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## **PRACTICE NOTES POLICY No.15 – CARETAKER’S DWELLINGS**

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# 1 INTRODUCTION

Under the Industrial 1, 3 and Business 3 zones accommodation, with the exception of a caretaker's house, is prohibited. A Caretaker's house is the only form of residential use available within these zones. Caretaker's houses are a section two use and are therefore subject to a planning permit in all three zones.

Over the last 10 years there has been a considerable number of caretaker houses built within the South Melbourne East Industrial area. There is continuing pressure to allow caretaker houses in industrial areas due to their locality and inherent land values.

Council has identified the increasing number of caretaker's as an issue to be further investigated. This is likely to occur concurrently with the industrial land use review. The industrial land use review is proposed to be undertaken over the next 12 months and will set the future strategic direction of our industrial areas. It is important that until this process has been completed new uses do not compromise the integrity of the industrial areas.

## 1.1 Purpose of Practice Note

This practice note is designed to assist in the assessment of applications involving caretaker's dwellings within Industrial 1, Industrial 3 and Business 3 Zones.

## 1.2 Application of Practice Note

This practice note is to be used in the assessment of all development and use applications incorporating a caretaker's house within either an Industrial 1 Zone or Industrial 3 Zone or Business 3 Zone.

This practice note must be used in association with the provisions of the Port Phillip Planning Scheme including the Municipal Strategic Statement and Industrial Areas Policy.

# 2 PLANNING SCHEME FRAMEWORK

## 2.1 Caretaker's House Definition

Under the Port Phillip Planning Scheme a Caretaker's House is defined as:

"A dwelling on the same site as a building, operation, or plant, and occupied by a supervisor of that building, operation or plant."

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## 2.2 State Planning Policy Framework

### Clause 17.03 - Industry

#### Objective

- To ensure the availability of land for industry and to facilitate the sustainable development and operation of industry and research and development activity.

#### General Implementation

- Industrial activity in industrial zones should be protected from the encroachment of unplanned commercial, residential and other sensitive uses which would adversely affect industry viability.
- Responsible authorities should not approve non-industrial land uses which will prejudice the availability of land for future industrial development.

## 2.3 Municipal Strategic Statement

### Clause 21.05-9 – Industrial Areas

#### Strategies

##### *Municipal Wide*

- *Ensure that as caretakers' houses are a minor or ancillary component of any building that will not unduly constrain industrial or business use and development on adjoining land.*

##### *Fishermans Bend Industrial Area:*

- *Support its continued role as the largest important industrial area within Port Phillip.*
- *Support traditional viable existing industrial uses.*
- *Encourage a transition from the traditional manufacturing role of the area to employment-intensive, clean and sustainable industrial activity, including high technology uses, offices and other labour intensive industries.*

##### *South Melbourne Industrial Area:*

- *Maintain the area's strong industrial focus as well as the mix of large general industrial uses in the west and smaller lots with less intensive industrial uses in the east*
- *Encourage new industrial uses in appropriate locations where they will not impact upon the amenity of adjoining residential areas.*

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South Melbourne East Industrial and Commercial Area:

- *Support the mixed use role of the area as a location for light industrial and commercial development (including manufacturing, motor vehicle repairers and a limited number of offices) with the potential for a range of mixed commercial and office use along the Kings Way corridor.*

## 2.4 Local Policy

**Clause 22.03-3 – Industrial Land Use Policy** makes specific reference to caretaker houses.

*Require that a caretaker's house to be an ancillary use to a building, operation or plant proposed or existing on the site, with a total building area comprising less than 30% of the total building area of the site. Consideration will be given to an application for a caretaker's house which occupies between 30 to 50% of total building area per site if it can be demonstrated that the proposed use and development:*

- *will not lead to a significant loss of Industrial 1, 3 or Business 3 zoned land for industrial and business purposes,*
- *will not lead to a significant reduction in the operating capability and capacity of adjoining Industrial 1, 3 or Business 3 zoned land,*
- *is necessary to meet the supervisor's residential requirements for the particular building, operation or plant, and*
- *is reasonably compatible with existing land uses in the surrounding area.*

*Further require a caretaker's house to be:*

- *designed in accordance with the provisions of the Good Design Guide for Medium Density Housing in relation to the provision of car-parking, on site amenity and off site amenity impacts to adjoining residential properties; and where the site shares a common boundary with a residential property or caretakers dwelling, the height and length of walls adjacent to residential boundaries.*
- *consistent with Ministerial Direction No. 1 in relation to any part of the site which presents an environmental health risk for the occupants of the caretakers house unless it can be demonstrated that there is no likelihood of environmental contamination on the site;*
- *protected from adverse amenity impacts through the provision of noise attenuation measures and the provision of a clear physical separation between residential and non-residential uses within the building."*

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## **2.5 Zoning Controls**

### **2.5.1 Industrial 1 Zone - Clause 33.01**

Under an Industrial 1 Zone a caretaker's is a section 2 use.

