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 a revised draft Residential Aged Care Facilities (RACF) Particular Provision.

The revised draft was prepared by DELWP in response to feedback received following a consultation process between December 2017 and February 2018. Council lodged a submission opposing the proposed reforms following the Urban Planning Special Meeting on 12 February 2018.

The key changes to the proposed RACF can be summarised as follows:

- Relocating the planning permit trigger to the relevant residential zones rather than the proposed RACF Particular Provision.
- Replacing mandatory terminology (‘must’) with discretionary terminology (‘should’).
- Limiting the exemption from notice and review to land within the Residential Growth and Mixed Use Zones (but not within 30m of land in the Neighbourhood or General Residential Zones).
- Including ResCode Standards verbatim in the RACF Particular Provision rather than referencing to the relevant Clause 55 Standard.
- Including new application requirements for the preparation of a design response and landscape plan.
- Removal of the provision related to car parking rates.

Council’s Strategic and Statutory Planners have reviewed the revised draft RACF Particular Provision. While some concessions and improvements have been made following the consultation process, officers remain opposed to the key aspects of the reform including:

- The 13.5m discretionary height limit
- 80% site coverage
- The failure to include a number of important ResCode standards
- The lack of consideration of neighbourhood character in the RACF Particular Provision.
- The lack of adequate decision guidelines to enable councils to undertake a robust assessment and decision-making process.
- The scope of the RACF Particular Provision (particularly with regards to the Yarra River Protection Corridor Design and Development Overlay).

Officers have prepared a draft submission on the revised draft RACF Particular Provision (Attachment 1) 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).
Officers' recommendation

That the Urban Planning Special Committee resolve to:

1. Adopt the submission prepared by officers in Attachment 1 to the Victorian Government’s 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 1 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 changes made to the proposed draft RACF Particular Provision and the opportunity to provide feedback on the revised draft particular provision to the Department of Environment, Land, Water and Planning (DELWP).
2. Seek the UPSC’s adoption of the draft submission at Attachment 1 prepared by Strategic and Statutory Planning Officers on behalf of the City of Boroondara.

2. Policy implications and relevance to community plan and 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 RACF 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 DELWP 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.
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.

3. Background

The proposed reform (consultation draft)

The Minister for Planning has instructed the DELWP to prepare a reform package to facilitate the development of RACF.

The reforms would mean the development of 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 in some circumstances.

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.
2. Introduce a new particular provision at Clause 52 that would provide the assessment framework for a RACF in the Neighbourhood Residential, General Residential, Residential Growth, Mixed Use and Township Zones.

The proposed particular provision that formed the basis for the public consultation between December 2017 and February 2018 included 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.
Consultation

DELWP undertook a public consultation process of the proposed reforms from December 2017 to February 2018 seeking feedback on the proposed particular provision.

The consultation process involved the following activities:

- An article was published in Planning Matters, a weekly planning update sent to over 5000 subscribers.
- The draft particular provision and supporting information were publicly exhibited on DELWP’s website.

Following endorsement by the UPSC on 12 February 2018, Council lodged a submission opposing the proposed reforms. The key concerns expressed in the submission 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 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 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.

Recognising that the reforms are likely to proceed irrespective of its submission, Council also suggested a number of additions and changes to the proposed draft particular provision to improve its operation and ensure a more robust and comprehensive assessment process to deliver acceptable development outcomes.

4. Outline of key issues/options

Outcomes of consultation process

DELWP received 51 submissions including 21 from local government, 17 from industry associations (i.e. aged care providers), 17 from community members and two from peak bodies.

At the recent Working Group meeting, DELWP Officers provided a summary of the key findings of the consultation process including:

- Broad support for the proposed reform from the majority of both local government and industry association submissions noting the importance of the need to increase the supply of residential aged care facilities in Victoria.
- Local government and community members expressed concern over the building height limit, site coverage, exemption from notice and review provisions as well as the lack of neighbourhood character considerations.
- Industry associations were generally supportive of the proposed reforms with some submissions calling for even greater building heights and increased flexibilty.
Proposed changes to the RACF Particular Provision

In response to the feedback received, DELWP has now updated the proposed RACF Particular Provision and provided a copy to the Working Group for further comment.

The revised draft particular provision includes some changes directly in response to concerns raised by local government and community members - most notably the concern raised with regards to the exemption from notice and review.

However, some of the fundamental concerns Council expressed in its previous submission in February 2018 remain unchanged including the setting of a 13.5m blanket discretionary height limit, excessive site coverage and lack of adequate decision guidelines.

No further changes are proposed to the relocation of the definition of ‘Residential aged care facility’ from under ‘Residential Building’ to under ‘Accommodation’.

The key changes made to the draft RACF Particular Provision are summarised below.

Inclusion of planning permit trigger in the zone rather than particular provision

The consultation draft of the RACF Particular Provision included a planning permit trigger for buildings and works associated with a RACF. As the use is as-of-right due to the proposed change in the nesting diagrams, a planning permit would therefore only have been required under the particular provision rather than the relevant residential zone. This would have meant that an application for a RACF would not have required an assessment against Clause 55 (ResCode) or Council’s Neighbourhood Character Policy.

