What happens if a council decides a standard is met?

If a standard is met, the corresponding objective is met. The council is not required to consider the corresponding decision guidelines.

What happens if a council decides a standard is not met?

If council decides a standard has not been met, the relevant decision guideline of the standard outlines what council must consider when deciding whether the corresponding objective is met. For example, the decision guidelines in the suite of neighbourhood character objectives include the requirement to assess an alternative design solution against "Any relevant neighbourhood character objective, policy or statement set out in this scheme". This enables the council to apply local neighbourhood character policies when considering if an alternative design solution satisfies the objective.

What role will referral authorities play in deemed to comply assessments?

Any referral requirements of a planning scheme continue to apply. Clause 55 does not exempt the council from considering any decision and comments it has received from a referral authority as set out in section 60 (1)(d) of the *Planning and Environment Act 1987* (the Act).

Does the garden area requirement in the General Residential Zone or Neighbourhood Residential Zone apply to a clause 55 assessment?

Yes. The applicable zone requirements continue to apply in addition to the requirements of clause 55.

Do the building height requirements of an applicable zone apply to a clause 55 assessment?

Yes. An applicable mandatory building height requirement will apply to an application assessed under clause 55.

Does the applicant need to state if the standard has been met or not?

Yes. Clause 55 states that an application must be accompanied by "a written statement outlining which standards are met and which are not met". If a standard is not met, the written statement must include an explanation of how the development meets the corresponding objective having regard to the corresponding decision guidelines.

What parts of the Act are exempt for deemed to comply assessments?

An application to which clause 55 applies is exempt from specific requirements in the Act to ensure that clause 55 operates as a deemed to comply provision.

An application to which clause 55 applies is exempt from the requirements of section 60(1)(b), (e), (f), (1A) and (1B) of the Act in order to limit the matters that a council may consider when assessing an application. This includes the following matters:

- The objectives of planning in Victoria (section 60(1)(b)).

- Any significant effects the use or development may have on the environment or the environment may have on the use and development (section 60(1)(e)).
- Any significant social and economic effects (section 60(1)(f)).
- The approved regional strategy plan under Part 3A, approved strategy plan under Part 3C and Part 3D, any relevant environment reference standard and Order under the *Environment Protection Act 2017*, strategic plan, policy statement, code or guideline, or section 173 agreement affecting the land (section 60 (1A))
- The number of objectors in considering whether the use or development may have a significant social effect (section 60 (1B)).

An application to which clause 55 applies is also exempt from the requirements of section 84B(2)(b) to (jb) of the Act in order to ensure the Victorian Civil and Administrative Tribunal (VCAT) takes into account similar matters to the council in determining an application for review. This includes the following matters:

- The objectives of planning in Victoria (section 84B(2)(b)).
- The approved regional strategy plan under Part 3A, approved strategy plan under Part 3C and Part 3D (section 84B(2)(c), (d) and (da)).
- Any relevant environment reference standard or Order under the *Environment Protection Act 2017* (section 84B(2)(e) and (ea)).
- The extent to which persons residing or owning land in the vicinity of the land to which is the subject of the application were able to and in fact did participate in the procedures required to be followed under the Act before the responsible authority could make a decision in respect of the application for a permit (section 84B(2)(f)).
- Any amendment to a planning scheme which has been adopted but not approved by the Minister or the planning authority (section 84B(2)(g)).
- Any section 173 agreement affecting the land (section 84B(2)(h)).
- Any amendment to the approved regional strategy plan under Part 3A, approved strategy plan under Part 3C and approved strategy plan under Part 3D Section 84B(2)(i), (j) and (ja)).
- The number of objectors in considering whether the use or development may have a significant social effect (Section 84B(2)(jb)).

How will a responsible authority consider land contamination and other environmental matters?

The requirements of the Environmental Audit Overlay, Buffer Area Overlay and other environmental overlays do not change. These overlays will continue to operate and are applied by council's strategic work as planning scheme amendments.

The changes to clause 55 do not change the general environmental duty (GED) specified in the *Environment Protection Act 2017*, meaning land managers must manage activities to reduce the risk of harm to human health and the environment resulting from pollution or waste, including contamination of land.

What happens if other planning provisions apply to an application?

There are no changes to the operation of other provisions of the planning scheme, including overlays and particular provisions. Residential developments are still required to meet the requirements of any relevant overlay or particular provision that apply to the site or proposal, including planning permit requirements for land use, development and heritage.

The notice and review provisions of the Act will continue to apply as required by other provisions of the planning scheme.

Does this mean clause 65 applies in full where an overlay applies?

Yes. When an overlay applies, its purposes and decision guidelines must still be considered in addition to the relevant decision guidelines in clause 65. However, the council is exempt and must not consider the decision guidelines in clause 65 in determining an application under a residential zone to which clause 55 applies.

Notice of application

Is notice of an application removed under clause 55?

No. A council must be satisfied that the grant of the permit would not cause material detriment to any person otherwise it must give notice of the application in accordance with section 52 of the Act.

If a development meets all the standards, is notice still required?

Yes. There is no change to the notice of application requirements in accordance with section 52 of the Act. A council must still determine if notice of an application is required. In most cases council will give notice of an application to adjoining neighbours and place a sign on site.

Does council need to determine if the standards are met before giving notice?

A council does not need to determine if all the standards are met before it makes a decision to give notice.

How will residents know development is proposed next door to them?

Residents will still receive notice of a development application where a council considers that the application may cause material detriment to them.

If the development meets the standard, but an objection raises concerns regarding the standard, must the council consider the objection?

The Act requires the council to consider all objections. If an objection is received specifically about a standard that council considers is met, then no change in relation to a deemed to comply standard can be required as part of council's decision.

