

1.2 PROPOSED PLANNING SCHEME CHANGES FOR RESIDENTIAL AGED CARE FACILITIES (SH:File No)

Responsible Director: Peter Panagakos

RECOMMENDATION

That Council, having considered the changes proposed to the Victoria Planning Provisions for Residential Aged Care Facilities:

- 1. Notes with concern the proposal to create a special definition and exemptions for Residential Aged Care Facilities in all residential zones in Victoria.*
- 2. Makes a submission to the State Government setting out concerns over the proposed changes as outlined in this report.*
- 3. Authorises the Director City Development to prepare and finalise the submission to the review in accordance with the issues raised in this report.*

INTRODUCTION

The purpose of this report is to consider the changes proposed by the State Government to the planning provisions to introduce special exemptions for Residential Aged Care Facilities in all Victorian planning schemes.

This report outlines a number of concerns with the proposed changes that should form the basis of a submission to the State Government which objects to the proposal.

BACKGROUND

The State Government is proposing changes to planning schemes to make it easier for the development of Residential Aged Care Facilities (RACF) in residential zones across Melbourne. As part of the process the government is seeking feedback on proposed changes.

The proposed changes would apply to all planning schemes in Victoria and have been proposed by the State Government in response to requests from the residential aged care industry.

It should be noted that Council did not receive direct notification of the proposed changes and the consultation program. Officers became aware of the consultation through the weekly State governments generic "Planning Matters" email which is distributed weekly to registered planning officers and industry professionals. Planning Matters is generally used to communicate planning information on amendments, panel hearings and planning training.

The "Planning Matters" email was received on 14 December 2017. Consultation on the proposed changes is open until 16 February 2018.

DISCUSSION

Current provisions for Residential Aged Care

A Residential Aged Care Facility (RACF) is defined in the Victoria Planning Provisions and the Monash Planning Scheme 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.”

Currently the use of land for a RACF does not require a permit in the residential zones that apply in Monash – the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone and the Mixed Use Zone.

As a Residential Aged Care Facility does not require a use permit, the assessment is limited to the potential impact of the building itself and not whether the use is appropriate for any given location based on its hours of operation, staffing levels or size.

A planning permit is only required for the construction of a RACF. As it currently is defined as a residential building the RACF is assessed against the full buildings and works requirements of the zone and the requirements of ResCode. Issues relating to the design, siting and neighbourhood amenity and impacts are then considered in the assessment of the proposal.

The current situation correctly deals with the built form of a RACF development in a residential area by requiring compliance with ResCode, neighbourhood character and the Monash Planning Scheme. In practical terms the current situation means that Council and the community are limited to assessing the built form associated with the RACF. Council and the community have no ability to consider whether the location or operation of the facility is appropriate for the neighbourhood.

Proposed changes

Whilst there are a number of technical changes proposed to the planning scheme. The objective of the changes are to make it easier to obtain a planning permit for a RACF in all residential zones in the State.

The State Government is proposing to make the following changes related to RACFs -

- *Relocate the definition of Residential aged care facility from “Residential building” to “Accommodation”. (Attachment 1.)*

This is proposed to be achieved by creating a new special definition for Residential Aged Care Facility which removes it from the “Residential Building” category. The new definition then provides exemption for RACFs from the requirements of ResCode and neighbourhood character *(even though these requirements continue to apply to other types of residential building such dwellings, units and apartment buildings in residential zones).*

- *Introduce a new Particular Provision as part of Clause 52 for Residential aged care facility. (Attachment 2.)*

A particular provision is a “special” planning control that is established for individual uses or developments. Other current examples include Home Occupation, Gaming and Container Storage.

Particular provisions set out special requirements for the use or development. They are generally used where the use is unusual, a discrete issue or has very specific requirements.

As noted earlier the particular provision proposed for RACFs exempts developments from ResCode and neighbourhood character considerations.

As a replacement assessment process the particular provision includes small number of siting requirements, drawn from ResCode, designed to provide basic amenity protection to neighbours. It does not, however, include any neighbourhood character provisions, and omits most of the site layout and building massing provisions that apply to other residential development.

In addition to removing the ResCode standards the proposed particular provision:

- Raises front fence height to 1.5metres (ResCode – 1.2)
- Increases Site Coverage to 80% (ResCode 60%)
- Provides exemption from the new Garden Area requirement

The provision also provides an exemption from the height limit of the zone, allowing as of right building height of 13.5 metres (equivalent to 4 storeys), with higher heights possible by obtaining planning permission. By comparison dwellings or units in a Neighbourhood Residential zone are limited to a mandatory 9 metres or 2 storeys and in General Residential zone the to 11 metres or 3 storeys.

The proposed provision also provides exemption from advertising to neighbours and third party review requirements.

The provision also allows for a permit to be granted to vary the limited compliance requirements of the proposed particular provision.

ISSUES

There are a number of aspects of the proposed changes that are concerning and potentially exacerbate the existing situation with inappropriately located RACFs.

Location of RACFs

As the use of land for a RACF is currently “as of right” in residential zones there is no direction on the most appropriate locations for these often large bulky facilities. The proposed changes further reduce the ability of Council and the community to influence development in their neighbourhood.

The proposed provisions do not differentiate between locating in a low density area (Neighbourhood Residential Zone), or in a main road location closer to services and facilities (General Residential or Residential Growth Zone).

It would be more appropriate as part of this review to ensure that the particular provision provided direction or criteria on preferred locations for RACFs. The location of proposed facilities would then reflect the intensity of the development, its impact on surrounding areas and be accessible to community facilities and commercial infrastructure.

