

SUBMISSION ON IMPROVING THE OPERATION OF RESCODE



VICTORIAN DEPARTMENT OF ENVIRONMENT, LAND,
WATER AND PLANNING.



Submission issued December 2021

CONSULTATION INTO IMPROVING THE OPERATION OF RESCODE



Australian
Institute of
Architects

ABOUT THE INSTITUTE

The Australian Institute of Architects (Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation with around 13,000 members across Australia and overseas.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of architects and architecture to the sustainable growth of our communities, economy and culture. The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

PURPOSE

- This submission is made by the Australian Institute of Architects (the Institute) in response to the Victorian Parliament's Legislative Assembly Environment and Planning Committee's Inquiry into Apartment Design Standards.
- At the time of this submission the National President is Tony Giannone FRAIA.
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COVER PHOTO

The Australian Institute of Architects' 2021 Sir Zelman Cowen Award for Public Architecture and The David Oppenheim Award for Sustainable Architecture. Monash Woodside Building for Technology and Design. Grimshaw in collaboration with Monash University.
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TABLE OF CONTENTS

1	INTRODUCTION	3
1.1	About the Institute and the Architecture profession	3
1.2	This context of this submission.....	3
2	EXECUTIVE SUMMARY	5
	5	
2.1	Key recommendations made in this submission.....	7
3	RESPONSE TO THE CONSULTATION QUESTIONS.....	8
3.1	A clearer model.....	8
3.2	Greater certainty.....	9
3.3	Expectation of issues.....	13
3.4	Perceived benefits.....	15
3.5	Easier assessment.....	15
3.6	Easier compliance.....	16
3.7	Changes to Victoria’s planning schemes.....	16
3.8	Other changes to the new assessment model.....	17
3.9	Identifying and protecting neighbourhood character attributes.....	18
3.10	Communicating neighbourhood character attributes	19

1 INTRODUCTION

1.1 About the Institute and the Architecture profession

The Australian Institute of Architects (the Institute) is the peak body for the architectural profession in Australia, representing almost 13,000 members. The Institute works to improve our built environment by promoting quality, responsible, and sustainable design. Architecture influences all aspects of the built environment and brings together the arts, environmental awareness, sciences and technology.

By combining creative design with technical knowledge, architects create the physical environment in which people live, which in turn, influences quality of life. Through its members, the Institute plays a major role in shaping Australia's future.

Architects are a key component of Australia's \$178 billion building construction sector¹ and there are around 13,000 architectural businesses in Australia with more than 43,000 employees. Approximately 25,000 people in the labour force hold architectural qualifications (bachelor's degree or higher) and architectural services in Australia in 2021 had revenue of \$7 billion²

Australian architects have a worldwide reputation for creative and innovative design leadership and Australia is known for producing contemporary and breakthrough architecture. We have a well-recognised, high quality and liveable built environment. To maintain this into the future and support our burgeoning population in both urban and regional centres, we must create buildings and public spaces that are environmentally, economically and socially sustainable and culturally rich.

1.2 This context of this submission

The Institute welcomes the opportunity to make a submission to the Victorian Department of Environment, Land Water and Planning's consultation on *Improving the Operation of ResCode*.

This past almost two years has presented the challenge of the Covid-19 pandemic which has had different impacts across the world and between cities and regions across Australia. It has also seen the delivery of a Royal Commission into National Natural Disaster Arrangements.

¹ Combined housing, multi-unit apartments and townhouses, commercial and industrial and institutional building construction as noted in [Construction in Australia](https://www.ibisworld.com/au/construction-sector/) sourced from: <https://www.ibisworld.com/au/construction-sector/>

² [Architectural Services in Australia - Market Research Report updated August 2nd 2021](https://www.ibisworld.com/au/industry/architectural-services/550/) sourced from <https://www.ibisworld.com/au/industry/architectural-services/550/>

As one of its key policy priorities, the Institute promotes action on climate change and the promotion of a sustainable built environment. The Institute places a very high value on action to reduce the impacts of climate change. In 2020 the Institute invited all of its 13,000 members in Australia (and our International Chapter) to take an ambitious step of commitment to a zero-carbon journey³. We note that:

- Australia's buildings generate 23 per cent of Australia's carbon emissions.
- Australia's building sector can deliver up to 28% of Australia's 2030 emissions reduction target.
- Architects are uniquely placed to help lead the transition to a carbon neutral future.

The Institute, through the work of its Climate Action and Sustainability Taskforce, has called on the Australian Government to establish a national plan towards zero carbon buildings by 2030 that can be supported and led where appropriate by federal, state and local governments.

