USING COUNCIL LAND FOR AFFORDABLE HOUSING

This resource aims to support local councils and Registered Housing Agencies to progress the delivery of Affordable Housing on local government land. 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 councils to release and develop council land, and mechanisms that can ensure Affordable Housing delivery on the land and the value of their contribution 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 and Registered Housing Agencies 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.

Why council would contribute council land for affordable housing

Affordable Housing cannot be realised without the availability of appropriately located and priced land. Contributing council-owned land for affordable housing development allows councils to take direct action to assist low-income residents and represents a meaningful contribution towards addressing policy objectives and local housing need. It also assists in attracting additional investment into the community by creating project opportunities.

Why a Registered Housing Agency would choose to develop using council land

Registered Housing Agencies exist to assist households who need affordable housing. They are attracted to using council land for affordable housing developments because it provides an opportunity to access strategically located land in areas the agency may otherwise be unable to purchase. Subject to the delivery model, building on council land can improve the feasibility of the development and increases the likelihood of attracting funding and financing. Working in partnership with council can also build good relationships with the local community.

Deciding on the model and mechanism to apply

Which model a council selects, as well as the mechanism(s) they use to secure their contribution will depend on factors such as:

- Council, community and Registered Housing Agency objectives;
- Intended ownership structure of the land and resulting dwellings;
- The value of the land relative to other development costs and the terms associated with funding;
- Registered Housing Agency capacity to secure funding or financing, and the long-term feasibility of operating the housing;
- The relationship between the value of the council contribution and the length of time the housing is to be secured; and
- Whether other mechanisms are being used to ensure use for a defined period.

This fact sheet was developed in conjunction with Affordable Development Outcomes and Moores.

Models to release land

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 (including "air rights")

Gifting is best suited to scenarios where Council's primary objective is to **maximise the delivery of Affordable Housing,** particularly if council only expects to release a small number of sites, or small scale sites. It can also be appropriate for instances where **Council has limited internal resources to administer the disposal or there is an urgency to release land** to address demand and/or to align to funding opportunities.

However, it **requires council to transfer land from its ownership**. It is unlikely to be suitable for sites where other council services are required to be delivered, or where Council expects the site could be required for another purpose in the future.

Gifting of air rights is more appropriate where the land is suitable for multi-level residential development but Council desires retention of an existing use of the land in the medium to long term. It can also **allow for development of sites with contamination issues** requiring minimal disturbance to the underlying land. Air rights are not appropriate for scenarios where the land is required as security for debt finance or where Council wants to retain options for further development of the land in the long term.

Sale of land at a discount

This model **provides for a financial return to council**, in addition to Affordable Housing. It is also suited to the **development of large scale sites** that require involvement of a private developer.

However, as with the gifting model, selling the land means that **council relinquishes ownership**, development potential and future control over land use. It also **increases the funding required by the Housing Agency** to purchase the site, which can impact on the ability of the Housing Agency to house very low-income households.

This model is not suited to scenarios where there is no funding available to Housing Agencies to support the purchase or where sale to a private developer is not supported by council.

Leasing of land

This model is **suited to sites where Council's key objective is to retain the asset, or sites where the transfer of title would be complex**, or where there is a reasonable **expectation the land will be required for another purpose at a future point**.

Leasing of land is generally **not a high priority model for Registered Housing Agencies** as it does not provide the same benefits as models where the Registered Housing Agency has title to the land. However, it may be attractive in scenarios where the site is very well located and will support a reasonable amount of Affordable Housing supply relative to resourcing and effort.

Joint Venture or Partnership Arrangement

A joint venture approach **supports an active council role** in development decision making and share in risks and rewards. It is **suited to large scale redevelopment and multiple sites** and requires commitment to a **dedicated partnership approach** over a longer period of time. This delivery model can accommodate the **development of sites which include other community services**.

However, joint ventures are **complex, requiring substantial skill and resourcing**. Because of this they are **only likely to be appropriate for more complex sites** involving significant funding and financing and mix of public benefits.

Mechanisms to secure affordable housing

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

- **Mechanism to secure delivery** – how the delivery of the agreed outcomes will be assured once land is transferred out of council's control; and
- **Mechanism to secure a contribution and outcomes over tim**e – how the value of the council contribution will be secured to ensure an agreed and appropriate period of use and any agreed reinvestment of the contribution at the end of the dwelling life or if the asset is sold.

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

Where council has contributed land, the key rationale for applying a mortgage instrument is that the council wants to retain a right to the value of its contribution and ensure a return should the land ever be sold, or to ensure reinvestment by the Registered Housing Agency whilst not wanting to unduly impact on development financing.

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 COUNCIL CONTRIBUTION	DELIVERY MODEL: GIFTING LAND	DISCOUNTED SALE OF LAND	JOINT VENTURE/ PARTNERSHIP AGREEMENT	LEASE
Registered Housing Agency Ownership	✓	✓	✓	
Special Purpose Vehicle Ownership	✓	✓	✓	
Section 173 Agreement	✓	✓	✓	
Other Legal Agreement	✓	✓	✓	✓
Mortgage Instrument	✓	✓	✓	

Example – Drill Hall Redevelopment, Melbourne CBD

Local government: City of Melbourne
Registered Housing Agency: Housing Choices Australia
Model: gifting council owned land - council undertook a process to transfer the land to Housing Choices Australia at no cost for the purposes of Affordable Housing and restoration of the building and hall.
Outcome: 58 Affordable Housing units, including several suitable for people with a disability, and the refurbishment of the hall and lease back to council on a 99-year period for community use.

Drill Hall Melbourne CBD. Source: MGS Architects.

Before offering council land for affordable housing

Councils have legal obligations and process requirements to dispose of land deemed to be 'surplus'. Relevant legislative and policy documents that inform this process include the Local Government Act 2020 (LG Act) and the guidance included in the Local Government Best Practice Guidelines for the Sale, Exchange and Transfer of Council Land (2009).

The full report *Options for Delivering and Securing Affordable Housing on Local Government Land* 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.

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