MUNICIPAL ASSOCIATION OF VICTORIA

Community Housing INDUSTRY ASSOCIATION VICTORIA

OPTIONS FOR DELIVERING AND SECURING AFFORDABLE HOUSING THROUGH THE PLANNING SYSTEM

A GUIDE FOR LOCAL GOVERNMENT, LANDOWNERS AND REGISTERED HOUSING AGENCIES

Prepared by Affordable Development Outcomes in partnership with Moores

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chiavic.com.au

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Reference / Attribution:

Affordable Development Outcomes & Moores (2021) Options for Delivering and Securing Affordable Housing through the Planning System; A Guide for Councils and Registered Housing Agencies, Commissioned by CHIA Vic and MAV with funding support from Homes Victoria, www.chiavic.com.au.

CONTENTS

FOREWORD

The lack of affordable housing remains one of the most critical and vexed issues facing Victoria. We have the lowest proportion of social housing in the country at 3% of dwellings; well below the national average of 4.2%. The impact of COVID has further highlighted the importance of access to safe, secure and affordable housing, not just for the households themselves but also for society as a whole.

Amendments to the *Planning and Environment Act* in 2018 created the ability for local government to facilitate the voluntary provision of affordable housing. Until this time there was no framework to assist local government, community housing and developers to negotiate affordable housing outcomes.

This change to the planning system started many councils on a new journey of identifying local housing need and exploring how they could best respond to it. For some this was grounded in the opportunities provided through the planning system, but for others this included an analysis of council land holdings to see if there were any opportunities for these holdings to be utilised for social housing. These activities in the local government space highlighted a gap in the knowledge base: which mechanisms were best suited to achieving the aims of councils interested in assisting with the delivery of affordable housing, and how did they impact on community housing organisations' abilities to secure funding and manage ongoing operations.

Although the announcement of the historic Big Housing Build investment in social and affordable housing means that most of the current interest lies in opportunities that can take advantage of state government funding, the amendments to the planning system continue to offer councils ways to include affordable housing in larger developments. This can provide pathways to create mixed tenure developments that extend beyond the current period of significant growth.

CHIA Vic and the MAV have come together to commission two reports and related resources to detail the key methods that councils use to support the delivery of affordable housing projects, and the various legal mechanisms that can be used to secure this housing over time. Our aim is to provide a smoother pathway through the complexity of housing provision for all stakeholders. The work explores the risks and opportunities that these mechanisms create for community housing organisations, councils, and other stakeholders likely to be involved in the project.

We would like to thank Homes Victoria for funding this work; and the reference group members for ensuring that we captured the diversity of views. This project builds on the relationship established by our first joint project, completed in 2019, and reflects the many productive working relationships that have been established between local government and the community housing sector as we work together in addressing Victoria's affordable housing shortfall.

Lesley Dredge, Chief Executive Officer (retired December 2021), Community Housing Industry Association of Victoria (CHIA Vic)

Kerry Thompson, Chief Executive Officer, Municipal Association of Victoria (MAV)

DEFINITIONS

Affordable Home Ownership	Affordable Housing where a household that meets defined income eligibility requirements purchases a property at a rate that is affordable for their household and where a subsidy provided to support the housing outcome is appropriately secured to ensure future repayment and reinvestment.
Affordable Housing	Defined in the *Planning and Environment Act 1987* as housing, including social housing, that is appropriate for the housing needs of very low, low and , moderate-income households.
Affordable Housing Agreement	The parameters agreed between a council and a developer through the planning system to deliver an Affordable Housing Contribution.
Affordable Housing Contribution	A contribution made by a landowner or developer towards an Affordable Housing outcome.
Affordable Rental Housing	Housing that is provided at a discount to rent to households that meet the PE Act or Victorian Housing Register income eligibility requirements.
Build-to-Rent (BTR)	A development retained in single ownership, where all dwellings are rented to individual households. BTR are structured as long-term holds by a developer or investor and dwellings are not strata-titled and individually sold.
Community Housing	Affordable Housing managed by not-for-profit organisations.
Community Housing Organisations	Not-for-profit organisations that manage Affordable Housing. Community Housing Organisations include but are not limited to Registered Housing Agencies.
Commonwealth Rent Assistance (CRA)	A non-taxable income supplement, payable to people who receive a government support payment and rent in the private rental market or community housing.
Eligible Household	A household that meets the income threshold set out in a Governor in Council Order (for Affordable Housing), or as set by the Director of Housing for the Victorian Housing Register, and that meets any other eligibility requirements (residency, asset threshold).
Housing Act	Victorian Housing Act 1983
LG Act	Victorian Local Government Act 1993 and replacement 2020 Act
PE Act	Victorian Planning and Environment Act 1987
Public Housing	Social Housing that is owned and/or managed by the Victorian Government.
Registered Housing Agency	A Community Housing Organisation registered under Part VIII of the Housing Act 1983 and subject to regulation overseen by the Victorian Housing Registrar. Organisations are registered as a Housing Association or a Housing Provider.
Registrar of Housing Agencies	The Registrar of Housing Agencies, supported by the Office of the Housing Registrar, is responsible for regulatory oversight of the community housing sector in Victoria under the Housing Act 1983.
Residual Land Value	A method for calculating the value of development land. This is done by subtracting all costs associated with the development, including profit but excluding the cost of the land from the total value of the development.
Section 173 Agreement	A legally binding agreement between council and a landowner. The agreement remains with the land, regardless of any change of ownership.
Social Housing	Defined in the Housing Act as *public housing* (owned and managed by the State Government) and housing owned, controlled or managed by a participating registered agency (a *Registered Housing Agency*).
Special Purpose Vehicle	A subsidiary company formed to undertake a specific business purpose or activity such as Affordable Housing.
Victorian Housing Register	The register for households that apply for and are determined to be eligible for *Social Housing* in Victoria.

WHEN TO USE THIS GUIDE

***Options for Delivering and Securing Affordable Housing through the Planning System* is a resource guide developed for use by councils, landowners/developers and Registered Housing Agencies to assist in the investigation of options for realising Affordable Housing through the planning system.**

This guide builds on earlier CHIA-MAV commissioned work, available **here**, which is recommended foundational reading on Affordable Housing, the community housing and local government sectors and planning negotiations.

This guide sets out models by which a landowner could provide an Affordable Housing Contribution as a result of a planning control or agreement, and mechanisms by which a council could then secure the value of the contribution over time. It assumes Affordable Housing will be owned and/or managed by a Registered Housing Agency. **A summary of the guide is available at www.chiavic.com.au.**

Part 1 provides important legal, planning and policy context;

Part 2 analyses five models that a landowner could apply to deliver a contribution; and

Part 3 analyses four mechanisms to secure a contribution to Affordable Housing,

Both **Part 2 and Part 3** provide an analysis of each option from different stakeholder, legal, feasibility and risk perspectives.

Councils are encouraged to refer to the guide where it is seeking to:

- Meet its obligations as the responsible authority to facilitate the provision of Affordable Housing through the application of available planning tools, such as planning scheme amendments and voluntary negotiations;
- Understand the options by which a landowner could provide an Affordable Housing Contribution and to make an informed decisions on council's preferred model(s) and mechanism(s) to inform policy and negotiations;
- Negotiate Affordable Housing Contributions.

Landowners are encouraged to refer to the guide where it is seeking to:

- Respond to a planning and council objective, understand the options for providing an Affordable Housing Contribution and the impact on land value, feasibility and delivery;
- Negotiate with a council;
- Work with a Registered Housing Agency to support delivery of an Affordable Housing Contribution.

Registered Housing Agencies are encouraged to refer to the guide where it is seeking to:

- Understand the options and mechanisms by which Affordable Housing Contributions may be realised from a planning agreement;
- Influence councils and/or landowner decision-making to ensure agreements are feasible and result in an appropriate Affordable Housing outcome for the benefit of vulnerable and low to moderate income households.

Affordable Housing can also be delivered on council land, which is discussed separately in the report, ***Options for Delivering and Securing Affordable Housing on Local Government Land.***

NOTE: The guide does not provide a 'how to' on every step required to release and develop land for Affordable Housing.

Attachment 1 sets out wider considerations that the parties will need to explore when assessing council land use opportunities.

EXECUTIVE SUMMARY

Opportunity

Victoria has the lowest proportion of Affordable Housing in Australia.[1] This is a critical social and economic issue for individuals, communities and the State.

The *Victorian Planning and Environment Act 1987* (the 'PE Act') establishes one of the objectives of planning is to facilitate the provision of Affordable Housing in Victoria.

Delivery of Affordable Housing requires inputs, skills and processes in land assembly, design, planning, funding, financing, development, construction, asset and tenancy management.

The role of local government ('council') is to provide good governance in its municipal district for the benefit and wellbeing of the community. Councils undertake several roles to realise this purpose, including leader and advocate, responsible authority, investor and manager of community services.

Private landowners and developers ('landowners') are the primary vehicles for developing land and constructing housing in Victoria. As for-profit entities, these organisations require a return on investment, relative to risk, to support project feasibility and delivery.

To realise planning objectives the State Government supports a council and landowner reaching an agreement to an Affordable Housing Contribution ('a contribution'), as part of a planning scheme amendment or permit approval process.

Determination of an Affordable Housing Contribution requires consideration of:

- The percentage of dwellings or floor space that could be realised as Affordable Housing, with regard to evidence of housing need, project context, delivery model and feasibility;
- The required outcomes in terms of built-form, tenure, affordability, integration, and the process to allocate dwellings to Eligible Households;
- The way in which a contribution and resulting dwellings will be delivered, and how a contribution will be secured and managed over time;
- Whether additional planning benefits or dispensations will be agreed to offset the costs of a contribution; and
- Expectations as to the role and inputs of other organisations to contribute to support feasibility.

Community Housing Organisations (CHOs) are mission-driven, not-for-profit organisations that have a dedicated purpose to support lower income households to reduce housing stress through the provision of Affordable Housing. CHOs registered under the *Housing Act 1983* ('the Housing Act') are defined as a 'Registered Housing Agency'.

Registered Housing Agencies are very well placed to support realisation of an Affordable Housing Contribution generated through the planning system.

[1] Australian Institute of Health and Welfare (2019), *Housing assistance in Australia 2019*
https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2019

Objective

This guide aims to support determination of an appropriate model by which Affordable Housing will be realised as a result of a planning policy or agreement, and the mechanism that will be applied to ensure delivery and the securitisation of a contribution over time.

Application of this guide is intended to support:

- Improved cross-sectoral knowledge on how to efficiently achieve socially-positive housing outcomes of mutual benefit to local government and the community housing sector;
- Informed decision-making by councils and Registered Housing Agencies;
- Standardisation of approaches; and
- Appropriate use of planning tools to secure agreements that result in an increase in Affordable Housing for the benefit of very low to moderate income households in housing need.

Terminology

The guide uses the term 'Affordable Housing' as defined in the Planning and Environment Act 1987 ('PE Act'), being ***"housing, including Social Housing, that is appropriate for the housing needs of very low, low, and moderate income households"***.

- This definition reflects there are a range of housing program responses that could meet the needs of households who are at risk of, or experiencing homelessness, housing stress, or discrimination in the market;
- Social Housing is one type of Affordable Housing, defined as housing owned and managed by the State Government (Public Housing), or owned and/or managed by a Registered Housing Agency; and
- Social Housing providers primary focus is on providing rental housing to households that meet the Victorian Housing Register (VHR) eligibility requirements. Registered Housing Agencies may also apply income eligibility set out under the PE Act where delivery does not depend on Government funding.

Whilst there are a range of Community Housing Organisations, the resource focusses on models that involve a Registered Housing Agency as these organisations are regulated and prioritised as owners and managers of new Affordable Housing in Victoria.

References to land refer to any land parcel comprising one or more titles, or a portion of a site that is part of a single title (without requiring subdivision).

'Landowner' is used to describe the owner of a piece of land, the planning applicant and the organisation responsible for meeting an Affordable Housing Contribution. It is recognised that the landowner may not be the developer.

Why Seek Affordable Housing through the Planning System

Access to safe, secure and affordable housing is recognised as a human right and concerns the ability of a person to have somewhere to live that is appropriate. This requires consideration of tenure, affordability, accessibility, location, and cultural adequacy. Affordable Housing is also recognised as essential infrastructure due to its impact on workforce attraction and retention.

A lack of Affordable Housing has direct and indirect economic and social costs for individuals and the community. It is estimated that across Australia more than two-thirds of lower income households in private rental experience rental stress, paying more than 30 per cent of their income on rent.[2] Moderate income households are also, increasingly, finding it difficult to find affordably priced housing.

Affordable Housing delivery depends on subsidy and the regulation and management of resulting outcomes over time.

Homes for Victorians: Affordability, Access and Choice (2017) and *Plan Melbourne 2017-2050* recognise that the planning system should play a role in responding to Affordable Housing demand.

Amendments to the PE Act in 2018 established that *"to facilitate the provision of Affordable Housing in Victoria"* is a primary objective of planning and established income bands (eligibility) and a list of matters that must be considered when a responsible authority is assessing the appropriateness of a proposed built-form as Affordable Housing as a result of a planning control or agreement.

Reasons councils, landowners and Registered Housing Agencies may seek, or support, an Affordable Housing Contribution include:

Council	Landowner	Registered housing agency
▪ Responds to objectives of planning and local housing need. ▪ Captures part of uplift realised from a planning approval in a public purpose. ▪ Taps into market development as the primary means by which new housing supply is delivered. ▪ Supports integrated Affordable Housing. ▪ Supports feasibility and delivery of Affordable Housing for Registered Housing Agencies / less reliance on government funding.	▪ Supports planning approval. ▪ May provide for other value-add, such as additional density. ▪ Contributes to addressing a critical social and economic need and social responsibility objectives. ▪ May supports attraction of social impact investment. ▪ Potential to be structured as a pre-sale arrangement.	▪ Support an increase in Affordable Housing. ▪ Provides access to land or dwellings in areas the Agency may otherwise not be able to purchase. ▪ Reduces reliance on government funding. ▪ Utilises the skills and capacity of the private sector to support delivery, reducing risks and costs. ▪ Supports a diversity of Affordable Housing responses, including mixed-tenure outcomes.

Table 1: Reasons for supporting an Affordable Housing Contribution

Options for Delivering and Securing Affordable Housing through the Planning System

Contributions can currently be facilitated through the Victorian planning system by:

1. A council undertaking a strategic process culminating in a planning scheme amendment that incorporates objectives and strategies to facilitate Affordable Housing within a defined geographical area. The inclusion of Affordable Housing objectives must be in accordance with the Planning Policy Framework (PPF) and are expected to be based on the principle of value uplift and voluntary adoption; or

2. An agreement being reached between the responsible authority and a landowner as part of a site-specific planning scheme amendment or permit approval process ('voluntary negotiation').

The State Government has not defined the Affordable Housing percentage, dwelling mix, or delivery model in the PPF or policy.

Contributions are specific to the local planning context, site and development, landowner-council agreement and an arrangement with a Registered Housing Agency.

[2] Productivity Commission (2019), Vulnerable Private Renters: Evidence and Options, Commission Research Paper, Canberra

Negotiating and delivering a contribution can be a complex and resource-intensive process that requires organisations to have resources, skills and processes in place to make informed decisions in relation to several matters, including:

- Legislative and regulatory requirements;
- Site suitability and development potential;
- Housing demand, priority household cohorts and their housing and support service requirements;
- Development feasibility, planning incentives, social and economic priorities and value;
- Planning requirements and process;
- Risks, responsibilities and mitigations; and
- Ensuring delivery and the appropriate management of outcomes and a council contribution over time.

Key issues recommended for consideration are outlined at **Attachment 1**.

It is critical that organisations considering securing and making 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; and
- In the context of limited funding and financing for Affordable Housing, the way in which 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.

Strategic Objectives

The State Government, councils, landowners, and Registered Housing Agencies each have their own strategic objectives and policies that direct how they invest and what outcomes they want to achieve.

The following objectives are important to keep in mind when seeking and delivering a contribution:

Council and housing agency objectives	Landowner / developer objectives
Meet legal and regulatory requirements.	Meet legal and regulatory requirements.
Maximise public / social outcomes.	Ensure commerciality and maximise return relative to risk.
Ensure organisational and project viability.	Ensure organisational and project viability.
Deliver value for public Investment.	Deliver value for shareholders.
Place resident interests at the centre of decision-making.	Place commercial interests at centre of decision-making.
Ensure prudential use of assets.	Ensure successful sale of assets on completion.
Regulated management of investment and tenancies.	Ensure Affordable Housing does not risk sales.
Ensure appropriate and mitigated risks.	Ensure appropriate and mitigated risks.
Long-term outcomes and reinvestment of subsidy over time.	Deliver short-term outcomes through development and sale.

Table 2: Key Objectives expected to guide each entity's decision-making on the optimal mechanism and delivery

This guide aims to assist councils, Registered Housing Agencies and landowners to determine an appropriate model for providing an Affordable Housing Contribution and a mechanism for securing the delivery of outcomes and the contribution over time.

Part 1 sets outs key context to inform planning negotiations and agreements.

Part 2 analyses the following ways that a landowner could deliver a contribution:

1. Gifting land or dwellings to a Registered Housing Agency or into a council-established Special Purpose Vehicle (SPV);
2. Selling land or dwellings at a discount to a Registered Housing Agency or SPV;
3. Leasing dwellings to a Registered Housing Agency for sub-leasing as Affordable Housing, or leasing directly to Eligible Households for an agreed period;
4. Selling dwellings to individuals under an Affordable Home Ownership arrangement; and/or
5. Providing a monetary contribution to council, a Registered Housing Agency or a SPV to acquire or develop Affordable Housing.

Part 3 analyses four mechanisms that could be applied to secure delivery and the land, dwellings, or the value of a landowner contribution:

1. Planning controls;
2. Ownership by a Registered Housing Agency;
3. Ownership of assets in a Special Purpose Vehicle (SPV) established or supported by a council for the purpose of delivering and/or managing Affordable Housing;
4. Legal agreement, including a Section 173 Agreement; and
5. Mortgage instrument.

