

July 2025

SUBMISSION TO DEPARTMENT OF TRANSPORT AND PLANNING ON BEHALF OF ARCARE AGED CARE

This submission demonstrates how the provision of accommodation to low means residents in Residential Aged Care satisfies the requirements of Clause 53.23 - Significant Residential Development with Affordable Housing that form part of the Victoria Planning Provisions.

1. INTRODUCTION

Arcare is a significant owner and operator of residential aged care services in Australia. Arcare sites are developed and constructed via related entities in the Knowles Group of which Arcare is a member.

An application for a Planning Permit is currently being prepared for Arcare to develop a new residential aged care facility at 724-728 Whitehorse Road, Mitcham. The proposed development will provide suites for an expected 133 older Australians together with communal facilities to support their daily and to provide them, their families and visitors and the Arcare workforce at the site with a sense of community.

To ensure the timely delivery of this new service, Arcare seeks to rely upon **Clause 53.23 - Significant Residential Development with Affordable Housing** of the Victorian Planning Scheme to apply for a Planning Permit.

Arcare proposes to make a Category 1 application under clause 53.23-1 which requires that:

- 1 the application include the **use or development of land for accommodation** (other than camping and caravan park, group accommodation and residential hotel); and
- 2 the **estimated cost of the development of land** for accommodation (other than camping and caravan park, group accommodation and residential hotel) as specified in the quantity surveyor report required under clause 53.23-3, must be at least:
 - a) \$50 million if any part of the land is in metropolitan Melbourne; or
 - b) \$15 million if the land is not in metropolitan Melbourne; and
- 3 at least 10% of the total number of dwellings in the development must be **affordable housing**

The purpose of this submission is to demonstrate how Arcare satisfies the requirements set out in paragraphs 1, 2 and 3 above.

2. REQUIREMENT 1: USE OR DEVELOPMENT OF THE LAND FOR ACCOMMODATION

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2.1. Requirement

A Category 1 application under clause 53.23-1 requires that *'The application includes the use or development of land for accommodation (other than camping and caravan park, group accommodation and residential hotel)'*.

2.2. How this Requirement is Satisfied

The planning report prepared by Arcare's consultant planners, Contour, as previously submitted to you provides a detailed assessment of the land use and the response to the Victoria Planning Provisions and specifically the provisions of Clause 53.23.

In summary, Residential Aged Care facilities are a separately defined residential activity that is nested under the broader land use term of "Accommodation". This individual land use is defined under clause 73.03 as being:

Land used to provide accommodation and personal or nursing care for the aged. It may include recreational, health or laundry facilities and services for residents of the facility.

This means that the proposed use of residential aged care satisfies this application requirement.

3. REQUIREMENT 2: ESTIMATED DEVELOPMENT COST

3.1. Requirement

A Category 1 application under clause 53.23-1 requires that *'The estimated cost of the development of land for accommodation (other than camping and caravan park, group accommodation and residential hotel) as specified in the quantity surveyor report required under clause 53.23-3 must be at least:*

- \$50 million if any part of the land is in metropolitan Melbourne; or
- \$15 million if the land is not in metropolitan Melbourne.'

3.2. How this Requirement is Satisfied

The Estimated Development Cost Report prepared by WT Partnership (Quantity Surveyor) confirms the project has an estimated development cost in excess of \$50 million.

This means that the estimated development cost requirement is met.

4. REQUIREMENT 3: PROVISION OF AFFORDABLE HOUSING

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4.1. Requirement

A Category 1 application under clause 53.23-1 requires that ‘At least 10% of the total number of dwellings in the development must be affordable housing, or alternatively this condition may be met via an alternative mechanism for the provision of affordable housing specified in the agreement under section 173 of the Act referred to in clause 53.23-4.’

4.2. How this Requirement is Satisfied

Residential aged care in Australia is provided by an array of private, church based, not for profit and government-based operators. The industry is governed and regulated by Federal legislation and the Federal Government.

The legislation governing the provision of aged care services has long required the operators of residential aged care facilities (**RACFs**) to in effect dedicate a significant portion of the beds in those for the purposes of housing people of lower socio-economic means (referred to collectively in this submission as “Low Means Resident”).

We propose to demonstrate how the provision of this pre-existing requirement on operators of RACFs satisfies the requirement of clause 53.23-1 to provide affordable housing.

4.3. What Are The Requirements Of The Victorian Planning Legislation?

Clause 53.23-1 requires that ‘At least 10% of the total number of dwellings in the development must be **affordable housing**’.