The Australian Institute of Architects is pleased to see the many initiatives of the Victorian Government that are already underway and will help create better natural and built environments for all Victorians well into the future. Our Institute has engaged in this policy development through participation in the associated submission⁴ and consultation processes and representation on advisory and working groups. Examples include:

- Environmentally Sustainable Development Roadmap
- A review of Victoria's 30-year infrastructure plan
- Planning for Melbourne's Green Wedges and Agricultural Land
- Built Environment Climate Change Adaptation Action Plans
- Victoria's Gas Substitution Roadmap
- Victoria's Building System Review
- Better Apartment Design Standards 2021
- Future Melbourne Planning Framework Land Use Framework Plans
- Victorian Parliamentary Inquiry into Apartment Design Standards

One of the responses that are needed by Australian cities to reduce climate change and improve liveability is to limit urban sprawl. The Institute notes that the Victorian Department of Environment Land, Water and Planning (DELWP) is seeking to limit urban sprawl and continued encroachment of urban growth on both agricultural and green space in its planning for Melbourne's Green Wedges and Agricultural Land.

Limiting urban sprawl and creating less car dependent lifestyles in 20-minute neighbourhoods, supported by urban and suburban public transport, requires a city and metropolis shaping strategy accompanied by much higher levels of density within existing developed area. The future of Melbourne, as with other cities in Australia and

³ <https://www.architecture.com.au/about/carbonneutral>

⁴ See the Victorian sub-heading of the Institute's submission library at: <https://www.architecture.com.au/advocacy-news/policy-submissions>

overseas, could be one where living in apartments becomes the ‘new normal’ and no longer the exception. For many of us, apartments are our new homes. With continually accelerating land prices, apartment and other higher density forms of dwelling are a significant departure from the traditional detached dwelling on a 800m² suburban allotment⁵. They are part of the solution set to increase housing affordability and, therefore, may also help address one of our greatest current social challenges being homelessness.

To face these challenges and capitalise on lessons learnt, governments will require built environment design expertise and master planning to support development of effective and enduring residential design solutions including associated land-use planning at the immediate precinct, neighbourhood and site level.

2 EXECUTIVE SUMMARY

In this submission we have set about to answer the questions as put on the Engage Victoria website for this Improving the Operation of ResCode consultation.

Overall the Institute supports:

- the proposal to re-package Clauses 54, 55 and 58 of the Victorian Planning Provisions into Performance Assessment Modules (PAM).
- the proposal in the discussion paper that promoting neighbourhood character should have important weighting in determining planning application outcomes.
- the proposal to express neighbourhood characteristics as Performance Measures that may lead to Performance Objectives deemed as has having been met and therefore potentially greater certainty about the likelihood that a planning application may be approved.
- the hierarchy of matters that a responsible authority may consider when assessing a Performance Assessment Module commencing with any performance measures as expressed in the proposed new operational subclauses under Clause 71.

However the Institute recognises that many of the applications that our members will be involved with will not meet PAM Performance Measures and quickly default to appraisal of qualitative PAM Performance Criteria or other decision guidelines. This is because much of the coverage of ResCode in inner and middle suburbs will increasingly involve areas where in-fill development and higher density is being pursued as part of the solutions to address climate change, urban sprawl and housing affordability.

With less ‘room to move’ our members and other design professionals working on behalf of their clients to renovate and improve older dwelling stock or build multiple dwellings on an allotment may be working with increasingly small and constrained sites. Unlocking difficulties within these constrained sites, are where our members work best

⁵ (the 1/4 acre block = 1,011m²)

in a qualitative environment. In these increasingly frequent scenarios, the likelihood of PAMs' performance measures being met are low.

Under these circumstances, appraisal as to whether an application meets the PAM Performance Objective will rely more heavily upon the design response.

The Institute therefore recommends that all local decision-making authorities (i.e. local government) should establish or have access to design expertise through an architect as well as other specialists where relevant such as landscape architects and appropriately credentialed heritage specialists. Options include engaging architects and other design professionals and specialists in planning departments or establishing Design Review Panels.

As an increasing proportion of applications may still default to appraisal of qualitative elements and the design responses, the intent of creating efficiencies and reducing timelines in planning approvals may not be achieved. The Institute recommends rather than a 'one size fits all' linear process, two or three application streams could be used so that the double handling and passing through delays to the next step are avoided and the most appropriate assessment methodology is applied.

We also recommend leveraging the potential for digitisation of the planning application process to enable a 'self-service' digital platform where applicants can test their planning application and ascertain early in the process if their application will rely upon qualitative appraisal of the design response. A self-service platform could then enable applicants to fast track the application directly to appraisers with sufficient design expertise and avoid unnecessary double-handling and delay of applications where it is already established that Performance Measures will not be achieved.

Improving the Operation of ResCode leans heavily upon the importance of neighbourhood character. The Institute acknowledges the complex nature of neighbourhood character and the additional element introduced by heritage overlays and buildings.

The new assessment model may make it easier to identify and protect neighbourhood character attributes where these are codified into quantitative parameters such as heights and setbacks in some neighbourhood settings. This includes neighbour settings such as those with large allotments which would more easily permit dual occupancy houses or town houses on a block in a way that does not adversely impact the amenity of most neighbours.