Analysis of Models and Mechanisms

For each mechanism and delivery model the resource explores:

- The structure and potential application;
- Benefits and disadvantages from different stakeholder perspectives;
- Key legal and risk considerations;
- Feasibility considerations and potential impact on subsidy requirements with reference to a hypothetical development scenario; and
- Resourcing and process considerations to implement.

The analysis aims to support organisations to assess and compare options and determine which delivery model and mechanism best suits a particular circumstance.

The delivery models and mechanisms are assessed against a set of objectives using the following rating:

High	Model or mechanism rates highly against criteria. i.e. Provides high level assurance or likelihood criteria willl be realised.
Medium	Model or mechanism rates moderately against criteria. i.e. Provides degree of assurance or likelihood criteria will be realised with some risks.
Low	Model or mechanism rates low against criteria. i.e. Limited or no assurance or likelihood criteria willl be realised and/or considerable risks.

Tables 2 and 3 summarises the assessment with detailed explanation provided at Part 2 and 3.

Figure 1 illustrates which mechanisms could be applied under each delivery model and highlights there are a range of options for consideration:

	DELIVERY MODEL				
MECHANISMS TO SECURE A CONTRIBUTION	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	✓	✓	✓	✓	

Figure 1: Mechanisms depending on delivery model

Note on assessment:

- The guide assumes involvement of Registered Housing Agency in the delivery, ownership and/or management either directly or via control of a Special Purpose Vehicle (SPV) as Registered Housing Agencies are structured, experienced, regulated, and have access to funding, financing and taxation benefits for this purpose.
- Whilst the guide does not contemplate a council owning and managing Affordable Housing, it highlights a Special Purpose Vehicle (SPV) as a mechanism a council could establish to direct contributions that could support a higher degree of council input into the delivery and/or management of outcomes.
- The assessment assumes a mechanism is applied in isolation of any other tool and is a subjective assessment of the authors taking into consideration project reference group input.

- How a mechanism or model is ultimately rated will depend on the council and Registered Housing Agency objectives, site context and the terms of an agreement.
- Organisations could develop their own criteria or place a weighting on specific objectives when assessing options.

Assessment of Models to Provide a Contribution

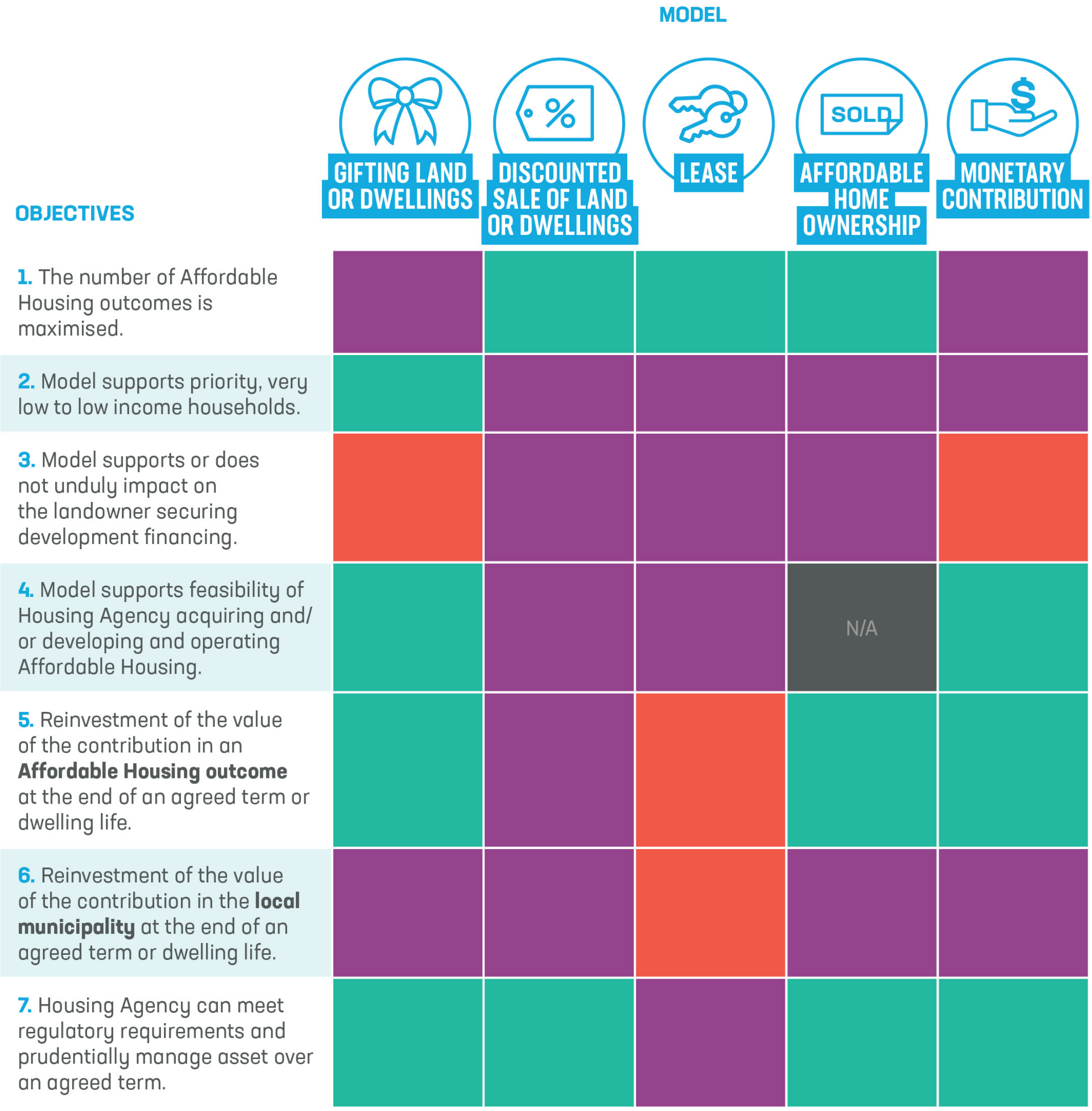

Table 3: Summary of Assessment of Delivery Models

Assessment of Mechanisms to Secure Delivery and Outcomes

OBJECTIVES	MECHANISM: PLANNING CONTROLS	REGISTERED HOUSING AGENCY OWNERSHIP	SPV OWNERSHIP	SECTION 173 AGREEMENT	OTHER LEGAL AGREEMENT	MORTGAGE INSTRUMENT
1. Contribution will be delivered in accordance with an agreement.						N/A
2. Contribution will be applied for Affordable Housing purpose for an agreed purpose, term and tenant cohort.						
3. Development and operational feasibility.						
4. Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.						
5. Reinvestment of the value of the council contribution in the **local municipality** at the end of an agreed term or dwelling life.						
6. Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.						

Table 4: Summary of Assessment of Mechanisms

Summary

There is a significant need to increase the supply of dedicated Affordable Housing in Victoria.

There is a recognised opportunity for a council and landowner to reach an agreement to an Affordable Housing Contribution as part of a planning scheme amendment or permit approval process, reflecting the objectives of planning.

Registered Housing Agencies are well-placed to work with landowners to support the development and management of Affordable Housing that is realised as a result of a contribution.

How the contribution is delivered, developed, owned and managed over time requires careful consideration to determine an appropriate and feasible structure.

Whilst the guide does not cover every question, circumstance or process involved in the planning assessment and approval process and the realisation of Affordable Housing, it is intended that it supports improved and consistent knowledge and capacity building across councils and landowners and the realisation of Affordable Housing outcomes for Victorians.

PART 1: CONTEXT

Affordable Housing Overview

Affordable Housing is defined under the Planning and Environment Act 1997 (PE Act) as "*housing, including Social Housing, that is appropriate for the housing needs of very low, low and, moderate income households.*"

- 'Affordable Housing' encapsulates a range of housing programs that provide targeted affordability outcomes to households that earn within defined very low to moderate income ranges. Delivery of Affordable Housing requires subsidy to address the gap between household income capacity and market prices.
- **Social Housing** is the primary form of Affordable Housing in Victoria, defined in the Housing Act as public housing and housing owned, controlled or managed by a participating registered agency.
- A 'participating registered agency' is an organisation that is declared and registered as a **Registered Housing Agency** - either a housing provider or housing association and is regulated by the Registrar of Housing Agencies. Other Community Housing Organisations also provide Affordable Housing but are not regulated specifically for this purpose.
- This resource focuses on arrangements that would involve a Registered Housing Agency, as these organisations are the only entities that are specifically structured and regulated to provide Affordable Housing, with regulation establishing performance standards and providing significant oversight of an organisation's performance. A list of Registered Housing Agencies is available here.
- Household eligibility for Affordable Housing realised under the PE Act is determined with reference to income criteria established under either the PE Act or the Victorian Housing Register (VHR).
- Dwellings managed by a Registered Housing Agency are predominantly rented to a household that meets the VHR eligibility, with a priority on housing vulnerable very low and low income households.
- Residents of housing managed by a Registered Housing Agency are charged a maximum 30 per cent of gross household income on rent and can access Commonwealth Rent Assistance. Tenancies are regulated under the Residential Tenancies Act.
- Determining the locations, housing type and price that is appropriate for lower to moderate income households requires consideration of a range of matters set out under the PE Act and highlighted in Figure 2. Registered Housing Agencies are skilled in considering these factors when assessing an opportunity to invest.

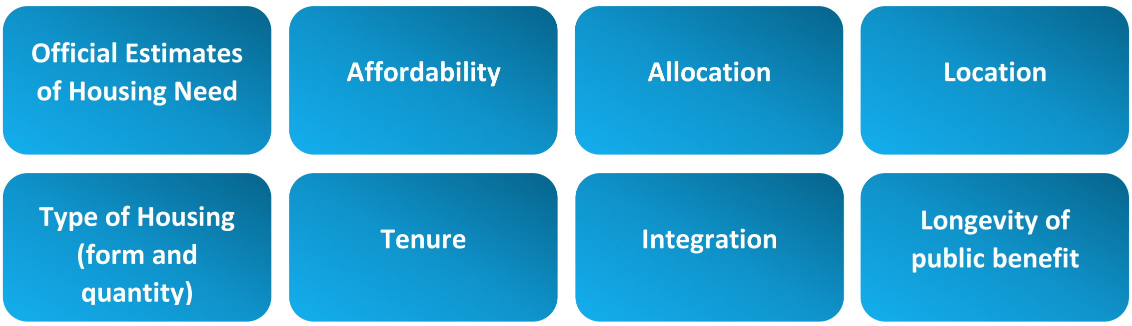

Figure 2: Matters gazetted under the PE Act required to be considered to determine 'appropriateness' of a built-form for Affordable Housing

Affordable Housing Delivery

The development of Affordable Housing shares the same characteristics as the delivery of market priced housing in terms of land, planning and construction inputs and processes.

Delivery of Affordable Housing also requires:

- Determination of the households to be supported and assessment of their financial capacity and dwelling requirements;
- Subsidy to bridge the gap between market prices and below-market revenue;
- Specialised tenancy management;
- Connection to support services for residents where required; and
- Regulation of subsidy to ensure appropriate use and reinvestment over time

Figure 3: Elements to support Affordable Housing delivery

Funding and Financing

Investment or subsidy is required to meet the costs of Affordable Housing development as the return from rents, after taking into consideration operating costs is insufficient to support any or significant borrowing.

Costs of developing and managing Affordable Housing include:

- Land and remediation
- Project planning (design, planning, feasibility)
- Financing
- Construction
- Tenancy Management
- Ownership (rates, insurance, Owners Corp,
- Asset management and maintenance
- Resourcing of land release process

Inputs to meet costs include:

- Rental income
- Government & philanthropic grants
- Gifted, discounted leased land
- Housing Agency savings
- Low-cost debt finance
- GST input tax credits
- Planning incentives
- Builder discount
- Individuals purchasing

Land, planning approval processes and construction are key costs. How these components are managed and funded has a considerable impact on the feasibility of Affordable Housing delivery for both landowners and Registered Housing Agencies.

Planning processes can add significant time and risk, impacting on costs and return.

Whether there is significant value uplift, provision of planning incentives or dispensations or time savings will inform the amount and type of contribution a landowner can make towards Affordable Housing.

The State Government's **'Big Housing Build'** is a significant investment in new Affordable Housing in Victoria that subject to timing and terms, has the potential to be allocated to a Registered Housing Agency to package with an Affordable Housing Contribution and support delivery.

Ownership and Management

This guide recommends and assumes that a Registered Housing Agency manages the Affordable Housing that results from an Affordable Housing Contribution as they:

- Have a primary not-for-profit purpose to provide and manage Affordable Housing and are structured and experienced to undertake this role;
- Are independently regulated which provides accountability to government and other investors, tenants and the community and provides the Registrar with the tools to address poor performance;
- Have a strong track record in tailoring housing and services to tenant needs and working with local service providers to ensure tenants have access to required support services and can sustain tenancies; and
- Have access to funding and financial inputs that are required to support the feasibility of below-market priced housing.

Councils managing Affordable Housing assets is not contemplated as it is not their primary role, they do not have access to funding or the skills or experience to deliver and operate outcomes at scale, and they are not regulated for this role.

How the ownership of land and dwellings is structured can significantly impact on a Registered Housing Agency's ability to secure debt, attract subsidy and manage the resulting assets.

Ownership of dwellings by a Registered Housing Agency is considered to provide the highest level of assurance that the value of the council investment and resulting housing outcomes will be appropriately used over time. This mechanism for securing outcomes is explored in Part 3.

Part 3 also includes analysis of alternative ownership structures and mechanisms for securing outcomes over time:

- A **Special Purpose Vehicle (SPV)** such as a Housing Trust, which is a mechanism that a council could establish to enable a higher level of council input into the ownership structure and the subsequent delivery and management of outcomes in its municipality over time.
- It is important to note that once established, a SPV is an entity independent from direct council control with the housing expected to be managed by a Registered Housing Agency. Establishment of a SPV is a more complex and resource-intensive process, with careful consideration of the benefits/disadvantages, risks, and justification required.
- A long-term **lease**, reflecting the emergence of the Build-to-Rent (BTR) sector, where a single landowner/investor will retain ownership of all the assets in a development and units are not strata-titled. Careful consideration is required as to how the outcome will be managed and regulated is required.
- Ownership by individuals through an appropriately structured **Affordable Home Ownership** model. Consideration of how the model will ensure affordability, allocation and securitisation of the contribution over time to avoid 'wind-fall' gain is required.

Determining Household Beneficiaries

The type of Affordable Housing and the targeting and allocation of the housing that is delivered as a result of a planning generated contribution will depend on the landowner contribution, Registered Housing Agency priorities, and terms of government funding.

Critically, the capacity for a Registered Housing Agency to apply equity or debt to support an outcome and the subsequent subsidy gap will depend on which households are supported and their income capacity.

Key factors that will inform the Housing Agency's determination as to which households to prioritise for a development include:

- Evidence of local housing demand and the requirements of priority groups in terms of location, dwelling type and size, accessibility, amenity, car parking, and any support services;
- State Government funding priorities;
- Agency focus, strategic objectives and funding availability and priorities;
- Scale of the development;
- Operational requirements and costs;
- Development and operational feasibility, noting that rent varies by household under an income-based housing model.

Councils are encouraged to:

- Engage with the State Government and Registered Housing Agencies to understand the evidence of need and the priority cohorts for funding;
- Understand impact of the council nominating a priority cohort on the project feasibility and delivery;
- Reflect that Registered Housing Agencies are regulated to deliver and manage Affordable Housing and are highly experienced in determining the optimal household mix with regard to site and development context, operational feasibility and sustainable community outcomes; and
- Avoid being overly prescriptive as to which cohorts must be housed.

Legislative and Policy Context

Legislation and policies that relate to the provision of Affordable Housing through the planning system include:

Legislation	Policy
▪ Local Government Act 2020 ▪ Planning and Environment Act 1987 ▪ Housing Act 1983 ▪ Residential Tenancies Act 1997 ▪ Building Act 1993 ▪ Sale of Land Act 1962 ▪ Property Act 1958	▪ Plan Melbourne ▪ Homes for Victorians (2017) ▪ Big Housing Build (2021)

Table 5: Key legislation and policy informing release and development of council land

Of key relevance are the following Acts and policies:

Planning and Environment Act 1987 (PE Act)

- Establishes the legal framework for planning the use, development and protection of land in Victoria. Objectives of planning include "to facilitate the provision of Affordable Housing in Victoria".

- Does not mandate Affordable Housing as a requirement of planning. 'Affordable Housing Contributions' as defined in this resource are also not a defined 'Development Contribution'; and
- Clauses under the Victorian Planning Policy Framework set out objectives specific planning provisions that apply where the majority development will result in Affordable Housing 'by or on behalf of the Director of Housing', including by a Registered Housing Agency. This includes specific design, consultation, decision-making and appeal processes relating to these developments.

Victorian Civil and Administrative Tribunal (VCAT) Act 1998

- Establishes an independent and qualified tribunal to hear and resolve legal disputes and cases, including disputes that arise under the PE Act and other legislation relating to property and tenancies;
- Has jurisdiction to hear an appeal from a landowner or other affected person regarding permit conditions proposed by a council, including conditions relating to the provision of Affordable Housing. Orders are binding by law.

Housing Act 1983 (Housing Act)

- Establishes the legislative framework for the development and management of Social Housing, including establishing the Registrar of Housing Agencies; categories of rental housing agencies; agency performance standards; powers of the Director and Registrar, and the Victorian Housing Register ('VHR');
- Objectives include "the participation of non-profit bodies in the provision of well maintained, affordable rental housing of suitable quality and location" and the promotion of the orderly planning, assembly and development of land for Affordable Housing; and
- Provides for the Director of Housing to register an interest in land owned by a Registered Housing Agency where the land has been purchased or developed with funds provided by the Director or the land was transferred to the Agency by the Director.

