

20 September 2024

Jim Papadimitriou
Director, Planning Systems
Department of Transport and Planning

Via email to: Planning.Systems@transport.vic.gov.au

Dear Jim

MAV submission – ResCode reform

The Municipal Association of Victoria (MAV) welcomes this opportunity to provide feedback to the Department of Transport and Planning’s (DTP) draft ResCode ‘Deemed-to-Comply’ provisions.

We are pleased that the DTP invited the MAV and all councils to participate in initial high-level codification consultation workshops. The MAV and councils supported the workshops in good faith and provided feedback on principles and approaches, particularly on neighbourhood character and operation models. This included a number of councils providing ResCode application examples to inform and test DTPs draft provisions.

Considering the condensed time to provide feedback, the MAV’s submission is a principles-based discussion with recommendations through a lens of:

- Meaningful co-design of new provisions councils will be responsible for implementing
- Transparent, consistent and fair decision making
- Ensuring provisions meet their intent in a context of significant reform to our planning system

While implementing the Housing Statement remains a priority for government, the local government sector is concerned the Victorian government has not clearly explained to communities the detail and interaction between this suite of proposed statutory reforms and the strategic policy intent.

Councils and the MAV see a need for further refinement of the provisions and deeper consideration given to the objectives of these reforms in the context of broader changes to the Victorian planning system. The government must lean more into council and industry expertise to ensure any changes meet regulatory intent and foster better homes to create thriving local places.

DTP must examine council submissions for detailed analysis. Councils have put in significant effort in a short time to provide thoughtful and constructive comments on policy direction, drafting form of the

proposed standards, and their likelihood of delivering the homes Victorian's need. [We urge DTP to carefully review and take on board the feedback provided in council submissions;](#)

Sector response to proposed ResCode provisions

In general, the local government sector wants to see these reforms succeed. Councils understand the merit in bringing ResCode and its operation into line with current housing and environmental challenges. There are some areas which generally have the sector's broad support, such as:

- Streamlined processes that reduce complexity and timeframes for councils, applicants and the community
- Updating standards to include elements of the Environmentally Sustainable Development (ESD) Roadmap
- Dwelling diversity targets in the standards

Councils have been consistent in their analysis and feedback of the proposed standards and new operation of ResCode as a deemed-to-comply model. It is the general view of council planning departments that the proposed provisions will not achieve better design outcomes as discussed in the workshops, nor expediate increases in appropriate density or housing diversity as expected by the Housing Statement. They have identified a number of issues that must be resolved and workshopped further before gazettal of the changes. These include:

- Drafting errors and inconsistency across a number of provisions
- A miss-match between the regulatory intent and the likely outcomes
- Limited review rights will create confusion about what communities can and cannot review
- Attempting to codify design detail will lead to unintended consequences and limit innovative design – which is contrary to much of the discussions that took place in the workshops
- Significant risks to councils meeting statutory timeframes for decision making, let alone ensuring good planning decisions are made
- Poor interaction with other areas of the Victoria Planning Provisions and council-led amendments that are underway

It is vital the department address these matters before implementation into planning schemes.

To assist the DTP in its review and refinement of the standards, councils would like to see and understand how testing of the new standards was undertaken, and how their examples were considered in the context of these draft provisions.

We also note that the Council Alliance for a Sustainable Built Environment (CASBE) submission has advocated for the DTP to go further with ResCode reform in integrating ESD outcomes. There was general concern across the sector, particularly within the CASBE councils, that a number of ESD provisions have been diluted. We urge the State to go further than the standards proposed by the roadmap. The MAV supports CASBE's position and their officer's analysis.

Our sector wants to continue to work with the DTP to improve ResCode. We want ResCode to be a fit-for-purpose planning tool to help us meet local housing needs, lift living standards, respond to the climate crisis, and deliver great places in a denser urban environment.

Recommendations:

- DTP carefully reviews council feedback to ensure practical implementation, consistent decision making and avoid unforeseen resourcing pressures
- DTP implement an ongoing ResCode review process with councils
- DTP shares its research and findings to give detail and context to the proposed new provisions

The administrative burden of removing Third Party Appeal Rights

Removing third party appeal rights increases the burden and risk to council planning departments. To avoid risky and costly legal challenges, ensure consistent decision making and fairness to the community when their review rights are removed, the deemed-to-comply standards must be properly drafted, consistently understood and lead to measurably better outcomes.

