

CONSULTATION DRAFT

52.XX RESIDENTIAL AGED CARE FACILITY

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Proposed
Provision

Purpose

To facilitate the development of Residential aged care facilities.

To recognise that Residential aged care facilities have a different scale and built form to the surrounding neighbourhood.

To ensure Residential aged care facilities do not adversely impact on the amenity of adjoining neighbours.

52.XX-1 Scope

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Proposed
Provision

This clause applies to the construction of a building or the construction or carrying out of works associated with a Residential aged care facility in a:

- Neighbourhood Residential Zone
- General Residential Zone
- Residential Growth Zone
- Mixed Use Zone
- Township Zone

If a zone, overlay or schedule specifies a different requirement from any requirement in this clause, the requirements in this clause apply except where a Heritage Overlay, Floodway Overlay, Land Subject to Inundation Overlay, Special Building Overlay or a Bushfire Management Overlay applies.

52.XX-2 Permit requirements

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Proposed
Provision

A permit is required to construct a building, or construct or carry out works associated with a Residential aged care facility.

52.XX-3 Requirements to be met

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Proposed
Provision

The following requirements must be met:

- A front fence within 3 metres of a street must not exceed 1.5 metres in height.
- The building height must not exceed 13.5 metres.
- Car parking must be provided at the rate of 0.3 car spaces to each lodging room.
- The site coverage, including a driveway, pedestrian path, and an area set aside for car parking, must not exceed 80 per cent of the site area.
- The following standards found at Clause 55 of this scheme:
 - B6 'Street setbacks' (does not include a porte cochere.)
 - B17 'Side and rear setbacks'
 - B18 'Walls on a boundary'
 - B19 'Daylight to existing windows'
 - B20 'North facing windows'
 - B21 'Overshadowing open space'
 - B22 'Overlooking'
 - B24 'Noise impacts'
 - B27 'Daylight to new windows'
- The main entry to a building (including a porte cochere) must be designed to:
 - Have direct vehicle and pedestrian access from a street.
 - Be sheltered from the weather.

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- Have convenient pedestrian and vehicle access from on-site car parking.
- Access ways designed to the satisfaction of the relevant road authority.

52.XX-4 Variation to a requirement

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Proposed
Provision

A permit may be granted to vary any of the requirements of Clause 52.XX-3.

52.XX-5 Information requirements

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Proposed
Provision

An application must be accompanied by the following information as determined by the responsible authority:

- A design response which explains how the proposed development responds to the site and context description and responds to the requirements of this clause.
- A copy of title for the subject land and a copy of any registered restrictive covenant.
- A proposed site and layout plans, drawn to scale and fully dimensioned showing:
 - Site shape, size, orientation and easements.
 - Existing levels of the site and the difference in levels between the site and surrounding properties.
 - Location of existing buildings to be retained.
 - The location of buildings, secluded private open space and habitable room windows of surrounding properties which have an outlook to the site within 9 metres.
 - Proposed levels of the site and the difference in levels between the site and surrounding properties.
 - The location and layout of all proposed buildings, habitable room windows including finished floor levels and setbacks.
 - Proposed landscaping and open space areas.
 - Proposed crossovers, driveways, onsite car parking, service and delivery areas.
 - All external storage, waste areas and services.
- An elevation plan, drawn to scale showing the height, colour and materials of all buildings and structures.
- Shadow diagrams showing proposed shadows.

52.XX-6 Exemption from notice and review

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Proposed
Provision

An application which meets all of the requirements of Clause 52.XX-3 is exempt from the notice requirements of section 52(1) (a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

52.XX-7 Decision guidelines

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Proposed
Provision

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

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Whether the permit requirements outlined in Clause 52.XX-3 have been met.
- How the proposed development responds to the site and context description.
- The impact of any building height above 13.5 metres, when viewed from the street and/or a side street.
- The impact of any reduced on-site car parking on neighbouring streets and associated traffic management.
- The impact on the amenity of existing dwellings and proposed amenity for future residents.

Facilitating Residential Aged Care Development

Proposed reforms to the *Victoria Planning Provisions*

DECEMBER 2017

Feedback is invited on proposed changes to the *Victoria Planning Provisions* (VPP) to facilitate the development of Residential Aged Care Facilities (RACF).

