



**Ministerial Advisory Committee on
Planning Mechanisms for
Affordable Housing**

Submission

October 2019

© Copyright Municipal Association of Victoria, 2019.

The Municipal Association of Victoria (MAV) is the owner of the copyright in the publication MAV Submission Affordable Housing MAC.

No part of this publication may be reproduced, stored or transmitted in any form or by any means without the prior permission in writing from the Municipal Association of Victoria.

The MAV does not guarantee the accuracy of this document's contents if retrieved from sources other than its official websites or directly from a MAV employee.

The MAV can provide this publication in an alternative format upon request, including large print, Braille and audio.

The MAV is the statutory peak body for local government in Victoria. The MAV would like to acknowledge the contribution of those who provided their comments and advice during this project. The MAV contact officer for any questions about this submission is Emlyn Breese, Senior Adviser – Planning and Environment. Email ebreese@mav.asn.au

While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils.

Table of contents

1	<i>Executive summary</i>	4
2	<i>Introduction</i>	6
3	<i>Efficacy of current planning policy settings and mechanisms</i>	7
1.1.	What has worked well	7
1.2.	The scale and distribution of affordable housing need	7
1.3.	The supply of affordable housing likely to be realised	7
1.4.	Challenges under the current framework	8
4	<i>Alternative models and options</i>	9
4.1	Value sharing.....	9
4.2	Density bonus	10
4.3	Reducing the risk	11
4.4	Other models	11
5	<i>Implementing the models</i>	12
6	<i>Recommendations</i>	13

1 Executive summary

The MAV welcomes the opportunity to make a submission on behalf of Victorian councils. This submission responds directly to the Committee's request for the MAV to provide feedback and advice on parts 4a, 4b and 4c of the Committee's Terms of Reference.

The MAV recognises the significant time constraints of the Committee, however we encourage you to contact councils that have benefitted from the DELWP Voluntary Affordable Housing Agreements grant funding program. They have been documenting the challenges and opportunities of the current framework.

The impact of decreasing housing affordability, and the growing need for affordable housing, are both significant issues for local government. The introduction into the *Planning and Environment Act (1987)* of a definition for affordable housing was a significant step in differentiating between housing affordability and affordable housing – two terms that are often conflated.

Numerous councils are undertaking strategic analysis to identify the current and future need for affordable housing within their municipal area. The picture of cumulative impact is bleak. Demand for affordable housing outstrips supply in inner, middle, and outer ring councils, in regional cities, and in rural towns and the gap between supply and demand is growing.

Under the current policy settings, the planning system cannot halt the growing gap between supply of and demand for affordable housing, and only a small number of affordable housing dwellings are being delivered.

There is considerable difficulty in negotiating an affordable housing contribution. This requires resources from council, developers, and often from community housing organisations, with no guarantee that there will actually be an increase the affordable housing stock. The efforts of councils and community housing organisations could be better spent assisting DELWP to develop a robust, transparent, and consistent mechanism and process to facilitate the provision of affordable housing.

Alternative models for using the planning system to deliver affordable housing contributions are:

- Value sharing – A mechanism in the planning system can be created to share with the community some of the value that is created when land is rezoned or a planning permit is issued, and that shared value can result in the provision of affordable housing.
- Density bonus – A planning provision could be created that provided an opportunity for additional site density (an increased floor area ratio) if a sufficient affordable housing contribution is made.
- Reducing the risk – One model to secure an affordable housing contribution would be implement mechanisms that help de-risk a project, for example by removing third party appeal rights. Detailed consideration of the impact on councils and local communities of this approach should be undertaken before pursuing this option.

- Other models – In addition to planning mechanisms, other models for increasing affordable housing should be pursued including the use of government land.

Each of the models above could be implemented through the creation of Victorian Planning Provisions for Affordable Housing. Any provisions should be developed to provide certainty and consistency, while allowing flexibility to enable councils to respond to the specific needs of their community.