It is now proposed to include the planning permit trigger in the relevant residential zone rather than the particular provision. The planning permit trigger under the residential zone would also have to include a requirement that any proposal must meet the requirements of the proposed particular provision.

The relocation of the permit trigger to the relevant residential zone means that an application to develop a RACF would now trigger an assessment against Council’s Neighbourhood Character Policy under Clause 22.05 and specific application requirements under the various schedules to the residential zones. An assessment against Clause 55 (ResCode) would still not be required.

Officers consider this change to be an improvement although it doesn’t respond to all of Council’s concerns. The consideration of Council’s Neighbourhood Character Policy is seen as a significant positive while the non-consideration of Clause 55 remains a concern.

Officers also note that they have not been provided with a copy of the relevant permit trigger provision in the residential zones but assume that the permit trigger will be similar to standard wording of permit triggers.
**Discretionary vs mandatory terminology**

The revised particular provision has removed the mandatory terminology with Clause 52.XX-2 Building Heights now including discretionary terminology. The 13.5m discretionary height limit has been retained but an additional statement included that this height can only be exceeded in instances where a greater height is set out in a zone or overlay.

As will be discussed in more detail below under ‘Building height limit’, the proposed new wording still allows for an application to be lodged in instances where a greater building height is not set through a zone or overlay.

Verbal advice from DELWP Officers has made it clear that they are not willing to consider a lower height limit.

The revised particular provision now also includes reference to a maximum of 4 storeys (although this is also discretionary).

**Exemption from notice and review**

The proposed exemption from the normal notice and review provisions included in the consultation draft of the particular provision has been changed to not apply on land within or abutting the Neighbourhood and General Residential Zones. That means that an application for a RACF will only benefit from the exemption from notice and review, if the subject site is located within a Residential Growth and Mixed Use Zones and the land does not abut land in the Neighbourhood or Residential Zone.

Given the lack of the strategic justification for the proposed particular provision and reform as expressed in Council’s original submission, officers continue to oppose any exemption from the notice and review provisions. This is further discussed below under ‘Key concerns’.

**ResCode Standards**

The revised draft particular provision now includes the applicable ResCode Standards rather than a simple reference to the relevant Clause 55 standard. This is intended to ensure that the particular provision operates as a ‘one-stop-shop’ planning control that does not require consideration of other parts of the scheme.

Officers are concerned about this approach as only the relevant standard and not the overarching objective has been included. This is discussed in more detail in the following section under ‘ResCode Standards’.

**Application requirements**

The application requirements now include new requirements for the preparation and submission of a design response and separate landscape plan.

As noted in the draft submission contained at Attachment 1, Council Officers consider that some gaps remain in the application requirements and have included these in the particular provision.
Car parking provision

The previously proposed car parking ratio of 0.3 spaces per lodging room has been removed. This means that the provision of on-site car parking will be considered under Clause 52.06 rather than the particular provision including any reduction in the provision of car parking spaces.

Officers consider this appropriate as it responds to the feedback provided as part of Council’s previous submission.

Key concerns

While some changes and concessions have been made as detailed above, some of fundamental concerns expressed in Council’s original submission in February 2018 remain.

Building height limit

The revised particular provision still sets a 13.5m (approximately four storeys) discretionary height limit. It is clear from conversations with DELWP Officers that this height limit is not open for further debate.

However, officers continue to oppose this height limit as it does not present a site and context-specific approach. There will be instances where a height of 13.5m will be inappropriate and result in unacceptable development outcomes that will detrimentally impact the amenity and character of the surrounding residential area.

Council’s previous submission therefore suggested a mandatory provision that limits the building height of a RACF to the same height of adjoining existing buildings facing the same street. This suggestion is not reflected in the revised particular provision.

Criteria for exceeding the building height

The draft particular provision has been revised with regards to the circumstance under which the 13.5m building height can be exceeded. Under the previous consultation draft there were no limiting circumstances under which the height could be exceeded. The revised particular provision now includes wording with the intent of only allowing a greater height in circumstances where a greater building height is already set in a zone, overlay or schedule to either. In those instances, the height of the zone or overlay will apply.

However, the control still uses discretionary terminology (i.e. ‘should’ instead of ‘must’) to allow for an increased height also in situations where a greater height is not set by another provision of the planning scheme. DELWP Officers have advised that this is to provide some flexibility to accommodate building services or architectural features (e.g. lift over runs). While this may be the intent, the draft control would also allow for more substantial height increases to accommodate additional storeys.

Officers are not supportive of this approach and recommend that the wording be changed to set a mandatory height limit. To provide some flexibility to accommodate roof top services or architectural features, officers suggest the inclusion of additional wording similar to the wording included in Schedule 16 to the Design and Development Overlay - Neighbourhood Centres in the Boroondara Planning Scheme.
The draft particular provision provided in Appendix 1 of Attachment 1 proposes wording changes to ensure the intent of the control is appropriately articulated and enforceable.