Purpose

The Minister for Planning has requested the Department of Environment, Land, Water and Planning to prepare draft changes to the VPP and all planning schemes to support appropriately designed and located RACF developed in established residential areas to cater for an ageing population.

The need for change

By 2051 it is estimated that 27% of all Victorians will be older than 60. The middle and outer suburban areas of metropolitan Melbourne will experience the largest proportion of this projected change.

The responsibility for the planning, delivery and funding of health and ageing services is a shared responsibility between all levels of government, the private sector and the not-for-profit sector.

Victoria's primary policy objective is to ensure that access to aged care services is available for all those who need them within the communities which they live.

Policy context

In March 2017, the Victorian Government released the housing strategy, *Homes for Victorians* to provide certainty in planning and housing supply and to coordinate cross-government issues to achieve housing affordability, access and choice. *Homes for Victoria* complements *Plan Melbourne 2017 – 2050* which focuses on the need to streamline approvals processes for specific housing types including RACF development to ensure that future community needs are met.

In July 2016, the *Managing Residential Development Advisory Committee – Residential Zones Review* identified the need for residential zones to provide greater support and flexibility. The Committee concluded that:

- There is strong planning policy support at a State level to facilitate RACF development and to enable 'ageing in place'.
- The maximum building height controls in the current suite of residential zones do not support State planning policy support for facilitating RACF development.
- RACFs should be excluded from mandatory maximum building height requirements and some ResCode requirements.
- A working group, with representatives from industry, peak bodies, councils and state government, has been established to provide advice in developing new RACF planning controls to ensure their timely and cost effective delivery.

How are RACFs currently considered in the VPP?

The State Planning Policy Framework via Clause's 16.02-3 and 16.02-4 outline the following objectives with regard to RACFs:

- To facilitate the timely development of RACFs to meet existing and future need; and
- To encourage well-designed and appropriately located RACFs.

An RACF is defined at Clause 74 of the VPP 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"

The RACF definition is nested under 'Residential building' and includes 'nursing home' within the overarching 'Accommodation' group of land use terms.

A RACF is also defined by the Building Code of Australia as a Class 9c building, with the following general description outlined in Practice Note 2014-30 issued by the Victorian Building Authority:

"RACF buildings may house children, disabled or aged persons, who need physical assistance in conducting their daily activities, and help to evacuate the building during an emergency. The BCA classification will depend on the building size, population and resident characteristics."

The use of land for a RACF does not require permit (as-of-right) within the following residential zones (the zones):

- Neighbourhood Residential Zone
- General Residential Zone
- Residential Growth Zone
- Mixed Use Zone
- Township Zone

Currently a permit is required for the building and works component of a RACF proposal due to its definitional relationship with 'Residential building' within the zones. As a result, a RACF proposal must be assessed under the full building and works requirements of the zones which include assessment against the requirements found in ResCode (Clause 55) of the VPP and any mandatory building height, minimum garden area, or any other requirement outlined within the zones.

A RACF proposal is a section 2 use (permit required) within the Low Density Residential Zone. A permit for buildings and works is required for any section 2 use.

What changes are proposed?

The following reforms are proposed to the VPPs and all planning schemes:

1. At Clauses 74 and 75, relocate the definition of 'Residential aged care facility' from under 'Residential Building' to under 'Accommodation' and remove 'Nursing home' as a defined use.
2. Introduce a new RACF focused Particular Provision at Clause 52 (the draft provision).

Why relocate the definition?

The current location of the RACF definition of Clause 75.01 under 'Residential building', means an assessment against Clause 55 (ResCode) is required for buildings and works within the zones.

Relocating the RACF definition to under 'Accommodation' will mean that the use will remain as-of-right and an assessment of the buildings and works component is moved from the zones to the draft provision.

What is the scope of the draft provision?

The draft provision will apply to the use and development for a RACF:

- as defined at Clauses 74 and 75 of the VPP; and
- within the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone, Mixed Use Zone or Township Zone.

The draft provision will override other requirements in a planning scheme where a similar requirement is outlined in a zone or an overlay except where the following overlays apply:

- Heritage Overlay
- Floodway Overlay
- Land Subject to Inundation Overlay
- Special Building Overlay
- Bushfire Management Overlay

Other requirements outlined in a zone or overlay, such as vegetation or buffer protections etc, will continue to apply.