Codifying some elements of neighbourhood character into performance measures may help to avoid poor development and built form outcomes that adversely impact the amenity of the occupants themselves or that of neighbours. However, the avoidance of bad design does not amount to the achievement of good design.

Moreover, planning objectives in relation to residential development are a key tool for government to help Victoria adapt to climate change, improve housing affordability, respond to population growth and promote social inclusion.

Under pressure of these social and environmental objectives, our urban and suburban landscape will need to change in the next 20-30 years as dramatically as in the period of

the post-war population and housing boom that saw the dramatic rise of the car-dependent broadacre suburban subdivisions. Therefore, it is important that neighbourhood character needs to shift from keeping things 'just as they are' to more of a future-focused aspiration. A key to this is good design that may not necessarily preserve a neighbourhoods' prevailing period, style or scale but is still able to enhance the neighbourhood's desirability, aesthetic appeal, amenity, and is clearly expressed in the quality of the final built form.

2.1 Key recommendations made in this submission

1. The Institute recommends ensuring a clearer process for the proposed assessment of Performance Measures by:

- excluding consideration of objections and submissions under Section 60 (1) (c) of the Planning and Environment Act, or
- establishing processes for relevant stakeholders (e.g. neighbours) which clearly informs as to what matters might be put forward in objections and submissions for consideration under Section 60 (1) (c) of the Act. This would also clarify the likelihood of objections and submissions in relation to a PAM being considered if Performance Measures have been met. The process should also distinguish between those stakeholders whose amenity might be directly impacted (adjacent property owners or in very close proximity) and those neighbours two or three streets away whose amenity is not directly impacted.

2. The Institute recommends further increasing certainty in the assessment of residential development proposals under the new assessment model by requiring all responsible authorities to:

- develop local standards/Performance Measures as schedules to zones in consultation with local residents. In this way local governments might reduce objections if community expectations about Performance Measures that relate to neighbourhood character have been addressed.
- update long out of date neighbourhood character studies. Neighbourhood character studies need to assume a broader contemporary view of residential areas fit for purpose for a metropolis where Victorian State Government Policy is committed to densification – especially in middle ring suburbs – in order to reduce urban sprawl and dependency on private motor vehicle transportation.

3. The Institute recommends that:

- All local decision-making authorities (i.e. local government) should establish or have access to a pool of design expertise through an architect as well as other specialists where relevant, such as landscape architects and appropriately credentialed heritage specialists. This can be achieved through either or a combination of direct engagement of appropriately credentialed persons or the establishment of design review panels.

4. The Institute recommends that:

- All mapping of Standards to new Performance Measures and all mapping of criteria pay attention to maintaining the intent of the original VPP clauses when the PAMs are being drafted.

5. The Institute recommends that to improve the operation of Victoria's planning schemes:

- Rather than a one size fits all linear process, two or three application streams could be used so that the double-handling and passing-through delays to the next step are avoided and the most appropriate assessment methodology is applied.
- Applications relying heavily on qualitative appraisal of designs are fast tracked to appraisers with sufficient design expertise. This would avoid unnecessary double-handling of applications.

6. The Institute recommends providing a better framework to communicate important neighbourhood character attributes by:

- including 'good design' as a parameter when implementing a framework of the new ResCode assessment model.
- providing greater attention and ensuring greater investment by relevant authorities in providing regularly updated visual case studies of good design to be communicated to all stakeholders – not just planners and designers – but property owners and neighbours as the important stakeholders in neighbourhoods.

3 RESPONSE TO THE CONSULTATION QUESTIONS

3.1 A clearer model.

Do you think the new assessment model makes the assessment of a residential development proposals clearer?

The discussion paper and the proposed new Clauses for the Victorian Planning Provisions, as set out in Appendix 3 of the discussion paper, appear to make the assessment clearer in the way assessments are proposed to be carried out for a Performance Assessment Module (PAM) for any given assessment provision.

How the new model appears to work

Fundamental to this process is the hierarchy embedded in the decision pathway⁶ to determine if a PAM's Performance Objective is met. This process steps include:

- assessing Performance Measures (where specified),
- appraising Performance Criteria, or other information and decision guidelines. This takes place only when neither the Performance Measures nor Performance Criteria satisfactorily demonstrate achievement of the Performance Objective.