4.3.1. What is Affordable Housing?

The Planning and Environment Act 1987 (PEA) defines Affordable Housing as follows:

- **affordable housing** is housing, including social housing, that is appropriate for the housing needs of any of the following:
 - very low income households;
 - low income households;
 - moderate income households.
- where:
 - low income households means households with a household income within the income range specified as a low income range by Order under section 3AB;
 - moderate income households means households with a household income within the income range specified as a moderate income range by Order under section 3AB;
- social housing has the same meaning as in section 4(1) of the Housing Act 1983;
- very low income households means households with a household income within the income range specified as a very low income range by Order under section 3AB.

4.3.2. What are the current Income Ranges under section 3AB?

The following income ranges are currently gazetted for low, moderate and very low income households in the Greater Capital City Statistical Area of Melbourne

	Very low income range (annual)	Low income range (annual)	Moderate income range (annual)
Single adult	Up to \$29,770	\$29,771 to \$47,630	\$47,631 to \$71,450
Couple, no dependant	Up to \$44,650	\$44,651 to \$71,450	\$71,451 to \$107,170
Family (with one or two parents) and dependent children	Up to \$62,510	\$62,511 to \$100,030	\$100,031 to \$150,030

4.3.3. Delivery Models

The funding, delivery, and management of affordable housing in Victoria is complex. It involves multiple players within different operating contexts, and a range of different legislative and regulatory frameworks, funding arrangements, corporate structures, economic influences, and competitive environments.

Importantly, it must be acknowledged that the delivery of affordable housing which will have a benefit to the community (specifically the section of the community that meet the definition at Section 3AA of the Planning and Environment Act 1987) remains voluntary. This is particularly the case in circumstances where there are a number of private landowners / developers in control of a parcel(s) of land to be developed, there are varied housing types to be provided, and several stages of development expected over many years. Some delivery models are more appropriate to higher density housing, some models may provide for a degree of affordability in the short term and some models may not benefit those in need the most but have a broader application across the community.

Furthermore, the number of delivery models that are now applied across Victoria has significantly increased in recent years and it is expected this will continue as the affordable housing delivery models mature. To date, the models that have been explored on larger projects include land lease communities managed by a registered housing agency, discounted sale of completed dwellings or rental of housing to eligible households at a discount to the market rent, and a range of shared equity schemes. The involvement of registered housing associations or agencies, the length of any agreement for the delivery of affordable housing to the community, the percentage of housing to be delivered and the degree of “discount” to the market are all matters that vary from project to project.

4.4. Part B: What Are The Requirements To Provide Accommodation To Supported Residents In Aged Care?

4.4.1. Aged Care Legislative Framework (Today)

All residential aged care providers (**Providers**) are governed by the *Aged Care Act 1997* (Cth) and its associated Principles (collectively the **ACA97**) which regulate the delivery of accommodation, care and other services, to older Australians including those assessed as Low Means Residents.

4.4.2. Bed Licences

Currently, in order to operate each bed in a RACF, Providers must be allocated a “place” for the bed by the Department of Health and Aged Care (**Department**). These are colloquially referred to as “bed licences”.

It is typical for a bed licence to have conditions attached to it, designed to cause the Provider to deliver specific outcomes (e.g. accommodate people of low socio-economic means, accommodate people with dementia).

4.4.3. The Cost of Accommodation in Aged Care?

The ACA97 permits a Provider to charge for the provision of accommodation, care and services. We will limit our commentary to the cost to the Resident of accommodation for the purposes of this submission.

Accommodation costs are means tested to determine whether a particular Resident is eligible for financial support from the Government to meet the cost of the bed that they choose.

The Provider determines the cost or “price” for the bed.

Self-Funded

For Residents with sufficient financial resources, a Provider may charge those Residents its price for the bed, either by:

- a lump sum payment known as a Refundable Accommodation Deposit (**RAD**);
- a daily rate calculated on the room price multiplied by an interest rate set by the Department known as a Daily Accommodation Payment (a **DAP**); or
- a combination of the two.

The Resident chooses how they pay. They are **not** entitled to any Government support.

Government Funded

For those who do not have the financial resources to pay all or some of the cost of the bed, they may be eligible to have that bed Government funded either:

- partially, in which case they will pay a contribution to the cost either as a Refundable Accommodation Contribution (a lump sum) or a Daily

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- fully, in which case the individual will not pay any anything for their accommodation.

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In both cases, the Government will pay a supplement (the **Accommodation Supplement**) i for that person, directly to the Provider.

4.4.4. Provision Of Accommodation To Low Income Residents

The ACA97 currently ensures that all Providers deliver aged care services in RACF'S to **Low Means Residents**.

