



20 September 2024

Property Council feedback on the proposed changes to ResCode deemed to comply provisions

The Property Council welcomes the opportunity to provide its feedback on the proposed changes to Clause 54 and 55 of the ResCode. We have reviewed the draft documents provided by the Department of Transport and Planning (DTP) and provide the comments below for its consideration.

Additionally, we have assessed the proposed amendments to Clause 55 standards B1 to B54 and include our detailed comments at **Attachment A**.

Property Council Comments

Review Rights

While we support the intention of exempting fully compliant proposals from review rights, we believe the current requirement for full compliance with all standards to benefit from this exemption is too stringent. It is likely that very few proposals will achieve this, limiting the benefit. We recommend that review rights only apply when a standard cannot be met for provisions relating to external amenity impacts.

Notice Provisions

In the *Understanding the Proposed Changes to ResCode* document, it is indicated that even when review rights are removed, notice will still be given, and the community may comment on the amenity impacts of adjacent properties if a deemed-to-comply (DTC) standard is not met. We seek clarification on this. If a proposal meets all DTC standards and is only subject to notice provisions, it is unclear why standards, particularly those relating to external amenity, would be open to community comment.

Environmentally Sustainable Development (ESD) Provisions

We welcome the integration of ESD requirements into ResCode. However, the combination of ESD and design provisions may affect the feasibility of many projects, with costs likely to be passed on through increased dwelling prices. While we acknowledge the long-term benefits of more sustainable housing and streamlined planning processes, we are seeking to understand what concessions or offsets are being considered by DTP to ensure affordable housing remains deliverable.

Garden Area

We recommend the removal of the Garden Area requirement from the General Residential Zone (GRZ), and a review of its application within the Neighbourhood Residential Zone (NRZ). The current Garden Area requirement is prohibitive for a range of housing typologies and impacts development

feasibility, particularly in middle-ring areas. The combination of Garden Area and car parking requirements often necessitates costly basement parking, which is not feasible in some areas. Removing this requirement would allow for at-grade parking, subject to adequate screening and landscaping controls, similar to provisions in Clause 52.20 and the Future Homes pathway.

Private Open Space

We strongly support the removal of the requirement for secluded private open space at the side or rear of a dwelling.

Overlooking

We support the reduction in building separation distances from 9m to 6m and the change in windowsill/external screen height from 1.7m to 1.5m.

Rooftop Solar Energy Generation Area

While this standard seems feasible for townhouse developments, it is unlikely to be achievable in apartment developments. For example, a four-storey apartment building with 40 units would require 1040 square meters of rooftop area, but this may not be feasible due to space limitations for other rooftop services like mechanical units. We suggest reconsidering the applicability of this standard to apartment buildings.

Natural Ventilation

Removing the 40 per cent allowance for apartments would render most apartment proposals non-compliant. This goes against the intent of the ResCode changes. Additionally, townhouse developments with ventilation openings on one side but offering cross-ventilation over two storeys should also be accommodated. We recommend adjusting this standard to allow for single-aspect apartments and compact townhouse developments to comply.

Design Detail

The current wording appears to conflict with Clause 54.06-1 Standard A19. We suggest addressing this inconsistency. Furthermore, the requirement for articulation, as currently written, may negatively impact minimalist architecture. We recommend changing “and” to “or” in the articulation requirements and removing the last point to allow windows to count towards the articulation calculation. We also propose that recessed windows over 0.3m deep be included as a method of articulation.

Waste and Recycling Objective

We suggest adding a note requiring bin storage areas to be appropriately screened from view or enclosed if located externally in the front setback.