Officer recommendation

It is recommended that the proposed provisions be modified to include locational requirements that provide Council and the community the ability to influence where RACFs are located either through changes to the residential zones permit requirements or the proposed particular provision.

Building Height Exemption

The building height exemption is likely to result in outcomes that run contrary to State policy of ensuring, *“that residential aged care facilities are located in residential areas, activity centres and urban renewal precincts, close to services and public transport”*.

In addition to the detrimental impact of the height and bulk on local neighbourhoods that is likely from a 13.5m (4 storey) building, the height exemptions provides a significant financial incentive for RACF providers to purchase and develop land in less accessible areas of Monash. These areas are generally proposed to be located in the in Neighbourhood Residential zone. In this zone the RACF providers can effectively can double the 2 storey height limit to 4 storeys and obtain a greater development density than other competing land residential land uses.

If the changes go through a proposed it is likely that many providers will seek out larger lots or consolidate lots in Neighbourhood Residential zones given the exemptions from building height.

Officer recommendation

It is recommended that the building height exemption be removed from the proposed changes.

Requirements to be met

The proposed provisions would allow site coverage of 80%. This far exceeds the site coverage in existing residential areas – currently 60%, and in the Amendment C125 residential zones – between 40% and 60%.

Garden area requirements in the residential zones (usually between 25% and 35% of the site area depending on lot size) would not need to be met as RACF would no longer be in the definition of Residential Buildings, so the requirement would not apply. The result could potentially be buildings with very large footprints and little garden area or landscaping that would be at odds with the garden city character of Monash.

The lack of any requirement to consider neighbourhood character and the impact on surrounding land uses is concerning and not appropriate in a residential zone. Such requirements apply to other uses in these zones and it is not clear why RACF should be exempt.

Officer recommendation

There is no apparent reason as to why RACF should be exempt from meeting the design and siting requirements that apply to other forms of residential type development in the residential zones.

The proposal to allow 80% site coverage should be removed from the proposed changes.

Permit to vary requirements

The proposed provisions would include an ability to grant a permit to vary any of the requirements outlined in the clause. This would include the ability for applicants to apply for greater site coverage than 80%, higher building heights, and reducing any of the other standards included in the provisions.

Officer recommendation

The proposed new provision are a significant departure from existing requirements for RACFs, containing a limited range of basic siting requirements. It is not clear why discretion is required for increasing site coverage beyond 80%, or increasing building height beyond 4 storeys. The inclusion of the ability to increase the size and scale of a development beyond the very generous proposed standards only increases the uncertainty about the bulk and scale of any future RACF.

The ability to vary compliance with the standards of proposed changes should be removed.

Exemption from Notice and Review

The draft provisions propose that if all requirements listed in the draft provision are met, the application would be exempt from the notice and review provisions of the Planning and Environment Act 1987. Therefore if a proposal provides the minimum requirements such as 80% site coverage, 4 storey in height there is no notification to neighbours, no ability to object and no appeals.

Where a requirement is to be varied, as is allowed with these provisions, Council would have the discretion to consider the appropriateness of the variation and determine whether notice of an application is required to be given.

Officer recommendation

The exemption of third party notice and appeal rights for RACFs should be removed from the proposed provision.

Ongoing use of the building as a RACF

There is no requirement to be a registered aged care provider in seeking a permit under the proposed special use provision. As the exemptions from height limits provide a potential incentive to seek out cheaper, lower development potential land. The exemptions, particularly from a use permit, also mean that there is no guarantee that any building approved and constructed as an aged care will be used as such on an ongoing basis. There appears to be no impediment to a land owner obtaining a permit for a RACF, constructing the building to a point and then applying to private building surveyor to convert it to an alternative use such as an apartment building.

Officer recommendation

This is a significant concern that arises from the proposed changes and should be addressed by the State government.

SOCIAL IMPLICATIONS

The provision of housing for an ageing population raises challenges and issues for the community generally, and for Council as a planning authority and responsible authority more specifically.

Whilst it is appropriate to encourage the provision of additional aged care facilities, this should not occur to the detriment of the balance of the community who have reasonable expectations about the provision of services and the future development of their neighbourhoods.

As noted earlier in this report, given the extent of the proposed exemptions and the significant advantage these exemptions confer on RAFC in the Neighbourhood Residential zone it is likely that increased provision of aged care facilities will occur in the more socially isolated and infrastructure poor locations of Monash.

CONSULTATION

The State Government is seeking feedback on the proposed changes by 16 February 2018. It is concerning that Councils were not directly notified of the proposed changes, and have only been given until early February to provide feedback.

CONCLUSION

Whilst it is acknowledged that there may be a need to increase the provision of aged care facilities, it could also be argued there is need to increase housing provision overall in Melbourne. The proposed changes effectively provide the industry with a special exemption from residential development location and design requirements that apply to all other forms of development in residential zones. The proposed changes are also at odds with the recent strengthening of neighbourhood character through changes to the residential zones and the introduction of a garden area requirement.

Other than general submissions to the State government from industry representatives about perceived “special issues” with designing an Aged Care building, given the need for lifts and other commercial facilities such as kitchens, there has been no case made as to why Aged Care Facilities should be treated differently to other large buildings in residential zones such as hotels, apartments or offices.

Residential aged care facilities should be designed to respond to the existing or preferred neighbourhood character. These extent of these changes is not supported and is out of step with community expectations of the type and scale of development that is possible and expected in their local neighbourhoods.

The proposed changes to the Residential Aged Care Facility provisions are considered to go too far in facilitating new aged care facilities, creating a special exemption is likely to result in poorly located, large buildings that are out of scale and character with the local neighbourhood. The proposed changes do not provide an appropriate balance between the development of aged care facilities, neighbourhood character and community participation in the local planning process.