Accordingly, in these first two levels of the hierarchy (Performance Measures and Performance Criteria) there are matters which the responsible authority must not consider and is exempt from considering. These are set out in the proposed new Clause 71 operational clauses in the appendix of the discussion paper. For both the assessment of Performance Measures and appraisal of Performance Criteria the proposed new clauses specify that,

⁶ Refer to the flow diagram which schematically represents this process, *Making a decision using a performance assessment module*, on p20 in *Improving the Operation of ResCode*.

the responsible authority must not consider and is exempt from considering:

- *Any decision guidelines specified for the use or class of development under the relevant provision or other provision under the which the application is made.*
- *The Municipal Planning Strategy and Planning Policy Framework.*
- *The requirements of section 60(1)(b), (e) and (f) and (1A) (b) to (h) and (j) of the Act.*
- *The decision guidelines in Clause 65.*

In addition, when assessing, in the first instance, any Performance Measures, where specified, the responsible authority must not consider and is exempt from considering,

Any performance criteria specified for the use or class of development under that assessment provision.

We note that these proposed clauses are similar to set out under VPP Clause 71.06-2 VicSmart process. However, VPP Clause 71.06-2 VicSmart process also excludes consideration of Section 60(1) (c) of the Planning and Environment Act 1987 being,

all objections and other submissions which it [the responsible authority] has received and which have not been withdrawn;

The Institute recommends ensuring a clearer process for the proposed assessment of Performance Measures by:

- **excluding consideration of objections and submissions under Section 60 (1) (c) of the Planning and Environment Act, or**
- **establishing processes for relevant stakeholders (neighbours) which clearly informs as to what matters might be put forward in objections and submissions for consideration under Section 60 (1) (c) of the Act. This would also include clarifying the likelihood of objections and submissions in relation to a PAM being considered if Performance Measures have been met. The process should also distinguish between those stakeholders whose amenity might be directly impacted (adjacent property owners or in very close proximity) and those neighbours two or three streets away whose amenity is not directly impacted.**

In addition Section 61 (1) of the Act specifies that the overall decisions that a responsible authority may make are:

- (a) to grant a permit; or*
- (b) to grant a permit subject to conditions; or*
- (c) to refuse to grant a permit on any ground it thinks fit.*

The discussion paper on pages 20 and 21 nor the draft clauses do not show the path or steps concluding to a Section 61(1) decision to grant a permit or otherwise – notwithstanding other requirements such as the payment of planning application fees or levies – if all relevant performance objectives are met.

3.2 Greater certainty

Do you think the new assessment model makes the assessment of residential development proposals more certain than the current process?

The new assessment model will partially make the assessment of residential development proposals that are assessed under ResCode more certain. This is due to the clearer expression and emphasis on quantifiable Performance Measures and the subjugation of Performance Criteria.

Limitations to certainty

However, as explained above, the new model does not assertively establish a rule that the statutory planner at the relevant authority must actually decide to unconditionally or conditionally grant or otherwise refuse planning permit.

As the Performance Measures may not exist or may not have been met for a given Performance Objective the assessment of Performance Criteria is a qualitative assessment which, therefore, introduces uncertainty.

Ongoing challenge of objections

Objections and submissions may still be considered under the requirements of Section 60(1)(c), when assessing a Performance Measure or Performance Criteria.

This still creates a considerable risk that applications will be impeded by objections and submissions and that these applications will be referred for decision by the Victorian Civil and Administrative Tribunal through its Planning and Environment List.

A key objective outlined in the operation of ResCode is greater application of quantifiable Performance Measures.

This includes Performance Measures, currently expressed as Standards which local communities have the opportunity to specify via schedules to zones. These are shown on page 34 of the discussion paper and include:

- B6 Street Setback
- B8 Site coverage.
- B9 Permeability and stormwater management.
- B13 Landscape layout and design
- B17 Side and rear setbacks
- B18 Walls on boundaries
- B28 Private open space
- B32 Front fences

As outlined in the previous section, a clearer process might be put in place for raising objections or making submissions coupled with a reduced likelihood of any objection being considered if the Performance Measures in respect of relevant Performance Objectives are met.

The Institute recommends further increasing certainty in the assessment of residential development proposals under the new assessment model by requiring all responsible authorities to:

- **develop local standards/Performance Measures as schedules to zones in consultation with local residents. In this way local governments might reduce objections if community expectations about Performance Measures that relate to neighbourhood character have been addressed.**
- **update long out of date neighbourhood character studies. Neighbourhood character studies need to assume a broader contemporary view of residential areas fit for purpose for a metropolis where Victorian State Government Policy is committed to densification**

- especially in middle ring suburbs- in order to reduce urban sprawl and dependency on private motor vehicle transportation.

The densification of the middle ring is also aligned to activated precincts – 20 minute neighbourhoods where daily needs for certain types of amenity can be met using active transport such as cycling, walking, and other personal mobility devices such as scooters that may also be used by people living with some form of mobility impairment. The reduction in urban sprawl does not only have an objective to reduce dependency on private motor vehicles but also to reduce the rate at which green space – natural bushland and agricultural land on the urban fringe is impinged by urban development.

Closely related are the heritage overlays which may have been poorly determined by one or two heritage ‘objects’ rather than broader attention to the character and cultural significance of the neighbourhood.

