)
- B45 ‘Waste and recycling’
- B48 ‘Windows’

The following standards found at Clause 58 of this scheme, if the proposed building exceeds four storeys:
- D7 ‘Communal open space’
- D8 ‘Solar access to communal outdoor open space’
- D10 ‘Landscaping’
- D13 ‘Integrated water and stormwater management’
- D14 ‘Building setback’
- D16 ‘Noise impacts’
- D17 ‘Accessibility’ (100% of dwellings to comply with the standard)
- D23 ‘Waste and recycling’
- D25 ‘Room depth’
- D26 ‘Windows’

The main entry to a building (including a porte cochere) must be designed to:
- Have direct vehicle and pedestrian access from a street.
- Be sheltered from the weather.
- Have convenient pedestrian and vehicle access from on-site car parking.
- Access ways located and designed to the satisfaction of the relevant road authority.

52.XX-4 Variation to a requirement

A permit may be granted to vary any of the requirements of Clause 52.XX-3 except for the building height requirement.

52.XX-5 Information requirements

An application must be accompanied by the following information as determined by the responsible authority:
- A neighbourhood and site description plan that meets the requirements of Clause 55.01-1 including:
  - Location of existing trees to be retained or removed
  - Location and width of any existing vehicle crossings and details of any street
trees or street infrastructure located within 3m of such crossings
- A design response which explains how the proposed development responds to the site
  and context description and responds to the requirements of this clause.
- A copy of title for the subject land and a copy of any registered restrictive covenant.
- A proposed site and layout plans, drawn to scale and fully dimensioned showing:
  - Site shape, size, orientation and easements.
  - Existing levels of the site and the difference in levels between the site and
    surrounding properties.
  - Location of existing buildings to be retained.
The location of buildings, secluded private open space and habitable room windows of surrounding properties which have an outlook to the site within 9 metres.

Proposed levels of the site and the difference in levels between the site and surrounding properties.

The location and layout of all proposed buildings, habitable room windows including finished floor levels, setbacks external wall heights and overall building height measured from natural ground level.

Proposed landscaping and open space areas.

Proposed crossovers, driveways, onsite car parking, service and delivery areas.

All external storage, waste areas and services.

An elevation plan, drawn to scale showing the height, colour and materials of all buildings and structures.

Photomontages or 3D images (taken from pedestrian eye level) that depict the proposed development in the context of adjoining buildings

Shadow diagrams showing existing and proposed shadows together with detailed information on any new increase of shadow over neighbouring secluded private open space areas.

Written advice by the relevant road authority confirming that the design of any access ways satisfies the requirements of the road authority.

52.XX-7 Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Whether the requirements outlined in Clause 52.XX-3 have been met.
- Whether the proposed development achieves the preferred character outcomes of any adopted neighbourhood character study.
- How the proposed development responds to the site and context description.
- Whether the development provides a transition in building height to lower-scale adjoining residential properties.
- Whether the proposed development is appropriately recessed and articulated to minimise the visual impact of any buildings when viewed from the street, a side street and/or adjoining properties.
- Whether the development avoids continuous built form through separation and setbacks at upper levels.
- Whether the proposed development incorporates adequate landscaping and areas for communal open space.
- The impact on the amenity of existing dwellings and proposed amenity for future residents.