Plan Melbourne 2017 – 2050

- Establishes a vision for Melbourne and objectives and strategies to guide growth. Includes objectives to increase the supply of Social and Affordable Housing.

Homes for Victorians - Housing Affordability, Access and Choice

- Victorian Government's 2017 strategy to respond to the housing affordability crisis in Victoria. Established new investment, including the Social Housing Growth Fund and acknowledgement that changes to the PE Act were required to facilitate Affordable Housing, including that value-capture was an appropriate means of securing landowner contributions.

Big Housing Build

- Victorian Government's 2020 investment and policy reform package comprising $5.3 billion in investment to support development of over 12,000 new Social and Affordable homes, establishment of Homes Victoria, a commitment to develop a 10-year strategy, and reforms to planning to support streamlined approval of Affordable Housing developments.

Guidelines in relation to Use of Planning Tools and Negotiations

Planning system generated Affordable Housing Contributions can currently be realised by:

1. **A council undertaking a strategic process culminating in a planning scheme amendment** that incorporates objectives and strategies to facilitate Affordable Housing within a defined geographical area. The inclusion of Affordable Housing must be in accordance with Planning Policy Framework (PPF).

   To date, requirements have been incorporated:

   - Where there is strong strategic evidence of the need for Affordable Housing;

    - As local planning policy objectives (not requirements);
    - As incentive-based provisions, applying floor area or density uplift mechanisms that a landowner can opt to voluntarily adopt; and/or
    - Following negotiation and execution of an agreement between a landowner and council as part of a planning scheme amendment, with the details reflected in local planning policy and/or precinct specific zoning controls (effectively mandating a voluntary agreement within new controls).
2. **An agreement being reached between the responsible authority and the landowner** as part of a permit approval process, reflected in a permit condition and a Section 173 agreement.

The State Government and planning panel and VCAT precedence has emphasised the importance of councils:

- Establishing a clear strategic evidence base confirming housing need;
- Undertaking negotiations in the spirit of voluntary agreement;
- Assessing a proposal against the matters set out under the PE Act to ensure the housing is appropriate for Eligible Households; and
- Recognising the need for development commerciality, including considering the costs of delivery and potential for incentives to offset and improve realisation of a contribution.

Key Considerations and Resourcing Requirements

This guide does not address the considerations and processes that a council, landowner or a Registered Housing Agency will need to undertake to confirm and deliver a contribution, expected to include processes to:

- Meet planning obligations;
- Determine priority households and impact on design, construction and operating costs and returns;
- Assess development feasibility and determine and secure financing and funding;
- Secure planning approval;
- Draft planning controls and/or a legal agreement;
- Develop the dwellings and manage the resulting Affordable Housing assets and tenancies.

Councils involved in negotiations have indicted external costs of securing a contribution can start from $5,000, excluding internal resourcing. Establishment of a SPV such as a Housing Trust will require significant council resourcing.

Attachment 1 highlights the breadth of considerations and highlights that delivering and securing Affordable Housing through the planning system is not a simple process and will require organisations to have or to source appropriate expertise and resourcing potentially over a considerable time frame.

Risk Considerations

Organisations will need to give careful regard to risks and mitigations. Each model and mechanism are assessed against the following set of risks:

Risks
Financial risk – can you be exposed to financial loss?
Legal liability risk - could you be held liable to compensate someone?
Reputational risk - could your reputation be negatively impacted by participating?
Outcome risk - can the proposed structure fail to deliver the outcomes for the full duration of the intended period?
Legislative compliance risk – is there a risk of non-compliance with legislative and regulatory requirements?
Outcome risk – is there a risk that outcomes will not be realised?

Table 6: Key risk considerations

PART 2: MODELS FOR PROVIDING AN AFFORDABLE HOUSING CONTRIBUTION

Delivery Models

This section assessed the following models that a landowner could apply to make an Affordable Housing Contribution:

1. Gifting land or dwellings to a Registered Housing Agency or into a council-established Special Purpose Vehicle (SPV);
2. Selling land or dwellings at a discount to a Registered Housing Agency or SPV;
3. Leasing dwellings to a Registered Housing Agency for sub-leasing as Affordable Housing, or leasing directly to Eligible Households for an agreed period;
4. Selling dwellings to individuals under an Affordable Home Ownership arrangement; and/or
5. Providing a monetary contribution to council, a Registered Housing Agency or a SPV to acquire or develop Affordable Housing.

The potential reasons for applying the model, benefits, disadvantages, key feasibility, legal and risk considerations from different stakeholder perspectives, and resourcing to implement are highlighted.

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

Key Criteria and Summary of Assessment

Each model is assessed against a set of objectives summarised in Table 7 that reflects the primary objectives of councils, landowners and Registered Housing Agencies, with reference to the following rating:

High	Model rates highly against criteria. i.e. Provides high-level assurance or likelihood criteria will be realised.
Medium	Model rates moderately against criteria. i.e. Provides degree of assurance or likelihood criteria will be realised with some risks.
Low	Model rates low against criteria. i.e. Limited or no assurance or likelihood criteria will be realised and/or considerable risks.

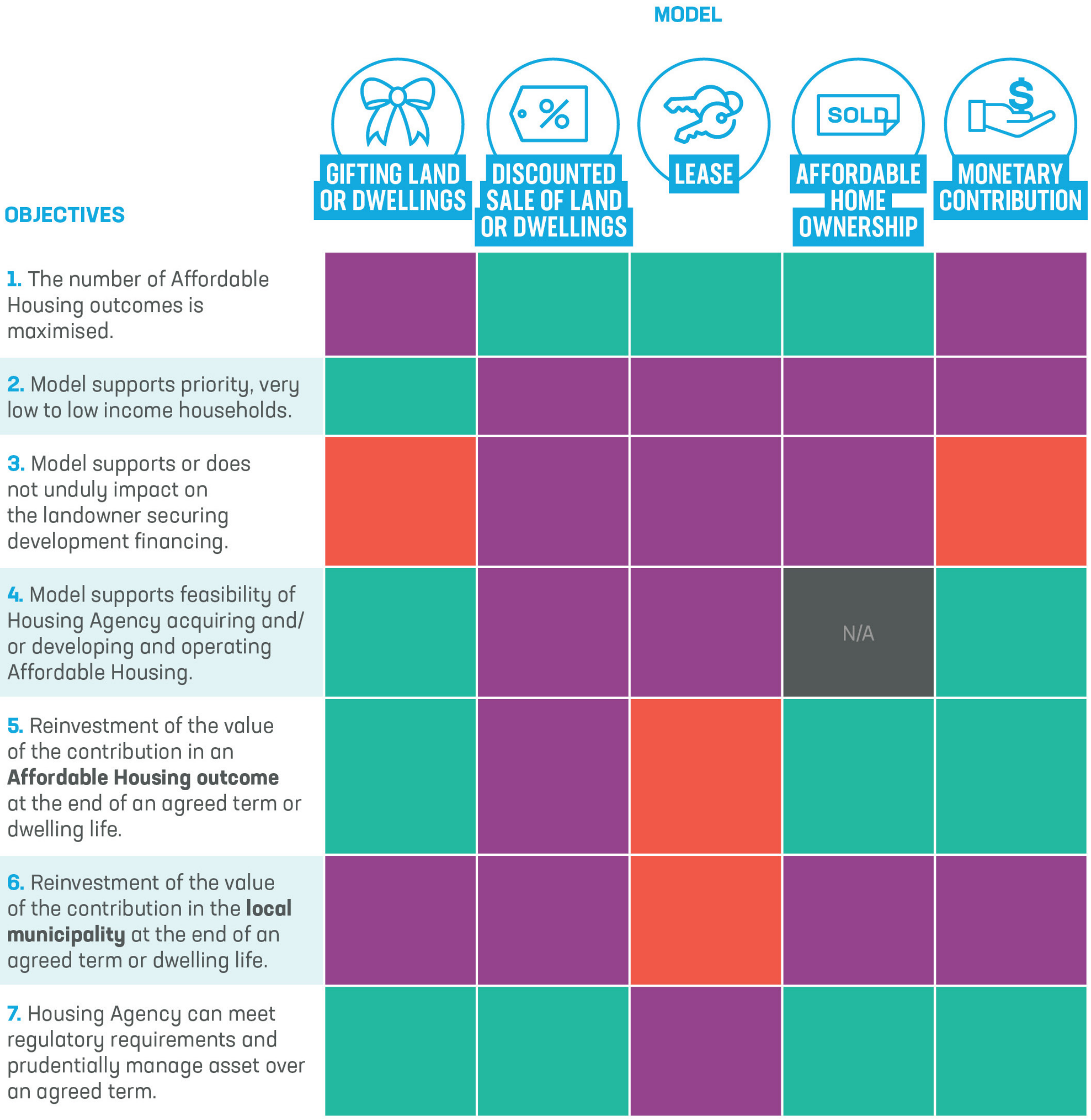

Table 7: Summary of Assessment of Delivery Models

Model 1: Gifting of Land or Dwellings

Model:	Gifting of land or dwellings
Overview	▪ Gifting of land or completed dwellings and transfer of title to a Registered Housing Agency or a council-established SPV. ▪ Requires the landowner to forego all value and potential financial return for agreed land or dwellings. ▪ If title to vacant land is gifted, the Registered Housing Agency or SPV will need to manage the design, permit approval process, sourcing and management of funding, financing, and construction.
Ownership of land	▪ Registered Housing Agency or council established SPV.
Manager of assets	▪ Registered Housing Agency or council established SPV.
Key Strengths	▪ Does not require Registered Housing Agency or SPV to secure funding or financing if gifted dwellings. ▪ Reduces subsidy gap required for development to occur if gifted land. ▪ Provides Registered Housing Agency with control of the asset. Asset can be used for security for borrowing.
Key Weaknesses	▪ Gifting of dwellings likely to impact on the number of dwellings provided as contribution per dwelling is 100 per cent of market value (compared to a discount sale or gifted land model). ▪ Gifting of land requires Registered Housing Agency to source funding and financing and have capacity to develop (risk).
Responsibility for assets and tenants at end of term or dwelling life	▪ Registered Housing Agency or SPV.
Resourcing to implement	▪ Low – moderate depending on procurement process and legal agreement, or other mechanisms that are applied to secure value over time.

Application and Reasons for Applying

Gifting or land or dwellings can occur under any amendment or agreement.

Gifting will not however suit sites where the landowner needs to retain control of the land, for example in a Build-to-Rent (BTR) scenario, or a contract of sale and return is required for the developer to secure financing.

It may also not be feasible for a Registered Housing Agency to own a dwelling if there are high owners' corporation costs, even if the dwelling is gifted.

Reasons why a council, landowner and Registered Housing Agency may agree to the gifting of land or dwellings include:

Gifting of land	Gifting of dwellings
▪ Council key objective is to facilitate a higher percentage of Affordable Housing and the gifting of land contribution supports this compared to the equivalent value being provided in the gifting of dwellings. ▪ The landowner is subdividing and selling land, not constructing dwellings. ▪ Large site with capacity for title to stand-alone land to be transferred into full control of Registered Housing Agency or SPV.	▪ Council and/or landowner seeks to remove any reliance or risk of other organisations needing to secure funding or financing for Affordable Housing delivery. ▪ Council's key objective is to support higher needs / lower income households. ▪ Apartment development (land cannot be separated). ▪ The gifting of dwellings is established under the planning scheme because of a floor area uplift.

Strengths and Weaknesses of Model

Stakeholder	Strengths / benefits	Weaknesses / disadvantages
Council	▪ Results in ownership of asset by a Registered Housing Agency. ▪ Gifting of land can occur where development only involves subdivision. ▪ Removes subsidy gap if completed dwellings are gifted and increases likelihood of funding if land is gifted. ▪ Gifted dwellings improve the Registered Housing Agency's capacity to house very low or low income households or other priority groups. ▪ Gifting of land may support council to actively engage with Housing Agency in design. ▪ Gifting is relatively simple to monitor delivery.	▪ As a high-cost/value contribution, the gifting of dwellings is likely to result in a lower percentage of Affordable Housing compared to other models. ▪ Gifting of land requires Registered Housing Agency to source funding and financing to develop (risk). ▪ Gifting of dwellings is dependent on the development progressing with reliance on pre-sales and financing. ▪ Potential community concerns about concentration if land for multi-unit development is gifted.
Registered Housing Agency	▪ Significant opportunity to deliver Affordable Housing in strategic locations through accessing land or dwellings at no cost. ▪ Gifted dwellings removes reliance on funding or financing. Gifted land translates to equity and increases likelihood of attracting investment. Land value provides security for borrowing. ▪ Gifting of land could support a greater number of outcomes compared to gifting of dwellings. ▪ Assuming 100 per cent Affordable Housing, 'profit' on land development is captured as value. ▪ Agency controls design and build if land is gifted. Special planning clauses apply. ▪ Delivery on gifted land is not dependent on market sales or driven by developer objectives. ▪ Subject to operating costs, gifted dwellings can support agency to house lower income/priority household, as no need to service debt. ▪ Gifting of land provides control of land and resulting dwellings in Agency ownership, potentially reducing owners' corporation charges and supporting future re-development.	▪ Gifting of land requires Registered Housing Agency to fund and manage design and planning process, secure funding and finance and manage development risks. ▪ Risk of land contamination may sit with Agency. ▪ Gifting of dwellings will likely result in a lower percentage of dwellings compared to other models. ▪ Gifting of dwellings does not tap into funding or financing opportunities which could support a greater number of outcomes. ▪ Gifted dwellings may not be viable to operate if high owners' corporation costs.
Landowner	▪ Gifting of land can occur where development only involves subdivision. ▪ Gifting of land does not require landowner to fund Affordable Housing development. ▪ Costs associated with gifting of land and dwellings can be factored into feasibility early and are relatively certain. ▪ Gifting of dwellings can result in lower percentage of total yield being Affordable Housing, freeing up more dwellings to be sold at market value. ▪ Gifting of land can separate Affordable Housing from the market housing and reduce perceived marketing risks. ▪ Gifting of dwellings is not dependent on determining a discount or the Agency securing funding or financing. ▪ No ongoing obligation once transferred.	▪ Gifting of land may result in higher percentage of total yield being Affordable Housing with potential for higher impact on feasibility, and/or perceived marketing risk. ▪ Developer needs to meet costs of gifting without a financial return. ▪ Final actual cost of gifting dwellings is unknown at point of agreement, creating a construction cost risk.

Key Legal and Risk Considerations

It is expected that a landowner will need to enter an agreement with a Registered Housing Agency to gift assets or provide the assets to a council established SPV managed by a Registered Housing Agency.

An agreement should set out the contribution, any conditions, the timing of the transfer, and any expectations on the Registered Housing Agency or SPV in relation to use of the dwellings or land that was agreed with council.

Registered Housing Agency input in the development of any conditions is recommended to ensure they terms are reasonable and will not impact on funding, financing, delivery or regulatory requirements.

A contract of sale is expected to govern the gifting, with a discount or rebate reflecting 100 per cent of value. The legal process to transfer land or dwellings is regulated by the *Transfer of Land Act 1958*, managed by the Victorian Land Registry Office. The name of the receiving entity is registered on the title following the transfer.

Gifting of land

- Gifting of land could involve a two-stage process whereby there is an agreement between the landowner and Registered Housing Agency to the transfer subject to the Agency meeting conditions such as planning approval, and then the transfer of title at a future date.
- For a Registered Housing Agency to invest in design and planning and to secure funding and financing, the agreement should provide sufficient assurance that the land will transfer upon achievement of the conditions. Pre-conditions should not be so onerous that they limit the Agency's ability to secure funding and financing. Title should be in the Registered Housing Agency or SPVs' name before development proceeds, noting that financiers and/or funders will require title for security.
- The Registered Housing Agency will need to consider risks associated with undertaking development, including any conditions before title will be transferred, and how these can be managed. This includes risks associated with contamination, planning approval, financing, funding and construction.

Gifting of Dwellings

- Risks associated with the gifting of dwellings relate to any dependency on the rest of the development being progressed for the Affordable Housing to be provided, for example in an apartment building. This includes risks that the developer cannot secure funding to undertake construction for the development or decides to not proceed with the development.

Key risks and potential mitigations include:

	Risks	Mitigations
Council	**Financial, Legal Liability, Regulatory and Reputational risk** ▪ No material risks	
	Outcome risk ▪ Delivery of dwellings is subject to developer / project timeframes, financing and pre-sales. ▪ Registered Housing Agency is unable to secure funding or financing to develop gifted land. ▪ The Registered Housing Agency sells one or more dwellings and reinvest outside the local government area, resulting in a loss of Affordable Housing in the local government area. ▪ The Registered Housing Agency winds-up.	▪ Permit requires development to commence within defined period. ▪ Registered Housing Agencies are very experienced in securing government funding once land is within its control (subject to funding availability). ▪ Early engagement by Registered Housing Agency with State Government regarding funding for land development. ▪ Registered Housing Agencies are constitutionally structured so that should they wind-up, assets are required to be transferred to a 'like' organisation. The Affordable Housing outcome would be transferred to a housing agency with an aligned purpose. ▪ The parties could agree to a further agreement (e.g. Section 173) upon sale to retain Affordable Housing outcome in the local government area for a period.

