



15 December 2021

Mr Phil Burn
Director, Planning Systems Reform
Department of Environment, Land, Water and Planning
8 Nicholson Street
MELBOURNE VIC 3000

Via website: [Improving the operation of ResCode | Engage Victoria](#)

Dear Mr Burn

Re: Improving the operation of ResCode

I write in relation to the proposed new assessment model for residential development in Victoria and would like to thank you for the opportunity to provide feedback. Overall, the intent of providing a clear and consistent operational framework that promotes the use of a Performance Assessment Module (PAM) is supported.

Kingston Council welcomes the following items as outlined in the Discussion Paper:

- An enhanced structure providing a tiered hierarchy of decision making and operation of discretionary provisions that aim to achieve better assessment timeframes.
- Retention of the third party notice and review rights.

However, we do wish to raise some matters that Council believes require further consideration.

1. Changes to assessment of neighbourhood character and design detail (Standards B1 and B31)

Kingston adopted its Housing Strategy and Neighbourhood Character Study (HS & NCS) at its 25 October 2021 Ordinary Council meeting. The HS&NCS is underpinned by collaborative work with officers from DELWP and is underpinned by a body of strategic work that aligns with Planning Practice Notes 90 and 91.

Council is currently lodging an Amendment request to implement new residential zones, overlays and local policy to implement the recommendations of the HS & NCS and an associated landscape character assessment. Local objectives and decision guidelines have been included in proposed residential schedules to give effect to desired character and landscape outcomes for each area, in accordance with PPN91.

Council has invested significant resources into ensuring that the HS & NCS is a robust document that will deliver positive neighbourhood character outcomes to Kingston. Therefore, Council welcomes the opportunity to elevate neighbourhood character in decision making through proposed changes to ResCode. Nonetheless, concerns are raised in relation to proposed changes to Standards B1 and B31.

The Discussion Paper notes '*Councils have accumulated substantial bodies of work that identify important features of neighbourhood character for local areas. **Neighbourhood character study documents largely exist outside planning schemes or are imprecisely expressed in local policies.***' This does not align with the approach adopted by PPN91 which allows for local objectives to be included in residential schedules. Council therefore raises the following concerns:

- The proposed changes diminish the role of neighbourhood character objectives and decision guidelines in the schedule to a residential zone. Considerable strategic work has been undertaken to develop these and they should be considered in every application, including enabling the consideration of decision guidelines in each step of the assessment process in the proposed PAM model, where relevant. Kingston has spent considerable time developing new draft zone schedules and associated decision guidelines to reflect its HS & NCS. This work would no longer be relevant to the assessment of medium density housing in Kingston. It is not clear to Council how this body of strategic work is now to inform planning decisions. This work has a sound strategic base and has been informed by extensive community consultation and investigation. To ignore this penalises Councils who have developed and implemented robust neighbourhood character studies.

- Significant Council resources would be required to undertake the strategic planning work to convert local policy or zone objectives into the PAM model. If this work is not able to be completed concurrently with the proposed changes to ResCode, a 'gap' in neighbourhood character assessment will be created which would ordinarily be filled by local policy. This is likely to result in built form outcomes being approved which do not reflect the aspirations of Council or the planning scheme. The Discussion Paper does not appear to consider how proposed changes will be resourced and delivered. It is also noted that if authorised, the proposed amendment implementing our HS & NCS is likely to be placed on public exhibition in the new year an amendment could introduce new policy, zones and controls without consideration of the proposed new assessment model. Council would not consider that another amendment process to align a new assessment model as an appropriate outcome.
- The extent to which local planning policy can now inform planning decisions is considerably diminished. Council has drafted local planning policy content in relation to housing and neighbourhood character to respond to local conditions; however, it is acknowledged that an assessment of neighbourhood character is nuanced, and specific to the site being assessed. The proposed introduction of quantitative standards to replace a proper site assessment and consideration of policy objectives removes this nuance. This is of particular concern given that objectives drafted for the Schedule to each Zone are often qualitative considerations that have limited capacity to be translated into PAMs for B1 and B31. A body of recent strategic work underpinning neighbourhood character will carry less weight when the intention of Council is to strengthen policy around neighbourhood character.
- DELWP has a longstanding commitment to integrated decision making which is expressed in Clause 71.02-3 of the Scheme. Restricting consideration of medium density housing to a single set of performance measures undermines this commitment.
- The Discussion Paper does not clearly articulate the link between the Planning Policy Framework (PPF) and consideration of a proposal against the Performance Criteria or Performance Measures that incorporate qualitative assessment. If decision guidelines are not to be used, Council is no longer sure of the role of the PPF. However, Council understands that where an application is deemed to achieve compliance with a PAM, then no further consideration of the PPF is required in relation to that particular aspect of the proposal. The Discussion Paper should explicitly address the role of the PPF in the assessment of qualitative PAMs.
- Council is starting a Planning Scheme Amendment to implement its HS & NCS. If these changes to ResCode are to be progressed, Council would seek support from DELWP to write new PAMs, and to implement these with the whole suite of reforms in one package or in the alternate provide a pathway for a section 20(4) amendment after the reforms are implemented, for Council to update zone schedules where required.
- Council supports the retention of the Design and Development Overlay and Neighbourhood Character Overlay as it believes these are appropriate controls to deal with neighbourhood character having greater flexibility and the ability to impose more detailed requirements to achieve desired character outcomes.