ResCode permit applications, for example, to develop small dwellings on very small allotments (less than 300m²) or in difficult site circumstances could be adversely impacted by paying too much attention to the particular design or period of adjacent buildings rather than noting that the overall character of the neighbourhood is one primarily of residential use and that the use is consistent with the neighbourhood. To protect areas of high heritage worth, heritage overlays can be applied to maintain relevant integrity. These need to be applied judiciously. Areas outside these controls should then be considered more broadly in relation to the wider neighbourhood character, allowing for future growth, incorporation of latest building standards, and our future heritage.

Neighbourhood character also changes with the local population. For example many of the suburbs where ‘Baby Boomers’ and ‘Gen X-ers’ grew up, forty or fifty years ago, were characterised by young families with children playing in the streets and generous front lawns. These may now have largely changed and be comprised of retired couples or lone older adults, or young adults share-housing in unrenovated investment properties.

Attention to property maintenance and gardens may have altered the visual landscape from their original idyllic historic original suburban context. The neighbourhood character is not just determined by physical attributes of the dwellings but who resides in the neighbourhood and their activity patterns.

In this context, some owner-occupiers may seek to subdivide properties – to achieve multi-occupancy such that the original ageing owner occupier is able to remain in the neighbourhood and enjoy a new dwelling with adaptive features and low maintenance requirements for the remainder of the time that they choose to live in the property.

Creating certainty for neighbours

Certainty is an important issue for both the applicants in the planning process and the neighbours.

Applicants need to be certain about attaining the desired amenity outcome for the property. This is particularly important for existing owner-occupiers who wish to remain in the neighbourhood by renovating or altering their dwelling or re-building altogether in situ.

Local neighbours do not want the uncertainty of detracting levels of amenity – especially:

- overshadowing,
- diminishment of green space through loss of front or rear gardens,

- increasing traffic,
- more cars parked in the streets and
- loss of the sense of community through housing geared towards shorter term occupancy.

Faced with continually rising land prices, the market may not support the purchase of a dwelling by owner occupiers who can also finance the cost of necessary extensive renovations which approach the cost of building a new dwelling. Under these conditions developers – owner investors – will seek to purchase the property with a view to total redevelopment involving full demolition and rebuilding. The cost of the underlying land will determine that profitability will be maximised through multiple dwellings on the allotment.

There is a certain inevitability in this pattern, and it aligns to the government’s desire to achieve infill development and reduce urban sprawl for the above-mentioned reasons. It also goes part way to addressing growing housing affordability problem. The average wage continues to diminish in its capacity to pay for housing whether this is servicing a loan or paying rent. In either circumstance, the average wage earner cannot rent or purchase the same amount of house and land compared to a generation previous. Reducing affordability is necessarily accompanied by reduced dwelling and/or allotment sizes.

With an acceptance of all these factors at play, what should be aimed for is good design that does not impact the amenity enjoyed by neighbours and continues to promote the neighbourhood as a desirable place to reside.

Existing neighbourhood character can often be improved by good design which may not always reflect the long-standing neighbourhood character but could guide a move to improve the existing character.

Innovative designs, that are very different to a prevailing historical period that might be represented to some degree by individual properties in the neighbourhood, need not detract from the neighbourhood’s desirability, aesthetic appeal, neighbours’ amenity, nor quality of the final built form.

The current multiple strategies of the Victorian Government to mitigate climate change and bring about longer-term sustainability are acknowledged in the introduction section of this submission.

We note the important contribution that retaining heritage buildings can make to reducing embodied carbon, in an adaptive re-use context. Recycling or upcycling buildings can make good sense if this is supported by sustainable design including construction and materials.

However we also note that the right balance needs to be struck in neighbour character responses between using materials which ensure good long-term sustainability performance, as well as the materials themselves having low embodied carbon and being able to be sustainably sourced. As an example a proposed project undertaken by one of our member-architects in a heritage context included a front facade using light weight walls (which provided better thermal performance). However, for purely subjective aesthetic neighbourhood character reasons, the local government authority instructed the architect to use face brick. It is scenarios such as this where a design review panel could provide appropriate insight into what is appropriate in a holistic manner for both the building and the neighbourhood

In this regard, certainty can only be achieved by revisiting and recalibrating community expectations. The relevant authorities need to invest in community consultation and engagement about what they expect from their neighbourhoods. Once an agreement or conclusion has been achieved, then this should be clearly articulated for the relevant zone.

As far as possible, the key neighbourhood characteristics, insofar as built form is concerned, can have certain base parameters expressed as quantifiable standards. These performance measures should be developed as an outcome of the consultation process.

Certainty is probably best achieved by then maintaining these standards or performance measures. This means in practice, consistently approving only those applications that adhere to the performance measures and consistently not allowing objections on applications that meet the performance measures. Certainty will be increased when the right signals are consistently sent to both applicants and neighbours alike.