The provisions should clearly set out the way in which the affordable housing contribution will be calculated, allowing developers to work out and build the cost into their development feasibility and enabling planners to calculate the affordable housing contribution.

It should also articulate who pays for the affordable housing – moving beyond a discussion about number of dwellings to certainty about the quantum of the overall affordable housing contribution.

Based on a review of the current planning policy settings and mechanisms, plus an assessment of alternative options, the MAV recommends that:

1. A suite of Affordable Housing Planning Provisions is created that can be used by councils to seek affordable housing contributions for example:
 - a. Affordable Housing Planning Policy Framework (distinct from housing affordability PPF), and
 - b. Affordable Housing Overlay, with the ability to create a Schedule to the Overlay
2. The Provisions include mandatory (rather than discretionary) requirements so that there is certainty and clarity for landowners, developers, and planners.
3. The Provisions provide for land, dwelling, and/or cash affordable housing contributions and allows councils to specify the preferred form the contribution will take.
4. If the affordable housing contribution is to be delivered through the sale of dwellings, the Provisions clearly set out who will pay for the affordable housing (and at what discount) to provide certainty about the quantum of the affordable housing contribution.
5. That any requirements in the Provisions that set out the time for which a property will remain affordable housing, take into account the financial impact on the end owner of the affordable housing so that it does not create a burden on the community housing sector.
6. The State Government maximise the delivery of affordable housing on their existing land assets.

2 Introduction

The Municipal Association of Victoria (MAV) is the peak representative and advocacy body for Victoria's 79 councils. The MAV was formed in 1879 and the *Municipal Association Act 1907* appointed the MAV the official voice of local government in Victoria.

Today, the MAV is a driving and influential force behind a strong and strategically positioned local government sector. Our role is to represent and advocate the interests of local government; raise the sector's profile; ensure its long-term security; facilitate effective networks; support councillors; provide policy and strategic advice; capacity building programs; and insurance services to local government.

The MAV commends the Minister for establishing the Ministerial Advisory Committee on Planning Mechanisms for Affordable Housing and welcomes the opportunity to make a submission on behalf of Victorian councils.

The impact of decreasing housing affordability, and the growing need for affordable housing, are both significant issues for local government – the level of government closest to the community.

Ensuring there is sufficient access to safe, secure, appropriate, and affordable housing for all members of a community, whether as a social or an economic driver, helps to create better communities, reduces the demand for health services, and underpins the prosperity of cities and regions.

The MAV recognises the significant time constraints of the Committee, however we urge you to take the opportunity to speak to individual councils. While our submission conveys the key matters raised by Victorian councils, the Committee would gain much by directly engaging with the councils that have firsthand experience of implementing the current planning mechanisms and a deep understanding of the needs of their communities.

Affordable housing has featured prominently both in discussions and in resolutions at MAV State Councils over recent years. Most recently, at its May 2019 meeting, the MAV State Council resolved that we “*Advocate for mandatory controls in planning schemes, in the form of inclusionary zoning, to require affordable housing contributions as part of private development.*”

The following submission responds directly to the Committee’s request for the MAV to provide feedback and advice on parts 4a, 4b and 4c of the Committee’s Terms of Reference.

3 Efficacy of current planning policy settings and mechanisms

For an overview of the efficacy of the current planning policy setting and mechanisms we encourage you to contact councils that have benefitted from the DELWP Voluntary Affordable Housing Agreements grant funding program. They have been documenting the challenges and opportunities of the current framework. Moreland and Darebin Councils have made their evaluation report publicly available and it provides a very useful overview and assessment including live case studies ([click here](#)).

1.1. What has worked well

The introduction into the *Planning and Environment Act (1987)* (the Act) of a definition for affordable housing, (and the associated Order in Council, and the Ministerial Notice) was a significant step in differentiating between housing affordability and affordable housing – two terms often conflated by people in the development and local government sectors.

Having a definition in the Act is helping land use planners make the essential distinction between lower cost housing (delivered through housing diversity, increased supply, more efficient construction methods, lower utility costs) and affordable housing (which has an appropriate allocation and eligibility process).

