



# USING THE NEIGHBOURHOOD CHARACTER PROVISIONS IN PLANNING SCHEMES

**The purpose of this VPP Practice Note is to provide guidance to planning authorities about how to plan for neighbourhood character and how to apply neighbourhood character provisions when preparing amendments to planning schemes.**

Designing and siting new dwellings to respect neighbourhood character is a fundamental objective of the residential development provisions in Clauses 54, 55 and 56 of the *Victoria Planning Provisions* (VPP). In some cases, additional neighbourhood character provisions are necessary to ensure that either the existing neighbourhood character is respected or a preferred neighbourhood character is achieved.

This Practice Note provides information about:

- planning for neighbourhood character
- preparing a neighbourhood character study
- using the neighbourhood character provisions
- providing strategic justification for a neighbourhood character amendment
- drafting the schedule to the residential zones
- drafting the neighbourhood character overlay.

The neighbourhood character provisions can be found in the VPP in:

- the State Planning Policy Framework (SPPF)
- the Residential 1, 2, Mixed Use and Township Zones
- the schedule to the residential zones
- Clauses 54, 55 and 56
- the Neighbourhood Character Overlay (NCO).

## Planning for neighbourhood character

When considering neighbourhood character, it is important not to forget the broader strategic context.

Some areas will undergo significant changes as a result of new social and economic conditions, changing housing preferences and explicit housing policies. When planning for neighbourhood character, it is important to recognise and consider these broader influences and plan separately for them.

Different areas do have different characteristics and expectations and the VPP allows councils to set different residential development standards through either the schedule to the residential zones or the application of the NCO to achieve local neighbourhood character objectives. These can influence the nature and extent of development that can occur in order to achieve a desired neighbourhood character outcome for an area.

## The State Planning Policy Framework

Neighbourhood character is only one of a number of residential policy objectives in the SPPF. The encouragement of urban consolidation, higher land-use densities near major public transport interchanges and routes, the need to improve housing choice, the better use of existing infrastructure and the provision of ecologically sustainable development are also State planning policy objectives that need to be achieved when considering neighbourhood character and residential development.

If a planning authority decides to establish local neighbourhood character objectives, they must be considered within this broader strategic context and be balanced with other State planning policy objectives.

Inevitably, tension will sometimes occur as a result of different objectives. Planning authorities, in consultation with local communities, must balance these different strategic objectives to ensure that all strategic objectives are achieved through the administration of the planning scheme including the protection of neighbourhood character.

### Neighbourhood character – the mandatory starting point

In accordance with Clauses 54, 55 and 56 in all planning schemes, neighbourhood character is the starting point for the assessment of all residential development applications through the neighbourhood and site description or site and context description, the design response and the application of the neighbourhood character standards.

In most cases, the application of Clauses 54, 55 and 56 will be effective in respecting the existing neighbourhood character of an area without the need to supplement these standard provisions with additional local neighbourhood character provisions.

A neighbourhood character study is, therefore, not necessary to ensure that neighbourhood character is properly considered through the development approval process in every case. While a neighbourhood character study can help, it is not a substitute for undertaking a neighbourhood and site description on a 'site-by-site' basis for all planning applications for residential development.

The General Practice Note *Understanding neighbourhood character* provides more detailed information about neighbourhood character and guidance about applying neighbourhood character through the neighbourhood and site description process in Clauses 54 and 55 of all planning schemes.

## What is neighbourhood character?

Neighbourhood character is shaped by the combination of the public and private realms. Every property, public place or piece of infrastructure makes a contribution, whether great or small. It is the cumulative impact of all these contributions that establishes neighbourhood character.

## What does 'respect' mean?

Respecting character does not mean preventing change.

In simple terms, respect for the character of a neighbourhood means that the development should be designed in response to its context. Depending on the neighbourhood, there are two broad approaches to respecting character:

- respecting the bulk and form of surrounding development
- respecting the architectural style of surrounding development.

Determining whether either or both approaches should influence the design response will depend on the features and characteristics identified in the neighbourhood and site description.

Respecting neighbourhood character does not mean mimicry or pattern book design, or limiting the scope of design interpretation and innovation. Instead, it means designing the development in response to the features and characteristics identified in the neighbourhood.

## Developing a neighbourhood character study

The need for a neighbourhood character study should be established through the normal monitoring and review requirements of the planning scheme.

Some form of study about neighbourhood character is necessary before any statements about existing neighbourhood character values or statements of preferred character can be included in the planning scheme and before any of the residential development standards in Clauses 54 and 55 can be varied.

### What is the purpose of a neighbourhood character study?

The purpose of a neighbourhood character study is to identify and then support actions to achieve good development outcomes in both the public and private realms.

An objective and independent assessment of the character of areas will establish existing character attributes. Actions can then be identified to ensure that existing character is respected or a preferred new character is achieved.

A neighbourhood character study should be able to:

- provide an assessment that identifies the comparative significance of each neighbourhood character area. In assessing the significance of areas, comparisons need to be made, not only with other parts of the municipality but with the wider metropolitan area
- identify why differences are important. It is these differences that lie at the heart of the strategic justification for additional neighbourhood character provisions
- demonstrate that additional or locally varied neighbourhood character provisions are necessary to either protect or enhance the existing character of an area or to achieve a preferred future neighbourhood character.