In order to determine who is eligible for support and the extent of that support, a means test is conducted by Services Australia based on information provided by the individuals concerning their assets and income. Providers are advised of the outcome of these assessments and must comply with the outcome.

Individuals will be “fully supported” or “partially supported” if the value of their combined assets and income at the time at which they entered residential care, was:

- Assets
 - under \$61,500 = fully supported
 - between \$61,500 and \$206,663.20 = partially supported
- AND income
 - below \$33,849.40 for a single individual or
 - \$33,173.40 for each member of a couple

COMPARISON OF FULLY SUPPORTED VS PARTIALLY SUPPORTED RESIDENTS

Feature	Fully Supported Resident	Partially Supported Resident
Government pays accommodation?	Yes, fully	Yes, partially
Resident pays accommodation fee?	No	Yes, as a contribution only (DAC or RAC)
Means tested?	Yes	Yes
Financial status	Very low income and assets	Limited income and assets

4.4.5. Who Determines Who Is A Supported Resident?

As noted above, Services Australia (formerly Centrelink) is the body responsible for determining a Resident's status and their entitlement to assistance with accommodation costs, via a means testing process.

Services Australia considers a variety of information in order to means test individuals, then provides them with an assessment of their status and whether they will pay some or any of the cost of their accommodation.

Services Australia considers a resident's:

- **income** such as Australian Government support payments (e.g. age pension, services pension, income support supplement), rental property income, business income, family trust distributions, and superannuation pensions; and
- **assets** such as financial assets (e.g. cash, term deposits, investments, shares, loans, gold etc.), household and personal effects, foreign assets, investment properties, superannuation and private trusts. The RAD that a person pays to a Provider is deemed to be part of that person's assets.

Following this assessment and the designation of a status to an individual, Services Australia will then automatically pay the relevant amount of the Accommodation Supplement to Providers for any eligible residents. This is done on a monthly basis.

4.4.6. How Does The ACA97 Require Accommodation To Be Provided To Low Means Residents?

The ACA97 both causes and encourages Providers to provide a portion of their RACF'S to house Low Means Residents using two principle methods:

REGIONAL RATIOS – THE “STICK”

Providers are currently required to meet the **mandatory regional ratios** for beds for Low Means Residents, specified for regions.

For example, the ratio for Southern Metro is 18.2%. This means Providers in this region are required to have at least 18.2% of places in a RACF'S occupied by low means residents.

Failure to meet these ratios could result in sanctions being imposed on Providers by the Aged Care Quality and Safety Commission (**Commission**) which poses not only reputational risks for Providers (sanctions are published publicly) but also potentially impacts Providers' ability to derive funding and income from that RACF.

ACCOMMODATION SUPPLEMENT – THE “CARROT”

The Department will pay the Provider an **Accommodation Supplement**.

Where a Provider makes available not less than 40% of its new built (or substantially refurbished) beds to Low Means Residents it can receive the maximum Accommodation Supplement of \$69.49 per day per resident for their beds. This is a significant incentive.

Where the percentage falls below 40%, the Accommodation Supplement will be reduced by 25%, down to \$52.12 per day per Resident for their beds.

Most importantly, this represents a guaranteed income stream for Providers for each bed it sells to a Low Means Resident.

4.5. How Provision of Accommodation to Supported Residents in a RACF Equates to Provision of Affordable Housing

It is possible to compare the definition of a Low Means Resident in a RACF to a person who is eligible for Affordable Housing under the Victorian Planning Scheme as set-out in the following table.

The resulting effect is that by default, if Arcare were to be successful in obtaining a permit to, and subsequently developing Arcare Mitcham, it would be providing accommodation to Low Means Residents, thereby satisfying the requirements of this clause to provide ‘*affordable housing*’

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Comparison of Affordable Housing vs Low Means Residents