	Risks	Mitigations
Registered Housing Agency **And** **Landowner**	**Financial risk** ▪ Gifting of land requires Registered Housing Agency to construct at its own cost. Risk agency is unable to secure financing.	▪ Agreement for land transfer subject to Registered Housing Agency securing funding or financing. Other Agencies may be offered opportunity if sale does not proceed. ▪ Execution of tripartite agreement between landowner, financier and the Registered Housing Agency to use as basis for securing finance. ▪ Registered Housing Agency to undertake robust feasibility assessment early in project.
	Legal liability risk ▪ Termination of agreement due to delay could expose the Registered Housing Agency to a compensation claim.	▪ Agency to seek early confirmation of funding from lender/state government. ▪ Ensure appropriate conditions precedent with milestone dates, with ability to terminate if project is in trouble.
	Reputational and regulatory compliance risks ▪ No material risks.	
	Outcome risk ▪ Subject to the number of dwellings, a requirement for gifted dwellings may make a project unfeasible. ▪ Delivery is subject to developer ▪ Requirement for delivery of gifted land may not align with Agency's ability to secure funding or financing to support construction in a timely manner.	▪ Permit requires development to commence within defined period. ▪ Seek early engagement with State Government to discuss funding opportunities and alignment. ▪ Consider allowance for a discounted sale or monetary contribution within the agreement should gifted dwellings are not feasible. ▪ Provide for appropriate time allowance for Agency to complete any land development and force majeure clauses to allow for extensions of delivery time if necessary.

Feasibility Considerations

The key feasibility considerations for a landowner relate to the costs of providing serviced land or constructing the dwellings and how these costs will be funded without any financial return. This will be impacted by:

- Whether the land was already acquired and what assumptions were made in relation to Affordable Housing;
- How much of the total yield is proposed to be Affordable Housing;
- Costs of construction if gifting completed dwellings or costs of servicing lots if land;
- Availability and cost of finance;
- Whether the financier requires evidence of a return on each dwelling (even if at a discount); and/or
- If there are incentives or offsets provided because of the planning approval.

For a Registered Housing Agency or receiving SPV, the key feasibility considerations will relate to the costs of developing gifted land and the ongoing costs to own and manage the dwellings. Costs such as owners' corporation charges can have a significant impact on the ability of a Registered Housing Agency to manage costs.

There are considerable feasibility benefits for a Registered Housing Agency/SPV that receives land, including immediate equity in the form of land value that can be used to secure debt and reduce subsidy requirements. It will also capture the development margin/profit (difference between costs and value) as hypothetical or book value.

The gifting of dwellings also results in the value of the dwellings being held by the Registered Housing Agency/SPV which could support borrowing for other projects.

Resourcing and Process Considerations

Excluding the negotiation process, the resourcing to implement this model is expected to be minimal for a council, with an agreement to gift land or dwellings translated into planning controls and/or a Section 173 Agreement and verified on transfer of title.

For a landowner and Registered Housing Agency, the resourcing to implement will depend on whether land or dwellings are provided and the process and resourcing to deliver. This includes whether the Agency has an opportunity to review and influence design, or whether it needs to fund design, planning and construction on gifted land. The later will require considerable resources.

The parties may decide to enter a side agreement to support the transaction which will require drafting and legal review before organisational approval. A landowner may also elect to undertake a process to select a Registered Housing Agency which could be relatively informal, or a more formal tender process.

Assessment of Model

Objective	Assessment	Rationale for Assessment
The number of Affordable Housing outcomes is maximised.		▪ Gifting of dwellings is a very high cost impact and is therefore likely to impact the number of dwellings that a landowner can support into an Affordable Housing purpose. ▪ Gifting of land represents a contribution towards the total cost of Affordable Housing and could therefore support a greater number of Affordable Housing outcomes compared to gifting of dwellings, assuming the same total value was provided by the landowner.
Model supports priority, very low to low income households.		▪ Gifting to a Registered Housing Agency is expected to support targeting of very low to low income households, subject to owners' corporation costs, as the Agency does not need to service borrowing.
Model supports or does not unduly impact on the landowner securing development financing.		▪ Gifting, particularly of constructed dwellings will not provide any finance return to the landowner and is therefore expected to negatively impact on landowner ability to secure borrowing for development. ▪ Impact will depend on number of dwellings to be gifted. ▪ Impact may be lower / move to yellow if cost of gifted land or dwellings is factored into land purchase price, and/or if land is provided rather than completed dwellings.
Model supports feasibility of Housing Agency acquiring and/or developing and operating Affordable Housing.		▪ Gifted dwellings mean a Registered Housing Agency does not need to secure funding or financing to acquire. ▪ Gifted land translates to Registered Housing Agency equity that can be used to secure financing. Land as a contribution towards costs also reduces subsidy gap and requirements for funding.
Reinvestment of the value of the contribution in an Affordable Housing outcome at the end of an agreed term or dwelling life.		▪ Ownership of resulting dwelling by Registered Housing Agency ensures reinvestment in future Affordable Housing.
Reinvestment of the value of the contribution in the local municipality at the end of an agreed term or dwelling life.		▪ Unless coupled with a specific agreement, gifting as a model does not guarantee reinvestment of any future proceeds or of the land in the local municipality.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.		▪ Gifting and subsequent ownership without limitations set by a legal agreement maximise the ability of the Registered Housing Agency to manage the asset and tenancy.

Example – Gifting of Land

Example:	Gifting of Land
Local Government	▪ City of Glen Eira
Outcome	▪ Expected minimum 150 Affordable Housing dwellings, owned and managed by a Registered Housing Agency
Background / Structure	▪ Planning scheme amendment C155glen (approved) rezoned a 25-hectare site located Bentleigh East, referred to as 'East Village' to Comprehensive Development Zone to accommodate approximately 3,000 dwellings. ▪ As part of the amendment process the council and landowners agreed to an Affordable Housing Contribution to support a minimum five per cent Affordable Housing by way of either: ▫ Transferring land at no cost that has the capacity for five per cent of residential dwellings (150 dwellings) to council or a Registered Housing Agency to develop; or ▫ Constructing and gifting dwellings equalling 1,970 m2 to council or a Registered Housing Agency. ▪ The terms are reflected in a Section 173 Agreement and include conditions relating to a minimum number of land parcels to be provided to avoid concentration and timing and process requirements relating to the transfer. ▪ Schedule 2 to the Zone also requires that a permit must not be granted to exceed 3,000 dwellings within the precinct unless the landowner enters in an agreement under Section 173 of the PE Act to provide for 10 per cent of the number of dwellings beyond 3,000 (one in 10) to be provided as Affordable Housing dwellings. ▪ An agreement has been reached between the landowners in relation to the provision of the land and a separate agreement has been reached with a Registered Housing Agency establishing them as the intended recipient of the land. ▪ The Registered Housing Agency is expected to source funding and financing to cover construction costs and will need to enter a range of legal agreements as part of this process.

Concept image of East Village precinct in Bentleigh East

Model 2: Sale of Dwellings or Land at a Discount

Model:	Sale of Land or Dwellings at a Discount
Overview	▪ The model involves the landowner selling land or dwellings at a discount to a Registered Housing Agency or into a SPV. ▪ The landowner is responsible for financing delivery of land services or dwellings. Upon subdivision or at practical completion the title to the dwellings or land would be sold to the Registered Housing Agency or SPV at the agreed price. ▪ The Registered Housing Agency or SPV will need to source funds and/or finance to purchase. ▪ The discount will need to be agreed and be sufficient to enable the Registered Housing Agency or SPV to purchase and realise an Affordable Housing outcome for intended households at the point the dwellings are ready to settle. The parties will need to decide the level of reliance on other funds/financing when establishing the discount.
Ownership of land	▪ Registered Housing Agency or council established SPV.
Manager of assets	▪ Registered Housing Agency or council established SPV.
Key Strengths	▪ Can support a greater number of Affordable Housing outcomes as landowner contribution is spread across more dwellings (compared to gifting). ▪ May be treated as pre-sale by landowner financier.
Key Weaknesses	▪ Requires Registered Housing Agency or SPV to have funds to purchase. ▪ Requires determination of appropriate discount rate with regard to affordability and other investment opportunities.
Responsibility for assets and tenants at end of term or dwelling life	▪ Registered Housing Agency or SPV.
Resourcing to implement	▪ Moderate to high

Application

This model could apply in any development circumstance, including where a landowner is only subdividing land.

The key reasons why organisations may agree to a discounted sale include:

- A greater number of Affordable Housing dwellings will be realised compared to gifted dwellings;
- There is reasonable comfort that the Registered Housing Agency/SPV can secure funding and/or financing to purchase at the point dwellings are ready to settle;
- The landowner requires a contract of sale and financial payment to support financing; and/or
- The landowner does not require ongoing ownership.

Discounted sale will not work in a Build-to-Rent scenario as the dwellings need to remain in single ownership of the investor.

Strengths and Weaknesses

Stakeholder	Strengths / benefits	Weaknesses / disadvantages
Council	▪ Potential to support a greater number of dwellings compared to gifting. ▪ Results in ownership by regulated Registered Housing Agency or SPV. ▪ Leverages / attracts other investment (debt, grants, taxation benefits).	▪ Requires determination of an appropriate discount. ▪ Dependent on Agency securing funding or financing to enable purchase and land development. ▪ Purchase of dwellings likely to be dependent on sufficient market pre-sales and developer financing. ▪ Potential community concerns about concentration if land is sold and results in multiple-unit development. ▪ May not result in very low income households being supported if Agency needs sufficient return to support borrowing to acquire. ▪ May increase likelihood of future sale to repay debt.
Registered Housing Agency	▪ Potential to increase the number of dwellings compared to gifting. ▪ Results in agency ownership of the dwelling. ▪ Sale of dwellings does not require agency to manage and finance construction. ▪ Discount obtained can satisfy co-contribution requirements of some funding arrangements.	▪ Viability will depend on discount. Increases subsidy gap / funding requirements compared to gifting. ▪ May require equity or grant funds to purchase land as well as to fund construction. ▪ Purchase is dependent on developer proceeding with the development. ▪ Risks associated with land development. ▪ Can decrease capacity to support very low income households, due to borrowing.
Landowner	▪ Contract of sale and (reduced) financial return supports borrowing and level of cost recovery. ▪ Greater number of Affordable Housing supports planning approval. ▪ Decreases number of dwellings that need to be pre-sold (may be a positive or negative). ▪ No ongoing obligation on developer once sold. ▪ Costs and revenue can be factored into feasibility early and are a relatively certain	▪ Requires determination of a discount and agreement to the valuation process to assess discount against. ▪ Dependent on Agency securing funds to purchase. ▪ Likely to decrease the number of dwellings available for market sale (compared to gifting). ▪ Potential negative perceptions of other purchasers / market risks.

Key Legal and Risk Considerations

This model has similar legal and risk considerations to Model 1 (gifting of land or dwellings) with the additional risks that the discount is not sufficient for the Registered Housing Agency/SPV to viably purchase and/or other funding is not available to fund construction on purchased land.

A pre-sale agreement between the landowner and a Registered Housing Agency is required to govern the sale and support the Registered Housing Agency to secure funding prior to a contract of sale being entered. This could take the form of a Heads of Agreement. The agreement should set out the discount that will be provided and any pre-conditions relating to the transfer of land. The parties will need to consider how to reflect the agreed discount in the pre-sale agreement to not impact on valuations of other properties in the development, financing or charitable tax status or benefits.

Risk considerations:

	Risks	Mitigations
Council	**Financial, Legal Liability, Regulatory and Reputational risk** ▪ No material risks	
	Outcome risk ▪ Delivery of dwellings is subject to developer / project timeframes, financing and pre-sales. ▪ Registered Housing Agency is unable to secure funding or financing to develop gifted land. ▪ The Registered Housing Agency sells one or more dwellings and reinvest outside the local government area, resulting in a loss of Affordable Housing in the local government area. ▪ The Registered Housing Agency winds-up. ▪ Land is transferred but is not developed as the Registered Housing Agency was unable to secure funding, financing and/or planning approval	▪ Permit requires development to commence within defined period. ▪ Registered Housing Agencies are very experienced in securing government funding once land is within its control (subject to funding availability). ▪ Early engagement by Registered Housing Agency with State Government regarding funding for land development. ▪ Registered Housing Agencies are constitutionally structured so that should they wind-up, assets are required to be transferred to a ‘like’ organisation. The Affordable Housing outcome would be transferred to a housing agency with an aligned purpose. ▪ The parties could agree to a further agreement (e.g. Section 173) upon sale to retain Affordable Housing outcome in the local government area for a period.
Registered Housing Agency and Landowner	**Financial risk** ▪ Finance / funding not secured by Registered Housing Agency or is not sufficient to purchase and /or develop. ▪ Discount is not sufficient to support acquisition. ▪ Discounted sale impacts on landowner ability to secure development finance.	▪ Landowner and/or council consultation with Registered Housing Agency to determine appropriate discount. ▪ Contract of sale subject to Registered Housing Agency securing funding or financing. Other Agencies may be offered opportunity if sale does not proceed. ▪ Registered Housing Agency to seek early confirmation of funding from lender/state government. ▪ Execution of tripartite agreement between landowner, financier and the Registered Housing Agency to use as basis for securing finance. ▪ Registered Housing Agency to undertake robust feasibility assessment early in project.
	Legal liability risk ▪ Termination of contract due to inability of Registered Housing Agency to secure funding/financing could expose the Agency to a compensation claim.	▪ Agency to seek early confirmation of funding from lender/state government. ▪ Ensure appropriate conditions precedent with milestone dates, with ability to terminate if project is in trouble without penalty.
	Reputational and regulatory compliance risks ▪ No material risks.	
	Outcome risk ▪ Discount may not be sufficient to support development or housing for very low income households and/or Registered Housing Agency cannot secure funding or financing. ▪ Delivery of dwellings is subject to development progressing, financing, and pre-sales etc. ▪ Requirement for delivery of land may not align with provider’s ability to secure funding or financing to support construction in a timely manner.	▪ Permit requires development to commence within defined period. ▪ Consider inclusion of alternative gifting or a monetary contribution model within an agreement in event discount sale cannot be realised. ▪ Provide for appropriate time allowance for Agency to complete any land development and force majeure clauses to allow for extensions of delivery time if necessary.

Key Feasibility Considerations

A discounted sale requires careful consideration of the discount that is feasible for both the landowner and the purchasing entity. It will also require agreement to how the market value will be determined and the sale terms.

For the landowner, key feasibility considerations will also include whether the return after discount will cover construction costs and the impact the sale has on financing. The parties will also need to consider if a deposit is payable and if this is calculated on a percentage of market value or the discounted price.

For a Registered Housing Agency, feasibility considerations include:

- Market price and subsequent discount;
- Intended household recipients and subsequent rental income:
- Operating costs, return available to service debt and the cost and availability of finance;
- Location and amenity of dwellings available for purchase;
- How to structure the purchase to maximise charitable tax benefits;
- Development feasibility if land is purchased; and
- The estimated subsidy gap and the availability and terms of funding.
- The level of discount is a critical feasibility consideration. The discount may need to be sufficient to eliminate the need for Registered Housing Agency debt or other funding for the transaction to occur.
- The discount will likely also impact on the percentage of Affordable Housing that will be delivered, with higher discounts having a greater cost impact on the landowner.

To mitigate these risks an agreement could include a 'fall back' option if land or dwellings are unable to be sold. This could allow for a lower percentage of dwellings to be gifted or for a monetary contribution at an equivalent value to the discount to be provided.

Process and Resourcing Considerations

In addition to determining an agreement, the process is likely to require resources by council and landowner to determine and assess a discount and its likely ability to support affordability for households in need and the viability of a sale arrangement. Advice of a Registered Housing Agency, or a specialist, may be required. This is expected to be a more resource-intensive process to determine a suitable arrangement, compared to a gifting model.

Additional resourcing will be required to establish a pre-sale agreement between the Registered Housing Agency and landowner particularly if this needs to set out terms of any sale and development of land.

A Registered Housing Agency will need to apply resourcing to secure funding and/or financing, and in the case of land sale, to fund the planning, funding and development process.

Assessment of Model

Criteria	Assessment	Rationale for Assessment
The number of Affordable Housing outcomes is maximised.		▪ Subject to agreement, a discounted sale of land or dwellings should result in a higher percentage of dwellings compared to a gifting model.
Model supports priority, very low to low income households.		▪ The need to fund the acquisition may impact on an Agency's ability to prioritise very low to low income households, as they require sufficient funds to purchase and service borrowing.
Model supports or does not unduly impact on the landowner securing development financing.		▪ Discount impact on developer return. ▪ Discounted sale arrangement has potential to be structured as a pre-sale arrangement and support the landowner to secure financing (i.e. demonstrates that costs are met). ▪ A high discount may reduce the assessment against this objective whilst a low discount may improve likelihood of landowner attracting development financing. ▪ Provision of additional density or other planning dispensations would improve this assessment.
Model supports feasibility of Housing Agency acquiring and/or developing and operating Affordable Housing.		▪ The need to source funds reduces the feasibility for an Agency and will increase reliance on government funds.
Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.		▪ Any proceeds from a future sale must be reinvested in the Agency's purpose, i.e. Affordable Housing.
Reinvestment of the value of the contribution in the **local municipality** at the end of an agreed term or dwelling life.		▪ Reinvestment of any proceeds from a future sale are not guaranteed to be reinvested in the local municipality. ▪ This mechanism on its own does not realise this objective, however it could be increased to green if coupled with other mechanisms.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.		▪ Control by a Registered Housing Agency provides capacity to meet regulation and to manage assets and tenancies without restrictions. ▪ This assessment may be lower if Agency ownership is coupled with a Section 173 Agreement.