2. Clarification on Performance Measures

The Discussion Paper currently uses interchangeable language which does not provide certainty that all performance Measures must be met to achieve the Performance Objective. We refer you to page 46, Appendix 3 '*Draft Clause 71.XX-5*' of the Discussion Paper which states that where a proposal complies with 'any' Performance Measure it is deemed to achieve the relevant Performance Objective. The use of the word 'any' is vague and creates uncertainty whether 'all' or 'some' of the Performance Measures can be met in order to meet the Performance Objective. We believe this should be made very clear that all need to be met to achieve the Performance Objective.

3. Information Required within the PAM

Many of the PAMs contain limited requirements for information to be submitted. This could therefore potentially result in uncertainty and tension between the permit Applicant and Council as to what level of information is needed to determine if the Performance Measure and Performance Objective have been met. We suggest that the Information Required within certain PAMs be expanded to be clear, informative, and directly relevant to the Performance Measures and Performance Objectives. An example of this is B4 Infrastructure, where the Information Required is insufficient (focuses on existing infrastructure only and fails to consider future loads and other services listed in the Performance Measure) to sufficiently enable Council to undertake an assessment against the Performance Measure.

4. Holistic approach to reform

We acknowledge that this reform considers the structure of the assessment component only, however Council recommends that this reform also include a review of its entire content which would result in a more holistic approach to improving ResCode. It is noted that this reform will provide greater clarity around meeting the objectives of ResCode, however the restructure accepts that the Standards (better or worse) are sufficient to meet the Objective. This reform has come about largely due to a divergence of view (in local Councils and the VCAT domain) that has created the uncertainty around the operation of some aspects of ResCode.

This is an opportunity to review what the Standard (Performance Measure to be) communicates to ensure that once put into practice, particularly for Councils that have not sharpened their Scheme, it does not result in a 'tick the box' exercise leading to unacceptable built form outcomes.

5. Vegetation Management Overlay

Following from section 2 of this document, if all relevant performance measures are required to be compliant to meet the performance objective, we suggest the following alterations to the vegetation objectives:

Standards	Comments/ Suggestions
A8	<p>Performance Measure Consider the introduction of a performance measure to demonstrate that trees retained on site can be protected during development.</p> <p>Performance criteria Consider the introduction of a criteria to ensure if a tree is removed that it will be replaced with an outcome consistent with the schedule of the to the zone (not only limited to NC or Design Guidelines as some planning schemes have variations on A8)</p> <p>Information requirements Consider the introduction of the following information:</p> <ul style="list-style-type: none"> • If not included in the design response, a statement prepared by a suitably qualified person, describing the vegetation on site and reasons for removal.
B13	<p>Performance Measure Consider the introduction of a performance measure to demonstrate that trees retained on site can be protected during development. Consider the introduction of a performance measure to demonstrate each dwelling is provided with landscaping that is consistent with the requirements specified in a schedule to the zone (not only limited to NC or Design Guidelines as some planning schemes have variations on B13)</p> <p>Information requirements Consider the introduction of the following information:</p> <ul style="list-style-type: none"> • If not included in the design response, a statement prepared by a suitably qualified person, describing the vegetation on site and reasons for removal. • If not included in the design response, a statement of how the vegetation removal and permeability deficit will be offset to reduce urban heat effects.
B38	<p>Performance measure Not meeting the Deep Soil Areas required under the B5 table should result in not meeting the objective. Consequently, the statement regarding the alternative to canopy cover should be included in the performance criteria.</p>

Standards	Comments/ Suggestions
D10	Information requirements Instances where a variation is required due to not meeting the deep soil areas, an application should be accompanied by a statement/plan that describes depth of planter boxes and details of the green walls.

6. Environmentally Sustainable Design

Council support the views held by a number of Councils that the proposed reforms enable the opportunity to introduce a stronger decision making framework around ESD. Careful consideration should be given to enabling the opportunity to create Local ResCode variations to achieve elevated ESD targets across residential areas. As highlighted above a holistic approach to reform would carefully analyse the merits of this approach whilst undertaking this review.

7. Implementation

Council stresses the importance regarding the timing of implementation of the reform, as this is critical especially for Councils still undertaking policy work including amendments to implement this work.

Consideration should be given to the possibility of transitional provisions to allow Council's to rely on the local planning policy framework currently in the Scheme, to negate the potential for inconsistencies and damaging development outcomes resulting in detrimental impacts on neighbourhood and landscape character.

We also welcome (prior to implementation) extensive communication, training programs and the provision of templates for Councils to attend and utilise to ensure smooth transition and successful implementation. Should you have any queries regarding this submission, please feel free to contact Jonathan Guttman, General Manager, Planning and Development [REDACTED].

Yours sincerely

[REDACTED]

Cr Steve Staikos
MAYOR