

AFFORDABLE HOUSING THROUGH THE PLANNING SYSTEM

This resource aims to support local councils, Registered Housing Agencies and landowners to progress the delivery of Affordable Housing through the planning system. It was developed as part of a project guided by a diverse advisory group, comprising representatives from Registered Housing Agencies, local government, Homes Victoria, Department of Environment, Land, Water and Planning (DELWP), the Municipal Association of Victoria (MAV) and Community Housing Industry Association of Victoria (CHIA Vic).

This summary outlines the most commonly considered models for Affordable Housing delivery through the planning system, and mechanisms by which the value of the contribution can be secured over time. The full report provides more detail on these models and mechanisms, and steps through the legislative and policy context as well as matters for councils, Registered Housing Agencies and landowners to consider when deciding which model and mechanisms to pursue.

A **Registered Housing Agency** is a community housing organisation registered as a Housing Association or Housing Provider under Part VIII of the Housing Act 1983, and subject to regulation overseen by the Victorian Housing Registrar.

This project focused on arrangements that would involve a Registered Housing Agency as these organisations are specifically structured and independently regulated to provide Affordable Housing, with regulation establishing performance standards and providing significant oversight of an organisation's performance.

Facilitating Affordable Housing through the planning system

In 2018 amendments were made to the *Planning and Environment Act 1987* to facilitate the voluntary provision of Affordable Housing. This enables a council and landowner to reach an agreement to an Affordable Housing Contribution ('a contribution') as part of a **planning scheme amendment** or **permit approval process**.

It is critical that organisations considering an Affordable Housing Contribution note:

- The primary means of securing a contribution is by **voluntary agreement**. Applying a requirement without landowner consent may be subject to legal challenge.
- **Feasibility is a critical consideration for a landowner** and will significantly influence the number of Affordable Housing dwellings that can be realised. Consideration as to whether the council can provide additional value or incentives to offset costs is recommended.
- Delivery models, household targeting and how the contribution is secured can have direct **financial implications on the delivery and/or operating costs**.
- In the context of limited funding and financing for Affordable Housing, the way a contribution is provided will have considerable influence on a Registered Housing Agency and State Government's **assessment as to whether a project reflects value** and is worth co-investing.

Why seek Affordable Housing through the planning system

Supporting a contribution through the planning system enables **councils** to respond to local housing need, support the feasibility and delivery of Affordable Housing, and capture part of uplift realised from a planning approval in a public purpose. For **landowners**, a contribution supports planning approval, may provide for other value-add such as additional density, and contribute to addressing social responsibility objectives. For **Registered Housing Agencies**, it can provide access to land or dwellings it may otherwise not be able to purchase, support diversity in Affordable Housing responses, and enable utilisation of private sector skills and capacity.

Models to provide a contribution

Organisations are expected to consider State Government, council and Registered Housing Agency context, policy drivers, strategic objectives and site specific constraints and opportunities when determining an appropriate model.

Gifting land or dwellings

Gifting land or dwellings **provides the Registered Housing Agency with control of the asset**, enabling the asset to be used as security for borrowing, and **reduces the subsidy gap** required for development to occur. However, it is **not suitable where the landowner needs to retain control of the land, for example in a Built-to-Rent (BTR) scenario**. Compared to gifting land, gifting dwellings enables a contribution to be directed towards an Agency which doesn't have the capacity to develop, however it can impact on the number of dwellings provided, and may not be suitable where there are high owners' corporation costs.

Discounted sale of land or dwellings

Discounted sale of land or dwellings can support **more Affordable Housing outcomes** compared to gifting, and is suitable when the landowner requires a **contract of sale and financial payment to support financing**. As with gifting, discounted sale of land or dwellings **provides the Registered Housing Agency with control of the asset**, but is **not suitable where the landowner needs to retain control of the land, for example in a BTR scenario**. Discounted sale also requires the Agency to have **funds to purchase**, and is likely to require council and landowner resources to **determine an appropriate discount rate**.

Leasing land or dwellings

Leasing land or dwellings **supports Affordable Housing when gifting is not feasible** due to the number of Affordable Housing dwellings desired by council, and provides the Registered Housing Agency with access to land or properties to manage **without needing to source funding or financing** to acquire. However, **reinvestment** of the contribution in Affordable Housing, or the municipality, **at the end of the lease term is not realised**, and it is a **more complex** arrangement to structure and assess. **Leasing dwellings** enables a contribution in BTR developments, or when the requirement for Affordable Housing in the building is short-term, however it requires careful consideration of different management arrangements.

Affordable home ownership

Affordable home ownership can suit scenarios where council is seeking to support **mixed-tenure outcomes**, or it is a **large site** with potential to support a greater mix of households. It can be applied to developments that do not suit affordable rental outcomes and/or where **funding is not available for a Registered Housing Agency** to purchase. However, this model **does not support very low income households** and **requires a shared equity program** led by a Registered Housing Agency. The **contribution needs to be legally secured to ensure reinvestment** of the contribution in Affordable Housing when the purchaser sells or refinances.