**Site coverage**

The draft particular provision provides for 80% site coverage (buildings only) with no requirement for permeable surfaces.

Officers consider this to be excessive as it would leave little space to accommodate parking, internal access ways, landscaping and open space areas. Given that car parking and internal access will be a necessity, it is likely that the maximisation of residential accommodation on the land will be at the expense of landscaping and communal open space. This is a particular concern for smaller sites where development that seeks to maximise the site coverage is more likely to have greater detrimental impact on the amenity and character of the surrounding properties.

Officers suggest that the site coverage be reduced to 60% and that a standard for the provision of permeable surfaces (20%) also be included to allow for more effective mitigation of potential off-site impacts and on-site stormwater retention.

**ResCode standards**

Clause 52.xx-2 of the revised draft particular provision includes a number of Clause 55 (ResCode) Standards with the text copied verbatim. Officers have two key concerns with the proposed approach.

Firstly, the list of ResCode Standards remains limited, with none of the additional standards recommended by Council as part of its original application included. Officers maintain that the additional standards should be included to ensure a more rigorous and comprehensive assessment process. As an example standards relating to permeability, design detail and apartment design standards at Clause 58 are not included in the draft particular provision.

Secondly, officers are concerned that ResCode Standards included in the particular provision have been copied from Clause 55 verbatim but the overarching objective has not been included. The standards and objectives need to be used in conjunction with each other, and it is not appropriate to only require a development to meet the standard without consideration of what the overarching objective is trying to achieve.

Officers therefore recommend that rather than including relevant ResCode Standards verbatim, an extended list of ResCode standards be included. A proposal could then be assessed against the relevant Clause 55 objective and standard to ensure better outcomes. This would also result in a more succinct and manageable planning control that avoids repetition.
**Exemption from notice and review**

While officers acknowledge that some concession has been made with regards to the exemption from notice and review provision as discussed above, officers continue to oppose any exemption from the notice and review provisions.

As noted in Council’s original submission, the built form guidelines contained in the proposed particular provision have the potential to have significant impacts on surrounding properties’ amenity and the established character. This is not just the case in the Neighbourhood and General Residential Zones but also in the Residential Growth and Mixed Use Zones. As Council considers that there is no strategic justification for the amendment, any exemption from notice and review is considered inappropriate.

However, should the Minister decide to include the exemption from notice and review for applications in the Residential Growth and Mixed Use Zones, officer recommend some changes to Clause 52.XX-3 to:

- Provide greater certainty about when the exemption applies by including reference to the 30m buffer around the Neighbourhood and General Residential Zones
- Ensure the exemption from notice and review only applies, if the proposed development complies with all of the design and siting requirements at Clause 52.XX-2.

**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 adequately 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 increase the 13.5m building height.

Officers therefore suggest the inclusion of additional decision guidelines to strengthen the assessment process and improve development outcomes (**Attachment 1**).

**Next steps**

Feedback on the revised RACF Particular Provision by the members of the Working Group is due by 26 May 2018. Following the receipt of any feedback, DELWP Officers will make any changes considered appropriate and then provide a policy brief to the Minister for Planning for his consideration.

DELWP Officers have advised that the intention is to provide the relevant documentation to the Minister in late May/early June. The Minister must then decide whether to approve the amendment to implement the proposed reforms. The time frame for the Minister’s decision is unclear at this stage.
5. Consultation/communication

Council’s Strategic and Statutory Planning Department have collaborated in the preparation of the submission contained in Attachment 1. Additional support was provided by Council’s Community Planning and Development Department.

No consultation was undertaken with local residents by Council officers 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 (even with the changes made) 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.

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Facilitating Residential Aged Care Development - Proposed reforms to the Victoria Planning Provisions

Submission by the City of Boroondara

21 May 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 revised draft Residential Aged Care Facility (RACF) Particular Provision which has been updated following feedback received from local government, industry associations and community members.

While some positive changes have been made to the particular provision, Council remains fundamentally opposed to the proposed RACF reforms. Council’s key issues include:

- Lack of strategic justification;
- The proposed blanket height limit and ability to exceed this height limit;
- 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 development that exceeds the 13.5m height limit.

At the Working Group meeting with officers from the Department of Environment, Land, Water and Planning (DELWP) on 26 April 2018, the Minister’s desire to proceed with the proposed reforms irrespective of the opposition expressed by the local government sector and the affected communities was made very evident. However, Council also recognises that concessions have been made to the proposed particular provision, particularly with regards to the operation of the exemption from notice and review provisions (refer to Section 3.4 for details).

Notwithstanding, improvements are still possible and in Council’s view necessary to ensure the particular provision will result in acceptable outcomes. Council therefore has identified further changes to the draft particular provision (Appendix 1) either through wording changes or inclusion of additional requirements and guidelines.