### Suggested steps for developing a neighbourhood character study

1. **Area of interest.** Identify the broad area that needs to be examined. It does not need to be the whole municipality.
2. **Data/information collection.** This should not be restricted to the built form or other physical features, but should include factors such as noise, traffic, activity and locational attributes, where relevant.
3. **Observations.** This should identify relevant influences on the past, present or future use and development of an area (both positive and negative) and the way in which this has or may affect character.
4. **Description of character.** This should describe the relationship between elements, a synthesis of its qualities.
5. **Assessment.** In assessing the significance of areas, comparison needs to be made between areas and explanation given of why differences are important.
6. **Identifying implementation actions.** Steps 1–5 should help Council formulate its neighbourhood character objectives. A set of strategies can then be developed which identify the actions that will be undertaken to achieve those objectives.

The implementation of a neighbourhood character study will fail if it:

- seeks to achieve a predetermined outcome
- seeks to be a means to restrict medium-density development
- is a 'feelgood' exercise without some critical and independent evaluation of character attributes
- values or devalues areas by saying that one area is better than another (under Clauses 54 and 55 of all planning schemes, the existing neighbourhood character of all areas must be respected)
- only lists discrete features of an area and does not explain how they interact to contribute to the neighbourhood character of an area.

### What is preferred neighbourhood character?

Preferred neighbourhood character is either:

- the existing character of an area, or
- an identified future neighbourhood character different to the existing character of an area.

It is important to identify the key neighbourhood characteristics of an area to be respected where the existing character is identified as the preferred neighbourhood character to be achieved. Providing a preferred character statement and objectives can do this.

There is no prescribed format for a preferred neighbourhood character statement. It will depend on a number of factors such as the particular characteristics of an area or municipality, the kind of outcomes council is seeking to achieve and the views of the local community. It should be based on a summary of the essential elements that define the preferred character being sought to be achieved.

*Note: please refer to the General Practice Note, Understanding neighbourhood character for further information about preferred character.*

## Using the neighbourhood character provisions

One of the issues facing a planning authority is selecting the right neighbourhood character provision to give effect to its desired neighbourhood character outcomes. In a practical sense, this poses many questions about the appropriate selection and use of the neighbourhood character provisions. For example, when is it appropriate to use a neighbourhood character policy instead of the schedule to the residential zones or the NCO?

Selecting the appropriate neighbourhood character provision requires road testing against real life scenarios before a planning authority can be sure that it has made the right selection.

The same neighbourhood character approach may not be appropriate in each instance. A careful analysis of the issues on a case-by-case basis is necessary when applying neighbourhood character provisions.

There is no predetermined formula that delivers the right answer for the application of particular neighbourhood character provisions.

### Which tool is best?

#### One scenario to consider

A planning authority may have expressed a neighbourhood character aspiration in the MSS, (supported by some level of analysis) to 'green' the municipality through the planting of trees capable of growing to a certain height to create an enclosed canopy.

#### How should this aspiration be achieved?

The planning authority may wish to prescribe a higher private open space requirement in the schedule to the residential zones in the belief that this will provide the necessary 'space' to enable the planting of a canopy tree or trees. However, taking a prescriptive approach to the provision of private open space may not in itself facilitate achieving the desired outcome.

#### What are the other options?

What can be done within the public domain through a tree planting program? The desire to 'green' the municipality in this instance is effectively a desire to place canopy trees somewhere on the land subject to redevelopment. By focusing on the private open space area other options are neglected.

#### The solution

In this example, the desire to 'green' the municipality is probably best achieved through an active program of tree planting in the public domain, complemented by a well-written policy that council considers when assessing the neighbourhood and site description and design response. This enables a flexible and performance-based approach to the placement of the canopy tree or trees on private land reinforced by demonstrated commitment to the same objective on public land.

## The Municipal Strategic Statement

Neighbourhood character can be included in the Municipal Strategic Statement (MSS) as either a general issue or in relation to particular aspects or places. The MSS could describe the key issues surrounding the existing neighbourhood character (including valued areas, threats to existing character and areas where change to the existing character is proposed). The objectives for neighbourhood character and the strategies and implementation measures for achieving the neighbourhood character objectives should also be included in the MSS.

### Local planning policies

When neighbourhood character objectives have been established and the intended outcomes are clear, a local planning policy (LPP) may be warranted.

A local planning policy can be used to:

- set out a preferred neighbourhood character statement and local neighbourhood character objectives
- specify how an issue should be considered across the municipality or for a particular area
- provide greater clarity about how discretion will be exercised to achieve the neighbourhood character standard in Clause 54 or Clause 55 and how it will assess whether the subdivision design meets the residential character and identity objective in Clause 56
- include additional decision guidelines in relation to specific standards to ensure that the relevant objective in Clause 54, 55 or 56 is met.