How will a RACF be considered under the draft provision?

A planning permit will be required for buildings and works associated with a RACF. A RACF will be required to meet a suite of requirements which are aimed at reducing impacts on neighbouring amenity and other matters which include:

- maximum front fence height
- maximum building heights not exceeding 13.5 metres

- car parking provided at 0.3 car spaces to each lodging room
- site area covered by buildings, including driveways, pedestrian path and area set aside for car parking, not exceeding 80 per cent of the site area
- meeting the following standards from ResCode (Clause 55):
 - B6 'Street setback' (excludes porte cochere)
 - B17 'Side and rear setbacks'
 - B18 'Walls on a boundary'
 - B19 'Daylight to existing windows'
 - B20 'North facing windows'
 - B21 'Overshadowing open space'
 - B22 'Overlooking'
 - B24 'Noise impacts'
 - B27 'Daylight to new windows'
- building entry point (including a porte cochere) to:
 - have direct access from a street
 - be sheltered from the weather
 - have convenient access from on-site car parking
- accessways designed to the satisfaction of the relevant road authority.

A permit may be granted to vary any of these requirements.

How have these requirements been determined?

In 2012, a working group provided advice to the then Minister for Planning on the proposed requirements to streamline RACF within the VPPs.

That working group and overall process undertook a thorough assessment of the requirements contained within Clause 55 of the VPP in consultation with the RACF industry and local government to determine what requirements were needed for appropriate consideration and assessment of RACFs.

In September 2017, the project working group was reformed to reconsider those conclusions and other matters that have since emerged to inform the draft provision.

Exemption from notice and review

The *Planning and Environment Act 1987* requires a responsible authority to decide whether to give notice of a permit application unless the planning scheme directs otherwise.

The draft provision proposes to exempt notice of an application being given if all requirements listed in the draft provision are met.

Where a requirement is to be varied, the responsible authority will have the discretion to consider the appropriateness of the variation and determine whether notice of an application is required to be given.

How do I provide feedback?

The Minister for Planning will consider stakeholder feedback in deciding whether to introduce the reforms to the Victoria Planning Provisions and all planning schemes.

For more information on the proposed reforms, copies of the draft provision and to provide feedback visit: www.planning.vic.gov.au/residential-aged-care

Feedback must be provided by **5:00pm Friday, 16 February 2018**.

For more information, please email: planning.systems@delwp.vic.gov.au. Or call the Victorian Government Contact Centre: 1300 366 356.

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Reforming the Victoria Planning Provisions – Facilitating Residential Aged Care Development

Submission to Victorian State Government

Nillumbik Shire Council

13 February 2018

Victorian Planning Provisions Review

Contents

1.	Introduction and Background Context.....	1
1.1	Understanding the context of providing aged-care housing in Nillumbik.....	1
2.	Strategic.....	2
2.1	A first step but more required.....	2
2.2	Controlling change of use.....	3
2.3	Location of aged care housing in urban areas?.....	3
2.4	Rural aged care housing needs.....	4
3.	Statutory planning comments.....	5
3.1	Site Coverage.....	5
3.2	Building height.....	5
3.3	Built form presentation.....	6
4.	Conclusions.....	8

1. Introduction and Background Context

Nillumbik Shire Council (Council) welcomes the opportunity to consider the draft Residential Aged Care Facilities (RACF) 'Particular Provision' (the draft Particular Provision) which has been released for public consultation.

1.1 Understanding the context of providing aged-care housing in Nillumbik

Overall, the Council recognises the challenges facing metropolitan Melbourne in terms of providing appropriate housing for the elderly as well as other forms of affordable and social housing.

The Nillumbik Shire Council area has the largest proportion of ageing baby boomers within its population of all metropolitan Councils.

By 2036, the number of persons aged 55 years and over is expected to increase by almost 4,600, meaning that by 2036, one in three residents in Nillumbik will be aged 55 and over – up one in four from 2015.

