

Review and reform of planning provisions for community care unit, crisis accommodation and shared housing

CONSULTATION INFORMATION

MAY 2017

Comments are invited on proposed changes to the *Victoria Planning Provisions* to clarify and improve permit exemptions for Community Care Unit, Crisis Accommodation and Shared Housing (rooming house) provisions.

Purpose

The Minister for Planning has requested the Department of Environment, Land, Water and Planning (DELWP) to review and investigate reforms to the crisis accommodation, shared housing and community care unit provisions in the *Victoria Planning Provisions* (VPP). The purpose of the review is to improve and clarify the provisions, introduce exemptions for the development of domestic scale establishments and continue the existing permit exemptions for land use.

Work to reform these particular provisions began in 2011. The review work included consultation with councils, the community and stakeholders. The Minister for Housing, Disability and Ageing has requested the review be continued and finalised. The department is working closely with the Department of Health and Human Services on the review.

Policy Context

The proposed reforms support State planning policies and broader government policy. The existing provisions are based on a long standing policy to exempt these special types of uses from permit requirements to reduce discrimination against disabled or disadvantaged people seeking housing and support the confidentiality of sensitive

accommodation such as housing for victims of domestic violence. One of the reasons for the exemption was to avoid objections to permit applications based on the physical, mental or social characteristics of the residents to be accommodated.

The State Planning Policy Framework (SPPF) and *Plan Melbourne* supports the supply of social housing and affordable housing. Rooming houses and community care units play an important role in providing inclusionary, social and affordable housing.

Plan Melbourne is Victoria's metropolitan planning strategy that defines the future shape of the city and state over the next 35 years. It integrates long-term land use, infrastructure and transport planning. It identifies that between 2015 and 2051 Melbourne is projected to grow from a population of 4.5 million to almost 8 million. In that time the total Victorian population will reach 10.1 million. A population increase will require another 1.6 million dwellings and contribute to an increase in demand for social and affordable housing.

The Victorian Government's housing strategy *Homes for Victorians* contains initiatives complementary to *Plan Melbourne* which demonstrate the Governments' state-wide commitment to increasing and renewing social housing

stock. The strategy introduces a number of funded programs including the \$1 billion Social Housing Growth Fund, the \$185 million Public Housing Renewal Program, and the \$140 million Social Housing Pipeline.

Homes for Victorians states that:

Every Victorian deserves the safety and security of a home. Social housing provides homes to Victorians in need, and for many it gives them the foundation to stabilise other areas of their lives, and participate in education, work and the community. A healthy social housing system is critical in meeting the housing requirements of Victorians in need.

In response to the Royal Commission Into Family Violence Report (March 2016), the Victorian Government has also committed \$152 million in funding over the next three years to implement Family Violence housing measures. Part of this funding will go toward construction of 180 new units of crisis accommodation and provision of 130 new social housing properties.

Plan Melbourne Direction 2.3 aims to increase the supply of social and affordable housing. Key policy areas include utilising government land to deliver additional social housing and streamlining decision-making processes for social housing proposals which will facilitate faster delivery of social housing projects with lower holding costs and greater planning certainty.

Background

Some councils and members of the community have raised concerns that rooming houses can be established in residential zones without a planning permit if the existing exemptions of clause 52.23 are met and a building permit for a class 1b building is obtained, requesting removal of permit exemptions or greater restrictions for the exemption thresholds. The draft reforms do not remove exemptions however the provisions and exemptions are clearer and thresholds are more restrictive.

In addition to the policy support the draft provisions address uncertainty about the extent of permit exemptions for these uses. VCAT determined (*Department of Human Services v Maribyrnong CC [2008]* and *Kingston CC v Wilson [2015]*) that the land use exemptions for crisis accommodation and shared housing in the VPP should be interpreted broadly to include any requirement in the planning scheme for development. The exemptions in the draft provisions apply only to use and development in the zone and particular provision. Other permit requirements in the planning scheme such as heritage, flooding and neighbourhood character overlays continue to apply.

Amendment VC127 to the VPP and planning schemes was gazetted in February 2016. It sought to address uncertainty about permit exemptions for shared housing by clarifying, via a note in the clause, that the exemption in clause 52.23 does not include development.