A local planning policy should not be used to replace a numeric value in a standard in Clause 54, 55 or 56 with a local value. Where a planning authority seeks to change a numerical standard to give effect to a neighbourhood character objective, either the schedule to the residential zones or the NCO should be used.

## The schedule to the residential zones

The schedule to the residential zones can be used to:

- increase the lot size threshold for a planning permit for one dwelling on a lot from 300 to 500 square metres so that the development impacts of the dwelling can be more comprehensively considered under the planning system
- vary six siting standards in Clauses 54 and 55 which also replace the corresponding standards for one dwelling on a lot in the Building Regulations to better reflect the prevailing neighbourhood characteristics of the municipality.

The six standards that can be varied are:

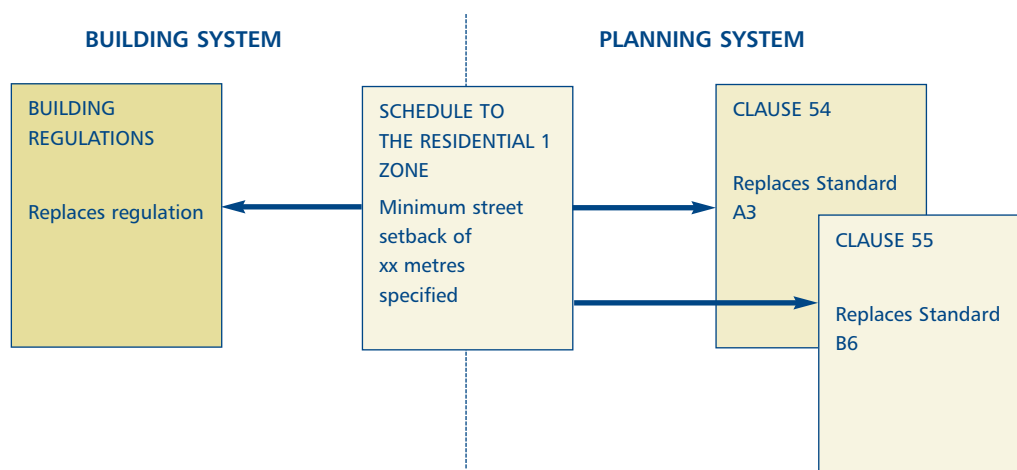
- street setback (Standard A3 in Cl 54, Standard B6 in Cl 55)
- building height (Standard A4 in Cl 54, Standard B7 in Cl 55)

- site coverage (Standard A5 in Cl 54, Standard B8 in Cl 55)
- side and rear setbacks (Standard A10 in Cl 54, Standard B17 in Cl 55)
- private open space (Standard A17 in Cl 54, Standard B28 in Cl 55)
- front fence height (Standard A20 in Cl 54, Standard B32 in Cl 55).

### How does the schedule operate?

An important feature of the schedule to the residential zones is that a change to a value in the schedule will affect all dwellings in the zone in the municipality. When a local value is specified in the schedule, the value replaces the relevant value in both the building regulations and in the corresponding Clause 54 and Clause 55 standard.

Appendix 1 outlines principles for drafting the schedule to the residential zones.



### Remember

- When a local value is specified in the schedule it applies to all dwellings in both the planning and building systems.
- When assessing a planning permit application, the local value continues to be read in conjunction with the relevant objective and decision guidelines in Clause 54 and Clause 55.
- The schedule simply substitutes one value for another – the rest of the standard continues to apply. The schedule cannot be used to 'vary' the objective or decision guideline of the standard in Clauses 54 and 55.
- When assessing a building permit application, the building practitioner must use the value in the schedule to the residential zone instead of the value expressed in the relevant building regulation. Schedule 3 in the Building Regulations identifies which planning schemes have schedules that specify a local value.
- It is not possible to apply different standards for different types of residential development in the schedule, except for private open space which allows a distinction between single and multi dwellings.

## Applying overlays

### The Neighbourhood Character Overlay

The NCO can be used when the following criteria can be met:

- the proposed area exhibits specific characteristics that need to be protected or changed to achieve a preferred character
- the area, relative to the rest of the municipality, requires a specific approach to neighbourhood character
- the application of local policy, the standard provisions of Clause 54 and Clause 55 or the residential schedule will not satisfy the neighbourhood character objectives identified in the local planning policy framework (LPPF) for that particular area
- a rigorous character study has been undertaken that accurately shows the physical aspects of character in the area that need to be translated into the provisions of the NCO
- The proposal is supported by appropriate community consultation.

An NCO should not be used as a 'blanket' control across the municipality. It should be applied strategically to areas where the application of the residential development standards consistently fails to meet the objectives for neighbourhood character for a particular area.

#### *Varying the standards*

The NCO can be used to vary most Clause 54 and Clause 55 standards, except for a number of standards specified in the overlay at Clause 43.05-3.

The NCO cannot be used to vary the objectives or decision guidelines contained in Clauses 54 and 55. They continue to apply in relation to the modified standard in the NCO. However, additional local neighbourhood character objectives and decision guidelines can be specified in the schedule to achieve the preferred neighbourhood character.

Although the NCO cannot be used to vary the standards in Clause 56, the neighbourhood character statement and objectives in the NCO must be considered in the design response to the site and context description for a residential subdivision.