The number of households with persons aged 55+ is forecast to increase by 3120 between 2015 and 2036. The majority of this growth will be in smaller household types of 'empty nesters' and old lone person households. It suggests there will be a significant need for 2 and 3 bedroom dwellings to better meet these needs. Even in the age cohort of 80 year plus, 87% of people living in 1-2 bedroom households live in large family homes. 27% of over 80s live in 4-bedroom dwellings.

The majority of housing in Nillumbik is larger, detached family homes (94% of all housing). This lack of diversity will increasingly create a mismatch between supply and demand. It is a challenge for the municipality and one that will need to be addressed through an integrated approach to land use planning and strategy across both urban and rural areas.

With regard to aged care housing, the Nillumbik Shire Council is acutely aware of these issues given its ageing population coupled with a predominantly rural landscape. These bring their own challenges, including a desire within the community for people to 'age in place' such as through downsizing to more appropriate accommodation locally rather than needing to move beyond our municipal boundaries. It also extends the challenge from urban areas to rural communities in our Shire.

Council also reinforces the needs of providing appropriate and affordable housing for different sectors of our community, not just aged care, extends beyond the more intensified inner metropolitan areas and is also a genuine issue to interface, peri-urban and rural Councils/ areas.

It is in the context of the above that the Council's comments and recommendations are set out herein.

2. Strategic

Comments and recommendations

2.1 A first step but more required

The release of the draft Particular Provision is one step toward addressing the need for more inclusive housing options. Other mechanisms are still likely to be required in order to ensure that aged care housing is delivered in an affordable manner and in the locations where it should be provided, such as in and around activity centres as well as addressing aged care needs in more rural communities.

Council makes the comment that the draft Particular Provision is somewhat rudimentary in approach. The intent of the draft Particular Provision appears to simply allow aged-care providers to extract more from a residentially zoned site than a typical market residential development proposal might otherwise. It does this by encouraging greater height and site coverage for aged care housing development, which should (in theory) provide an ability to deliver more housing units. In turn this will enable aged care housing developers to compete better for land knowing they can extract more from it. This is a market focused approach.

The draft Particular Provision also proposes to waive planning controls, such as mandatory maximum height controls in residential zones and remove third party notice and appeal rights (where a building would not exceed the new height controls).

It places an uncomfortable focus on encouraging bulkier built form ahead of good design led outcomes. In this context, the draft Particular Provision sets a height requirement that generally exceeds the maximum permissible building height in the residential zones. It then also provides further discretion to apply for a permit to exceed any height limit further. Further comment is made about building height under the statutory planning comments later at Section 3.2.

The mandatory nature of current height controls within the residential zones does not allow any discretion to exceed maximum building heights, even where exceptional architecture or design outcomes may prevail. This indicates that building height is a sensitive planning matter, particularly in areas with lower density characteristics or landscape values, such as the Neighbourhood Residential Zone (NRZ). The proposed generic draft Particular Provision does not appear to acknowledge any locally distinct issues. It is unclear why such local sensitivities are considered less relevant to aged care housing given it is the building and its form that is the key issue in any local context which will create a legacy in its local context.

Council also question whether this approach would facilitate integrated aged care housing in areas such as Nillumbik. Encouraging facilities that provide combined housing options for younger new retirees through to those requiring full time care may not be stimulated by the rather simplistic draft Particular Provision – which appears to focus only on building height and mass as a solution to land supply for RACF facilities. Vertical aged care is only one model – but other solutions and approaches are required.

Council recommendation 1:

- 1) Introduce greater discretion for local building height controls (see also recommendations under Section 3.2); and

- 2) Require any development proposal for an aged care facility that wishes to exceed the maximum height of the zone to demonstrate exceptional architectural and design outcomes, preferably by requiring it to be reviewed by a new aged care design review panel within the Office of the Government Architect (OVGA).
- 3) Contemplate other levers to facilitate RACF development, including inclusive zoning, State Government land sales or land taxes for example rather than the rudimentary built form approach proposed by the draft Particular Provision. This should apply to all forms of aged care, social, key worker and affordable housing provisions. It may also help to provide diversity of aged care provision forms also, rather than a focus on taller vertical solutions.

2.2 Controlling change of use

The use of a building for aged care, such as an apartment style building, will be as-of-right within the residential zones where the draft Particular Provision would apply i.e. no use permit will be required. The future use of an 'aged care facility' for the purposes of 'dwelling' would also be as-of-right.