Attachment A

Standard	Removed/ Amended / Proposed inclusion	Property Council Feedback
Standard B1 – Neighborhood Character	Removed	Support the change
Standard B2 – Residential Policy	Removed	Support the change
Standard B3 – Dwelling diversity	<p>Updated to introduce requirements for developments to include:</p> <ul style="list-style-type: none"> • 10% 1 bedders. • 10% 2 bedders • 5% 3 bedders. <p>Rounded down to nearest whole number.</p> <p>Applicable to 10 or more dwellings.</p>	<p>We appreciate the intent but note it may not always align with local market demand. Could the decision guidelines be adjusted to offer planners more flexibility on when a variation is appropriate? For instance, they could consider factors like the existing housing stock, the target market for the application, and local housing demand.</p> <p>For example: the three-bedroom requirement, may only apply to developments with 20+ units. There's general agreement that this should be removed, as it's not our role to dictate market forces. This could also tie into accessibility standards, as the NCC already covers this area, ensuring accessibility remains considered.</p>
Standard B4 – Infrastructure	Removed	Support the change
Standard B5 – Integration with the street	Removed	Support the change
Standard B6 – Front setback	Amended to be 6m (in lieu of 9m), 6m for Transport Zone 2, with no other changes to the balance	Support the change – 9m is excessive.
Standard B7 – Building Height	Amended to reflect zone particulars	This is duplicative but ensures it's a 'DTC' standard. The reworded provision specifies that the extra 1m building height only applies where the slope exceeds 2.5 degrees.

		We do not support changing the provision to 2.5 degrees.
Standard B8 – Site Coverage	<p>Amended to reflect:</p> <ul style="list-style-type: none"> • 60% for NRZ • 70% for GRZ • 80% for RGZ / MUZ 	This is a welcome change, but the Garden Area in the GRZ also needs adjustment for it to be effective. The Garden Area requirement should be removed in scenarios where site coverage meets deemed compliance.
Standard B9 – Permeability	<p>Wording amended to say 'water pervious' rather than 'pervious'.</p> <p>New decision guidelines considers treatment areas and draining 'residual' flows into the LPOD.</p>	<p>Unclear if the new wording provides better clarity. Improved focus on drainage is a positive change, but "meets current best practice performance objectives" lacks clarity – does this refer to a 100% STORM rating?</p> <p>How will planning assess whether stormwater is being redirected to treatment areas, gardens, tree pits, and LPOD?</p> <p>We support the proposal to remove this from Clauses 55 and 58, while retaining it in Clause 54, as 53.18 does not apply.</p>
Standard B10 – Energy efficiency	Amended so that 25% of windows to the primary living area of the dwelling or residential building are north facing. Deleted other existing requirements.	<p>This may be challenging to achieve on a constrained site. The wording is unclear and could benefit from a diagram for clarity.</p> <p>We recommend removing this requirement as it's too burdensome.</p>
Standard B11 – Open Space	Delete	Support the change
Standard B12 – Safety	Delete	Support the change
Standard B13 – Landscaping	<p>Updated to reflect BADS standards, or retaining an existing tree (as a first option).</p> <p>Note: the documents outline that a planning permit to remove, destroy or lop a canopy tree of a specific size will be</p>	<p>The change to create consistent tree controls in residential areas is a positive step. However, the landscape provisions are complex and will require significant learning for landscape architects.</p> <p>There is a lack of clarity around what qualifies as a significant tree and how canopy coverage should be calculated in practice.</p>

	introduced into the planning scheme.	<p>The reasoning behind planting a Type C tree is unclear, as there doesn't appear to be any structure or hierarchy for different tree types, similar to BADS.</p> <p>The reference in the rationale to introducing a planning permit for canopy tree removal is confusing, particularly regarding the exemptions outlined in Clause 52.17.</p> <p>We do not support adding a permit requirement for canopy tree removal, as it falls outside the scope of ResCode. Overall, the provisions are overly complex, burdensome, and difficult for the average person to understand.</p>
Standard B14 – Access	<p>Amended to exclude laneways, require no more than one crossover for each dwelling, access points to TRZ1, 2 and 3 not increased, and not require removal of street tree.</p> <p>Also includes standard around setbacks to habitable room windows from driveways.</p> <p>Garages are also to be setback 0.5m behind the facade of the dwelling.</p>	<p>We support with comment.</p> <p>We are concerned about including street tree removal as a non-compliance issue. While the intent is understood, street trees can hinder access on constrained sites and should remain under local laws, separate from planning. If a street tree is removed, does this mean the kerb must be included in the site description?</p> <p>The phrase "except to a rear lane" is unclear in its purpose, and the reference to habitable room window measurements from "ground level" lacks clarity.</p> <p>We recommend removing the requirements for "except to a rear lane" and "street tree removal."</p>
Standard B15 – Parking location	Removed.	To be incorporated into B14.
Standard B17 – Side and rear setbacks	Amended to include a second option, which allows one consistent side setback (with larger space at ground) up to 11m.	We support this amendment. However, it is unclear why the existing rules are being kept? We recommend applying this consistently.