A recent VCAT decision (*Modo Project Builders Pty Ltd v Frankston CC [2017] VCAT 390*) in March 2017 considered that, regardless of the note introduced by Amendment VC127 the shared housing particular provision does not exempt a proposal from a permit requirement to develop land, or impose a requirement. It confirmed that a permit requirement for development may be specified elsewhere in the planning scheme.

The decision also noted:

“Lest it be thought that the this decision opens the door for uncontrolled development in cases where the proposal is a dwelling answering the description of shared accommodation for the purpose of clause 52.23 the Tribunal points out that all buildings must comply with the Building Code of Australia. The Code sets out development and performance standards that are similar to those set out in clause 54 of the planning scheme. These standards are commonly regarded as adequate to control development.”

VCAT have previously determined (*Armarto v Hepburn Shire [2007] VCAT 6031* and *Douglas v Mansfield [2007] VCAT 828*) that any land use included in the term accommodation (which includes uses such as boarding house, backpackers lodge, residential hotel, group accommodation and residential building) can ‘benefit’ from the exemption provided by the existing shared housing provisions. The draft provisions now address this issue and clarifies that the exemption only applies to a rooming house.

What do the draft provisions do?

Community care accommodation

It is proposed to replace the VPP particular provisions for Community Care Unit and Crisis Accommodation provisions with a new provision Community Care Accommodation.

A permit exemption is proposed for the use and development of community care accommodation where specific planning requirements that limit the scale and intensity development are met. The planning requirements align with building permit requirements that regulate the scale, height and setbacks for a single dwelling.

Summary of the proposed changes:

- New defined land use term, community care accommodation included in the land use, residential building.
- Amend the land use table in the Commercial 1 Zone, General Residential Zone, Low Density Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone, Rural Living Zone and Township Zone to make rooming house a section 1 (no permit required) use, if the requirements for permit exemption are met. The requirements of clause 55 (ResCode) apply in the residential zones if the requirements for development exemptions are not met.

The construction of a community care accommodation requires a building permit (Class 1b) assessed under Part 4 of the Building Regulations 2006 where the building is no more than 300 square metres in floor area, has no more than 12 people and meets specified requirements including setbacks, overlooking and overshadowing. Local schedules to residential zones are translated into the building regulations.

- Provide permit exemptions in specified zones for the use and development of community care accommodation where the following requirements are met:
 - The community care accommodation is by or on behalf of a public authority including a public authority established for a public purpose under a Commonwealth Act.
 - No more than 20 persons are accommodated on the site, not including staff.
 - No more than 10 persons who are not residents may access support services provided on the land.

If the exemptions are not met the relevant requirements of the zone apply. The exemption only applies to the zone provisions. Other requirements of the planning scheme may apply including maximum building height requirements of the zone, schedule or requirements in an overlay such the Heritage Overlay.

- Provide exemptions from notice (advertising of an application) and review (review to the Victorian Civil and Administrative Appeals Tribunal) if the application is by or on behalf of a public authority including a public authority established for a public purpose under a Commonwealth Act.

Rooming houses

It is proposed to include a permit exemption for the use and development of a domestic scale rooming house in specified zones where requirements that limit the scale and intensity of the rooming house are met. The requirements align with building permit requirements that apply to single dwellings.

Summary of the proposed changes:

- Remove the land use terms shared housing and boarding house and introduce a new land use term, rooming house. This will clarify that the particular provision does not apply to other land uses such as backpackers' lodge or other forms of accommodation. The land use rooming house is included in the land use, residential building.
- Amend the land use table in the Commercial 1 Zone, General Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone and Township Zone to make rooming house a section 1 (no permit required) use, if the requirements for permit exemption are met. Where the condition is not met a permit is required for the land use. The requirements of clause 55 (ResCode) apply in the residential zones if the requirements for development exemptions are not met.



The construction of a rooming house requires a building permit (Class 1b) assessed under Part 4 of the Building Regulations 2006 where the building is no more than 300 square metres in floor area, has no more than 12 people and meet specified requirements such as setbacks, overlooking and overshadowing. Local schedules to residential zones are translated into the building regulations.