How does the State Government intend that an aged care facility building, which may benefit from additional height exemptions, will not be used in the future for the purposes of 'dwelling' when all that may be required is a car parking dispensation (and which assumes parking rates don't also change e.g. to maximums rather than minimums?) Is it anticipated that every Council will need to require a Section 173 Agreement over the land limiting the use and sale of units to those over 60 in order to ensure that the aged care Particular Provision does not provide a 'back door' method of establishing regular market housing?

Council Recommendation 2:

That the State Government further contemplates whether the draft Particular Provision should include mandatory conditions that would require any land to be retained for the use of aged care housing to carry with the title.

2.3 Location of aged care housing in urban areas?

The draft Particular Provision does not establish any test for the location of aged care facilities. The Council asks State Government why it is that RACF are not being prioritised close to local services, facilities, amenities by walking and/ or public transport. Fostering continued participation in community life without need for a car should be a key objective of providing inclusive housing opportunities, particularly for those with more limited mobility. State Government policy, notably Plan Melbourne makes housing in the right locations a key objective.

A key Plan Melbourne Direction is Direction 2.1 (replicated below):

Direction 2.1 *Manage the supply of new housing in the right locations to meet population growth and create a sustainable city.*

The social, economic and environmental benefits of creating a more compact, sustainable city are profound. Some of the benefits of compact, higher-density neighbourhoods are as follows:

Under the heading 'Social', Direction 2.1 continues as follows:

Social

It encourages positive social interaction and diversity, improves the viability of (and access to) community services and enables more (and better integrated) housing.

Council Recommendation 3:

That consideration of a community services and accessibility assessment test ought to be built into any planning permit application requirements to help encourage aged care housing to be provided in the appropriate locations for its intended occupiers and that occupiers will not be isolated.

2.4 Rural aged care housing needs

The draft Particular Provision has a very urban focus and would not apply to rural zoned land, as it is currently drafted.

For Council, appropriate housing for the ageing is a genuine issue, particularly those who wish to remain within the landscape and to remain close to family. Providing different housing options will also be an important factor in enabling housing to be recycled for new generations, which in turn enables rural areas to continue to regenerate and thrive.

The Council encourages the State Government to contemplate how appropriate aged care housing might be provided in rural communities also as part of a more integrated approach to housing. This would enable interface and predominantly rural Councils to undertake better informed strategic planning to meet changing housing needs across an entire municipality, including aged care provision.

A more immediate response that could be considered under the scope of the current review may be to consider what comprises the '*Dependent Persons Unit*' definition within Clause 74 of the Victorian Planning Provisions to determine if this is now too limiting, particularly within rural communities.

Council Recommendation 4:

That the State Government adopt an integrated approach to providing greater housing diversity and provide clear and early direction about the intent for providing aged care housing in either rural or predominantly rural areas, which face housing pressures of their own. This would enable Councils to undertake fully informed strategic planning decisions.

Council will continue to advocate on this need with State Government through other land use planning forums.

3. Statutory planning comments

3.1 Site Coverage

Under draft Clause 52.XX-3, the draft Particular Provision states that site coverage should not exceed 80%.

This again has no regard to local context. Relevant to Nillumbik and localised characteristics, 80% site coverage is high and in many residential areas of Nillumbik overlays encourage strong landscape outcomes that could not be achieved with such a high site coverage. Eighty per cent site coverage is more commonly applied in the inner suburbs and Council is of the view that the site coverage specified by this draft clause should align with the site coverage of the zone and/or applicable schedule. In the case of Nillumbik, there is no schedule to a residential zone that prescribes a site coverage greater than 60%.

There is no apparent justification why 80% site coverage has been chosen for the draft Particular Provision. 80% site coverage will make it extremely difficult to achieve a positive site responsive outcome in some areas.

Council Recommendation 5:

It is recommended, for the benefit of achieving good site amenity and layout, that site coverage should:

- Not exceed the site coverage allowed by the zone without triggering third party notice and review; and
- That site coverage calculations should include courtyards, service yards and hard paved areas/structures (e.g. fire hydrant structures, waste collection areas etc). This will attempt to remove a focus on maximising site coverage.