Example – Discounted Sale

Example:	Discounted sale
Local Government	Various
Outcomes	▪ Between five and 10 per cent of dwellings to be constructed and sold at a discount to a Registered Housing Agency.
Background / Structure	▪ Several councils and landowners have agreed to an Affordable Housing Contribution being provided in the form of a dwelling constructed and sold at a discount to a Registered Housing Agency. ▪ Agreements are reflected in a schedule to a zone in the case of a planning scheme amendment or a permit condition. ▪ Examples of agreed contributions to be provided by way of a discount sale include: ▪ 10 per cent of dwellings to be sold at a 30 per cent discount (Sunbury); ▪ Six per cent of dwellings to be sold at a 35 per cent discount (Fishermans Bend); ▪ Five per cent of dwellings to be sold at a 30 per cent discount (Coburg); ▪ Five per cent of dwellings to be sold at a 25 per cent discount (Altona North precinct 15); ▪ Four per cent of dwellings to be sold at a 50 per cent discount (Clayton). ▪ Each percentage and discount were negotiated and agreed between the council and landowner and is expected to reflect site and planning specific circumstances.
Key Learnings	▪ Determination of a discount needs to be done with regard to the total percentage of dwellings that will be realised as Affordable Housing, the likelihood of a Registered Housing Agency being able to purchase (including the likelihood of it securing government funding), and the impact of the discount on the Housing Agency capacity to secure debt and funding. ▪ Several agreements provide for the discount to be translated to a lower percentage of dwellings that are gifted should a discount sale not be realised. This ensures an Affordable Housing Contribution will be achieved. ▪ The process of determining an appropriate discount can be time and resource-intensive. ▪ The discount and percentage of dwellings to be sold under this approach can have a significant impact on project feasibility. ▪ A discounted sale can support a greater number of outcomes but this may impact on the targeting should the housing agency need to service debt.

Model 3: Leasing of Land or Dwellings

Model:	Leasing of Land
Overview	▪ Under this model, the landowner either leases land (ground lease) to a Registered Housing Agency to then develop and manage, or builds the dwellings and the owner either: ▫ Directly manages the leasing of the Affordable Housing dwellings to eligible households at a defined discount to market rent for an agreed period; or ▫ Appoints a Registered Housing Agency to manage the leasing of the Affordable Housing dwellings, either through a head lease or a tenancy management agreement. ▪ The landowner will need to secure funding and financing for the development and manage costs over time.
Ownership of land	▪ Private entity.
Manager of assets	▪ Registered Housing Agency.
Key Strengths	▪ Supports Affordable Housing delivery in arrangements where the land or dwelling cannot be sold to a Registered Housing Agency. ▪ Provides Registered Housing Agency with access to land or properties to manage without needing to source funding or financing to acquire or develop.
Key Weaknesses	▪ Reinvestment of contribution in Affordable Housing, or the municipality, at the end of the lease term is not realised. ▪ Depends on determination of affordability (discount to rent) and allocation process and subsequent process to regulate outcomes over time. No regulation of private ownership of Affordable Housing. ▪ More complex arrangement to structure and assess.
Responsibility for assets and tenants at end of term or dwelling life	▪ Owner of the land and dwellings. ▪ Registered Housing Agency may be responsible for terminating tenancies / handing back vacant properties – subject to Residential Tenancy Act regulation.
Resourcing to implement	▪ Moderate to high.

Application and Reasons for Applying

Ownership and potentially management by a single private entity of all Affordable Housing in a development is considered in the context of Build-to-Rent (BTR), where single private ownership of all dwellings in a building is critical to the investment profile, and individual dwellings cannot be sold. It may also be the only model that can work in high-value developments, or in other models where there is a single owner of the land, such as in a retirement village context.

The analysis does not consider sale of dwellings to individual investors to manage as Affordable Housing, as this approach has considerable complexity and risks that require detailed consideration outside the scope of this resource.

The model requires determination of several matters, including:

- If land is leased, what are the terms, particularly as they relate to assets built on the land;
- How construction costs will be met on leased land, noting a Registered Housing Agency is unlikely to be able to borrow against the asset if title is not in its name;

- Who will manage the leasing and management of tenancies and how these costs will be met?;
- What discount to rent will be provided?;
  - Which renter income groups will this be affordable for?;
  - Is there a return to the landowner?
  - If dwellings are not proposed to be managed by a Registered Housing Agency, what dwelling allocation and income-checking process will be put in place to ensure eligibility, and how this is regulated and managed, over time?;
  - How the lease terms will be regulated and monitored to ensure compliance with the original planning agreement conditions;
  - What is an appropriate term of lease for the dwellings?; and/or
  - What would happen if the owner wanted to end the lease before the end of the term?.

Registered Housing Agency management of the tenancies will provide the highest level of assurance to council and government that outcomes will be appropriately managed and allocated to households in need, with reporting on outcomes expected to be captured through agency regulatory reporting requirements.

A landowner may also seek to manage the Affordable Housing arrangement through a private real estate agent, as they are seeking a single on-site management response for tenants.

A council will need to consider the benefits and disadvantages of different management arrangements with regard to the number of Affordable Housing units, the skills and capacity of the owner to manage, and the mechanisms available to secure outcomes and monitor over time. At this point there is no regulation of privately owned and managed Affordable Housing tenancies in Victoria other than under standard Residential Tenancy Act requirements (which do not distinguish Affordable Housing tenancy arrangements). Private management will likely require a council to put in place and monitor a mechanism such as a Section 173 Agreement to ensure appropriate use and confirm compliance over time.

Registered Housing Agency oversight of income eligibility checking and allocation and subsequent reporting to council on a fee-for-service basis paid for by the landowner is a potential ‘middle ground’ where private management is agreed where an Agency provides independent verification to council as a service.

Reasons for Applying

The key reason why a landowner and council would agree to a lease model is that the title to the land needs to be retained by a private landowner because:

- It is a BTR development where the dwellings will be held in single private ownership for investment purposes and will not involve sale of individual units;
- Dwellings could not be sold at a discount as the Registered Housing Agency was unable to secure funding and/or financing;
- Gifting is not feasible due to the number of dwellings desired by council to be delivered as Affordable Housing;
- The requirement for Affordable Housing dwellings in the building may only be for a short-term (e.g. five-10 years) and is not suitable for sale to a Registered Housing Agency.

Strengths and Weaknesses

Stakeholder	Strengths / Benefits	Weaknesses / Disadvantages
Council	▪ Enables realisation of (potentially higher) Affordable Housing outcome compared to gifting. ▪ Does not depend on Registered Housing Agency to source funding/financing to acquire if leasing of dwellings.	▪ Does not result in title or value being held by Registered Housing Agency 'in perpetuity'. Affordable Housing outcome is lost at the end of term. ▪ Complex, requires consideration of range of matters including lease term, discount to rent, management, regulation of outcome. No standard model. ▪ Private management is not currently regulated other than by Section 173 agreement or under the Residential Tenancies Act. ▪ Depending on discount to rent, may be more likely to target moderate income households. ▪ If leased land, depends on Agency interest and capacity to secure funding and financing to develop the land. ▪ Different disadvantages depending on if private or Registered Housing Agency management. ▪ Council may need to regulate outcomes. Difficult to enforce a penalty if non-compliance over the term.
Registered Housing Agency	▪ Does not result in title or value being held by Agency. Agency not responsible for delivering a housing outcome at the site 'in perpetuity' and is not responsible for recycling asset at the end of its usable life. ▪ Potential to manage assets without needing to source funding/financing to acquire. ▪ Potential to develop leased land. ▪ Income stream from management can support other project delivery.	▪ Does not result in Agency ownership. ▪ Under a head lease, Agency-limited control of the asset and may be responsible for ongoing maintenance. ▪ Affordable Housing may be lost at end of term. ▪ Agency may be responsible for finding alternative accommodation for residents at the end of the term. ▪ Lack of clarity around regulatory requirements if managing privately owned Affordable Housing. Risk impacts on regulatory status.
Landowner	▪ Leasing of dwellings enables delivery of Affordable Housing and realisation of planning approval without requiring funds to be secured by an Agency . ▪ Enables single ownership of Affordable Housing, supporting investment structure, particularly for BTR. ▪ Controls delivery and ownership if leased dwellings. ▪ Leasing of dwellings direct will provide (discounted) income stream from rent. ▪ Leasing via a Registered Housing Agency transfers responsibilities for meeting agreement terms. ▪ Can sell the asset upon expiration of the lease term.	▪ Needs to understand and meet range of criteria to ensure delivery of designated Affordable Housing dwellings. ▪ Requires detailed consideration of terms of agreement and ongoing management to ensure compliance. ▪ Registered Housing Agency management will be at a cost to landowner. ▪ Potential need to manage other resident perceptions of Affordable Housing. ▪ Ongoing obligations on landowner to maintain the dwellings in accordance with the lease.

Key Legal and Risk Considerations

It is important to understand how the use of different tenancy structures will affect the relationship between the landowner and Registered Housing Agency:

- Under a head lease, the landowner grants certain proprietary rights to the Registered Housing Agency for a defined term in return for rent and compliance with the terms of the lease;
- The principal benefit of a head lease for both parties is that the land is put in the hands of the Registered Housing Agency, that is then empowered to enter its own subleases with a defined tenant cohort with limited oversight from the landowner. The landowner will have no direct relationship or responsibility for any subtenants but will have also ceded control of the premises to the Registered Housing Agency for the term subject to the conditions of the lease.
- A management agreement is a contractual arrangement between the landowner and the Registered Housing Agency, where the agency will manage tenancies to residents for a fee from the landlord. The landowner retains control and responsibility for the leased premises and appoints the Registered Housing Agency to manage the premises on its behalf. The landowner has a direct relationship with the residents through the tenancy agreements it enters and is ultimately responsible for compliance with the terms of the tenancy agreement and the *Residential Tenancies Act 1997*.

The terms of the head lease or management agreement will be the principle governing document for the relationship between the parties and the delivery of the Affordable Housing outcome. The parties will need to consider the form of relationship they will have with each other (landlord/tenant or principal/managing agent), what risks each approach raises, and how the agreement can best reflect the parties' intentions to avoid disputes years into the lease term.

Some of the key responsibilities and risks which will need to be considered by the parties in each document include:

HEAD LEASE	
Item	**Key considerations**
Rent and Outgoings	▪ The rate of rent and contributions to outgoings expected under the lease should be commensurate to the Registered Housing Agency's responsibilities to manage and maintain the dwellings. ▪ Consider the financial return the landowner will expect from the lease. Does the Registered Housing Agency need to contribute toward building outgoings? Are these costs financial sustainable for the agency?
Maintenance	▪ What is a reasonable allocation of repair and maintenance responsibilities when considering the amount of rent payable and the length of the lease term? For example, a Registered Housing Agency receiving the property on a lengthy term at a discounted rent might be expected to have greater maintenance and repair obligations than they might otherwise have. ▪ How does the head lease allow for the Registered Housing Agency to comply with any urgent maintenance and repair requests made by a subtenant under the Residential Tenancies Act 1997?
Insurance	▪ Who is responsible for insuring the property, and what level of coverage is required to protect each party's interests? ▪ Where the landowner is the insuring party, will the Registered Housing Agency be required to reimburse any premiums as outgoings?
Co-operation and reporting	▪ What degree of ongoing involvement and oversight does the landlord require during the lease term? ▪ What structures are in place to discuss any disputes between the parties? ▪ Should the landowner have input into which subtenants receive housing (for example, through nomination rights)?

HEAD LEASE	
Item	**Key considerations**
Major damage or destruction	▪ If the assets are substantially damaged or destroyed, will there be an obligation to rebuild to ensure continuity of the housing outcome? ▪ Alternatively, will the parties have a right to terminate the lease where reconstruction costs are prohibitive? If so, can the Affordable Housing outcome be preserved for the existing tenants and which party is responsible for doing so. ▪ What responsibility should the Registered Housing Agency have to remedy any major or structural damage caused by a sub-tenant?
Failure to perform lease obligations	▪ Disputes between the parties present considerable risk, as both parties will be investing significant resources into the development of the Affordable Housing asset and unwinding on termination will be very difficult. ▪ What dispute resolution and mediation procedure do the parties need in place, and what proactive measures can be taken to prevent disputes from escalating (e.g. regular meetings between Registered Housing Agency and Landowner to review the asset and each party's performance of their obligations)?
Termination/ expiry of the term	▪ What 'make good' obligations will the Registered Housing Agency have at the end of the term (e.g. prescribed maintenance, removal of fit-out, etc). ▪ If the head lease is not to be renewed, how will the relocation of sub-tenants will be managed? Is relocation permissible under the tenancy legislation? ▪ The parties may agree that the Registered Housing Agency has an option to purchase the land/dwellings at the end of the term. How will the parties value the purchase price, and will a discount be available? ▪ In the event of early termination of the lease due to a default by one party, what rights will the Registered Housing Agency, landowner or council have to appoint a new agency to continue to deliver the Affordable Housing outcomes. ▪ What is a reasonable notice period for terminating the lease, to allow for relocation of any affected subtenants? Alternatively, should the landowner be able to require an assignment of the lease to a new Registered Housing Agency following a substantial breach or repudiation by the current agency?
MANAGEMENT AGREEMENT	
Item	**Key considerations**
Management fee	▪ What fee will the Registered Housing agency charge to manage the assets?
Authority	▪ Under a management agreement, the Registered Housing Agency will be appointed as the landowner's agent for the purposes of operating the Affordable Housing. The landowner will need to consider how far this responsibility should extend and what degree of independence the Registered Housing Agency will have. ▪ Can the Registered Housing Agency action maintenance and repairs without written approval by the landlord? ▪ Will the Registered Housing Agency be responsible for referring prospective tenants?
Major damage or destruction	▪ If the assets are substantially damaged or destroyed, will there be an obligation to rebuild to ensure continuity of the housing outcome? ▪ Alternatively, will the parties have a right to terminate the management agreement where reconstruction costs are prohibitive?
Residential Tenancies Act 1997	▪ Is the landowner aware of its obligations under the tenancy legislation, where it has a direct lease with each resident? What level of indemnity might the landlord require from the Registered Housing Agency where a breach of the tenancy law occurs?
Occupational health and safety (OH&S)	▪ Under a tenancy management arrangement, the landowner will retain management and control of the leased premises. This means that responsibility for OH&S compliance will continue to reside with them, not the Registered Housing Agency.

Risk Considerations

	Risks	Mitigations
Council	**Financial, legal liability and regulatory compliance risk** ▪ No material risks	
	Reputational risk ▪ If there is no appropriate transition mechanism to move on sub-tenants when the lease ends or is terminated by either party, there may be a significant number of unmanaged evictions.	▪ Council can provide short-term accommodation while sub-tenants are rehoused.
	Outcome risk ▪ Shifting housing priorities for council over the term of the lease may result in the original target tenancy group no longer being a priority.	▪ Housing agencies will typically seek to deliver outcomes to groups with greatest need. Flexibility measures can be built into the lease to account for changes in housing needs.
Registered Housing Agency **And** **Landowner**	**Financial risk** ▪ Depending on rent required by Landowner, housing mix may not yield sufficient rental income to repay rent and construction costs.	▪ Confirmation of rent required (including any scheduled rent increases during the term) should be obtained as part of financial feasibility modelling for the development. ▪ Sufficiently long term of lease, to ensure return on investment is realised.
	Legal liability risk ▪ Breach of lease may require compensation payments. ▪ 'Make good' obligations of the site at the end of the lease may require removal of fit-out or other expensive works.	▪ Ensure lease document is fit for purpose. ▪ Ensuring that lease obligations are actively managed during the term. ▪ Where end of lease requirements is known in advance, Agency can budget for remediation costs.
	Reputational risk ▪ There may be difficulties ending tenancy agreements at the end of the lease, and perception of efforts to evict tenants.	▪ Parties should plan to move tenants to alternative accommodation throughout the duration of the lease.
	Regulatory compliance risk ▪ At the end of the lease term (if not renewed), landowner may receive premises back with several residents with ongoing tenancies protected under the *Residential Tenancies Act 1997* and will be responsible for the condition of those tenancies. ▪ Registered Housing Agency may not be lawfully able to terminate tenancies at the end of the term, requiring a handover of the tenancies to landowner or an extension of the lease term. ▪ Land continues to be held in landowner's name, and it will be responsible for the land to the extent that responsibility is not transferred to the Housing Agency under the lease.	▪ Housing Agency should proactively manage tenancies toward the end of the lease term to either move tenants to alternative premises or arrange an extension with landowner. ▪ Subject to future provisions of Residential Tenancies Act (or its successor), landlords can terminate a tenancy where the premises are to be demolished or substantially renovated. Substantial refurbishment at the end of the lease may provide grounds to issue notices to vacate to residents. ▪ Depending on terms of agreement with Agency (e.g. whether lease is rent free or highly discounted or the length of term), lease can minimise landlord's responsibility for the land for the duration of the lease.

	Risks	Mitigations
	Outcome risk ▪ Leasehold interest is significantly less attractive to lenders for a development than a freehold interest in the property. May be more difficult to obtain finance outside of state government funding. ▪ Termination of lease takes Affordable Housing outcome out of the hands of a Registered Housing Agency.	▪ Certain lenders more experienced with Affordable Housing may be willing to consider lending against the leased asset or leveraging against the Agency's portfolio. ▪ Alternatively, Housing Agency may be able to fund smaller developments with its own cash. ▪ Landowner may need to appoint a new agency to manage tenancies.

Monitoring privately owned and/or managed outcomes

Council will also need to consider how it legally secures and monitors the use of dwellings in accordance with an agreement over time. This could involve use of a Section 173 Agreement and/or a requirement for a Registered Housing Agency to manage tenancies and/or oversee allocations:

- If the managing entity is a Registered Housing Agency then this is expected to be able to occur through its reporting to the Housing Registrar.
- If management is not intended to be done by a Registered Housing Agency then council and a landowner will need to agree what reporting will be required and how they will be held to account for performance.

Section 126(1) of the PE Act provides that a person or organisation may be liable for penalties if owner of the land was in contravention of, or failed to comply with a planning scheme, a permit, or a Section 173 Agreement. This will require the responsible authority to take action to prosecute for an offence under the Act, which is a costly and resource-intensive process. It is recommended the parties consider how the Section 173 provides for reporting on outcomes, and a process to remedy any default, before legal action is taken.