This submission will focus on the changes made to the draft particular provision and suggested changes and improvements. Other issues and concerns raised as part of Council’s previous submission remain including the lack of strategic justification and consideration of RACF solely under the particular provision rather than relevant residential zone. Council refers to its previous submission for a detailed discussion on these issues.

2. GENERAL COMMENTS

2.1. Permit trigger

Council welcomes the inclusion of the permit trigger for RACFs to the zone rather than the particular provision as previously proposed. While Council has not seen the proposed wording for the permit trigger to be included under the relevant residential zone, it understands that the wording will be similar to the wording included in the previous consultation draft of the particular provision. This is considered appropriate as it will enable consideration of Council’s Neighbourhood Character Policy.
2.2. Proposed height limit

Council remains opposed to the introduction of a blanket 13.5m building height and is disappointed that its suggestion for a more performance-based height limit has not been taken on board. This is particularly disappointing given the strong feedback from the local government sector and community members opposing the height limit.

As noted in Council’s previous submission, the 13.5m blanket height limit does not allow for site and context responsive design. Council considers that there will be many instances where a building height of 13.5m will be highly inconsistent with the established character and have detrimental character and amenity impacts.

Council refers to its previous submission for a more detailed discussion and suggested wording to implement a context-sensitive, performance-based provision.

3. RACF DRAFT PARTICULAR PROVISION

As noted in its previous submission, 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. Council is disappointed that its feedback and many of the suggested improvements have not been accepted.

Council therefore again recommends a number of specific changes and additions to the revised particular provision as discussed in the following chapters and highlighted in Appendix 1.

3.1. Purpose of the proposed particular provision

Council notes that there are now two purpose statements that relate to the amenity of adjoining residences. As noted in Council’s previous submission, the inclusion of a purpose statement relating to the protection of existing amenity is considered important and is welcomed.

However, the two statements included in the updated draft particular provision use different terminology with one referring to ‘minimal impact on the amenity of surrounding properties’ while the other refers to ‘not unreasonably impact on the amenity of adjoining dwellings’. Council considers this to be confusing and ambiguous. Terms such as ‘unreasonable’ must be avoided as they are open to interpretation and do not provide clarity in the assessment process.

Council therefore suggests that only one purpose statement be included that seeks to protect and maintain the amenity of adjoining and nearby residential properties. This is reflected in the draft particular provision contained at Appendix 1.

Council also notes with disappointment that the revised draft particular provision does not include a statement relating to the protection of neighbourhood character.

Council reiterates its earlier submission that the purpose of the control must also recognise the importance of RACFs to respect or not detrimentally affect the established neighbourhood character. Council therefore again suggests inclusion of alternative wording to require consideration of neighbourhood character.
3.2. **Scope of the proposed particular provision**

Council notes with disappointment that the list of overlays that take precedence over any of the requirements set out in the draft particular provision has not been broadened. In its previous submission, Council had suggested that the following overlays also be included:

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

One particular example where there is a conflict between the building height set out in an overlay and the draft particular provision is the Yarra River Corridor Protection Design and Development Overlay (DDO31). This control was introduced by the Minister for Planning to protect the Yarra River Corridor by setting a mandatory height limit of 8 or 9 metres (not accounting for sloping sites). However, the proposed particular provision would mean that a RACF development can exceed this mandatory height limit.

It seems illogical to Council that the Minister would introduce a planning control to directly undermine the outcomes sought by the Yarra River Corridor Protection DDO. At the very least, the particular provision should also include DDO31 in the list of overlays that take precedence over the requirements set out in the proposed particular provision. The proposed RACF reforms will already facilitate the development of RACF in all residential areas. When the Minister introduced the planning controls for the Yarra River Corridor, he announced that these controls would protect the Yarra River “for decades to come” and that “tougher planning controls will ensure developments don’t compromise the beauty of our iconic Yarra”. The planning controls now proposed by the Minister himself have the potential to severely undermine his own, very publically stated objective of protecting the Yarra River.

Council therefore strongly urges the inclusion of the Yarra River Protection Corridor DDO in the scope as one control that takes precedence over the proposed particular provision. This is reflected in the draft particular provision contained at Appendix 1.

3.3. **Application requirements**

Council considers that there are a number of significant gaps in the application requirements that need to be addressed. While the provision refers to a ‘site and context description’ the list of information excludes those aspects of a context description relating to the surrounding neighbourhood.

The draft particular provision contained at Appendix 1 includes the additional information requirements Council considers necessary.
3.4. Design requirements to be met

Discretionary height control

It is Council’s understanding that the intent of this revised provision is that an application to exceed the 13.5m height limit can only be lodged in instances where a zone or overlay (and any applicable schedule) sets out a height limit greater than 13.5m or where minimal height increases are sought (e.g. to accommodate roof top services).

However, Clause 52.XX-2 Building Height uses the term ‘should’ rather than ‘must’ which allows for an application to exceed the 13.5m building height to be also lodged in instances where a greater height is not set by a zone or overlay. This could include an application for additional storeys above the 13.5m building height rather than just minor increases to accommodate roof top services.