1.2. The scale and distribution of affordable housing need

Numerous councils are undertaking strategic analysis to identify the current and future need for affordable housing within their municipal area. The picture of cumulative impact is bleak. Demand for affordable housing outstrips supply in inner, middle, and outer ring councils, in regional cities, and in rural towns and the gap between supply and demand is growing.

Preliminary analysis undertaken for the City of Melbourne indicates that across the whole of metropolitan Melbourne, there is a current shortfall of 182,260 affordable housing dwellings. By 2036, that shortfall is forecast to grow to 289,062 dwellings. This reflects an increase in demand for social and affordable housing by 106,802 households over the next 20 years.

Municipal-specific needs analysis for affordable housing is being done in the absence of statewide analysis of current and future affordable housing need and in the absence of a consistent methodology for quantifying affordable housing need. In the same way that *Plan Melbourne* projects and forecasts economic growth and housing by region, there is need for a holistic and regional understanding of current and future affordable housing need.

1.3. The supply of affordable housing likely to be realised

Plan Melbourne and *Homes for Victorians* both acknowledge that the planning system can contribute to the supply of social and affordable housing in Victoria, however both caution that the planning system alone cannot address the existing shortfall of affordable housing.

To ensure the supply of affordable housing better meets the demand, all three tiers of government, working with the private and not for profits will need to play a role. While planning mechanisms are essential sectors, the scale of the problem will require a multi-faceted approach and a suite of mechanisms at each level of government. Preliminary modelling for the City of Melbourne suggests that even a 10% mandatory inclusionary

zoning requirement is likely to only deliver approximately 20% of the affordable housing required to meet the demand.

Under the current policy settings, the planning system cannot halt the growing gap between supply of and demand for affordable housing, and only a small number of affordable housing dwellings are being delivered. The reasons for this are set out below.

1.4. Challenges under the current framework

The current framework relies on developers voluntarily agreeing to make an affordable housing contribution. The current planning policy settings and mechanisms have resulted in several challenges namely:

- A significant investment of staff resources from councils, developers, and community housing organisations is being used to try and negotiate affordable housing contributions, without the certainty of any affordable housing outcome. The negotiations can be lengthy and complex which causes delays.
- The policy setting has resulted in considerable focus on the quantum of affordable housing being sought with insufficient focus on who pays for the affordable housing. An agreement that requires 5% of dwellings to be affordable housing, but does not say if those properties are to be gifted (100% discount), or sold at a discount rate, or at full market value to a registered housing agency does not provide the developer, council, or a community housing organisation with certainty about the obligations and outcomes.
- Lack of certainty and clarity for developers about the size of an affordable housing contribution meaning they cannot factor in the cost of an affordable housing contribution when they are preparing their development feasibility prior to purchasing a site. When deciding how much to offer for a site, a developer has to gamble on whether other bidders for a piece of land will or won't factor in the cost of an affordable housing contribution.
- Without being able to factor in the cost of affordable housing, developers require trade-offs or incentives in order for their development to be financially feasible while providing an affordable housing contribution. The incentives that a council can offer (e.g. reduce car parking requirements, reduced setbacks) are small in value compared to the cost of providing an affordable housing contribution.
- There is significant inequity in the distribution of the cost of affordable housing contributions. Due to the staff time and complexity of negotiations and trade-offs, most councils will only seek an affordable housing contribution for large developments (more than 20 dwellings). This means that smaller infill developments are not shouldering their share of the cost of affordable housing contributions.

- Because smaller infill developments (up to 20 dwellings) are not making an affordable housing contribution, there are significant lost opportunities in municipalities where infill development accounts for a large portion of new housing supply.
- There is uncertainty across the planning sector about how and where to include provisions for an affordable housing contribution when considering a planning scheme amendment to rezone land. A Section 173 agreement does not provide the transparency that planning provisions do.