#### *Demolition*

The demolition control in the NCO is intended to hold the existing pattern of development until the character features of the site and the new development have been evaluated. The demolition control is not to be used to conserve existing buildings, but to ensure that demolition does not occur until the responsible authority is satisfied that the new development meets the desired neighbourhood character objectives for the area.

A Heritage Overlay (HO) should be used where the objective is to conserve the existing building or buildings.

Appendix 2 outlines principles for drafting a schedule to the NCO.

### The Heritage Overlay

The HO has different objectives to the NCO and is not intended to operate as a neighbourhood character control. However, the heritage values of an area often contribute to the neighbourhood character values of an area as well.

The HO requires any application to construct or extend one dwelling on a lot to also meet the requirements of Clause 54. Therefore, any residential development application in a heritage area must also meet the neighbourhood character objective of Clause 54 (or in some cases Clauses 55 and 56) as well as the heritage requirements of the planning scheme.

In a practical sense, does this mean that an NCO should never be used where a HO exists?

This will depend on the circumstances. For example, where an existing HO covers a large heritage precinct, the neighbourhood character considerations will most likely be directly related to the heritage values of the area and would not need the use of an NCO to give effect to the preferred neighbourhood character objectives for the area.

However, where the heritage overlay covers a specific heritage place or only a limited number of buildings that are located in a larger neighbourhood area and where it may be necessary to implement an NCO to achieve a preferred neighbourhood character, it would be appropriate to use both overlays.

As a general rule, avoid applying the NCO as well as the HO, where possible.

### The Design and Development Overlay

While the Design and Development Overlay (DDO) has some similar features to the NCO, it is more appropriately applied to promote specific urban design outcomes for a particular site or area. The DDO is not specifically a tool for dealing with residential character. For example, the schedule to the DDO does not provide a specific framework for the variation of standards in Clauses 54 and 55 in the way that the NCO does.

If a planning authority is considering the use of a DDO instead of an NCO, it should be clear about its neighbourhood character objectives. The DDO should not be used as a substitute for an NCO if the NCO is not supported because the area it would apply to is too extensive and would affect too many single dwellings. The planning authority should be clear about what objectives it is seeking to implement through the overlay.

The DDO may be appropriate for achieving very specific neighbourhood character outcomes that cannot be achieved through the application of the NCO in some limited circumstances. An example of this could be addressing the design requirements for a building facing a particular open space area or other feature area.

### Other environment and built form overlays

Sometimes vegetation may be the only feature of neighbourhood character defining the urban area. If the principal objective is to identify and protect vegetation for

its contribution to the character of an area, overlays such as the Vegetation Protection Overlay (VPO) and the Significant Landscape Overlay can be used instead of the NCO to protect these valued aspects of neighbourhood character.

### Remember

Weigh up the pros and cons of all VPP provisions when seeking to give effect to local character objectives. The key is to be able to provide adequate evidence that the best provision has been selected to give effect to neighbourhood character objectives.

## Providing justification for a neighbourhood character amendment

The General Practice Note, *Strategic assessment guidelines for planning scheme amendments*, outlines a framework for assessing any planning scheme amendment. Some of the key issues that may be raised in a neighbourhood character amendment are outlined below.

### Is an amendment required?

Before starting to prepare an amendment, consider whether an amendment is necessary.

Analyse whether the residential development provisions in Clauses 54, 55 and 56 can deliver the sorts of neighbourhood character outcomes identified in the neighbourhood character study without the need to amend the planning scheme.

Establish the aspects of the planning scheme that require amendment to give effect to the neighbourhood character objectives. Will a local planning policy suffice or do different residential development standards need to be implemented?

The solution may not always be exclusively in the planning scheme. What can be done through other mechanisms outside the planning scheme to achieve the desired outcomes? Can a street planting program deliver neighbourhood character objectives for a particular area?

### What is the strategic basis for the amendment?

Is the amendment underpinned by a thorough and rigorous analysis and assessment of neighbourhood character?

All the key elements of a neighbourhood character study outlined earlier in this Practice Note must be addressed in the strategic work that underpins any amendment proposal. For example, strong community support will not in itself be a sufficient basis for supporting a neighbourhood character amendment. Evidence and justification for additional provisions is essential.

Without such a strategic basis, it will not be possible to support the introduction of additional neighbourhood character policies and provisions into the planning scheme.

### The State Planning Policy Framework

Will the amendment further the residential development objectives in the SPPF?

A neighbourhood character amendment must not adversely impact on the achievement of State and local residential policy objectives such as, urban consolidation, housing diversity and intensification.

### The Local Planning Policy Framework

Are local neighbourhood character objectives and policies required to supplement the policies in the SPPF and the neighbourhood character provisions in Clauses 54, 55 and 56?

When developing a strategic vision for the MSS and LPPF, there is no need to repeat policy objectives already detailed in the SPPF or the residential development provisions.

A neighbourhood character amendment should be consistent with other housing aspects of the LPPF. While the MSS and other relevant local planning policies may require adjustment as part of the implementation of the neighbourhood character study, this should not impinge on other housing objectives stated in the MSS.