Key Feasibility Considerations

Feasibility considerations that landowners and Registered Housing Agencies are expected to need to consider, and that a council should be conscious of when considering a lease model include:

Landowner	Registered housing agency
▪ Cost and financing required to build the dwellings if leasing of completed dwellings; ▪ Returns, including if there will be an initial sale to a single investor or if landowner will fund construction and own the dwellings over the lease period, with returns made from rent; ▪ The discount to rent and impact on cash-flow and debt capacity; ▪ What building operating costs will remain with the landlord; ▪ Costs of management and what and how fees will be payable to the Registered Housing Agency either to manage tenancies and/or reporting obligations. ▪ Costs associated with executing a lease agreement; ▪ Additional costs associated with compliance/reporting on obligations.	▪ Costs associated with developing leased land and/or managing leased dwellings; ▪ Costs and potential fees for managing tenancies and/or reporting; ▪ Whether it is responsible for building operating costs such as dwelling maintenance; ▪ Whether other subsidy is required to improve affordability for tenants and whether funding terms align to obligations under the landowner agreement; ▪ Feasibility of land development; and ▪ Costs associated with securing and executing a lease agreement.

Process and Resourcing Considerations

Resourcing and process to support assessment, securing and delivery of a lease model is more complex than models involving gifting of dwellings as it requires additional consideration of a range of matters, particularly how affordability and allocation of dwellings will be realised.

The landowner may also need to fund development of an agreement with a Registered Housing Agency concerning management of Affordable Housing tenancies under a head-lease and/or for any agency oversight and reporting of outcomes over time.

Assessment of Model

Objective	Assessment	Rationale for Assessment
The number of Affordable Housing outcomes is maximised.		▪ Reasonably expected that a lease model will maximise the number of outcomes compared to a gifting model, however this depends on the landowner ability to forego market return on the units for a defined period and could therefore move to 'yellow'.
Model supports priority, very low to low income households.		▪ Subject to terms of agreement and discount to rent.
Model supports or does not unduly impact on the landowner securing development financing.		▪ Depends on how the landowner financier views the lease terms and the level of rental discount.
Model supports feasibility of Housing Agency acquiring and/or developing and operating Affordable Housing.		▪ Lease does not involve agency purchasing but may negatively impact on capacity to secure funding if required to develop leased land.
Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.		▪ Lease is expected to have an end-date for Affordable Housing requirements. At end of this term the control of the land/asset will revert to landowner.
Reinvestment of the value of the contribution in the **local municipality** at the end of an agreed term or dwelling life.		▪ Lease is expected to have an end-date for Affordable Housing requirements. At end of this term the control of the land/asset will revert to landowner.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.		▪ Subject to lease terms.

Model 4: Sale to Households (Affordable Home Ownership)

Model:	Monetary Contribution
Overview	▪ Landowner sells a completed dwelling to an Eligible Household secured under a Registered Housing Agency facilitated Affordable Home Ownership program. ▪ The Agency secures the contribution via a legal agreement and second mortgage. Income eligibility requirements, a process of allocation and provision of a contribution by the landowner (effectively a 'discount' to market price) will need to be applied to support affordability. ▪ When the purchaser sells or refinances the contribution is repaid to the Registered Housing Agency to reinvest on terms agreed with council.
Ownership of land	▪ Individual homeowner.
Manager of assets	▪ Individual homeowner.
Key Strengths	▪ Provides for tenure diversity through an Affordable Home ownership arrangement. ▪ Subject to model, ensures appropriateness, affordability, allocation and protection of a landowner contribution and reinvestment of this value over time. ▪ Can be applied to developments that do not suit affordable rental outcomes and/or where funding is not available to support a Registered Housing Agency to purchase.
Key Weaknesses	▪ Does not support very low or potentially low income households. ▪ Depends on the Registered Housing Agency establishing an appropriate shared equity home ownership model (currently one operating model in Victoria).
Responsibility for assets and tenants at end of term or dwelling life	▪ Asset is owned by individual homeowner. Responsibility for landowner contribution should the dwelling be sold or refinanced sits with the Registered Housing Agency and can be subject to an agreement with council in relation to reinvestment of future repayment of the contribution.
Resourcing to implement	▪ Low to moderate (excluding resourcing for Registered Housing Agency to establish shared equity model).

Application and Reasons for Applying

This model can be applied in any development where the council and landowner agree to support Affordable Home Ownership as there is evidence low to moderate income households are unable to access home purchase without intervention. Currently the only means of a contribution towards an Affordable Home Ownership being properly secured in Victoria is if it is managed through a shared equity program that is led by a Registered Housing Agency who supports sourcing of households, confirmation of eligibility, and protection and reinvestment of the Affordable Housing Contribution.

As an example, a hypothetical shared equity arrangement involves:

- A landowner agreeing to transfer 25 per cent of the market value of a dwelling as a contribution through a shared equity arrangement. If the dwelling market value is $500,000 the Affordable Housing contribution is $125,000 per dwelling.
- The shared equity entity sourcing eligible purchasers and confirming capacity to service a mortgage of approximately $375,000 ($500,000 - $125,000), assuming no deposit.
- The purchaser entering a shared equity agreement with the Registered Housing Agency and a contract of sale with the landowner.
- On settlement the purchaser obtains a first mortgage for $375,000 to the vendor and the shared equity facilitator secures 25 per cent of the market value of the dwelling through a mortgage instrument (second mortgage);

- When the purchaser decides to sell or wants to refinance to repay the equity contribution, the value of the social equity is 25 per cent of the (future) market value of the dwelling. For example, if the dwelling is now valued at $600,000, the social equity that must be repaid is $150,000. The shared equity entity then reinvests the contribution in new Affordable Housing.

Key reasons why a landowner and a council might agree to the sale of dwelling to individuals as an approved Affordable Housing outcome include:

- The council is seeking to support mixed-tenure outcomes to benefit a range of household types;
- It is a large site with potential to support a greater mix of households;
- There is established demand for Affordable Home Ownership within the municipality;
- The contribution that is required is lower than other options, making the contribution either viable or supporting an increase in Affordable Housing that is delivered;
- The development is not suitable for housing for very low income households, due to location or cost; and/or
- A Registered Housing Agency would not be able to service operating costs if it was to purchase dwellings, due to high owners' corporation charges.

Strengths and Weaknesses

Stakeholder	Strengths / Benefits	Weaknesses / Disadvantages
Council	▪ Supports mixed tenure outcomes and affordability for a diversity of households in need. ▪ Contribution is secured and reinvested (unlike other homeownership grant programs). ▪ Does not depend on a Registered Housing Agency to acquire or develop. ▪ Provides a pathway into homeownership for households. ▪ Investment by landowner is secured, repaid and reinvested in future Affordable Housing.	▪ Does not result in title being held by Registered Housing Agency. ▪ Subject to social equity contribution as to whether lower income households will benefit ▪ Requires council to understand a new model.
Registered Housing Agency	▪ Model supports households in private rental or Affordable Housing to pathway into homeownership, freeing up other housing stock and subsidy. ▪ Can support greater mix of households in a development or community. ▪ Proportional equity tracks market values so contribution is not diminished over time. ▪ Provides future return to reinvest in new Affordable Housing.	▪ Agency does not own dwelling. ▪ Require application of a suitable shared equity model (cost, timing, risk considerations) – option for BuyAssist model to be used. ▪ Equity arrangement will depend on household groups that can benefit. ▪ Potential risk households fall into housing stress at a future point and are unable to service mortgage.
Landowner	▪ Enables delivery of Affordable Housing without requiring purchase by a Registered Housing Agency. ▪ Results in a financial payment for the dwelling, supporting financing. ▪ Easily understood as sits within standard sales approach. ▪ Subject to timing and terms, sale may be considered a pre-sale for purpose of financing. ▪ Results in homeowners living in the development - potential reduced marketing risks. ▪ Controls delivery. ▪ No ongoing obligation.	▪ Contribution may not be lower than other models. ▪ Requires understanding of a new model and agreement to contribution and structure.

Key Legal and Risk Considerations

It is critical the contribution (referred in this resource as 'social equity') is legally secured to ensure no windfall gain by the first purchaser if the dwelling is subsequently sold or the purchaser repays their mortgage or refinances. The contribution can then be reinvested in new Affordable Housing when the purchaser sells or refinances. This is expected to require a legal agreement between the Registered Housing Agency and the purchaser which enables them to secure the contribution.

Key legal considerations include:

- Terms of a planning control and/or Section 173 or other legal agreement are required to ensure sale occurs through an appropriately structured shared equity program to eligible tenants;
- How the contribution will be legally secured (e.g. second mortgage) to ensure repayment upon a future sale, repayment of debt or refinancing; and
- How the reinvestment of the contribution is governed, expected to require a legal agreement between the council and the managing Registered Housing Agency;
- Legal obligations on the purchaser in relation to housing costs.

Key risks and potential mitigations include:

Risks	Mitigations
▪ The landowner contribution is not sufficient to support an affordable sale to Eligible Households. ▪ The contribution is not appropriately secured or reinvested by the Registered Housing Agency. ▪ A distressed sale of the asset results in Registered Housing Agency being unable to recover the social equity investment without substantial financial detriment to the purchaser. ▪ There is market downturn reducing the value of the contribution.	▪ Largely mitigated by the Registered Housing Agency developing and implementing a shared equity model. Where purchase price is higher, Agency's contribution and equity in the property will be higher as well. ▪ Council could seek to enter a legal agreement with the Agency concerning the future reinvestment of social equity. ▪ Households are expected to be less likely to sell in a market downturn. Reduction in value of property would need to be very significant for value of social equity to be lower than original contribution.

Private owners proposing a 'shared equity' approach, without an established and bank-endorsed structure, will not meet these requirements and are assessed as high-risk.

Key Feasibility Considerations

The key feasibility considerations for a landowner are the same as for a discounted sale arrangement with the potential additional costs to engage a Registered Housing Agency to source individual purchasers (i.e. marketing and sale costs). The landowner will need to meet all costs of development and accept a reduced return.

The contribution will depend on the market value and the income and borrowing capacity of target household. It is estimated contributions of at least 20 per cent of market value will be required to support affordability.

As the Registered Housing Agency does not purchase the dwellings they are primarily concerned with the feasibility/affordability for the end-purchasers. This requires assessment of household borrowing capacity and then matching to dwellings after considering the social equity contribution.

A council and the Registered Housing Agency manager of social equity contributions will need to determine how the future repaid contribution is reinvested. This could involve the parties entering a legal agreement. Alternatively, the Registered Housing Agency could invest returns in Affordable Housing across a wider geographical area. The repaid funds may not result in a one-for-one replacement, depending on the future market circumstances and how the funds can be used.

Process and Resourcing Considerations

To apply this model requires development and application of an appropriate Affordable Home Ownership program that has been developed by a Registered Housing Agency. Once established, application is expected to require:

- Council and landowner agreement;
- Agreement between a landowner and a Registered Housing Agency with an operational shared equity Affordable Home Ownership model;
- Registered Housing Agency:
  - Working with the landowner to confirm the contribution and its capacity to support affordability;
  - Sourcing purchasers and confirming income eligibility and capacity to purchase;
  - Supporting purchaser to connect to the landowner and enter a contract of sale;
  - Entering a legal agreement with the purchaser ensuring the landowner contribution can be secured by the agency, giving them rights to a proportional equity share; and
  - Potentially entering a legal agreement with council in relation to the securing of the contribution and any reinvestment requirements.

Assessment Against Criteria

Objective	Assessment	Rationale for Assessment
The number of Affordable Housing outcomes is maximised.		▪ Subject to contribution, sale should result in a higher percentage of dwellings compared to a gifting model.
Model supports priority, very low to low income households.		▪ Will not support very low income and less likely to support low income households, unless contribution is significant. Households also need secure employment to receive bank financing.
Model supports, or does not unduly impact on the landowner securing development financing.		▪ Potential to be structured as a pre-sale arrangement and support the landowner to secure financing (i.e. demonstrates that costs are met). ▪ A high social equity contribution may reduce the assessment against this objective, whilst a low contribution may improve likelihood of landowner attracting development financing.
Model supports feasibility of Housing Agency acquiring and/or developing and operating Affordable Housing.	N/A	▪ Not applicable as Housing Agency does not purchase.
Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.		▪ Social equity (as proportion of value) is repaid to Registered Housing Agency to use in accordance with purpose.
Reinvestment of the value of the contribution in the **local municipality** at the end of an agreed term or dwelling life.		▪ Subject to council – Registered Housing Agency agreement.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.		▪ Agency expected to have appropriate legal agreement in place with purchaser to manage risks. ▪ Social equity is secured by second mortgage.

Model 5: Monetary Contribution

Model:	Monetary Contribution
Overview	▪ Under this model, the landowner provides a monetary contribution to either a council trust fund, a SPV or direct to a Registered Housing Agency to utilise for the development or acquisition of Affordable Housing in the municipality. ▪ A formula to calculate the contribution will be required, for example, linking it to the discount that would otherwise be provided under a sale or gifting model.
Ownership of land	▪ Subject to arrangement. Affordable Housing assets could be owned in a SPV, council or by a Registered Housing Agency.
Management of assets	▪ Registered Housing Agency or SPV assuming funds are transferred from council and support acquisition or development.
Key Strengths	▪ Enables a contribution where other models do not suit, or as a default option where other models are not able to be realised at the point the dwelling is ready. ▪ Provides a funding source for a Registered Housing Agency to support acquisition or development.
Key Weaknesses	▪ Potentially open to greater challenge. ▪ May require funds to be pooled before they can be spent on acquisition or development. ▪ May not significantly increase number of dwellings if funds are used to reduce subsidy gap on other projects (instead of using towards new projects). ▪ Subject to the Registered Housing Agency or SPV being able to develop or acquire assets in the municipality. ▪ Requires process and resourcing to receive and allocate funds and ensure appropriate use over time.
Responsibility for determining use of contribution at end of term or dwelling life	▪ Registered Housing Agency or SPV in accordance with any agreement with council.
Level of resourcing to implement	▪ Low to moderate.

Application and Reasons for Applying

It is important to note that Affordable Housing is not currently established as a specific development contribution under the Planning Policy Framework. Whilst a voluntary agreement to a monetary contribution may be agreed, reflection of a monetary contribution in an amendment may be subject to Ministerial approval or may be more readily contestable at VCAT.

It is recommended councils consider a monetary contribution only as a ‘default’ option, in the event other models and contributions cannot be realised.

If the council collects the contribution it will require a process to apply the funds towards an Affordable Housing purpose. This could include:

- Landowner nomination of a Registered Housing Agency and subsequent transfer of funds;
- Direction by council that funds are to be made to a council established SPV such as a Housing Trust;
- Council collection and release of funds to a Registered Housing Agency under a council procurement process.

The recipient entity is expected to need to demonstrate that it has the capacity to source and/or develop properties in the municipality. A legal agreement is expected to be required concerning the use of the funds.

Critical considerations include how many dwellings the contribution will support (and subsequently if this will result in a lower percentage of dwellings due to the need for funds to be pooled to support a purchase), and whether other funding or financing is required to support delivery.

Key reasons why a landowner and a council might agree to a monetary contribution include:

- There is little value uplift or development potential;
- The landowner is unable to find a Registered Housing Agency purchaser for discounted dwellings;
- Premium development with very high owners' corporation costs that mean ownership is prohibitive for a Registered Housing Agency, even if dwellings were gifted;
- Council and Registered Housing Agency have identified a preferred site for Affordable Housing in the municipality and a monetary contribution would support costs; and/or
- The development will not result in residential housing.

Strengths and Weaknesses

Stakeholder	Strengths / Benefits	Weaknesses / Disadvantages
Council	▪ Captures a contribution where other models cannot be delivered on-site or site does not involve residential housing. ▪ Supports delivery on other sites that are more appropriate or feasible. ▪ Contribution may be larger than would otherwise occur as the landowner can sell 100 per cent of dwellings rather than commit some to Affordable Housing. ▪ Contributions could be consolidated to support funding of larger Affordable Housing projects including on council land.	▪ Does not align delivery of Affordable Housing to the market development – delivery may be delayed if other sites need to be acquired. ▪ Requires a process to collect and disperse funds. ▪ Requires development of terms associated with use of funds/mechanism to secure, and subsequent monitoring over time. ▪ May not result in the desired number of outcomes if contributions need to be consolidated. ▪ May not be supported by government or be more readily contested.
Landowner	▪ Enables contribution towards Affordable Housing without the need to fund on-site delivery. ▪ Simple model that can be reflected in feasibility. ▪ Reduced risk of negative perceptions of Affordable Housing by other purchasers. ▪ Maximises the number of market dwellings for sale. ▪ No ongoing obligation on developer.	▪ Requires funds to make a payment (compared to a reduced return or reduction in profit).
Registered Housing Agency	▪ Provides funding towards Affordable Housing development or acquisition. ▪ Provides Agency with greater choice on where and how Affordable Housing is delivered. ▪ Contributions could be consolidated to support funding of larger Affordable Housing projects including on council land.	▪ Use of funds will depend on property availability, suitability and price. ▪ Requires resourcing to tender to secure funds. ▪ Funding may need to be pooled, reducing number of outcomes compared to if discount sale on site. ▪ Likely to require sourcing of other funding and/or financing to deliver.

Key Legal and Risk Considerations

An Affordable Housing Agreement should specify the contribution amount, or a clear method of calculating the contribution, who it must be paid to and when, and any conditions relating to fund use. Triggers for payment could include prior to subdivision or issuing of a certificate of occupancy.

Direction of contribution	Considerations
To Council	▪ Developer may require a guarantee that the contribution is to be used exclusively for the development of Affordable Housing. ▪ Council should seek to ensure that the contribution use is not limited to a single development or project to ensure the funds can be allocated to maximise outcomes. ▪ Council will need to determine if it will expend the funds directly (and how), if it will pass them on to a SPV, or grant them to a Registered Housing Agency. Any of these options will require consideration as to how the contribution would be released and outcomes confirmed and managed over time. ▪ Greatest probity risk, and council must ensure that it complies with the requirements of Division 4 of Part 4 of the Local Government Act 2020, relating to financial management principals and its policies regarding financial contributions.
To Registered Housing Agency	▪ Requires determination of whether council or landowner nominates Agency. Potential probity issues for Registered Housing Agency and council to consider include justification for the distribution to the selected Registered Housing Agency, proposed use of distributed funds, and consideration of the Agency's financial management obligations under the Housing Act. ▪ Where the contribution is made directly to a Registered Housing Agency, council is expected to need assurance that the funds will be used to support Affordable Housing outcomes in the municipality. ▪ An agreement, either direct between the Registered Housing Agency and council, or a tripartite agreement between Registered Housing Agency, developer and council, could establish the terms of the grant and how the Registered Housing Agency is expected to use the funds.
To Special Purpose Vehicle	▪ Requires establishment of the SPV such as a Trust prior to funds being able to be received. Will require consideration of how council can direct contributions to be made to the SPV. ▪ The terms of the trust or establishing document will define how monies granted to the SPV can be used, so it will be imperative that these documents are carefully worded to allow flexibility if funds were provided. ▪ Depending upon the form of SPV and the terms of the contribution the council will have limited influence in how the funds are ultimately used.