There is considerable difficulty in negotiating an affordable housing contribution, requiring resources from council, developers, and often from community housing organisations, with no guarantee that there will actually be an increase the affordable housing stock. The efforts of councils and community housing organisations could be better spent assisting DELWP to develop a robust, transparent, and consistent mechanism and process to apply, rather than negotiating for each individual development as it arises.

While the amendments to the Act provide a starting point for the delivery of affordable housing through planning mechanisms, there is a dependence on the success of negotiated outcomes. Without a mechanism to mandate the provision of affordable housing (including being clear on who pays for it), all of the positive changes made by State Government lack strength to deliver even a small portion of the affordable housing required to meet the demand in Victoria.

4 Alternative models and options

4.1 Value sharing

One model for using the planning system to contribute to affordable housing is designed around the reality that the zoning (rezoning) of land, and/or the issuing of a planning permit creates value for the landowner/developer. A mechanism in the planning system can be implemented to share with the community some of that uplift in value in the form of an affordable housing contribution.

This is similar to the mechanisms that already exist for seeking public open space contributions, development contributions, or infrastructure levies. In those cases, there is a clearer nexus between the new development and the resulting additional demand on infrastructure and public assets that will result, but the principle is the same.

The mechanisms would create a requirement for an affordable housing contribution as part of a:

- Planning scheme amendment to rezone land
- Development where a planning permit is required
- Precinct Structure Plan

The benefit of this approach is that it responds to proposed changes to the use and development of land and seeks to share the value created through the planning system. It can be applied to developments of any scale, allowing for a more equitable distribution of affordable housing contributions.

Concerns are sometimes raised that a requirement for an affordable housing contribution will simply raise the cost of other housing. In practice, rather than the cost being borne by the developer or future homeowner, the cost will actually flow back through to the landowner they would see a reduced land value for a site with the requirement for an affordable housing contribution vs. the land value of a comparable site without the requirement.

A constraint of this approach is where land has already been purchased at an increased price in anticipation of creating value through a planning scheme amendment or obtaining a planning permit. In such instances, it may be financially unfeasible to continue with the development.

For the value-share approach to be robust, transparent, and effective the requirements would need to be mandatory rather than voluntary. It should be applied to proposals that have a residential component. The affordable housing contribution could be in the form of land, dwellings, or cash. The ability to require cash contributions would be particularly important for small-scale developments where it is not feasible to provide an affordable housing dwelling.

4.2 Density bonus

A planning provision could be created that provided an opportunity for additional site density (an increased floor area ratio) if a sufficient affordable housing contribution is made. This is the approach in [SEPP 70](#) in NSW which provides the mechanism for councils to develop schemes and levy developer contributions for affordable housing. This is also the approach adopted in Fisherman's Bend (GC81) and Melbourne Central City (C270).

The benefit of this approach is that it provides the option for the developer to opt in or opt out, and so may garner less resistance from the development sector.

For the approach to be robust, transparent, and effective the requirements would need to set out who will pay for the affordable housing and the extent to which the developer will be expected to discount to affordable housing. Any discount will need to be set at a level that makes it financially viable for a community housing organisation to purchase it.

There are two key constraints of this approach. The first is that it is difficult to determine how much, if any, affordable housing will be delivered as it relies on the developer opting in. The other constraint is that the approach relies on setting the base floor ratio at a point that is less than what the site and surrounds can accommodate. This may result in underdevelopment of the site (if a developer chooses not to opt in) which is an inefficient outcome. Alternatively, if the base floor ratio is set at a point that reflects the maximum that the site and surrounds can accommodate, then if a developer opts in an overdevelopment of the site will occur with the resulting detrimental impact on the amenity of the neighbourhood.

4.3 Reducing the risk

The development sector, as with any enterprise, requires a certain return on the investment they make. The greater the risk in making the investment, the greater the return they require to cover that risk. One model to secure an affordable housing contribution would be to implement mechanisms that help de-risk a project in exchange for an affordable housing contribution. The risk could be reduced by:

- Exemptions from notification
- Removing 3rd party appeal rights
- Providing for a faster permit system
- Exemptions from permit requirements (e.g. [VPP 52.22 Community Care Accommodation](#))

It should be noted that several of our member councils raised concerns that implementing this approach may lead to community backlash and further stigmatization of affordable housing. It could also result in a reduction in the quality of built form, urban design, and internal amenity of the dwellings. Detailed consideration of the impact on councils and local communities of this approach should be undertaken before pursuing this option.