### Using the schedule to the residential zones and the Neighbourhood Character Overlay

Using the schedule to the residential zones should only be necessary where it can be shown that the residential development standards in Clauses 54, 55 and 56 of the planning scheme do not adequately reflect the existing neighbourhood character attributes of the municipality and an LPP can be shown to be insufficient to deliver the desired outcomes.

The schedule should only be used where it can be shown to be the most appropriate and effective mechanism in achieving the desired neighbourhood character outcomes in comparison to other alternatives. Again, an evidence-based approach will be necessary to demonstrate the basis for the proposed provisions.

### Outcome of the neighbourhood character amendment

The application of new neighbourhood character provisions can affect the provision of housing in the municipality and, consequently, the extent to which future housing demands will be met. While it may not be the intention to do so, the impact of an amendment implementing neighbourhood character provisions could result in a diminished potential for diversity in housing choice across a municipality.

Although a detailed housing study will generally not be necessary to support a neighbourhood character

amendment, some level of analysis of the impact of the proposed amendment will be necessary to demonstrate that other housing objectives have not been prejudiced. Therefore, any amendment to introduce a neighbourhood character provision must be assessed in the context of how it will impact on meeting the housing needs of the municipality identified in the MSS.

### Five housing tests

1. What is council's projected population for the next 30 years?
2. How many new households will be required?
3. Given the existing number of dwellings, how many additional dwellings are required to meet population and household projections over an initial 15-year period?
4. How will these additional dwellings be provided within the municipality?
5. What impact will the implementation of the neighbourhood character amendment have on achieving the number of dwellings that need to be provided to meet other housing objectives over the initial 15-year period?

When considering additional neighbourhood character provisions, a planning authority must address the five housing tests outlined above.

As a general rule, the level of analysis in relation to these tests should be proportional to the effect the amendment has on the delivery of future housing outcomes.

For example, if an NCO is proposed for a street of 20 dwellings, then the effect of the amendment on the supply of housing in the municipality will be minor.

If, however, the planning authority is seeking to amend the schedule to the residential zone, then the effect of the amendment can be potentially far-reaching. Therefore, there will be a far greater onus on the planning authority to demonstrate that the amendment will not prejudice the delivery of housing required to meet the future needs of the community. It is a matter of scale.

## Summary

When using the neighbourhood character provisions:

- a value in the schedule to the residential zone takes precedence over the value in the relevant standards in Clause 54 and Clause 55
- a value in the schedule to the NCO takes precedence over both the values in the standards in Clause 54 and Clause 55 and any value in the schedule to the residential zone
- requirements in an overlay other than the NCO also take precedence over the value in the standards in Clause 54 and Clause 55 and any value in the schedule to the residential zone.

When developing local neighbourhood character provisions:

The following provisions always apply:

- the purpose of the zone
- requirements for a neighbourhood and site description and design response
- Clause 54 and Clause 55 objectives, standards and decision guidelines
- Clause 56 objectives and standards

The following provisions can be applied when needed:

- LPP
- Schedule to the residential zones
- NCO

## A quick guide to potential neighbourhood character tools

Function	Local planning policy	Schedule to the residential zones	Neighbourhood Character Overlay	Significant Landscape Overlay	Vegetation Protection Overlay	Design and Development Overlay
Vary Clause 54 and 55 standards	X	✓ Limited to six residential development standards that can only be varied uniformly across the relevant residential zone	✓ Excludes residential development standards specified in Clause 43.05-3 from variation	X	X	X
Describe preferred neighbourhood character	✓	X	✓	✓	✓	✓ As a design objective
Require a permit for vegetation removal	X	X	✓	✓	✓	X
Require a permit for demolition	X	X	✓	X	X	X
Require a planning permit for one dwelling on a lot	X	✓ For lots between 300–500 square metres	✓	✓	X	✓
Introduce local neighbourhood character objectives	✓	X	✓	✓	✓	✓ As a design objective
Introduce additional decision guidelines	✓	X	✓	✓	✓	✓

## Appendix 1

### Drafting the schedule to the residential zones

Under the *Ministerial Direction on the Form and Content of Planning Schemes*, the schedule to the residential zones is a fully specified schedule. This means that:

- the format of the schedule cannot be changed
- extra standards cannot be added to the schedule.

The schedule is in a table format. The schedule is filled out differently for increasing the lot size threshold and varying the six standards:

- the lot size threshold box must have either 'Yes' or 'No' specified for the 500 square metre lot size threshold
- each box for the six standards must have either a value specified, or the words, '*None specified*' inserted to make the intent clear.

#### Principles for drafting the residential schedule

When inserting a value in the schedule, it is important to refer back to the relevant standard to determine what substituted value is being sought. The substituted value may be a dimension, area, distance or percentage.

Ensure that the local value in the schedule can be understood without reference to the State standard. This is especially important for single dwellings that do not require a planning permit because the locally varied standard in the schedule must be clear and legible for the building practitioner when issuing a building permit for a single dwelling that does not require a planning permit. It is also important so that the intent of the variation is unambiguous.