Standard B18 – Walls on boundaries	<p>Amended slightly to allow either 15m wall, or 50% of the boundary length, or the length of existing wall.</p> <p>Average height requirement deleted (only maximum height of 3.6m or height of existing wall).</p> <p>Allow a wall on the rear lane if it does not exceed 3.6m.</p>	<p>We broadly support the amendments.</p> <p>The lane provision appears to only permit rear lanes. Allowing for side lanes could be beneficial as well.</p> <p>The height requirement should be more specific, such as matching the height of the existing wall or allowing up to 3.6m, whichever is greater.</p>
Standard B19 – Daylight to existing windows	Amended to delete the setback requirement (the 50% one)	<p>We support the amendment; and we recommend the removal of the phrase <i>‘where the existing window is above ground floor level,’</i> as the second part of the sentence already addresses this, making it redundant.</p>
Standard B20 – North facing windows	Amended to include the option for the new second B17 setback	We support the amendment.
Standard B21 – Overshadowing open space	<p>Amended so that space overshadowed is not greater than 50% of the SPOS, or 25sqm with a minimum dimension of 3m (whichever is the lesser). However, it is for POS rather than SPOS.</p>	<p>We support the intended amendment, however, we believe that replacing SPOS with POS is not a positive change.</p> <p>We consider that it would be better to refine the definition of SPOS, similar to building regulations, to exclude service areas, etc.</p>
Standard B22 – Overlooking	Amended to be 6m with 1.5m (rather than 1.7m) as the test	We support this amendment and recommend also including planter boxes as an option.
Standard B23 – Internal views	<p>7.5m separation required for a habitable room window / balcony to another living room, or 6m to another balcony or habitable room.</p> <p>Side by side balconies is a 3m separation.</p>	<p>The use of two different numbers is confusing. We recommend adopting 6m, consistent with external overlooking guidelines. Other changes appear sensible. We suggest combining this with overlooking provisions and applying the same considerations, rather than having two different expectations.</p>
Standard B24 – Noise	More specific and aligning with BADS	Supported.

Standard B24.1 – Air Pollution	New standards require mechanical ventilation when in a noise pollution area.	The new requirement addressing air pollution impacts is a shift from the status quo but seems reasonable to include. However, we are seeking clarity around how this will be managed in practice.
Standard B25 – Accessibility	Removed	Supported.
Standard B26 – Dwelling entry	Incorporates some of B25. Covered area to entry door of 0.5m deep is reasonable (ie. A porch) and requiring it to be separate from a garage.	Supported.
Standard B27 – Daylight to new windows	Amended to have specific requirements about what a light court or outdoor space should dimension. Also includes BADS requirements for windows.	The proposed amendment seems reasonable, but we are seeking clarification on how the light court dimension is measured. For example, is it measured from the outside of the balcony, or can the balcony be included? This is unclear.
Standard B28 – Private open space.	<p>Amended to include the BADS balcony requirements.</p> <p>Introduces a new requirement for 70% of dwellings in a development to have a portion of POS of 6sqm with a 1.8m dimension with 2 hours direct sunlight between 9am and 3pm on 22nd.</p> <p>Removal of the requirement for it to be at the side or rear. Inclusion of need for open air-drying line.</p>	<p>The proposed amendment seems reasonable but meeting the sunlight requirement might be challenging where adjoining buildings are already developed.</p> <p>Consider removing the requirement for 70 per cent to be north-facing and instead rely on ESD requirements to address north-facing and ESD considerations.</p>
Standard B29 – Solar access to open space	Removed.	Supported.