The benefit of this approach is that it may allow for streamlining and cost savings for community housing associations that are undertaking their own developments.

There may be resourcing costs to councils if they are required to make a decision on applications more quickly, and in responding to community enquiries.

The constraint of this approach is in finding the balance between encouraging developments that include a minimum affordable housing contribution, and having the opportunity to assess and determine the appropriateness of other elements of the proposal (parking, built form, etc.).

For the approach to be robust, transparent, and effective the requirements would need to set out the minimum affordable housing contribution that would need to form part of a development, and processes would need to be put in place for determining whether the proposal met the requirements.

4.4 Other models

The planning system alone cannot deliver the amount of affordable housing required to meet the significant unmet demand for affordable housing in Victoria. In addition to planning mechanisms other models for increasing affordable housing should be pursued including:

- Requiring affordable housing as part of the development of any State Government land. Opportunities include: Development Victoria projects, developments associated with level crossing removal projects, air-rights over at-grade commuter and other carparks, other government land.

- Ongoing and certain funding streams for the construction of affordable housing enabling community housing associations to create a pipeline of development, rather than operating in a stop start and reactive environment.
- Strategies involving long term leases on government land could assist to increase affordable housing supply, in particular a program that favours 'BOOT' (Build-own-operate-transfer) schemes.
- Redevelopment of existing public housing, respecting councils' role as Responsible Authority.
- Counter-cyclical stimulus through direct investment in affordable housing by the State or Federal governments to help even out the downturns in the construction and property sectors.

5 Implementing the models

Each of the models above could be implemented through the creation of Victorian Planning Provisions for Affordable Housing. Any provisions should meet the following criteria:

- Provide certainty and consistency, while allowing some flexibility to enable councils to respond to the specific needs of their community – an Overlay and Schedule to the Overlay could achieve this
- Clearly set out the way in which the affordable housing contribution will be calculated, allowing developers to work out and build the cost into their development feasibility and enabling planners to calculate the affordable housing contribution
- Articulate who pays for the affordable housing – moving beyond a discussion about number of dwellings to certainty about the quantum of the overall affordable housing contribution.

Other aspects that will also need to be in place are:

- A process to collect and distribute cash-in-lieu contributions, noting councils' preference for contributions that come from their community to be invested within their community
- Mechanisms to secure the benefit of the affordable housing in the community, recognising that a requirement for a specific building to remain used as affordable housing in perpetuity will make management of that property unfeasible for any asset owner who will need to ability to divest of assets (and reinvest in other assets) as part of their long term asset management strategy

6 Recommendations

Based on a review of the current planning policy settings and mechanisms, plus an assessment of alternative options, the MAV recommends that:

1. A suite of Affordable Housing Planning Provisions is created that can be used by councils to seek affordable housing contributions for example:
 - a. Affordable Housing Planning Policy Framework (distinct from housing affordability PPF), and
 - b. Affordable Housing Overlay, with the ability to create a Schedule to the Overlay
2. The Provisions include mandatory (rather than discretionary) requirements so that there is certainty and clarity for landowners, developers, and planners.
3. The Provisions provide for land, dwelling, and/or cash affordable housing contributions and allows councils to specify the preferred form the contribution will take.
4. If the affordable housing contribution is to be delivered through the sale of dwellings, the Provisions clearly set out who will pay for the affordable housing (and at what discount) to provide certainty about the quantum of the affordable housing contribution.
5. That any requirements in the Provisions that set out the time for which a property will remain affordable housing, take into account the financial impact on the end owner of the affordable housing so that it does not create a burden on the community housing sector.
6. The State Government maximise the delivery of affordable housing on their existing land assets.