Any omission of text or values between the State standard and the locally varied standard could have unintended consequences. It is, therefore, important that the locally varied standard use the format and language of the relevant State standard to ensure that there is no confusion.

Only the numerical value of the relevant standard can be changed. The schedule cannot be used to apply a different value to only some land in the zone or to change the wording of the standard. It is not possible to differentiate the application of a varied standard within the schedule because the building regulations refer to the application of the locally varied standard uniformly throughout the zone.

#### Preparing an amendment to the residential schedule

When preparing a planning scheme amendment to the schedule to vary any of the six standards, a consequent amendment to the building regulations is also necessary to give effect to the planning scheme change in the relevant building regulations for single dwellings.

If the building regulations are not amended to make reference to the locally varied standards in the planning scheme, different standards will apply to a single dwelling depending on whether a planning permit is necessary or not. This is undesirable because:

- it creates inconsistency with the principle that all dwellings are treated equally in relation to a number of key siting and character standards irrespective of which development approvals system they fall within
- it adds complexity and confusion to the application of the standards between the two approval systems.

The Department will coordinate any necessary amendments to the building regulations with the Building Commission when it receives an adopted planning scheme amendment.

## Example schedules to the residential zones

The following examples illustrate the correct way to draft a schedule to meet the needs of both the planning and building systems.

### Example 1. Building height

	Clause 54 and Clause 55 Standard	Requirement
Building height	Standard A3 and Standard B6	7 metres <b>Correct ✓</b>
		7 metres if the site is located within a minimum change area and the ResCode standard for all other areas. <b>Incorrect X</b>
		The schedule does not allow the standard to be applied differently across the land covered by the zone.
		Must not exceed two storeys. <b>Incorrect X</b>
		Expressing the maximum building height in storeys is not precise and could be misapplied.

### Example 2. Front fence height

	Clause 54 and Clause 55 Standard	Requirement
Front fence height	Standard A20 and Standard B32	A front fence within 3 metres of a street should not exceed 1.2 metres. <b>Correct ✓</b>
		A front fence within 3 metres of a street should not exceed 1.2 metres and no front fence should be provided where 75 per cent of 10 properties either side or opposite the subject land do not have a front fence. <b>Incorrect X</b>
		There is no ability under the Building Regulations to introduce an additional requirement to calculate the average height of fences on adjoining properties to establish the front fence height.
		A front fence within 3 metres of a street should not exceed 0.9 metres in a minimum change area and 1.2 metres elsewhere. <b>Incorrect X</b>
		The schedule does not allow the standard to be applied differently across the land covered by the zone

## Appendix 2 Drafting the neighbourhood character overlay

Under the *Ministerial Direction on the Form and Content of Planning Schemes*, the schedule to the NCO is a partly specified schedule. This means that the specified parts of the schedule must be included in the planning scheme if the NCO is used.

The NCO template below provides specific drafting instructions.

### SCHEDULE NUMBER TO THE NEIGHBOURHOOD CHARACTER OVERLAY

Shown on the planning scheme map as **NCOnumber**

### NAME OF NEIGHBOURHOOD CHARACTER AREA

#### 1.0 Statement of neighbourhood character

The schedule must contain a statement of neighbourhood character to be achieved. This can be the existing character or a new character to be achieved.

#### 2.0 Neighbourhood character objective

The schedule must contain a statement of the neighbourhood character objective to be achieved. If the desired neighbourhood character objective is already expressed in Clauses 54, 55 or 56 of the planning scheme, there is no need to repeat the objective again. However, a local neighbourhood character objective can complement an objective stated in Clauses 54, 55 or 56 by being more specific about a particular neighbourhood character attribute or feature.

#### 3.0 Permit requirement

The NCO (in Clause 43.05-3) enables the schedule to specify whether a permit is required to construct or extend an outbuilding normal to a dwelling, construct a swimming pool, demolish or remove a building, or remove, destroy or lop trees over a certain height or girth, as specified in the front end of the overlay. This provision should not be used unless there are very specific reasons to control these forms of development.

If no exemption or permit requirement is to be included in the schedule, the 'Permit requirement' section should be deleted.

#### 4.0 Modification to Clause 54 and Clause 55 standards

Standard	Modified requirement
<i>Insert standard number</i>	<i>Insert modified requirement</i>
<i>Insert standard number</i>	<i>Insert modified requirement</i>

The schedule is able to modify any of the Clause 54 and Clause 55 standards except for Standards A1, A12, A13, A14 and A16 and Standards B1, B2, B3, B4, B19, B20, B21 and B27.

The schedule can only modify the standard, not the corresponding objective or decision guidelines associated with that standard in Clause 54 and Clause 55. However, the schedule can be used to apply additional objectives or decision guidelines.

The schedule can be used to modify the standards of Clauses 54 and 55 to apply different requirements to single dwellings and multi-dwellings. However, this should only be done in exceptional circumstances and would need to be strongly substantiated in relation to the character objectives being sought to be achieved. There will rarely be justification for different standards across different forms of housing. The residential development provisions seek to maintain consistent provisions for all forms of housing.