Key Feasibility Considerations

Key feasibility considerations include:

- How the contribution will be funded by the landowner (equity or debt), reflecting that it is a direct payment not foregone revenue;
- How the contribution will be calculated and when it will need to be paid;
- How many dwellings the contribution is expected to support;
- Costs associated with securing new dwelling s and if other funding or financing will be required by the receiving entity.

It is possible that monetary contributions will need to be pooled, or that the funds would be applied to another project to support outcomes and will therefore not deliver the same percentage of Affordable Housing outcomes that would otherwise be realised.

Example

In the Hobsons Bay Altona North Precinct 15, 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. Using this example:

- If a hypothetical market value of $500,000 was used to calculate the contribution, it would be worth $125,000 per dwelling;
- If 10 dwellings were required to be sold into Affordable Housing to achieve five per cent of dwellings, the value of the contribution would be $1.25 million;
- The contribution may need to be pooled to support a purchase due to market prices and/or limited government funding, resulting in a lower number of Affordable Housing dwellings. For example, instead of buying 10 dwellings at a 25 per cent discount, five dwellings valued at $500,000 could be purchased at a 50 per cent discount using the $1.25 million contribution.

Resourcing and Process Considerations

Management of monetary contributions will require council resourcing which may be considerable depending on the approach taken. Options include:

- Setting up a Special Purpose Vehicle and directing contributions direct to the vehicle (no handling of funds by council);
- Setting up a trust fund to accumulate contributions then running a single-stage tender process to select a Registered Housing Agency to receive contributions and direct them to new housing within the municipality. A tender process may be required every few years to allocate funds.
- Undertaking a tender process to appoint a Registered Housing Agency to directly receive and utilise contributions;
- Allowing a landowner to determine which Registered Housing Agency should receive the funds, which is likely to be subject under a Section 173 Agreement with council to the Agency proving it can expend the funds within the municipality.

Direction of funds to a SPV or Registered Housing Agency is expected to require the entity and council to also resource and enter a legal agreement regarding the use of the contribution over time.

A Registered Housing Agency would require resourcing to tender to secure funds, enter a legal agreement with council regarding the use of funds and to then source properties to utilise the contributions.

Assessment of Model

Objective	Assessment	Rationale for Assessment
The number of Affordable Housing outcomes is maximised.		▪ Subject to how funds are used.
Model supports priority, very low to low income households.		▪ Subject to how funds are used.
Model supports or does not unduly impact on the landowner securing development financing.		▪ Requires landowner to make direct financial payment (as opposed to foregone revenue). Direct financial implication is not expected to favourably support development financing.
Model supports feasibility of Housing Agency acquiring and/or developing and operating Affordable Housing.		▪ Contribution supports Registered Housing Agency to acquire or develop properties and manage as Affordable Housing (subject to any terms of funding).
Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.		▪ Assuming contribution is used to support dwellings being acquired or owned by Registered Housing Agency or council SPV, expected to see value of contribution reinvested over time.
Reinvestment of the value of the contribution in the **local municipality** at the end of an agreed term or dwelling life.		▪ Subject to terms of agreement between Registered Housing Agency and council.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.		▪ Subject to terms of agreement between Registered Housing Agency and council.

PART 3: MECHANISMS TO SECURE CONTRIBUTIONS

Mechanisms to Secure Outcomes

This section explores the following mechanisms for securing the delivery and the subsequent Affordable Housing outcomes over time:

1. Planning controls;
2. Ownership by a Registered Housing Agency:
3. Ownership of assets in a Special Purpose Vehicle (SPV) established or supported by the council for the purpose of delivering and/or managing Affordable Housing;
4. Legal agreement, including a Section 173 Agreement; or
5. Mortgage instrument.

The analysis assumes each mechanism is applied in isolation. In practice, mechanisms could be combined, for example, ensuring ownership by a Registered Housing Agency, and putting in place a contractual agreement, or a Section 173 Agreement, to secure the landowner delivers and/or that a contribution is applied for an agreed purpose.

Each Mechanism is assessed against a set of objectives summarised in Table 8 using the following rating:

High	Mechanism rates highly against criteria. i.e. Provides high-level assurance or likelihood criteria will be realised.
Medium	Mechanism rates moderately against criteria. i.e. Provides degree of assurance or likelihood criteria will be realised with some risks.
Low	Mechanism rates low against criteria. i.e. Limited or no assurance or likelihood criteria will be realised and/or considerable risks.

OBJECTIVES	MECHANISM: PLANNING CONTROLS	REGISTERED HOUSING AGENCY OWNERSHIP	SPV OWNERSHIP	SECTION 173 AGREEMENT	OTHER LEGAL AGREEMENT	MORTGAGE INSTRUMENT
1. Contribution will be delivered in accordance with an agreement.						N/A
2. Contribution will be applied for Affordable Housing purpose for an agreed purpose, term and tenant cohort.						
3. Development and operational feasibility.						
4. Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.						
5. Reinvestment of the value of the council contribution in the **local municipality** at the end of an agreed term or dwelling life.						
6. Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.						

Table 8: Summary of Assessment of Mechanisms

Key Considerations in Selecting a Mechanism

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

1. How the delivery will be assured if land is transferred out of landowner control; and/or
2. How on delivery, the contribution will be secured to ensure use for an agreed and appropriate period.

Mechanisms to Secure Delivery

Mechanism that could ensure delivery of a contribution include:

- Planning control, such as embedding requirements within a schedule to a zone or in a permit condition;
- A Section 173 Agreement recorded on the title to the land;

Terms of these mechanisms relating to the provision of a contribution would be met upon construction commencement. This could include discharging of a Section 173 Agreement or finalisation of another agreement.

Mechanisms to Secure a Contribution and Outcomes Over Time

How a specific piece of land or dwellings and the value of the contribution and/or the resulting Affordable Housing outcomes is secured for this use once the dwellings are constructed requires consideration of:

- Council, community and Registered Housing Agency objectives;
- Intended ownership structure of the land and resulting dwellings;
- The value of the landowner contribution relative to other cost inputs required to realise delivery and the source and terms associated with that funding;
- Registered Housing Agency capacity to secure funding or financing, develop the site and manage outcomes over time in accordance with its constitution, legal, regulatory and funding requirements;
- An appropriate term of use relative to the value of the contribution; and
- Whether other mechanisms are being used to ensure use for a defined period.

Councils are recommended to take these factors into consideration when considering if their primary objective is to secure:

- The specific parcel of land in an Affordable Housing purpose 'in perpetuity' regardless of dwelling lifecycle;
- The value of the contribution, i.e. value of gifted land or the discount to land; or
- The Affordable Housing outcome, i.e. a number of dwellings.

These are important distinctions that can strongly influence the choice of delivery model, the mechanism to secure outcomes over time and the Registered Housing Agencies capacity to deliver**.**

It is important councils note:

- Land, even if gifted, comprises only one cost input to the delivery and end value of a development;
- A Registered Housing Agency will need to provide equity, secure grant funding and/or debt to meet acquisition or construction costs;
- Where the State Government provides funding, it will require the outcomes to be utilised for an agreed period - currently a minimum 20 years under the current Social Housing Growth Fund - and will require Director of Housing interest to be registered on title; and

- The ownership structure and any limitations on the use of the land / dwellings and therefore value or re-sale potential can impact on a Registered Housing Agency's capacity to borrow or secure favourable financing terms.

The impact of a mechanism on the delivery and operational feasibility is particularly critical to understand.

A focus on the value of the contribution provided by the landowner because of a planning agreement, and ensuring that this value is retained in an Affordable Housing purpose for an appropriate period in the municipality could be achieved by:

- Trusting that ownership by a Registered Housing Agency provides assurance on use for an appropriate period, reflecting the Agency purpose and objective, and conditions of government funding relating to term of use;
- A time-limited arrangement secured by a Section 173 Agreement, and reflecting the value provided by the landowner in either retention of a defined number of dwellings, or use of the dwelling for a required length of time, whilst also ensuring practical considerations relating to asset management, financier and Registered Housing Agency requirements to invest are supported; or
- A mortgage instrument that translates the value of the land into a proportional equity share arrangement and means that if there was a future sale the council would be entitled to an equivalent percentage of the (future) market value.

Mechanism 1: Planning Controls and Conditions

Mechanism:	Planning controls and conditions, i.e. Lpp, schedule to zone
Overview	▪ Embedding Affordable Housing expectations within planning controls, such as Local Planning Policy (LPP) and/or a Schedule to a Zone as a result of a planning scheme amendment process, which then sets future expectations on landowners. ▪ A planning condition is expected to be linked to use of another mechanism such as a legal agreement or a Section 173 Agreement.
Ownership of land	▪ Subject to delivery model, recommended to be a Registered Housing Agency.
Management of assets	▪ Registered Housing Agency.
Key Strengths	▪ Provides a greater level of certainty that for a development to progress there will be a contribution towards Affordable Housing (noting this may still be subject to a site specific agreement). ▪ Makes objectives of council clear to the market. Intention that outcomes are considered at pre-acquisition stage. ▪ Supports consistency as to the Affordable Housing Contributions that are sought across multiple landowners and over time.
Key Weaknesses	▪ Is dependent on a planning scheme amendment which is subject to public review and approval of the Minister for Planning. Expected that a contribution is still a result of a negotiation or based on principle of voluntary agreement and/or value uplift and share. ▪ Outcomes may still depend on individual site negotiations post planning scheme amendment adoption and will depend on a Section 173 agreement to be developed to establish detail of contribution. ▪ Delivery models may change over time with amendments often occurring significantly in advance of delivery.
Responsibility for determining use of contribution at end of dwelling life	▪ Owner, subject to any associated agreement.
Level of Resourcing to Implement	▪ High-level resourcing required to undertake a planning scheme amendment. ▪ Low to moderate resourcing once an amendment and conditions are in place, subject to work required to develop and assess a site-specific response and confirm a Section 173 Agreement.

Application and Reasons for Applying

Opportunities to embed Affordable Housing objectives in planning policy and controls can arise when a planning scheme amendment is proposed, either by:

1. Council proposing and seeking ministerial approval of the inclusion of Affordable Housing objective and strategies for a defined area through a planning scheme amendment. This occurs prior to individual sites being assessed for permit approval; or

2. A council and landowner negotiating as part of a planning scheme amendment, with an agreement to Affordable Housing, which is then reflected within the new planning controls.

It is important to note that subject to the detail, establishing an objective for an Affordable Housing Contribution within a local planning policy framework or a schedule to a zone at the planning scheme amendment stage formalises the responsible authority's expectation and provides a basis for future site-specific negotiation. However, the inclusion does not make Affordable Housing mandatory, as landowners may choose not to enter into a subsequent agreement.

A permit is another planning tool to secure a contribution and delivery either arising from land subject to an amendment or because of a site negotiation.

Strengths and Weaknesses of Mechanism

Stakeholder	Strengths / benefits	Weaknesses / disadvantages
Council	▪ Embeds clear and public expectations in higher-order/level planning controls ▪ Applies to any landowner into the future.	▪ Requires a planning scheme amendment and development of sufficient agreement before enactment (resourcing, time). ▪ Subject to additional scrutiny before gazettal. Inclusion of objectives may be disputed in planning panel process by some landowners.
Registered Housing Agency	▪ Provides clear expectations on the landowner and public guidance on the expected contribution.	▪ Terms are determined significantly in advance of development proceeding. May not provide for future models or innovation.
Landowner	▪ Provides clarity and expectation. ▪ Can be factored into land price if land is sold or acquired.	▪ Requires process to resource development of terms significantly in advance of any revenue from development. ▪ May lock landowner into models that are not as applicable or feasible in the future.

Key Legal and Risk Considerations

The primary legal considerations relate to ensuring the appropriate application of the Planning Policy Framework (PPF) in reflecting Affordable Housing objectives and strategies within a local planning policy framework and/or zoning control for an area.

Amendments require clear strategic justification, including evidence of Affordable Housing need, and are typically subject to an independent review.

Embedding Affordable Housing expectations in a council-led amendment for a precinct may be difficult as there is not necessarily a process of negotiation with landowners, other than through inviting input on the amendment and an opportunity to argue a position to a panel.

An Affordable Housing Contribution that is agreed through a single-site negotiation is expected to be more easily embedded in a planning control, such as a schedule to a zone, on the basis that the parties have reached agreement to the contribution.

The reflection of an agreement in a planning control effectively mandates, via the agreement, the objectives as an expectation of development.

In both situations, the planning control is expected to require the landowner to enter a Section 173 Agreement with the responsible authority to establish the requirement to deliver on the land.

Risk considerations:

	Risks	Mitigations
Council	**Financial and legal liability risks** ▪ No significant risks.	
	Reputational risk ▪ Precinct-wide amendments are likely to affect multiple landowners with different views on the inclusion of Affordable Housing at the amendment stage.	▪ Have a clear and evidence-based rationale for seeking an amendment and associated Affordable Housing Contribution, with regard to the PE Act and PPF.
	Regulatory compliance risks ▪ Risk any agreement is not in accordance with planning regulations.	▪ Independent review of proposal before finalising an amendment.
	Outcome risk ▪ Inconsistent or poorly defined terminology can confuse parties, years after amendment. ▪ The cohort or location in need of appropriate Affordable Housing outcomes may shift over time, causing the amendment to lose relevance.	▪ Agreement should be 'stress-tested' against a range of potential scenarios. ▪ Planned review of the amendment and whether it had the desired outcome.
Registered Housing Agency **and** **Landowner**	**Financial, legal liability and reputational risks** ▪ No significant risk	
	Regulatory compliance risk ▪ Approval is subject to the Minister's assessment and approval that the controls are in line with the PE Act and PPF and could therefore be rejected after a process of development.	▪ Appropriate consultation with Registered Housing Agencies prior to amendment to ensure the proposed delivery strategy can be realised.
	Outcome risk ▪ Atypical or onerous terms may act as a disincentive for investment from lenders or State Government. ▪ A planning scheme amendment may not increase the value of the land and therefore offset the costs of Affordable Housing, making an objective unviable.	▪ Consideration of how third parties may view planning requirements when drafting. ▪ Analysis of how planning scheme amendment will achieve State Government objectives.

Process and Resourcing Considerations

The process to reflect Affordable Housing objectives, and any requirement within a LPP and/or Schedule to a Zone, is a resource- and time-intensive process, requiring:

- Council establishing evidence of Affordable Housing need and potentially needing to develop an Affordable Housing policy to further justify intervention;
- Development and refinement of the new planning controls, including a process of engagement with landowners;
- Public exhibition and consultation process;
- Potential independent review by a planning panel and approval by the Minister for Planning.

As part of this process, the council and landowner will need to determine what level of detail is appropriate to reflect in a planning control, and what can be deferred to a Section 173 Agreement. When the Section 173 Agreement is to be entered will also need to be determined.

Upon the rezoning and gazettal of the planning controls a landowner will need to secure specific planning approvals, enter a Section 173 Agreement and deliver a contribution. It may also need to prepare an Affordable Housing delivery strategy and/or enter an agreement with a Registered Housing Agency prior to permit approval.

A Registered Housing Agency is expected to need to resource the assessment of a proposed delivery strategy, a process to engage and enter a legal agreement with a landowner, and to secure funding and financing to acquire dwellings, utilise a monetary contribution, or develop land provided as a result of the planning control.

Assessment of Mechanism

Objectives:	Assessment	Rationale for Assessment
Contribution will be delivered in accordance with an agreement.		▪ Embedding objectives and strategies relating to Affordable Housing contribution within a planning scheme as a result of an amendment, a schedule to a zone and/or permit provides a greater level of assurance that contribution will be realised as expectations are embedded for landowners to then respond. ▪ However, there is some risk as inclusion within a planning scheme amendment may still be subject to individual site / landowner agreements, and planning controls may only provide high-level detail on objectives. ▪ Ensuring very clear objectives and outcomes are agreed by a landowner and responsible authority would move this assessment to green.
Contribution will be applied for Affordable Housing purpose for an agreed purpose, term and tenant cohort.		▪ Purpose may be reflected in planning controls, otherwise will be subject to other mechanism and any terms of an agreement.
Development and operational feasibility.		▪ Subject to terms set out within control and at what point the mechanism was applied (i.e. prior to or after land acquisition).
Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.		▪ Subject to other mechanism and any terms of an agreement.
Reinvestment of the value of the council contribution in the **local municipality** at the end of an agreed term or dwelling life.		▪ Subject to other mechanism and any terms of an agreement.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.		▪ Subject to any conditions set out in the planning control.