Council opposes this provision. Instead Council prefers the inclusion of a mandatory 13.5m height limit and providing an separate exemption to exceed this height only to accommodate roof top services and architectural features (similar in the way that sloping land or flooding are provided with an exemption).

This alternative wording is reflected in the draft particular provision contained at Appendix 1.

Site coverage

The proposed allowable site coverage of 80% (buildings only) is considered excessive and entirely inappropriate. The 80% requirement does not provide adequate space to accommodate parking and (internal) access ways, as well as, landscaping to mitigate any potential off-site amenity impacts.

RACFs 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. As noted by one of the aged care provider representatives at the recent Working Group meeting, on larger sites site coverage can be as little as 40% and still achieve an economically viable development. Yet on smaller sites (e.g. 2000m²) the 80% will more likely make a development more viable. However, developments on smaller sites are also more likely to produce detrimental off-site impacts on the amenity and character of surrounding properties. It is precisely on these sites that the 80% site coverage will lead to outcomes that are inappropriate and where the excessive site coverage will make it more difficult to mitigate off-site impacts. Ultimately, the Minister needs to decide whether it is appropriate and desirable to facilitate RACF on any site irrespective of the off-site impacts or whether it makes more sense to provide some limitations on what sites can be developed for a RACF.

The Minister also needs to consider whether the inclusion of the 80% will assist in streamlining the assessment process. On smaller sites where a proposed RACF development seeks to maximise the site coverage, VCAT appeals will be more likely due to the increased difficulty in mitigating off-site impacts. This will only lead to delays which is not compatible with the intention to streamline the assessment process and make it easier to develop land for such facilities.

Council therefore considers that the 60% site coverage currently contained in ResCode Standard B8 is appropriate. This is reflected in the draft particular provision at Appendix 1.
**Landscaping**

Council notes and welcomes the inclusion of a requirement to submit a landscape plan which requires the provision of landscaping along boundaries and maintaining established trees.

However, Council questions why these requirements are not included as design and siting requirements at Clause 52.XX-2, as well as, the application requirements at Clause 52.XX-1? If these are the intended outcomes to be delivered as part of a RACF development then it seems inappropriate to not include these as design requirements. By including these requirements only in Clause 52.XX-1 their weight is severely limited which will make it less likely that adequate landscaping will in fact be provided. Application requirements should be used to demonstrate how particular design requirements have been met by a proposed development.

Council therefore suggests the inclusion of an additional ‘landscaping’ requirements section at Clause 52.XX-2 as shown in the attached draft particular provision based on Standard B13 Landscaping objectives at Clause 55.03-8 (ResCode).

**ResCode standards**

As a minimum, Council submits that the following additional ResCode Standards need to be included in the design and siting requirements at Clause 52.xx-2 of the draft particular provision:

- **B9 - Permeability:** Inclusion of this standard is necessary to address on-site management of stormwater infiltration rather than externalising potential stormwater run-offs.
- **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. Council recommends the inclusion of additional wording based on the Standard at Clause 55.03-6.
- **B13 - Landscaping objective:** refer to previous discussion.
- **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. Council recommends the inclusion of additional words based on the Standard B31 at Clause 55.06-1 and further complimented with an additional decision guideline at Clause 52.XX-4.

It is also disappointing to note that the revised draft particular provision still 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). As noted in Council’s previous submission, the 13.5m height limit would allow for apartment-style developments of 4 storeys and developments above that height (i.e. five or more in some instances) are clearly possible. The current draft particular provision therefore does not allow a proper assessment of apartment-style developments against appropriate standards. This remains a major flaw of the proposed new particular provision exacerbated by the lack of adequate decision guidelines as discussed below in Section 3.7.

Council again recommends that the following Clause 55.07 and Clause 58 Apartment Development Standards be included in the RACF particular provision to ensure there isn’t a gap or ‘loop-hole’ in the assessment process:
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’

Council also does not support the approach of including the applicable ResCode Standards verbatim in the particular provision instead of providing a reference to Clause 55.

Council’s key concern is that the overarching ResCode design objective has not been included in the particular provision. The Clause 55 Standards have been developed to achieve particular design outcomes and therefore need to be considered in conjunction with these objectives. Not including the relevant design objective will result in a far less rigorous assessment process.

Further, simply copying the applicable standard results in repetition of planning controls that already exist in another part of the planning scheme. This will be a particular issue, if additional Clause 55 Standards are included as requested by Council.

Council therefore suggests that the particular provision revert back to the reference list of applicable ResCode Standards included in the previous consultation draft of the particular provision (subject to the inclusion of the above additional standards). This will result in a more succinct and manageable planning control.