The purpose of the Industrial 1 Zone is as follows:

- To provide for manufacturing industry, the storage and distribution of goods and associated uses in a manner which does not affect the safety and amenity of local communities.

### **2.5.2 Industrial 3 Zone - Clause 33.03**

A caretaker's house is a section 2 use under an Industrial 3 Zone.

The purpose of the Industrial 3 Zone is as follows:

- To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter-industry conflict.
- To provide a buffer between the Industrial 1 Zone and Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with nearby community.
- To ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.

### **2.5.3 Business 3 Zone – Clause 34.03**

A caretaker's house is a section 2 use under a Business 3 Zone.

The purpose of the Business 3 Zone is as follows:

- To encourage the integrated development of offices and manufacturing industries and associated commercial and industrial uses.

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## 3 PLANNING ISSUES

### 3.1 Information to be submitted with Planning Application

Where appropriate the following information should be provided with an application involving a caretaker's residence:

A **site analysis plan** including the following:

- Existing conditions on the subject site, building envelope, existing crossovers, car spaces and any other noteworthy features.
- Details of surrounding land uses. (Note: it is suggested that a 100m radius around the subject site be utilised to determine the extent of the site analysis. A distance greater or lesser than this can be utilised where appropriate).

A **written report** that explains:

- The proposed use(s) (include type of use, operating hours, staff numbers etc).
- Why a caretaker's is necessary, what will its role be, who will occupy it and what will their role be in the operation of the primary use.
- Break down of floor areas for primary use and caretaker's component.
- How the proposal satisfies the objectives of the zone, MSS and Local Policies.
- How the proposed design satisfies the requirements of Clause 22-06

A **parking and traffic report** (Only required in situations where dispensation is being requested or for larger applications).

Please Note: It is the applicants role to provide Council with sufficient information to demonstrate that the proposed use is in fact a caretaker's and that the proposed use/development meets the objectives of the zone and any relevant policy.

### 3.2 Caretaker's House Definition

The first question you need to ask in relation to a caretaker's application is 'does the proposed use satisfy the Planning Scheme definition of a caretaker's house?' The definition of a caretaker's house is:

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“A dwelling on the same site as a building, operation, or plant, and occupied by a supervisor of that building, operation or plant.”

VCAT have provided some guidance in terms of what constitutes a caretaker’s house. Refer to appendix 1.

The important things to remember are:

- The caretaker’s component must be ancillary to the primary use.
- In general the total floor area of a caretaker’s component should be kept to a minimum and should be less than the primary use. The local policy suggests that up to 30% of the total floor area is acceptable and under some circumstances up to 50%. A floor area in excess 50% should generally not be supported. (**\*Refer below for things to consider when calculating floor area**)
- The person living in the caretaker’s house must take an active role in the supervision of the primary use.

If applicant cannot clearly identify the role of the occupier of the caretaker and their relationship to the primary use then you need to question whether it complies with the definition.

**Important: If proposal does not meet the definition of a caretakers’ then Council has no option but to advise applicant that the use is prohibited and give them the opportunity to withdraw or modify their proposal.**

### 3.2.1 Calculating Floor Area

When calculating floor area the following should be considered:

- Total Building Area

The Local Policy for caretaker’s houses refers to the term ‘total building area’. This term is not consistent with gross or net floor area as defined within the Planning Scheme. However total building area does imply a meaning similar to that of gross floor area. It is recommended that for consistency, the definition of gross floor area within the Planning Scheme be used to calculate total building area.

- Floor Area

When calculating the floor area per use, the following principles should be applied:

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- Calculate the percentage of gross floor area for both the primary use and the caretaker's house component.

This is important as sometimes simply calculating the floor area percentage of the caretaker's house can be misleading.

For example:

Caretaker's	=	195m <sup>2</sup>
Warehouse/office	=	145m <sup>2</sup>
Car parking	=	60m <sup>2</sup>
Total	=	400m <sup>2</sup>

In the above scenario the caretaker's house would occupy a total of 49% of the total building area. However the primary use (warehouse/office excluding car parking) only occupies 36% of the total building area. This provides a better indicator of which use is the predominant use.