- Provide permit exemptions for use and development of a rooming house where the following exemptions are met.

Permit exemption to use land for a rooming house

- The gross floor area of all buildings on the land is no more than 300 square metres.
- No more than 12 people are accommodated.
- No more than 8 bedrooms.

Permit exemption to develop land for a rooming house

- No more than 8 bedrooms.
- The gross floor area of all buildings on the land is no more than 300 square metres.

If the exemptions are not met the relevant requirements of the zone apply. The exemption only applies to the zone provisions. Other requirements of the planning scheme may apply including maximum building height requirements of the zone, schedule or requirements in an overlay such the Heritage Overlay.

- Provide exemptions from notice (advertising of an application) and review (reviews to the Victorian Civil and Administrative Appeals Tribunal) if the application is by or on behalf of a public authority including a public authority established for a public purpose under a Commonwealth Act.
- Amend the car parking particular provision to include car parking requirements for rooming houses. A requirement of 2 car spaces for a rooming house of up to 8 bedrooms, inline with the building regulations for single dwellings.

Other proposed changes:

- Amend the State Planning Policy Framework, Clause 16.02-2 to retain and clarify the government’s policy support for community care accommodation and rooming houses.
- Amend clause 52.43, live music and entertainment noise to include community care accommodation and rooming house in the definition of noise sensitive residential use.
- Amend clause 74 and the nesting diagrams and Clause 75 land use terms to include the new land uses and remove the land use terms hostel, nurses home and residential college. These uses may meet the rooming house definition or be an innominate use.

Alignment with other regulation

- Other regulations administer matters outside of the planning system such as health, hygiene, orderly operation and security of rooming houses.

- The draft definition for the new land use term of rooming house references the definition in the *Residential Tenancies Act 1987*. In addition operators are required to comply with the additional standards set out in the Residential Tenancies (Rooming House Standards) Regulation 2012. These standards include requirements for rooming house operation, privacy, security and amenity and requirements for shared spaces such as kitchens, laundries and bathrooms.
- Under the *Public Health and Wellbeing Act 2008*, operators of rooming houses must register the rooming house with the local council and meet minimum standards for health and hygiene.
- Other laws regulate amenity impacts in residential areas. These controls apply to all dwellings and residential buildings. Section 48A of the *Environment Protection Act 1970* regulates unreasonable noise from any residential premises. Councils enforce local laws to control noise, rubbish, unsightly premises and noisy machinery such as plant and equipment. Unreasonable noise and antisocial behaviour can be reported to the Police.
- The draft provisions will exempt the development of a domestic scale rooming house or community care accommodation in many circumstances where a single dwelling is also exempt. For example development is exempt where the land is in a residential zone, there are no other planning controls such as an overlay and the lot size is greater than 300 square metres. Existing building regulations require a Class 1

building permit to construct or make additions to a dwelling, rooming house or community care accommodation.

Height, sighting and setback standards, similar to the VPP ResCode standards are reflected in the building permit requirements.

- The *Rooming House Operators Act 2016* came into operation in April 2017. It introduces greater regulation of rooming house operators. A key purpose of the Act is to foster professionalism of operators and protect tenants from exploitation. The Act requires new and existing operators to obtain a license and pass a 'fit and proper persons' test to operate a rooming house. The license scheme will be administered by the Business Licensing Authority, monitored and enforced by Consumer Affairs Victoria.

How do I provide feedback?

The Department of Environment Land Water and Planning seek your feedback on the draft provision. Your feedback will assist the Department of Environment Land Water and Planning (DELWP) to consider stakeholder and community views and any unintended consequences of the provisions. The Minister for Planning will consider feedback and may reform the Victoria Planning Provisions and all planning schemes under section 20(4) of the *Planning and Environment Act 1987*.

For more information on the proposed reforms, copies of the draft provisions and how to provide feedback visit <http://www.planning.vic.gov.au/policy-and-strategy/planning-reform/reforms-to-public-housing-and-shared-housing>.

Please provide feedback by Friday, 16 June 2017.

For more information please email planning.systems@delwp.vic.gov.au.

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ISBN 978-1-76047-596-3 (pdf/online)

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