3.3 Expectation of issues.

Do you expect any issues with the new assessment model

We also expect issues in relation to the appraisal of performance criteria which is qualitative assessment. The performance criteria will continue to be appraised by planners.

ResCode / the Victorian Planning Provisions do not simply guide decisions on land use, but guide land use in relation to appropriate design responses in a given land use context.

Planners are not comprehensively trained nor qualified in design. Design responses in respect of performance criteria should be appraised by appropriately credentialled persons. This means using practitioners who have the required training, experience and evidence of attained competencies and licencing, registration and other accreditation where this is applicable.

The Institute recommends that:

- **All local decision-making authorities (i.e. local government) should establish or have access to a pool of design expertise through an architect as well as other specialists where relevant, such as landscape architects and appropriately credentialled heritage specialists. This can be achieved through either or a combination of direct engagement of appropriately credentialled persons or the establishment of design review panels.**

One option to have design expertise available at the level of the relevant authority is to employ or contract architects and other design professionals and specialists in planning departments. An alternative is to establish Design Review Panels (DRP).

In whichever way expert design input is acquired, the design that they might review includes not only the individual buildings on their site, but also the development in the context of its neighbourhood precinct.

The need to include design expertise in planning application appraisals is further underscored by the emphasis on neighbourhood character as central to improving the operation of ResCode FAQ on Engage Victoria summarises thus,

The new assessment model maintains neighbourhood character as the starting point for assessing residential development.

It provides a new opportunity for planning authorities to specify local neighbourhood character and detailed design requirements more precisely in ResCode. This provides greater clarity and consistency about important neighbourhood character considerations in the planning scheme and reduce confusion when applying neighbourhood character policies.

The new assessment model offers an opportunity to introduce more structure and certainty around neighbourhood character, allowing decision making to be more focussed on neighbourhood character outcomes.

In particular the discussion paper proposes as one of three broad overall changes to introduce a new opportunity to specify neighbourhood character performance measures, and more specifically,

more precisely specify performance measures for Neighbourhood Character (A1 & B1) and Detailed Design (A19 & B31), within the planning scheme in the schedules to residential zones. (p.12 Improving the operation of ResCode Discussion Paper)

We note that in relation to 55.06

Standards A19 and B31 in respect of Clauses 54.06 and 55.06 for Detailed Design respectively⁷ both state that

The design of buildings, including:

- *Facade articulation and detailing,*
- *Window and door proportions,*
- *Roof form, and*
- *Verandahs, eaves and parapets,*

should respect the existing or preferred neighbourhood character. Garages and carports should be visually compatible with the development and the existing or preferred neighbourhood character. (Victorian Planning Provisions V_19 November 2021)

However, as discussed in our response to the previous question, this presents a risk of:

- replicating neighbourhood character that may have been derived from older studies where the character may no longer meet current residents' aspirations,
- unnecessarily prescribing a detailed sign features such as specific colour of a façade or roof, the angle of a gable, about which *most* local residents may not be very be concerned. However, residents may be very concerned about avoiding negative outcomes associated with a residential building's size, overshadowing, setbacks – the overall streetscape, scale and public realm.
- not gaining the benefits of innovative design responses that do not typify the original buildings in the neighbourhood that may have been used as the basis to determine neighbourhood character. However, these innovative responses may, in

⁷ Clause 54 overall sets out the objectives for one dwelling on a lot as does Clause 55 for two or more dwellings on a lot and residential buildings

every other respect add to neighbourhood character. This issue could be largely resolved through access to design expertise to appraise the design response.

3.4 Perceived benefits.

Do you think there are benefits to the new assessment model?

In addition to the conditional benefits already discussed, the Institute predicts that potential benefits may arise from savings in information handling and digitisation. The performance assessment modules will help to establish rules or algorithms for digital planning approvals platforms which would assist online self-service systems. The new model has the potential to reduce requirements at the front end in respect of local government planning personnel being required to perform data entry. Digitisation may augment initial approvals stages in respect of quantifiable Performance Measures. This 'digital-ready' dividend is considered extensively, especially on pages 23 and 42 of the consultation discussion paper.

Using such a self-service digital model could be beneficial if applicants are able to receive an initial evaluation of whether Performance Measures are deemed to have been met prior to actual lodgement. If applicants can save their initial application and then make amendments to their proposal, this would save time and resources for both the applicant and the planning authority. These savings could be re-invested into the planning authority to set up design review panels and enhanced processes for more complex sites to further improve the planning process and its efficiency. However, there is a risk with a 'self-service' approach that some applicants or developers could 'game' the process. There is a risk that simply 'designing by numbers' alone might still enable poor design responses to be legitimately approved.

3.5 Easier assessment

The new assessment model will make it easier for local councils to assess a planning permit application.