As councils will remain the responsible authority and assess the majority of applications to a deemed-to-comply standard, each specific provision must be incontestable. The avoidance of doubt must be assured to ensure the validity of council officer decisions and give confidence to neighbours and applicants. Councils will also need to ensure that all applications are consistent and complete – which is often not provided by well-resourced applicants, yet alone smaller developers and ‘mum and dads’ who struggle to navigate the complexities of our planning system. We have not yet seen a commitment from government to legislate or update provisions to mandate complete applications.

While some councils remain unconvinced that removing third-party rights is fair nor reduce appeals to VCAT, the drafting has confused others. External expert legal advice must be sought to review the clarity of the deemed-to-comply provisions. This advice should then inform guidance and training.

Recommendations

- DTP commission external expert legal advice to review the operation of the deemed-to-comply provisions to ensure clarity and fairness, reduce risk, and ensure consistent application across councils
- DTP partners with councils and the MAV to undertake training and sharing of information and guidance on how deemed-to-comply provisions are to operate in the context of removing third-party appeal rights

Unintended consequences of ‘deem to comply’

While the government’s Housing Statement has a focus on “streamlining” the Victorian planning system to deliver many more homes at scale, innovation and design excellence must also be at the centre of government thinking.

The MAV and councils have for some time now expressed the risks of moving Victoria's performance-based planning system to a codified one. The transition so far has not been easy, and the ResCode reforms presented here are unlikely to improve the situation. Our sector's concerns remain:

- Developers often push the envelope in terms of allowed building form and internal amenity, in turn requiring a greater level of scrutiny. This highlights the need to further rigorously test provisions and share findings with stakeholders to avoid poor design outcomes
- As discussed in the workshops, a development can be fully compliant with numerical standards such as setbacks and minimum private open space, and still clearly not deliver acceptable built form outcomes. It is not yet clear how the proposed deemed-to-comply approach will improve this issue
- Councils with proactive planning enforcement programs report that ESD initiatives and landscape design account for a high proportion of non-compliance in constructed developments

Any codification must strive for best-practice outcomes and be developed in partnership with local government as the on-the-ground experts. Council officers understand the complexities and bottlenecks of the planning system and are willing to share their experiences.

Intersection with other policy and reform underway

The breadth of legislative, strategic and statutory reform being undertaken in Victoria is significant, much of which begun from the launch of the Housing Statement just one year ago. This work includes, but is not limited to:

- Developing and implementing a Plan for Victoria
- Review and rewrite of the Planning and Environment Act
- Implementing the ESD Roadmap
- Proposed changes to car and bike parking provisions
- Monitoring and review of Small Second Dwellings provisions
- Expanding state-led development facilitation programs
- Rollout of the pilot Activity Centre Program in 10 identified centres

Pursuing statutory changes without implementing the legislative framework and strategic plan for housing and place-making risks confusing the community on the outcomes being sought, while leaving councils to implement a disconnected deemed-to-comply residential development system with no agreed strategic or legislated justification. This situation presents huge risks to councils and the State, leaves communities behind and is contrary to good governance of our planning system.

The proposed changes to ResCode represent a significant shift in how we design and plan for a range of development types in our residential neighbourhoods and activity centres. The new approach to ResCode will be a big change to the regulation of medium density housing in Victoria. It is important we get this work right.

The process for redrafting should be informed by lessons of the past, clearly state intent, and be co-designed and monitored by input from professionals working in the system. Outlining clear outcomes, ensuring quality design review, and articulating trade-offs need to be negotiated across all statutory reforms to give social licence for decisions that will be made under them.

Not addressing the above will undermine the Housing Statement's aim to »stimulate investment and build high quality homes quickly in the places where Victorians want to live« through not delivering the diversity and number of homes required in local housing targets.


Recommendations:

- DTP stand an ongoing Advisory Committee to monitor and review outcomes, particularly in the context of broad reform underway to Victoria's planning system
- DTP commits to ongoing review and refinement of the codified standards to ensure a denser urban environment is one that meets the on- and off-site needs of residents
- DTP outlines a clear a strategic intent that maps how these changes have considered the context of other legislative, strategic and statutory reform underway

The MAV and councils are ready and willing to assist in the success of planning reform and a new approach to undertaking residential development assessment. We want to ensure reform is done right and serves current and future communities well.

Should you have any queries about the above, please contact James McLean, Senior Policy Adviser – Sustainable Development at jmclean@mav.asn.au.

Yours sincerely



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