When modifying a standard, ensure that the varied standard is expressed in its entirety so that it cannot be misinterpreted. The language and format of the modified standard is able to be stated differently to the relevant State standard to enable the achievement of the preferred neighbourhood character.

To modify a State standard, a nexus between the modified standard, the neighbourhood character objectives and the statement of neighbourhood character must be clearly demonstrated.

If modification of the Clause 54 and Clause 55 standards is not needed, this section should be deleted.

#### 5.0 Decision guidelines

The NCO (in Clause 43.05-5) enables the schedule to introduce additional decision guidelines. If these are needed they can be included here. If not, this section should be deleted.

An example schedule before review

LOCAL PROVISION

GUMNUT PLANNING SCHEME

**SCHEDULE 9 TO THE NEIGHBOURHOOD CHARACTER OVERLAY**

Shown on the planning scheme map as **NCO9**

**GUMNUT GARDENS RESIDENTIAL PRECINCT**

**1.0 Statement of neighbourhood character**

The Gumnut Gardens are a significant open space area located in the middle of the Gumnut Gardens Residential Precinct. The Gumnut Gardens Residential Precinct displays a very strong landscape and garden theme. This is derived from the establishment of attractive private residential gardens, street trees and the Gumnut Gardens, itself.

This residential precinct plays a pivotal role in maintaining the landscape and natural environmental values of the Gumnut Gardens. The Garden's edge, and its interface with local streets, is paramount to these values.

The general setting of the Gardens, including the streets in the precinct, plays a role in contributing to the attractive garden character of the area.

**2.0 Neighbourhood character objective**

To preserve and enhance the established vegetation in the area.

To encourage landscaping that will ensure that the landscape character of the area is maintained and enhanced.

To maintain and enhance the existing treed interface between residential properties and the Gumnut Gardens.

To retain the informal garden qualities and the dominance of medium to large sized evergreen and deciduous trees.

To ensure that development provides for adequate building setbacks to protect and enhance the open garden character of the area.

To ensure that the location and scale of new buildings and works is consistent with the prevalent character of the area.

**3.0 Permit requirement**

A permit is required to remove, destroy or lop a tree. This does not apply to:

- A tree with a single trunk circumference of less than 0.45 metres at a height of 1.5 metres above the ground level.
- Pruning a tree (including vegetation overhanging a dwelling) to regenerate or shape it or to comply with the Electricity Safety Act 1998.
- A tree that is dead, dying or dangerous.
- Destroying a tree in accordance with a notice under the Forests Act 1958, Country Fire Authority Act 1958 or Local Government Act 1989.
- Removal, destruction, logging or pruning, including root pruning, of a tree or vegetation to prevent damage to works when, in the opinion of the responsible authority, damage to a pipeline, electricity or telephone transmission line cable or other service has occurred or is likely to occur.
- Removal of environmental weeds.

NEIGHBOURHOOD CHARACTER OVERLAY – SCHEDULE 9  
1 APRIL 2003

PAGE 1 OF 2

The statement of neighbourhood character should be more explicit about the significance of the existing key features and how they contribute to the preferred character being sought to be achieved. The reviewed version of the schedule shows how this statement could be improved.

Objectives 1 & 2 duplicate the landscaping objective in Clauses 54 and 55. They don't add any value to the schedule and should be deleted.

The Statement of neighbourhood character does not talk about the importance of built form. The last two objectives should be deleted or the Statement adjusted to acknowledge the contribution of existing dwellings to the character of the area.

The NCO already has exemptions for tree removal that cannot be varied. The exemptions here should be deleted.

This is an application requirement and should be removed from this section.

GUMNUT PLANNING SCHEME

LOCAL PROVISION

A report prepared by a qualified arborist identifying the vegetation to be removed and any proposed replacement vegetation should accompany any application. This should include a written statement describing the reasons for the removal of the vegetation and how its removal and any replacement vegetation achieves the landscape character objectives and decision guidelines of this schedule.

A permit is required to construct or carry out any of the following:

- A fence.
- Painting, repairs or routine maintenance to an existing building or outbuilding.

There is no head of power in the NCO to require a permit for a fence or for painting, repairs or routine maintenance of an existing dwelling or outbuilding. This text should be deleted.

4.0 Modification to Clause 54 and Clause 55 standards

STANDARD	MODIFIED REQUIREMENT
Minimum street setback A3 and B6	10 metres
Building height A4 and B7	8 metres and must not be greater than two storeys
Site coverage A5 and B8	65% including all buildings, swimming pools, tennis courts, paving and other hard surfaces
Front fence height A20 and B32	0.9 metres

These modified standards are inadequately expressed which could lead to confusion about their application. For example, is the street setback standard meant to apply to all street frontages and development contexts? The modified standard needs to be redrafted to make its intended application clear.