- Do not include areas set aside for car parking in the calculation of the floor space for the primary use. This should be treated as a separate space.
- Private open space areas generally should not be included in the calculation of the size of the caretaker's house.

### **3.3 Appropriateness of the Use**

#### **3.3.1 Caretaker's House**

##### **Is the proposed caretaker's an appropriate use in context of its surrounds?**

This is a key issue that needs to be carefully considered. The influx of caretaker houses within an established industrial/ commercial area can give rise to conflicts between the different uses and ultimately erode the future viability of the area available for industrial and commercial uses. Although a caretaker's is supposed to be an ancillary part of an industrial or commercial use it is still essentially a residential use. Occupiers of caretaker's will inherently have an expectation that their internal amenity should be protected. It is important therefore that conflicts between caretakers and surrounding uses are avoided.

Before approving a caretaker's house you need to consider whether there are any commercial or industrial uses within the immediate vicinity of the subject site that may cause an impact on the amenity of the residential use? For example a nearby factory or commercial premises that operates late at night or early morning, or on weekends.

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Adjoining or nearby uses deliver or require delivery of materials early morning or late night. This is where the information provided by the site analysis is important.

**Note: One of the flaws of the current Policy is that it implies that if the floor area of the caretaker's is less than 30% of the total floor area then there is no issue with it. This is not the case. For all applications you should assess the proposal against the issues listed in the policy.**

### 3.3.2 Primary Use

It is also important to keep in mind the objectives of the relevant zone. Office use is generally not acceptable within an Industrial 1 zone, and only under certain circumstances is acceptable within an Industrial 3 zone (max floor area of 500m<sup>2</sup>). In a Business 3 zone an office use is as of right.

## 3.4 Design Considerations

### External

The design should be assessed against Clause 22.06 of the Planning Scheme

The application needs to be assessed against the following requirements of the Good Design Guide/ResCode to ensure that it does not affect the amenity of any adjoining residential properties:

- Height and length of walls adjacent to residential boundaries
- Overlooking

### Internal

It is important that the space to be occupied by the primary use and the residential component is clearly defined. Designs that result in rooms with ambiguous uses should be avoided.

It is also important to ensure that the internal amenity of the caretaker's is maximised where possible. This can be achieved by ensuring the following:

- An adequate level of private open space is provided;
- A clear physical separation exists between the caretaker's area and the primary use.

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- That where necessary noise attenuation methods are used to reduce any potential impacts of noise from adjoining industrial or commercial uses (an example maybe the use of double-glazing or insulation).

### **3.5 Car Parking**

#### **Rates**

Car parking should be provided on-site for all applications unless sufficient justification can be provided by the applicant to reduce the requirement.

Car parking rates (CPR) should be calculated on the following basis:

CPR for primary use + GDG (Rescode) CPR for Residential Use – Credits\*

= Total Parking Requirement

\*Where applicable can consider credits for existing use.

#### **Key Questions**

If a dispensation is sought has the applicant provided supporting information in regards to it? (Parking report/analysis)

Are there other recent applications within close proximity that also had a car parking dispensation approved? If yes what is the cumulative affect of this?

Applications involving car parking dispensations should be referred to the Parking Department for comment.

### **3.6 Addition or expansion of an existing caretaker's house**

It is important to carefully manage incremental changes to approved and existing caretaker dwellings. Incremental increases in their size can result in a change in type of accommodation provided. It is really a question here of ensuring that the use continues to satisfy the definition of a caretaker's. Refer to Section 3.2 for details of the definition.

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## 3.7 Referrals

### 3.7.1 External – Referral Authorities

In general there are no specific requirements to refer applications for a caretaker's house to external referral authorities. For development applications it is important to check the zone and overlay requirements to ensure that no external referrals are required.

### 3.7.2 External – Public Notice

Public notice should be undertaken for all caretakers' house applications. As a caretaker's could potentially affect the operation of a nearby industrial or commercial use it is important that public notice is relatively broad. A notice on the frontage(s) of the subject site should be required with all applications. Notices to all adjoining and adjacent properties should also be required as appropriate. (Again it may be appropriate to use a 100m radius around the subject site for the purpose of determining the area to serve notice).

### 3.7.3 Internal

The following is a general list of internal referrals that maybe appropriate in relation to a caretaker's house application.