3.5. Exemption from notice and review

Council acknowledges the proposed changes to the operation of the exemption from notice and review provisions that would now only apply in some instances within the Residential Growth and Mixed Use Zones. Irrespective of these concessions, Council opposes any exemption from notice and review provisions even in the Residential Growth and Mixed Use Zone.
The built form guidelines set out in the proposed particular provision allow for substantial scale of development that can have detrimental impact on the amenity of adjoining properties and the established character of the surrounding area. Therefore, Council submits that RACF applications in the Residential Growth and Mixed Use Zones should not be exempt from notice and review requirements.

In the case that the Minister for Planning intends to include the exemption from notice and review provision, Council suggests some improvements.

Firstly, at the recent Working Group meeting DELWP Officers stated that the exemption would not apply to land within 30m of land in the Neighbourhood or General Residential Zones. However, this is not reflected in the revised draft particular provision which refers to land ‘abutting land within, a Neighbourhood Residential Zone, General Residential Zone or Township Zone’.

The wording should be changed to include reference to 30m in the particular provision as discussed at the recent Working Group meeting. This is Council’s preferred approach as it is a clear test to determine whether a proposed RACF development benefits from the exemption from notice and review.

The draft particular provision contained at Appendix 1 includes revised wording to reflect the advice provided by DELWP Officers.

Secondly, the exemption from notice and review should only apply in instances where all of the design and siting requirements are met (such as 13.5m building height, site coverage and side setbacks). Any proposed RACF application that seeks to vary a requirement (such as exceeding the 13.5m height limit) should not benefit from the exemption. These applications should be subject to the normal notice and review provisions as was originally proposed under the consultation draft of the RACF Particular Provision. This will provide greater incentive for applications to adhere to the 13.5m height limit and other development standards and also provide some greater certainty to nearby residents about the scale of development that can be expected.

3.6. 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 exceed the 13.5m building height limit as only one decision guideline has been included to assess such applications. This decision guideline is limited to visual impacts and excludes consideration of any neighbourhood character impacts.

As per Council’s previous submission, the draft particular provision at Appendix 1 includes some additional decision guidelines to strengthen the assessment process and improve development outcomes. While these additional decision guidelines are not worded to apply only to applications exceeding the 13.5m height limit, they provide a stronger assessment framework for all applications under this Clause. These guidelines relate to transitioning to a lower height at the interface with adjoining lower-scale dwellings and avoiding continuous built form at upper levels.
Appendix 1

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

Purpose

To facilitate the development of well-designed Residential aged care facilities to meet existing and future needs that respect the established neighbourhood character, with minimal impact on the amenity of surrounding properties.

To recognize that Residential aged care facilities may have a different scale or built form to the surrounding neighbourhood.

To ensure Residential aged care facilities are designed to protect and maintain do not unreasonably impact on the amenity of adjoining dwellings.

Scope

This clause applies to the construction of a building or 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 or Township Zone.

Operation

The provisions of this clause contain requirements that should be met.

If a zone, overlay or schedule specifies a different requirement from a requirement set out in this clause, the requirement in this clause applies. This does not apply where:

- A Heritage Overlay, Floodway Overlay, Land Subject to Inundation Overlay, Special Building Overlay or a Bushfire Management Overlay applies.
- Design and Development Overlay Schedule 31 - Yarra River Protection Corridor applies.
- A greater building height is specified in a zone, overlay or schedule.
- A greater number of storeys is specified in a zone, overlay or schedule.

Application requirements

An application must be accompanied by:

- A site and context description.
- A design response.
- A landscape plan.
- Written advice by the relevant road authority confirming the design of any accessway satisfies the requirements of the road authority.

Site and context description

A site and context description may use a site plan, photographs or other techniques and must include:

- The pattern of development of the neighbourhood.
- The built form, scale and character of surrounding development including front fencing.
- Architectural and roof styles.
- Any other notable features or characteristics of the neighbourhood.
- Site shape, size, orientation and easements.
- Levels of the site and the difference in levels between the site and surrounding properties.
- The location of existing buildings on the site and on adjacent properties, including the location and height of walls built to the boundary of the site.
- The use of adjacent buildings and land.
- The location of secluded private open space and habitable room windows of adjacent properties which have an outlook to the site within 9 metres.
- Solar access to the site and to adjacent properties.
- Any contaminated soils and filled areas, where known.
- Location of significant trees existing on the site and any significant trees removed from the site in the 12 months prior to the application being made, where known.
- Views to and from the site.
- Street frontage features such as poles, street trees and kerb crossovers.
- Any other notable features or characteristics of the site.

If in the opinion of the responsible authority a requirement of the site and context description is not relevant to the evaluation of an application, the responsible authority may waive or reduce the requirement.

**Design response**

The design response must explain how the proposed design:

- Responds to the site and context description.
- Meets the requirements of this clause.

**Landscape plan**

A landscape plan must be provided to the satisfaction of the responsible authority and include:

- Landscaping to communal open space for the enjoyment of residents and staff.
- Landscaping along the boundaries of the site.
- On-site management of runoff from paved areas.
- Maintaining significant trees where possible.