Major benefits for local councils might be those associated with digitisation of planning applications and less decision making where Performance Measures can be fully relied upon to meet Performance Objectives. However, many Performance Objectives may still require the appraisal of Performance Criteria where no Performance Measures have been specified or any Performance Measures have not been complied with. The appraisal of Performance Criteria is one which focusses on qualitative aspects.

ResCode particularly pertains to permit applications in the middle and established suburbs and urban precincts of the inner suburbs where infill development /densification is also occurring. As more in-fill dwelling applications are proposed, and having particular regard to very small allotments < 300m² in inner suburbs, an increasing proportion and number of ResCode applications may be a challenge to achieve the Performance Measures in the 'first pass' appraisal via a Performance Assessment Module.

A greater proportion of applications may still default to appraisal against Performance Criteria. This again means appraisal of qualitative elements and the design response. This might not be any easier than the current process. In the absence of sufficient design expertise to inform planning decisions, and keeping the door open all the way through the PAM process for objections and submissions to be considered, the relevant authorities may refer the application to VCAT for determination.

3.6 Easier compliance.

The new assessment model will make it easier for applicants to comply with planning requirements.

It may be more difficult in some instances. For example in Clause 54.03-5 Energy efficiency protection objectives, under Standard A7

“Living areas and private open space should be located on the north side of the dwelling, if practicable.”

However, in the proposed A7 Energy efficiency protection Performance Assessment Module, the Performance Measure simply states, *“Living areas and private open space are located on the north side of the dwelling.”*

In a small dwelling fronting to the North it may be impracticable to achieve private open space and living areas if the proponents wish the major (or only) living area to front the private open space in the South oriented backyard. In its original version Standard A7 refers uses the modal verb “should”, but further qualifies the provision with the conditional clause *“if practicable”*.

Similarly, in Clause 54.03-6 Significant trees objectives, Standard A8 includes,

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

However, the proposed performance measure for A8 Significant trees simply states,

“Existing significant trees on the site are retained”.

The conditional clause has been removed and also the requirement for the planting of trees.

In both examples this goes beyond mere language and the removal of the ‘deontic modal verb’ as noted on page 17 of the discussion paper. In the case of the first example it would likely be more difficult for the applicant to comply with the performance measure in a dwelling fronting to the north, which would mean the Performance Measure is not met, and would need to be assessed on the basis of the Performance Criteria.

While removal of the deontic modal verbal places Performance Measures in objective and unweighted terms, removal of conditional clauses changes the meaning as the conditional clauses set conditions under which a standard or criteria are expected to be met and acknowledges the conditions which make this highly improbable.

The Institute therefore recommends that:

- All mapping of Standards to new Performance Measures and all mapping of criteria pay attention to maintaining the intent of the original VPP clauses when the PAMs are being drafted.

3.7 Changes to Victoria’s planning schemes.

Because of the new assessment model, the paper highlights the changes that will be required to Victoria’s planning schemes. Are further changes required?

We have already noted that:

- Greater certainty might result if all local planning schemes were to review schedules to the zones within those schemes and, subject to community consultation, give specification to the Performance Measures.
- Neighbourhood character studies, especially those undertaken more than ten years ago, are revised in light of changing demography, and the imperatives on residential land use brought about by the need to address climate change and decreasing housing affordability.

In addition, where councils undertake masterplans, with extensive stakeholder consultation and council approval for adoption, these outcomes should be incorporated into the local scheme, as otherwise they have little standing from a legal perspective if they are only referenced. A sometimes-reported problem with local councils is that their masterplans may not be incorporated. This is then a point of significant frustration to the local community.

Developing a strategy to incorporate these documents may not fit to the current proposed changes to the operation of ResCode. If this is the case, we suggest this matter be given consideration as part of future reviews of other aspects of Victoria's planning processes.

3.8 Other changes to the new assessment model.

What improvements could be made to the new assessment model?

The new assessment model does not provide a designated pathway for stakeholders, including immediate neighbours and the broader neighbourhood community, to lodge their concerns or objections. If it were to do so, it could also clearly specify and communicate to the stakeholders the relevant cut-off points or criteria for objections. This could include whether or not Performance Objectives were met and therefore, if an objection on a specific Performance Objective cannot be considered.

Moreover, the model does not demonstrate how referral to a determining authority such as the Victorian Civil and Administrative Tribunal is avoided.

Stakeholder and community input is important. However, in order to reduce the likelihood of objections leading to adversarial determinations in VCAT, community input and views should be established early in the agreement in establishing neighbourhood character overlays.

As indicated earlier, a greater proportion of applications may still default to appraisal against Performance Criteria because they will not meet the Performance Measures. This again means appraisal of qualitative elements and the design responses. This might not be any easier than the current process.