Council Recommendation 6:

The fourth bullet point under Clause 52.XX-3 of the draft Particular Provision is somewhat confusing. It makes mention to a driveway or an area set aside for car parking – which could give rise to a situation that a second driveway or just one area set aside for car parking might count toward site coverage when in fact it should be all impermeable surfaces.

This bullet point should be reworded more simply from:

The site coverage, including a driveway, pedestrian path, and an area set aside for car parking, must not exceed 80 per cent of the site.

to

The site coverage, including any driveway, parking areas, pedestrian path, courtyards, service yards or any other impermeable surfaced areas must not exceed 80 per cent of the site area, unless a lesser amount is specified in a local schedule in response on local characteristics.

3.2 Building height

The proposed maximum height of 13.5m is excessive for the Neighbourhood Residential Zone, the General Residential Zone and the Township Zone.

The suite of residential zones encourage development that is respectful of neighbourhood character, whilst prescribing maximum heights through schedules that either reflect this existing neighbourhood character or seek to achieve a desired neighbourhood character. The standard maximum heights of the zones are set out in Table 1 below for ease of reference.

In the case of the Neighbourhood Residential Zone, the objectives clearly require applications to respond to areas that contain predominantly single and double storey development. Providing a green light for development of up to 13.5 metres (without third party notice and review) or greater (subject to third party notice and review) in such areas will likely encourage development proposals that are completely disrespectful of the neighbourhood character and, in turn, conflict with the neighbourhood character objective in the applicable zone. The overall purpose and intent of the zone would be undermined.

Table 1 - Standard maximum building height of current residential zones in the Victorian Planning Provisions.

Residential Zone as per the Victorian Planning Provisions	Maximum building height currently prescribed by the residential zone.
Neighbourhood Residential Zone (NRZ)	9m and no more than 2 storeys at any point
General Residential Zone (GRZ)	11m and no more than 3 storeys at any point
Residential Growth Zone (RGZ)	13.5m
Mixed Use Zone	No maximum
Township Zone	As per Clause 54 or 55 of the Planning Scheme @ 9m

Council recommendation 7:

It is recommended that:

- The draft particular provision should not apply to the Neighbourhood Residential Zone (NRZ); the General Residential Zone (GRZ) and the Township Zone (TZ); and
- The maximum building height should mirror the maximum height specified in the respective zone, e.g. > RGZ -13.5m.

or

- Heights should be driven by the size of the site and the applicable zone or have allowable maximum heights only on sites with an area greater than x and with minimum side/rear setbacks of x. (It is further recommended that RESCODE standards would be used to determine heights marked 'x'.)

3.3 Built form presentation

Council recommendation 8:

Built form presentation is considered critical and the requirements set out in bullet point five in Clause 52.XX-3 should be amended to include the following additional Clause 55 Standards:

- B31 Design Detail Objective
- B34 Site Services Objectives

Council recommendation 9:

Recommended changes to Clause 52.XX-5:

Information requirements should include a Car Parking and Traffic assessment and Noise impact assessment. Ultimately a responsible authority can determine if these are really required, however it would be good to state these requirements up front.

Under the third bullet point, it should also require that any elevation plan should also include natural ground levels.

Many RACF facilities have basement car parking. Earthworks and retaining walls may cause issues, and will reduce further the ability to landscape to the perimeter of the site with any meaningful landscaping. The Decision Guidelines of Clause 52.XX-7 should include the following additional requirement:

- Demonstrate that landscaping and planting will make a significant contribution to the amenity of the site and is capable of being established and maintained adequately.

4. Conclusions

Overall, Council is supportive of steps to increase the diversity and affordability of housing opportunities and help to provide RACF facilities, provided it is directed in the right locations where future residents will have access to transport services and facilities.

Good design outcomes also should not be bypassed simply to facilitate a more competitive market for the RACF industry and retaining strong design control within any Particular Provision will be critically important.

It is also important that a whole of Government planning approach is adopted to housing diversity and that interface Councils such as Nillumbik, with significant rural areas, must not be left to contemplate how changing housing needs will be provided in just one part of their municipality while the future of green wedge zones are contemplated.

Council trusts this submission and the recommendations contained herein are received in good faith and welcomes the opportunity to explore these matters in more detail with DELWP Officers.