**52.XX-2 Design and siting requirements**

**Building height**

The maximum building height should not exceed 13.5 metres unless any of the following applies:

- A greater building height is specified in a zone, overlay or schedule. In this instance the building cannot exceed the height set out in the relevant zone, overlay or applicable schedule.
- Greater height is required to accommodate roof top services that are designed as architectural roof top features or hidden from view from any adjoining public space or adjoining residential property. Roof top services includes but is not limited to plant rooms, air conditioning, lift overruns, roof top gardens, decks and communal outdoor spaces and their ancillary facilities.
A building may exceed the maximum building height by up to 1 metre if:

- the slope of the natural ground level, measured at any cross section of the site of the building, is greater than 2.5 degrees. In these instances, a building may exceed the maximum building height by up to 1 metre.
- the land is in a Special Building Overlay, Land Subject to Inundation Overlay or is land liable to inundation. In these instances, the maximum building height is the vertical distance from the minimum floor level determined by the relevant drainage authority or floodplain management authority to the roof or parapet at any point.

**Number of storeys**

The building **must** not have more than 4 storeys at any point unless a greater number of storeys is specified in a zone, overlay or schedule. A basement is not a storey for the purposes of calculating the number of storeys contained in a building.

**Street setback**

Walls of buildings should be set back from streets the distance specified in the table:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Distance Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is an existing building on both the abutting allotments facing the same street, and the site is not on a corner.</td>
<td>The average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser. This does not include a porte cochere.</td>
</tr>
<tr>
<td>There is an existing building on one abutting allotment facing the same street and no existing building on the other abutting allotment facing the same street, and the site is not on a corner.</td>
<td>The same distance as the setback of the front wall of the existing building on the abutting allotment facing the front street or 9 metres, whichever is the lesser. This does not include a porte cochere.</td>
</tr>
<tr>
<td>There is no existing building on either of the abutting allotments facing the same street, and the site is not on a corner.</td>
<td>6 metres for streets in a Road Zone, Category 1, and 4 metres for other streets</td>
</tr>
<tr>
<td>The site is on a corner.</td>
<td>If there is a building on the abutting allotment facing the front street, the same distance as the setback of the front wall of the existing building on the abutting allotment facing the front street or 9 metres, whichever is the lesser. This does not include a porte cochere.</td>
</tr>
</tbody>
</table>
Development context

- Minimum setback from front street (metres)
- Minimum setback from a side street (metres)
  - and 4 metres for other streets.
  - abutting allotment facing the side street or 2 metres, whichever is the lesser.

Side and rear setbacks

A new building not on or within 200mm of a boundary should be set back from side or rear boundaries by 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.

Screens, sunblinds, verandahs, porches, eaves, fascias, gutters, masonry chimneys, flues, pipes, domestic fuel or water tanks, and heating or cooling equipment or other services may encroach not more than 0.5 metres into the setbacks of this standard.

Landings having an area of not more than 2 square metres and less than 1 metre high, stairways, ramps, pergolas, shade sails and carports may encroach into the setbacks of this standard.

Walls on boundaries

A new wall constructed on or within 200mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of lot should not abut the boundary for a length of more than:

- 10 metres plus 25 per cent of the remaining length of the boundary of an adjoining lot, or
- Where there are existing or simultaneously constructed walls or carports abutting the boundary on an abutting lot, the length of the existing or simultaneously constructed walls or carports; whichever is the greater.
A new wall or carport may fully abut a side or rear boundary where slope and retaining walls or fences would result in the effective height of the wall or carport being less than 2 metres on the abutting property boundary.

A building on a boundary includes a building set back up to 200mm from a boundary.

The height of a new wall constructed on or within 200mm of a side or rear boundary or a carport constructed on or within 1 metre of a side or rear boundary should not exceed an average of 3.2 metres with no part higher than 3.6 metres unless abutting a higher existing or simultaneously constructed wall.

**Daylight to existing windows**

Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky. The calculation of the area may include land on the abutting lot.

Walls or carports more than 3 metres in height opposite an existing habitable room window should be set back from the window at least 50 per cent of the height of the new wall if the wall is within a 55 degree arc from the centre of the existing window. The arc may be swung to within 35 degrees of the plane of the wall containing the existing window.

Where the existing window is above ground floor level, the wall height is measured from the floor level of the room containing the window.

**North-facing windows**

If a north-facing habitable room window of an existing dwelling is within 3 metres of a boundary on an abutting lot, a building should be setback from the boundary 1 metre, plus 0.6 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres, for a distance of 3 metres from the edge of each side of the window. A north-facing window is a window with an axis perpendicular to its surface oriented north 20 degrees west to north 30 degrees east.
Overshadowing open space

Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September.

If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.

Overlooking

A habitable room window, balcony, terrace, deck or patio should be located and designed to avoid direct views into the secluded private open space of an existing dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio. Views should be measured within a 45 degree angle from the plane of the window or perimeter of the balcony, terrace, deck or patio, and from a height of 1.7 metres above floor level.