Standard B30 – Storage	Amended to align with BADS	Supported.
Standard B30.1 – Room depth	Introduced to align with BADS	We welcome this proposed amendment. However, we recommend ensuring that the drafting is consistent with BADS. The current wording is awkward: <i>"The depth of a single-aspect habitable room does not exceed 2.5 times the ceiling height, measured from the external surface of the habitable room window to the rear wall of the room."</i>
Standard B30.2 – Solar access to new windows	<p>New standard</p> <p>Shading to be provided by fixed devices (north). Eaves also included.</p> <p>East and west to be shaded by adjustable blinds.</p> <p>External structures within 5.5m of north facing living area to not have a solid roof that blocks solar access in winter.</p>	<p>Implementing this will be costly, but it offers positive ESD benefits.</p> <p>It may help clarify the minimum expectations for ESD rules. However, the restriction on external structures within 5.5m of north-facing living areas could be problematic for common features like pergolas.</p>
Standard B30.3 – Rooftop solar energy generation area	Requires an area of a certain sqm (depending on number of bedrooms) on the roof that can accommodate solar panels in future.	We support this amendment, however we believe that it may present challenges for larger developments with limited roof space. To address this, we suggest allowing for shared solar panels as an offset. Additionally, it would be beneficial to require the installation of solar panels from the outset. However, it is unclear how these provisions will be applied to apartment buildings.
Standard B30.4 – Natural Ventilation	Introduced to align with BADS	Support.
Standard B31 – Design detail	Amended to be specific	The proposed amendment is very complex, and it is unclear whether it will yield positive outcomes.
Standard B32 – Front fences	Amended to allow for higher heights if there is transparency	We support the proposed amendment and consider that it would benefit from incorporating the 52.20 provision, which

		permits a larger fence when SPOS is provided at the frontage. However, the distinction between a 1.8m and a 2m high fence needs clarification.
Standard B33 – Common property	Removed	Support the change
Standard B34 – Site Services	Amended to introduce specific requirements re extent of services and screening	Support the change
Standard B34.1 – Waste and recycling objective	<p>Introduces requirements for bins. Storage areas, screening etc. Also introduces internal waste storage requirements.</p> <p>Requirement for bin storage to be within 40m of kerbside collection point.</p>	The proposed amendment seems reasonable. However, requiring waste storage to be within 40m of the collection point may pose challenges in some cases.
Functional Layout	To also be applied to ResCode	The amendments are supported, but we request addressing the issue with the minimum width requirement.
Standard B35 – Energy Efficiency	Minor changes	Supported.
Standard B36 – Communal open space	Minimum dimension introduced, minor other changes	Supported. However, the threshold of 10 dwellings for providing communal open space still appears to be too low.
Standard B37 – Solar access to communal outdoor open space	Amended to allow it to be provided on other sides of the building	Supported
Standard B38 – Landscaping	Minor changes	Supported
Standard B39 – Integrated water and stormwater management	Minor changes	Supported

Standard B40 – Access	Removed	Supported
Standard B41 – Noise Impacts	Noise standard lowered for busy roads	Supported
Standard B42 – Accessibility	Removed	The provision is now covered by the NCC. However, it is unclear whether it also applies to Clause 58.
Standard B43 – Private open space	Removed	Supported.
Standard B44 – Storage	Removed	Supported.
Standard B45 – Waste and recycling	Amended similar to other waste provision	Feedback as per the other waste provision.
Standard B 46 – Functional Layout	Amended to specify wardrobe size	Supported – but we are seeking DTP fix the minimum dimension requirement.
Standard B48 – Windows	Removed	Supported.
Standard B49 – Natural ventilation	Removed	Supported.
Standard B50 – Building entry and circulation	Removed	Supported.
Standard B51 – Integration with the street	Removed	Supported.
Standard B52 – Site services	Removed	Supported.
Standard B53 – External walls and materials	Removed	Supported.
Standard B54 – Internal separation	6m sep for 11m in height. Additional 1.5m setback for each building above 11m. North – south is 9m separation up to 11m, then additional 4m	A 6m separation seems reasonable at first glance.