Altered/New Crossover	Standard Roads
Parking Issues	Complete Traffic Solutions
Design Advice	Urban Design & Architecture or Heritage Adviser
General Issues	Team Leader/ Neighbourhood Coordinator
Policy/Practice Note	Strategic Planning
Other	Ward Councillor

## 3.8 Assessment Checklist

Before making a decision on an application the following questions should be asked:

1. Is all the information required submitted? Yes/No
2. Is the proposed use a caretaker's? Yes/No
3. Does the proposal comply with the MSS/Local Policy?\* Yes/No

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\*Note: This applies to both the caretaker's and the primary use where a permit is required for it.

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|---|--------|
| 4. Does the proposal satisfy the zone objectives?           | Yes/No |
| 5. Is a caretaker's a suitable use within the locality?     | Yes/No |
| 6. Does the proposal satisfy design and car parking issues? | Yes/No |

Generally where you answer yes to all of the questions then you should approve proposed use. Conversely if the answer is no to any of questions then generally the application should be refused.

### **3.9 Standard Permit Conditions**

The following conditions are recommended to be included on any planning permit issued for a caretaker's house. (Please note these conditions should be additional to standard development and use conditions applied to permits and should only be applied where applicable)

#### **3.9.1 General**

- Use of the land for a caretaker's house shall only be the land that is shown within the lines delineated in red on the plans to be endorsed by Council.

#### **3.9.2 Agreement**

- Prior to the commencement of the use/development permitted the applicant must enter into an agreement under Section 173 of the Act with the Responsible Authority. The agreement must be in a form to the satisfaction of the Council, and the applicant shall be responsible for the expense of the preparation and registration of the agreement, including the Council's reasonable costs and expense (including legal expenses) incidental to the preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:
  - (i) That dwelling on the land shall only be used for a Caretaker's house for occupation by a supervisor of the existing use of the building, or other subsequent use of the building as allowed by the Port Phillip Planning Scheme. This requirement shall cease if the zoning of the subject land is changed to allow the use of a dwelling.

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- (ii) Use of the land for a caretaker's house shall only be the land that is shown within the lines delineated in red on the plans to be endorsed by Council.

### 3.9.3 Noise

- All dividing walls and floors within the development are to be constructed to limit noise transmission to 45 STC (Sound Transmission Class) in accord with Part F(5) of the Building Code of Australia.

### 3.9.4 Parking

- The operator under this permit must make all reasonable attempts to ensure that no vehicle under the operators control, or the operators staff, are parked in the streets nearby.
- The car parking provided on the land must always be made available for use by persons employed on or visiting the subject premises to the satisfaction of the Responsible Authority, and no measures restricting access by such persons to the car park may be taken without the prior permission of the Responsible Authority.
- Provision shall be made for the storage and disposal of garbage to the satisfaction of the Responsible Authority. All garbage storage areas must be screened from public view.

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## **APPENDIX 1: VCAT COMMENTS**

Below is some useful comments made by VCAT in relation to appeals involving Caretaker Houses.

### **Market Street, South Melbourne. (Appeal No. 1998/10756 App No. 777/97)**

'The designation on the plans of one room in each unit as an "office" or even for "industry" does not necessarily turn the two dwellings into caretaker's dwellings.'

'Many people have an office at home with comparable dimensions (or better) at which part or most of their business is conducted, but it is absurd to suggest that the presence of this one room converts the whole dwelling to a caretaker's dwelling.'

'I find that there is nothing about the layout of the buildings as proposed that suggests they are dedicated to non-residential purposes.'

'If the use goes beyond what may be characterised as a caretaker's dwelling, then it is already prohibited.'

'In this case the residential use anchors the use'

'The ambivalent nature of the application's treatment of the so-called caretaker's dwellings, where the caretaker is given so much more of the use of the site than the business or industry to which the caretaking function is supposed to be ancillary, increases the likelihood that future occupants of the subject land in accordance with the terms suggested by the Council in its Notice of Decision would see themselves as residents rather than caretakers.'

### **Graphos Architects Pty Ltd v Moreland City Council (Appeal No. 2000/002033)**

'In the new definition the occupation is required to be by the "supervisor". Does the supervisor have to take an active part in the supervision of what occurs in the building or is it sufficient for a person to merely occupy the dwelling component of the building to comply with the requirement of supervisor? It is the Tribunal's view that the supervisor must take an active role in the supervision of the activities to be carried out within the building. '