Feature	AFFORDABLE HOUSING			RESIDENTIAL AGED CARE	
	Very low income Household	Low income Household	Moderate income Household	Fully Supported Resident	Partially Supported Resident
Government pays accommodation?				Yes, fully	Yes, partially
Resident pays accommodation fee?				No	Yes, as a contribution (DAC or RAC)
Means tested?				Yes	Yes
Assessing Body				Services Australia (or DVA)	
Financial status				Very low and low income and assets	Limited income and assets
Single adult	Up to \$29,770	\$29,771 to \$47,630	\$47,631 to \$71,450	Assets <ul style="list-style-type: none"> under \$61,500 = fully supported between \$61,500 and \$206,663.20 = partially supported AND income <ul style="list-style-type: none"> below \$33,849.40 for a single individual or \$33,173.40 for each member of a couple 	Means tested amount = (income tested amount + asset tested amount) / 364 days, where Asset tested amount: <ul style="list-style-type: none"> Below \$61,500 = fully supported = nil of their assets are means tested Between \$61,500 and \$206,663.20 = partially supported = 17.5% of the assets above \$61,500 but below \$206,663.20 are means tested between \$206,663.20 to \$496,989.60 = 1% of their assets are assessed during the means test Above \$496,989.60 = 2% of their assets are assessed during the means test Income tested amount thresholds: <ul style="list-style-type: none"> Single: \$33,849.40 pa Each member of a couple: \$33,173.40 pa Once past these threshold amounts, the calculation of their income tested amount is 50% of the total income minus the income free area threshold (aka \$33,849.40). Income tested amount = 50% x (total assessable income - income free area) / 364 days If eligible, they do not have to pay the accommodation payment.
Couple, no dependant	Up to \$44,650	\$44,651 to \$71,450	\$71,451 to \$107,170		
Family (with one or two parents) and dependent children	Up to \$62,510	\$62,511 to \$100,030	\$100,031 to \$150,030		
% Required	10%			Set by Minister for Health by Region	

4.6. Arcare Commitment to the Delivery of Supported/Affordable Accommodation by Arcare

Any commitment that Arcare makes to the delivery of beds to Low Means Residents must be considered in the context of the unique market conditions that apply to residential aged care.

4.6.1. Average Stay

Arcare provides aged care accommodation to over 5,000 people across 60 RACFs nationally.

Approximately half of the beds within a RACFs will turnover in any given year (i.e. become free and be available for a new resident). Importantly, this is significantly less a period of time than “standard accommodation” in the community that is deemed affordable housing.

4.6.2. Need to Remain Fluid

This high degree of turnover and the resulting need to sell rooms on a frequent basis means that Arcare is very susceptible to changes in market conditions which affect people’s ability to afford aged care.

As a result, there are times when the number of Low Means Residents in a RACF is high and times when it drops down, based solely on demand and capacity.

It is important to note that each time Arcare wishes to sell a bed to a new resident, it must not only meet the market conditions, but also the then current obligations imposed upon it by the ACA97 as it stands at that time.

4.6.3. Arcare Mitcham: Commitment to Provide Accommodation to Low Means Residents

The construction of Arcare Mitcham if permitted, will bring approximately 133 new beds into the housing market in the area. After the initial sale of all beds, we anticipate needing to re-sell approximately 66 beds per annum.

As is its usual practice, Arcare will offer these beds for sale to self-funded (RAD and DAP paying) and Low Means Residents.

Arcare will cement its commitment to provide accommodation to Low Means Residents in order to satisfy the affordable housing requirements in the form of a suitable s173 Agreement between it and the Department.

4.7. CHANGES TO THE LEGISLATIVE REGIME

Following the Royal Commission into Aged Care in Australia, the Australian Government announced its intention to replace the ACA97.

The *Aged Care Act 2024* (Cth) (**ACA24**) and proposed (but *draft only*) *Aged Care Rules 2025* (**Rules**) are now expected to commence on 1 November 2025.

The Rules will largely govern the ongoing approach to accommodation for Low Means Residents.

The current drafting maintains the Accommodation Supplement arrangements as they are, however, the requirement to hold a bed licence and the mandatory regional ratios are being scrapped. It is not yet clear how the newly elected Government will further entrench requirements for Low Means Residents.

Having said that, we find it difficult to envisage an environment that does not impose any obligation on Providers to accept Low Means Residents, given they comprise a significant proportion of people housed in RACF's nationally.

To that end, the Department has released guidance on the Response to the Aged Care Taskforce Accommodation Reform which notes that over the next two years the Government will undertake a review of the accommodation supplements. The review will consider the current rates of accommodation supplement, incentives for providers to develop and maintain good quality accommodation, as well as incentives to accept Low Means Residents. While not expressly stated, this may include alternative ways to require Providers to meet the mandatory regional ratio.

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5. CONCLUSION

Based upon the above, it is our submission that an application for a Planning Permit to construct a Residential Aged Care Service under Category 1 clause 53.23-1 would satisfy the requirements to both:

- *use or development of land for accommodation; and*
- *provide at least 10% of the total number of dwellings in the development must be affordable housing.*

Whilst the ongoing implementation of *Aged Care Act 2024* (Cth) (**ACA24**) and proposed *Aged Care Rules 2025* (**Rules**) has not yet brought absolute certainty regarding the transition of Low Means Resident requirements, the ongoing need to provide accommodation to the significant cohort of Low Means Residents in the community into the future is certain, particularly as the forecast need for residential aged care beds is predicted to grow exponentially over the next several years (with the Baby Boomers entering the market).

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