The Institute recommends that to improve the operation of Victoria's planning schemes:

- **Rather than a one size fits all linear process, two or three application streams could be used so that the double-handling and passing-through delays to the next step are avoided and the most appropriate assessment methodology is applied.**
- **Applications relying heavily on qualitative appraisal of design are fast tracked to appraisers with sufficient design expertise. This would avoid unnecessary double-handling of applications.**

We note that this recommendation would be augmented by our previous suggestion of a ‘self-service’ digital platform,

3.9 Identifying and protecting neighbourhood character attributes.

The new assessment model makes it easier to identify and protect neighbourhood character attributes.

The new assessment model may make it easier to identify and protect neighbourhood character attributes where these are codified into quantitative parameters such as heights and setbacks. However as discussed above, neighbourhood character assessments may be out of date. Neighbourhood character based on historic perspectives (sic “Keep things just as they are”) rather than a future focussed aspiration that is adaptive to climate change, reduced housing affordability, population growth and social inclusion may risk stagnating neighbourhoods.

Owner-occupiers will likely be more vocal in raising objections and making submissions. The simple ‘weight of numbers’ should be discounted as a non-valid means to protect neighbourhood character assessments as there is an inherent sampling bias when a street full of owner-occupiers can be readily encouraged to take the time to raise objections or make submissions. A similar street with a greater proportion of occupants who are tenants may see fewer objections or submissions. Moreover, at the level of council, local political pressure exerted through the elected councillor for a given ward by owner-occupiers as rate payers will possibly exert greater influence.

On this basis neighbourhoods whose occupants are less vocal or articulate (including English language proficiency) or whose occupants see a greater proportion of renters on month-to-month and/or twelve month tenancy agreements⁸ may be compromised in their ability to identify and protect neighbourhood character attributes, or simply not have the longer term vested interest to do so.

Ultimately, higher social economic neighbourhoods with greater proportions of owner-occupiers will preserve long held characteristics and vehemently resist any form of change. A phenomenon evolves where lower socio-economic neighbourhoods with higher proportions of renters or people with low-English proficiency or insufficient technical/legal literacy to engage with submission processes will simply be passive recipients of ‘passable’ planning applications.

The volume of planning approvals made this way will more rapidly alter the characteristics of those neighbourhoods. In this way a socio-economic demarcation or gradient is created.

This raises a particularly important social-equity question for governments whether local residents in a neighbourhood, if they own their dwellings or not, should become subject to changes in neighbourhood characteristics, especially brought about by developers or owners who do not have to live with the consequences.

⁸ Average tenure was 22 months in Melbourne in the 2021 June quarter, ranging from 18 months for a single bedroom property to 24 months for 3 bedroom property. However this data is calculated from the refund of bonds. As such it may mask initial 12 month agreements that are converted to monthly after the first 12 months without any refund of the bond. Data source: Victorian Department of Families, Fairness and Housing, Rental Report June 2021 (current), <https://www.dffh.vic.gov.au/publications/rental-report>

3.10 Communicating neighbourhood character attributes

Do you think the new assessment model provides a better framework to communicate important neighbourhood character attributes?

In the same vein as the above response, the new assessment model provides a better framework to communicate important neighbourhood character attributes if the elements of the framework are accurate and relevant. It is not a better framework if the framework itself is not implemented with sufficient contemporary understanding of neighbourhood character attributes that has been developed from up-to-date studies, consultation with residents (not just owners) and is not based upon wholistic parameters.

This comes down to a question raised earlier as to whether neighbourhood character is simply defined by a particular aesthetic, described by those sorts of quantifiable parameters such as street, side and rear setbacks; site coverage; walls on boundaries; front fences; and height; landscape as discussed on page 32 of the discussion paper or whether it is more broadly encapsulates the amenity enjoyed by its residents and continues to promote the neighbourhood as a desirable sustainable place to reside.

Two buildings may encapsulate the same quantitative elements but be very different in terms of the impacts on the amenity of neighbours (and its occupants), the quality of the built form and its durability over time (we note the recent Apartment Design Guidelines have sought on the recommendation of the Institute to require durable facades).

Some quantifiable parameters may enable negative elements of design to be avoided, that detract from neighbourhood amenity for both occupants of buildings and neighbours. However, the mere avoidance of bad design does not amount to the achievement of good design. However, communicating good design is not easy. In order to do so, and without limiting innovative design responses,

The Institute recommends providing a better framework to communicate important neighbourhood character attributes by:

- including 'good design' as a parameter when implementing a framework of the new ResCode assessment model.
- providing greater attention and ensuring greater investment by relevant authorities in providing regularly updated visual case studies of good design to be communicated to all stakeholders – not just planners and designers, but property owners and neighbours as the important stakeholders in neighbourhoods.

We also note that without sufficient experience or the trained ability to visually interpret numerical dimensions and proportions into a sense of what might result from a planning provision, other tools need to be used to communicate this. This might be simple as accurate graphic examples whose visual dimensions and proportions accurately represent the parameters. Modern computer aided design and digital renders could also be used to provide 3D or 'walk through 3D examples on a 2D display so that the framework can be more easily communicated.