A habitable room window, balcony, terrace, deck or patio with a direct view into a habitable room window of existing dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio should be:

- Offset a minimum of 1.5 metres from the edge of one window to the edge of the other.
- Have sill heights of at least 1.7 metres above floor level.
- Have fixed, obscure glazing in any part of the window below 1.7 metre above floor level.
- Have permanently fixed external screens to at least 1.7 metres above floor level and be no more than 25 per cent transparent.

Obscure glazing in any part of the window below 1.7 metres above floor level may be openable provided that there are no direct views as specified in this standard.

Screens used to obscure a view should be:

- Perforated panels or trellis with a maximum of 25 per cent openings or solid translucent panels.
- Permanent, fixed and durable.
- Designed and coloured to blend in with the development.

This standard does not apply to a new habitable room window, balcony, terrace, deck or patio which faces a property boundary where there is a visual barrier at least 1.8 metres high and the floor level of the habitable room, balcony, terrace, deck or patio is less than 0.8 metres above ground level at the boundary.

### Noise impacts

Noise sources, such as mechanical plant, should not be located near bedrooms of immediately adjacent existing dwellings.

### Daylight to new windows

A window in a habitable room should be located to face:

- An outdoor space clear to the sky or a light court with a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky, not including land on an abutting lot, or
- A verandah provided it is open for at least one third of its perimeter, or
- A carport provided it has two or more open sides and is open for at least one third of its perimeter.

### Site coverage

The site area covered by buildings should not exceed 80.60 per cent.

### Permeability

The site area covered by pervious surfaces should be at least 20%.

### Access

Access ways should be designed to:

- Provide direct access to on-site designated areas for car and bicycle parking.
- Provide direct access to the building for emergency vehicles.
- Provide access for service and delivery vehicles to on-site loading bays and storage areas.
- Ensure vehicles can enter and exit a development in a forward direction.
- Provide a carriageway width of at least 5.5 metres and an internal radius of at least 4 metres at a change of direction.
• The number and location of access points from streets to the site and the design of crossovers must be to the requirements of the relevant road authority.
• Shared access ways or car parks should be located at least 1.5 metres from the windows of habitable rooms. This setback may be reduced by 1 metre where there is a fence at least 1.5 metres high or where window sills are at least 1.4 metres above the access way.

Building entry

The main pedestrian entry to a building should:
• Have convenient access from a street.
• Be sheltered from the weather.
• Have convenient access from on-site car parking.
• A designated vehicle standing area suitable for use by a community bus and a disabled parking area should be provided in an area that is convenient for the drop-off and pick-up of residents.

Communal open space

The proposed development should provide accessible and usable communal open space should be provided for residents and staff that:
• Is substantially fronted by dwellings or other buildings, where appropriate.
• Provides outlook for as many dwellings as practicable.
• Is designed to protect any natural features on the site.
• Is accessible and usable.

Landscaping

The landscape layout and design should:
• Protect any predominant landscape features of the neighbourhood.
• Take into account the soil type and drainage patterns of the site.
• Allow for intended vegetation growth and structural protection of buildings.
• In locations of habitat importance, maintain existing habitat and provide for new habitat for plants and animals.
• Provide a safe, attractive and functional environment for residents.

Development should provide for the retention or planting of trees, where these are part of the character of the neighbourhood.

Development should provide for the replacement of any significant trees that have been removed in the 12 months prior to the application being made.

The landscape design should specify landscape themes, vegetation (location and species), paving and lighting.

Development should meet any additional landscape requirements specified in a schedule to the zone.

Detailed Design

The design of buildings should respect the existing and preferred neighbourhood character, including:
• Facade articulation and detailing.
Window and door proportions, Roof form, and Verandahs, eaves and parapets, should respect the existing or preferred neighbourhood character.

**Front fence**

A front fence within 3 metres of a street should not exceed:

- 2 metres in height in streets in a Road Category 1; and
- 1.5 metres in height on all other streets.

### 52.XX-3 Exemption from notice and review

An application 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.

This exemption does not apply:

- Where any of the land is located in, or is within 30m of, or abutting land within, a Neighbourhood Residential Zone, General Residential Zone or Township Zone;
- If the proposed development does not meet all of the design and siting requirements set out in Clause 52.xx-2.

### 52.49-4 Decision guidelines

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

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- How the proposed development responds to the site and context description.
- The impact on the amenity of existing dwellings.
- The proposed amenity for future residents.
- Whether the proposed development:
  - Provides a transition in building height to lower-scale adjoining residential properties.
  - Is appropriately recessed and articulated to minimise the visual impact when viewed from the street, a side street and/or adjoining properties.
  - Avoids continuous built form through separation and setbacks at upper levels.
- Where the specified maximum building height is exceeded, the visual impact of the building when viewed from the street and from adjoining properties.

**Comment [LC3]:** Council opposes the exemption from notice and review. Should it be included in the final provision by the Minister, Council suggests adding additional wording to improve clarity and provide greater certainty.