Third party review rights (objector appeal)

When does an objector have no rights of review?

When all the applicable standards are met, there will be no third-party review right. The applicable standards relate to neighbourhood character and amenity protection:

- 55.02-1 Street setback
- 55.02-2 Building height
- 55.02-3 Side and rear setbacks
- 55.02-4 Walls on boundaries
- 55.02-5 Site coverage
- 55.02-6 Access
- 55.02-7 Tree canopy
- 55.02-8 Front fences
- 55.04-1 Daylight to existing windows
- 55.04-2 Existing north-facing windows
- 55.04-3 Overshadowing secluded open space
- 55.04-4 Overlooking
- 55.05-2 Overshadowing domestic solar energy systems

If there is an objection and the application does not meet one or more of the above standards, and the council decides to grant a planning permit, it must issue a notice of the decision to grant a permit to the applicant and any objector. An objector will then have the opportunity to appeal the decision to VCAT.

Can a council issue a permit where it has conditioned the decision to bring the application into compliance with an applicable standard?

No. Council cannot issue a permit where it has conditioned compliance with an applicable standard. Where notice has been given and an objection has been received, council would need to issue a notice of decision.

Can an application be amended to bring it into compliance with the applicable standards?

Yes. An applicant can seek to amend the application to bring it into compliance with the applicable standards.

If objections are received and council determines that the application is exempt from third party review to VCAT, what decision does council issue?

Where a council determines that the application complies with the applicable standards the application is exempt from third party review and council can issue a planning permit.

However, councils are encouraged to contact all objectors and make clear the exemption requirement and provide a copy of the permit to all objectors to ensure they are aware of the application outcome.

What happens if I object and council determines the application is exempt from third party review to VCAT?

The council must consider all objections to an application. An application for review to VCAT by an objector cannot be lodged if all the applicable standards are met.

If I object to an application will council inform me of its decision?

A council must inform the applicant and objector of its decision to refuse an application.

If an application is exempt from third party review, councils are encouraged to inform all objectors of its decision and provide a copy of the planning permit.

Can a review to VCAT be made against other components of an application?

VCAT is required to review the application against the same planning scheme provisions as council. Where a deemed to comply standard is met, all matters relating to the objective relevant to that standard are met, and other planning scheme objectives, decision guidelines and policy relating to that matter cannot be considered.

Clause 55 applies to VCAT's assessment of an application in the same way it applies to the council (that is, if the applicable standard is met, the corresponding objective is met).

If a proposed residential development also requires a permit under another provision of a planning scheme such as an overlay or particular provision, the third-party review rights set out in that provision will continue to apply to that component of the application.

Can an applicant seek review of a decision to VCAT?

Yes. The applicant may seek review of council's decision. The exemption from review rights at section 82(1) of the Act only applies to objectors (third party).

Applications lodged before 6 March 2025

What provisions apply to the application?

An application lodged before 6 March 2025 continues to be assessed under the former clause 55 (ResCode) provisions and not the new *Townhouse and Low-Rise Code*.

Will notice of an application be given to residents?

Residents will still receive notice of a development application lodged before 6 March 2025, if a council considers that the application may cause material detriment to them.

If notice of an application has been given, can an objector seek a review of the council's decision?

Yes. An objector can seek a review of council's decision. Third party review rights remain in place for applications lodged before 6 March 2025 if notice of the application has been given.

What happens if an application is amended under sections 50, 50A or 57A of the *Planning and Environment Act 1987* after 6 March 2025?

An applicant may request a council to amend an application (sections 50 and 57A). A council may also amend an application with the agreement of the applicant (section 50A). If an application is amended, it is taken to have been received by the council on the day the request for amendment was received by the council or the day the applicant agreed to the amendment, as applicable.

If an application lodged before 6 March 2025 is subsequently amended under sections 50, 50A or 57A of the Act:

- the former clause 55 (ResCode) will continue to apply to the application if the amendment request was received by the council, or agreed to by applicant, before 6 March 2025
- the new clause 55 or clause 57 introduced by Amendment VC267 will apply to the application if the amendment request was received by the council, or agreed to by the applicant, on or after the 6 March.

If council is making a decision on a condition of a permit that was issued before 6 March 2025 as condition 1 plans, does council have to consider the new code?

No. If the permit was issued before 6 March 2025, the conditions of the permit relate to the approval of the application at the time.

If council is considering an amendment to an existing permit, which provisions apply?

The transitional provision will apply to an application for an amendment of a permit under section 72 of the Act if the original permit was lodged before the approval date of VC267, 6 March 2025. Therefore, the former clause 55 (ResCode) provisions in operation before 6 March 2025 apply.

Applications lodged on or after 6 March 2025

What provisions apply to the application?

It is unlikely that a new or amended application lodged on or after 6 March 2025 will be determined before the new deemed to comply provisions commence on 31 March 2025.

It is recommended that councils advise applicants that an application will be assessed under the new deemed to comply clause 55 provisions and notice of an application given after 6 March 2025 include in the cover letter that the application will be assessed under the new provisions and if the applicable standards are deemed to be met the application is exempt from third party review.

The new deemed to comply clause 55 provisions are available on the VC267 Amendment documents page but will not appear in planning schemes until 31 March 2025.

In the unlikely event that a new or amended application lodged on or after 6 March 2025 is determined before 31 March 2025, the application must be assessed under the former clause 55 (ResCode) provisions in operation before 6 March 2025.

Applications lodged after 31 March 2025

What provisions apply to the application?

The new deemed to comply clause 55 provisions apply to applications lodged after 31 March 2025.