Monetary contribution

Monetary contribution enables a **contribution where other models do not suit**, and provides funding for a Registered Housing Agency to **support acquisition or development**. However, this model is subject to the **Agency being able to develop or acquire** assets in the municipality, and is potentially open to **greater challenge**. It requires **process and resourcing** to receive and allocate funds and ensure appropriate use over time. It is recommended councils consider this model only as a 'fallback' option, when other contributions cannot be realised, for example where a preferred site in the municipality has been identified for Affordable Housing, or in developments with very high owners' corporation costs.

Mechanisms to secure a contribution

The delivery and securing of a contribution will require consideration of:

- **Mechanism to secure delivery** – how the delivery will be assured if land is transferred out of landowner control; and/or
- **Mechanism to secure a contribution and outcomes over time** – how on delivery, the contribution will be secured to ensure use for an agreed and appropriate period.

Planning controls

This model makes **council objectives clear** to the market and supports **consistency** in the contributions sought across multiple landowners over time. It provides a **greater level of certainty** that for a development to progress, there will be a contribution towards Affordable Housing. However, it is dependent on a planning scheme amendment which is **subject to public review and approval of the Minister** for Planning, and outcomes may still depend on **individual site negotiations and a section 173 agreement** to establish detail of the contribution.

Ownership by a Registered Housing Agency

Ownership by a Registered Housing Agency **supports the attraction of funding and financing** as it does not involve covenants or other agreements that may be perceived to limit use or value. It **removes the need for a process and the associated costs of developing other legal agreements** and is **simple to establish and administer** over time. This mechanism requires that Council have confidence that the mission and regulation of the Agency provide sufficient assurance that delivery and management of the land and dwellings will achieve desired Affordable Housing objectives over time. Ownership on its own **does not lock in Affordable Housing always being realised on the specific piece of land or in the municipality**.

Assets placed in a Special Purpose Vehicle (SPV)

SPVs (such as a housing trust) are best suited to scenarios where Council is committed to directing a **large number of sites** – and potentially funding – to an Affordable Housing purpose, resulting in a larger pool of assets/ contributions that council wants to protect and that would benefit from management on a single portfolio basis. Due to the **complexity and cost** to establish and administer an SPV it is not an appropriate mechanism to secure a small number of projects or sites. The **additional decision making layers** require resourcing and add risk for Housing Agencies. The creation of a separate entity also means that **Council will have limited direct control over the SPV**.

Legal Agreement, including Section 173 (S173) Agreement

Legal agreements are a **commonly used tool to secure an agreement between parties** and **can be structured to suit the circumstances** of the project. They are suited to setting out the agreed terms prior to the transfer of land and can establish a level of detail that is not appropriate for planning controls. **S173 agreements remain on title** unless a sunset clause is included and can impact the Agency's **ability to secure funding and financing**. A **time limited S173 agreement** may be an appropriate 'middle ground' that reflects the value of the contribution without overly restricting the Agency's ability to develop and prudentially manage the tenancies and assets.

Mortgage Instrument

For contributions arising from a planning agreement, a mortgage instrument could be applied by a Registered Housing Agency to secure the value of a contribution that supports Affordable Home Ownership, providing the Agency with a right to a proportion of the value to reinvest when the dwelling is sold, or refinanced. It could also be applied by a council in partnership with a Registered Housing Agency to secure the value of a landowner contribution.

Overview of models and mechanisms

The below table illustrates which mechanisms could be applied under each delivery model and highlights there are a range of options for consideration.

MECHANISMS TO SECURE A CONTRIBUTION	DELIVERY MODEL				
	GIFTED LAND OR DWELLINGS	DISCOUNTED SALE OF LAND OR DWELLINGS	MONETARY CONTRIBUTION	AFFORDABLE HOME OWNERSHIP	LEASE
Planning Controls	✓	✓	✓	✓	✓
Registered Housing Agency Ownership	✓	✓	✓		
Special Purpose Vehicle Ownership	✓	✓	✓		
Section 173 Agreement	✓	✓	✓	✓	✓
Other Legal Agreement	✓	✓	✓	✓	✓
Mortgage Instrument	✓	✓	✓	✓	

Example – Glen Eira City Council, East Village

A planning scheme amendment rezoned the site in Bentleigh East to accommodate approximately 3,000 dwellings. The council and landowners agreed to an Affordable Housing Contribution to support a minimum five per cent Affordable Housing by either gifting land, or constructing and gifting dwellings. The amendment limits a permit to a maximum of 3,000 dwellings unless the landowner enters a S173 agreement to provide 10 per cent of dwellings beyond 3,000 dwellings as Affordable Housing.



Concept image of East Village precinct

Example – Hobsons Bay City Council, Altona North Precinct 15

In the Precinct, an endorsed planning scheme amendment provides for five per cent of dwellings to be sold at a 25 per cent discount, or in the event a purchaser is not found, for the landowner to provide the equivalent contribution in cash based on an average market value.

The full report *Options for Delivering and Securing Affordable Housing through the planning system* explores in more detail the legislative and policy context, and for each model and mechanism, the benefits, disadvantages, resourcing, and key considerations from different stakeholder perspectives.