5.0 Decision guidelines

Before deciding on an application, the responsible authority must consider:

- The need to retain natural features and vegetation, including tree canopy, that contribute to the character of the area.
- The effect of removal, destruction or lopping of any tree on the character of the Gumnut Gardens Residential Precinct.
- The reasons for removing any tree and the practicalities of alternative options that do not require removal of any trees.
- The size and species of any replacement vegetation.
- The effect of any buildings and works, including paving, landscaping and fencing on the garden character of the area.
- Whether the location, bulk, outline and appearance of the buildings and works will be in keeping with the character of the area.
- With regard to siting, any new development on an allotment that shares a side boundary with the Gumnut Gardens should adopt the front setback of the original building. A new development that breaks the established front setback of the street should not be used to establish an average setback. The average setback of the original building should be used where possible.
- With regard to building height and bulk, any double storey development should minimise the bulk of first floor areas through articulation of first floor walls or the use of attic style design. Any development with more than one dwelling on a lot should incorporate a mix of single and double storey built form. First floor balconies should not project within 6m of the boundary of the Gumnut Gardens.
- With regard to rooflines, the main roof pitch should not be less than 25° and not exceed 45°. Flat roofs are not considered appropriate.
- The selection of building materials.

The modified standards for building height, site coverage and front fences should only be included if a nexus between the statement of neighbourhood character and the modified standards can be demonstrated.

The second and third last decision guidelines are poorly drafted and should be rewritten as shown in the reviewed schedule.

The selection of building materials is not a relevant decision guideline unless the Statement of neighbourhood character outlines the significance of existing building materials and their contribution to the character of the area.

The first two decision guidelines should be deleted because they duplicate existing decision guidelines in the NCO.

The desired outcome could be achieved by the modified street setback requirement. If this is not possible, this decision guideline should be reworded as shown in the reviewed version of the schedule. This is a requirement rather than a decision guideline.

## An example schedule after review

GUMNUT PLANNING SCHEME		LOCAL PROVISION
<b>SCHEDULE 9 TO THE NEIGHBOURHOOD CHARACTER OVERLAY</b>		
Shown on the planning scheme map as <b>NCO9</b>		
<b>GUMNUT GARDENS RESIDENTIAL PRECINCT</b>		
<b>1.0</b>	<b>Statement of neighbourhood character</b>	
	<p>The Gumnut Gardens are a significant open space area located in the middle of the Gumnut Gardens Residential Precinct. The Gumnut Gardens Residential Precinct displays a very strong landscape and garden theme. The significance of this area is attributable to a number of key neighbourhood character features including attractive private residential gardens comprising mature indigenous and exotic species, generous front side and rear setbacks of existing dwellings, the modest nature of existing development, street trees and the Gumnut Gardens, itself.</p> <p>This residential precinct plays a pivotal role in maintaining the landscape and natural environmental values of the Gumnut Gardens. The Garden's edge, and its interface with local streets, is paramount to these values.</p> <p>The general setting of the Gardens, including the streets in the precinct, play a role in contributing to the attractive garden character of the area.</p> <p>The preservation and enhancement of the character of this Precinct is dependent on ensuring that the built form maintains an inconspicuous profile against the dominant landscape values, adequate open space is set aside to sustain medium to large trees and existing significant vegetation is maintained.</p>	
<b>2.0</b>	<b>Neighbourhood character objective</b>	
	<p>To maintain and enhance the existing treed interface between residential properties and the Gumnut Gardens.</p> <p>To retain the informal garden qualities and the dominance of medium to large sized evergreen and deciduous trees.</p> <p>To ensure that development provides for adequate building setbacks to protect and enhance the open garden character of the area.</p> <p>To ensure that the location and scale of new buildings and works is consistent with the prevalent character of the area.</p>	
<b>3.0</b>	<b>Permit requirement</b>	
	<p>A permit is required to remove, destroy or lop a tree.</p>	
NEIGHBOURHOOD CHARACTER OVERLAY – SCHEDULE 9 1 APRIL 2003		PAGE 1 OF 2

**4.0 Modification to Clause 54 and Clause 55 standards**

STANDARD	MODIFIED REQUIREMENT
Minimum Street Setback A3 and B6	Walls of buildings should be set back at least 10 metres from the front street.  Side street setback as specified in the Tables to Standards A3 and B6 continue to apply.
Building height A4 and B7	The maximum building height should not exceed 8 metres.  Changes of building height between existing buildings and new buildings should be graduated.
Site coverage A5 and B8	The site area covered by buildings should not exceed 50 per cent.
Front fence height A20 and B32	The design of front fences should complement the design of the dwelling and any front fences on adjoining properties. A front fence within 3 metres of a street should not exceed 0.9 metres in height.

**5.0 Decision guidelines**

Before deciding on an application, the responsible authority must consider:

- The reasons for removing any tree and the practicalities of alternative options that do not require removal of any trees.
- The size and species of any replacement vegetation.
- The effect of any buildings and works, including paving, landscaping and fencing on the garden character of the area.
- Whether the location, bulk, outline and appearance of the buildings and works will be in keeping with the character of the area.
- Whether the setback of any replacement dwelling on an allotment that shares a side boundary with the Gumnut Gardens is consistent with the front setback of the original dwelling.
- The need for two storey development to minimize the bulk of first floor areas through articulation of first floor walls or the use of an attic style design.
- The need to maintain a main roof pitch between 25 and 45 degrees.
- The selection of building materials.