Example – Embedding Objectives in Planning Policy

<table>
<tr><th>Example:</th><th>Fishermans Bend Local Planning Policy</th></tr>
<tr><td>Local Government</td><td>City of Port Phillip and City of Melbourne</td></tr>
<tr><td>Outcomes</td><td>Proposed six per cent of dwellings to be ‘Affordable Housing’; and
One in nine dwellings above a designated Dwelling Density limit to be gifted to a Registered Housing Agency for use as ‘Social Housing’.</td></tr>
<tr><td>Background / Structure</td><td>Fishermans Bend was declared an urban renewal project of State significance and rezoned to Capital City Zone in 2012. From 2014, a process of review and iterative changes to the planning controls were undertaken to establish a strategic vision and set of planning objectives to guide the sustainable development of the precinct.
The Fishermans Bend Vision was endorsed in 2016, setting out the ambitions for the area. As a result, a new Local Policy was introduced to the City of Port Phillip and City of Melbourne Planning Schemes that included objectives to seek Affordable Housing.
In 2018, the State Government released the final Fishermans Bend Framework and approved new planning controls comprising Clause 37.04 Capital City Zone, a Schedule to the Zone, and Fishermans Bend Local Planning Policy.
The Framework establishes the Vision for Fishermans Bend and a target that by 2050 “at least six per cent of all housing in Fishermans Bend is affordable”.
Clause 37.04 Capital City Zone, Clause 22.15-4.3 of the Port Philip Planning Scheme and Clause 22.27-4.3 of the Melbourne City Planning Scheme (‘Providing for Affordable Housing’) establishes the planning policy objectives to support realisation of the Affordable Housing target and provide for a mix of households to live in Fishermans Bend.
The policy includes two parts:
‘Affordable Housing’ – sets the Policy that “development should provide at least 6% of dwellings permitted under the dwelling density (excluding any Social Housing uplift dwellings) as Affordable Housing” to the satisfaction of the responsible authority unless criteria set out in the Policy is evidenced and agreed to apply; and
‘Social Housing Uplift’ – sets that the Policy “encourages development to provide Social Housing, in addition to the provision of six per cent Affordable Housing, by allowing a Social housing uplift equivalent to eight additional private dwellings of equivalent size for each Social housing unit provided.”
An Applicant is required to demonstrate how a development will provide for at least six per cent of dwellings under the Dwelling Density Requirement as Affordable Housing to the satisfaction of the responsible authority.
Applicants that meet the Affordable Housing Policy and other planning and design requirements are encouraged to apply to deliver Social Housing by applying the Social Housing Uplift.</td></tr>
<tr><td>Key Learnings</td><td>The PE Act and PPF limited the ability for the councils to mandate Affordable Housing. The six per cent Affordable Housing target is subsequently reflected as a local policy objective and is subject to negotiation. Landowners can, under this provision, seek to demonstrate that the requirement is economically unviable.
The Social Housing Uplift clause is based on a principle and assessment of value uplift/share and voluntary take-up and sets out a very clear delivery mechanism which can be factored into land pricing. The gifting of completed dwellings is simple and clear process.
The LPP did not state how the six per cent Affordable Housing is to be realised. The lack of certainty and potential for interpretation could limit the outcomes that are realised and adds time and resourcing to the process and the landowner and council must negotiate an outcome.
Uncertainty as to the potential application of the Social Housing Uplift impacts on assumptions on population growth and infrastructure requirements.
Over time it is expected that the six per cent Affordable Housing policy will become embedded in development assumptions and processes. The clause provides for some flexibility to support innovation and appropriateness of resulting Affordable Housing.</td></tr>
</table>

Mechanism 2: Ownership by a Registered Housing Agency

Mechanism:	Ownership by a registered housing agency
Overview	▪ Involves the land and dwelling resulting from a planning control or agreement being owned directly by a Registered Housing Agency through the transfer of title (either through gifting or sale of the land) without requiring any ongoing agreement or requirement for use on title. ▪ Note – this is different to ownership by a Special Purpose Vehicle managed by an agency (see *Mechanism 3*).
Ownership of land	▪ Registered Housing Agency
Management of assets	▪ Registered Housing Agency
Key Strengths	▪ Reflects purpose and regulation of sector as appropriate vehicles for managing Affordable Housing investment and resulting housing outcomes. ▪ Positively supports attraction of funding and financing as it does not involve covenants or other agreements that may be perceived to limit use or value. ▪ Removes need for process and costs of developing other legal agreements. ▪ Provides Housing Agency with full control and ability to manage assets over time in accordance with regulatory requirements. ▪ Not complex to establish or administer over time.
Key Weaknesses	▪ Ownership on its own does not lock in Affordable Housing always being realised on the specific piece of land or dwelling in the municipality.
Responsibility for determining use of contribution at end of term or dwelling life	▪ Registered Housing Agency
Level of Resourcing to Implement	▪ Minimal. Registered Housing Agency without other agreements does not require any additional resourcing to implement.

Application and Reasons for Applying

Applying this mechanism means that once the title is registered in the name of the Registered Housing Agency, there is no further legal agreement on title or between council and the agency.

Reasons why parties may agree to this approach as a mechanism to secure outcomes include that:

- There is significant independent regulation of the sector which sets standards and ensures a high degree of oversight of a Registered Housing Agency's operations and performance, and provides the Housing Registrar with step-in rights should the Agency not meet, or be able to remedy, non-performance;
- Registered Housing Agencies have a specific purpose and strong track-record in owning, managing or operating Affordable Housing for the benefit of lower income households and are the priority recipient of government funding;
- A Section 173 Agreement could impact on a Registered Housing Agency's ability to secure financing and/or funding from funders not familiar with the Affordable Housing sector, impacting on project feasibility;
- Where the State Government provides funding to a Registered Housing Agency a Director of Housing's interest will be placed on the title and a funding agreement entered that will establish requirements for dwellings to be used for a minimum period;
- In the event a Registered Housing Agency can no longer operate, its constitution will require the transfer of any assets to a 'like' organisation; and/or
- Council does not have the resources or systems in place to monitor a legal agreement over time.

A council, landowner and Registered Housing Agency may agree to apply agreements such as a Heads of Agreement, a contract of sale, or a Section 173 Agreement to govern the development and delivery phase, such as requiring a sale at a discount to a Registered Housing Agency. Under this mechanism, upon satisfaction of the delivery terms the agreement would be discharged and no ongoing agreement would be put in place.

Strengths and Weaknesses of Mechanism

Stakeholder	Strengths / benefits	Weaknesses / disadvantages
Council	▪ Results in assets in the ownership of a regulated organisation that has a primary purpose to own and manage Affordable Housing. ▪ Supports a stronger relationship, trust and ways of working together between the sectors. ▪ Removes the need to resource the development of legal agreements governing land use over time ▪ Reflects that Director of Housing likely to place interest on title and that funding will ensure use for a minimum period.	▪ On its own, does not secure a guaranteed term of use or specific housing outcome. ▪ Council has no recourse once dwelling or land is transferred. Depends on trust that the Agency will appropriately manage outcomes for an acceptable period. ▪ Risk that dwellings are sold in the future and proceeds reinvested in another municipality. ▪ Does not secure any ongoing reporting to council on use of land over time. ▪ Agency can seek to remove Director's interest and reinvest elsewhere without council approval.
Registered Housing Agency	▪ Reflects and reinforces the role of Registered Agencies and the regulatory system as the appropriate means to monitor Affordable Housing outcomes over time. ▪ Removes risk that ongoing conditions will impact on the Agency's ability to securing funding or financing. ▪ Limits risk that ongoing legal requirements would impact on Agency capacity to prudentially manage assets and respond to changing demand. ▪ Maximises the capacity to attract finance and funding and prudentially manage the assets in accordance with regulation and Agency's strategic objectives. ▪ Provides Agency with long-term control over asset. ▪ Removes need for each party to resource development of legal agreements governing use over time. ▪ Reflects the council contribution of land is only part of the total feasibility. ▪ Does not place a constraint on the Agency's ability to sell dwellings should that be necessary, particularly towards the 'end-of-life' of a building.	▪ Agency has a 'take it or leave it' option. It is less flexible than funding, which can be applied to any available site.
Landowner	▪ Simple model that removes need to negotiate and get Agency support for any ongoing conditions to apply post-delivery. ▪ Simplifies legal agreement (and resourcing and time to develop).	▪ May require additional work to support council acceptance of the mechanism.

Key Legal and Risk Considerations

There are no specific legal considerations relating to the mechanism of ensuring ownership by a Registered Housing Agency other than the Agency ensuring it continues to meet its legal and regulatory requirements to operate.

Risk considerations:

	Risks	Mitigations
Council	**Financial, Legal Liability and Regulatory Compliance Risks** ▪ No material risks.	
	Reputational risk ▪ Only where outcome risk is realised.	
	Outcome risk ▪ The Registered Housing Agency decides to sell one or more dwellings and reinvest outside the local government area during the intended outcome period. ▪ The Registered Housing Agency may wind-up. ▪ The land is transferred by landowner but is not developed as the Registered Housing Agency was unable to secure funding, financing and/or planning approval.	▪ Registered Housing Agencies have a strong track-record of delivering once land is secured and funding is available. ▪ Registered Housing Agencies are regulated, with the Registrar of Housing having a high level of oversight into the Agency's business and the ability to step-in to ensure financial stability and compliance with the Australian Not-for-Profit and Charities Commission and the Australian Taxation Office requirements of charities. ▪ Registered Housing Agencies are constitutionally structured so that should they wind-up, assets are required to be transferred to a 'like' organisation. The Affordable Housing outcome would be transferred to a housing agency with a aligned purpose ▪ The parties could agree to a further agreement (e.g. S173) upon sale to retain an Affordable Housing outcome in the local government area for a period. ▪ Specific planning clauses provide for a streamlined planning approval process and no third-party appeals.
Registered Housing Agency **And** **Landowner**	**Financial risk** ▪ Costs of undertaking appropriate due diligence on any transferred land.	▪ Landowner and Registered Housing Agency can agree to share costs of feasibility investigations to reduce financial burden prior to transfer.
	Legal liability, reputational and outcome risks ▪ No material risk	
	Outcome risk ▪ Underlying contamination or geological issues with the land are identified after the transfer of land. ▪ Council seeks an ongoing requirement on title that impacts on the landowner's ability to secure a delivery partner and meet their obligation.	▪ Proper due diligence (including planning considerations and site testing) should be completed. ▪ Confirm that ownership by an Agency without limitations on title is accepted part of the amendment process.

Process and Resourcing Considerations

Application of this mechanism does not require specific process or resourcing other than the resourcing required to:

- Confirm the delivery model (see Part 3);
- Confirm a Registered Housing Agency recipient;
- Enter required legal agreements to confirm delivery requirements between the landowner and council and the landowner and the Registered Housing Agency.

Assessment of Mechanism

Objectives	Assessment	Rationale for Assessment
Contribution will be delivered in accordance with an agreement.		▪ Subject to the agreement specifying that the outcome is to be realised through Registered Housing Agency, and that the delivery model is appropriate and can be supported by an Agency, there is a reasonable expectation that a contribution will be delivered, reflecting Agency purpose and role.
Contribution will be applied for Affordable Housing purpose for an agreed purpose, term and tenant cohort.		▪ Agencies must act in accordance with their constitutional objective to provide Affordable Housing and are regulated for this purpose. ▪ Agencies are experienced in determining which households need assistance and that best suits a location and development circumstances. ▪ Agencies are expected to need to secure funding to develop council land which will result in a requirement to apply the subsidy for a defined period. ▪ Agencies are committed to delivery of long-term housing outcomes.
Development and operational feasibility		▪ Unencumbered ownership by a Registered Housing Agency will maximise funding and financing attraction. This assessment will be reduced if coupled with a legal agreement that reduces land value.
Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.		▪ Registered Housing Agency constitution requires investment in an Affordable Housing purpose.
Reinvestment of the value of the council contribution in the **local municipality** at the end of an agreed term or dwelling life.		▪ Agencies seek to deliver Affordable Housing in areas of high-demand, where there are suitable services, transport etc and where there is access to opportunities. ▪ No guarantee that an Agency will reinvest the value of a contribution in the municipality at the end of an agreed term, however Agencies are noted to prioritise investment in areas where they have an established presence and there is demand. ▪ This assessment could move to 'green/high' rating if the mechanism was combined with another tool that requires reinvestment in the LGA, should the dwelling be sold (such as a mortgage instrument or legal agreement), however this may impact on the Agency ability to meet regulatory requirements, or secure funding in the future.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.		▪ Ownership of land by an Agency without an encumbrance maximises its ability to control outcomes and meet regulatory requirements over time.

Mechanism 3: Assets Placed in a Special Purpose Vehicle (e.g. Housing Trust)

Mechanism:	Assets placed in a special purpose vehicle
Overview	▪ Council establishes a Special Purpose Vehicle (SPV) which is a subsidiary company that is formed to undertake a specific business purpose or activity such as Affordable Housing. Examples of SPVs include housing trusts and companies limited by guarantee. ▪ Registered Housing Agencies may also establish a SPV for a particular development to separate it from its other assets and investment and could place a contribution in a SPV. ▪ A Registered Housing Agency can be a party to a SPV or contracted to manages the development and/or resulting dwellings on behalf of the SPV. Alternatively, the SPV could be registered as a Registered Housing Agency (subject to Registrar approval).
Ownership of land	▪ Special Purpose Vehicle, such as a Housing Trust.
Management of assets	▪ Registered Housing Agency on behalf of the SPV, or the SPV if registered as a Housing Agency.
Key Strengths	▪ Separates the development, liabilities and risk from other assets owned by the council and Registered Housing Agency. ▪ Can have specific focus such as development of Affordable Housing within a local government area. ▪ Once established, may be able to receive contributions each time opportunities are identified, reducing developer requirements to confirm a delivery partner. ▪ Can be structured as a charitable entity.
Key Weaknesses	▪ Can be significant cost and process to establish and resource over time depending on the structure of the SPV. ▪ Generally only assets within the SPV can be used for borrowing, or other guarantees are required. ▪ Requires careful consideration and legal and taxation advice to ensure charitable tax status. ▪ Additional decision-making layer, increased resourcing and risk for the Registered Housing Agency.
Responsibility for determining use of land at end of dwelling life	▪ SPV – depending on structure, may be a Board or Trustee.
Resourcing to implement	▪ Moderate to high, depending on purpose and structure of the SPV. ▪ Resourcing required to operate the SPV and ensure it meets legal, regulatory and operating requirements. High, depending on purpose and structure of the SPV. ▪ Once established, resourcing to utilise the mechanism will depend on the planning / negotiation process and development of any associated agreements.

Application and Reasons for Applying

SPVs are commonly utilised in certain structured finance applications, such as asset securitisation, joint ventures, property deals, or to isolate parent company assets, operations, or risks.

Under this mechanism, the council would first establish the SPV and then seek a landowner to direct an agreed Affordable Housing Contribution to the vehicle (i.e. gifted land or dwellings, discounted assets or a monetary contribution).

The development and subsequent management of tenancies is then managed by the SPV's governing board, or trustee, and is expected to involve a Registered Housing Agency. The SPV could also seek to be registered as a housing agency.

Key reasons why a council might pursue establishment of a SPV as a mechanism and a Registered Housing Agency participate in a SPV arrangement include:

Council	Registered housing agency
▪ Council requires strong assurance that the outcomes it facilitates (including any future proceeds of sale of assets it provides or facilitates) will only be utilised for Affordable Housing in its municipality; ▪ Council is committed to dedicating a large number of sites (and potentially funding) towards Affordable Housing resulting in a larger pool of assets/contributions that council wants to protect and that would benefit from management on a single portfolio basis. ▪ SPVs allow for more of a 'partnering' approach to delivery of Affordable Housing outcomes, with council and its related SPV able to work closely together. ▪ Council wants to have a level of (indirect) control over outcomes over time, for example, by appointing directors to the Trust Board or SPV. ▪ Other contributions towards Affordable Housing are expected such as land or cash from council. ▪ Council requires additional assurances above that offered by a legal agreement that the assets will be used for a specific agreed purpose over time.	▪ It enables an Agency to work with different entities and councils without risking assets that are managed under other funding and financing agreements; ▪ It supports a greater number of land assets being made available for Affordable Housing; ▪ It can support more of a partnering approach to development, compared to a purely transactional arrangement; and/or ▪ Subject to the SPV structure, it can attract other investment.

It is important for councils considering establishing an SPV to note:

- There are differing Registered Housing Agency views on whether a council establishing a Housing Trust is beneficial and cost-effective relative to the scale of outcomes that may be realised and considering the existing number of existing regulated entities;
- Registered Housing Agency preference is to have title and full control over land as this maximises their ability to secure funding and finance, deliver and control outcomes over time;
- Registered Housing Agencies will need to consider the structure of the SPV, the role of the agency in the SPV, any council commitment to placing assets in the vehicle, the feasibility implications including how costs of operating the SPV will be met, and the ability to secure debt and funding, and the risk structure; and
- For a landowner, direction of a contribution to SPV should be no different to providing it direct to a Registered Housing Agency. The SPV will need to be established at the point the landowner is ready to make the contribution.

Examples of SPV include a Housing Trust and a Company Limited by Guarantee:

SPV	Key attributes
Housing Trust	▪ Involves a council preparing a Trust Deed, establishing the objectives of the Trust, including how the property/assets are to be managed and specific duties of a Trustee. The Trust is expected to be established to be a charitable entity to reflect its purpose and to maximise taxation benefits, this will require legal and taxation advice and approvals to ensure the structure aligns to Australian Charities and Not-for-profits Commission (ACNC) requirements. ▪ Either a Trustee Board is appointed by council as Trustee, which could include council nominees who then contract a Registered Housing Agency to manage assets, or a Registered Housing Agency is appointed by council as Trustee. ▪ Once appointed, the Trustee is responsible for pursuing actions to achieve the objectives of the Trust. The Trustee, including any council nominee to a Trustee Board would need to act in the interest of the Trust in making decisions about the Trust activities. ▪ The Trust could seek to borrow using assets in the Trust as security. Borrowing may be limited in the early years as the portfolio is built. ▪ Outcomes are secured 'in perpetuity' in the Trust purpose, for example, requiring investments and assets to be utilised for the purpose of Affordable Housing in the municipality.

SPV	Key attributes
Company Limited by Guarantee	▪ A SPV could take the form of a public company limited by guarantee, that has a purpose to own and/or manage Affordable Housing. For Affordable Housing development, it is expected a company would be established by agreement between the council and a Registered Housing Agency. ▪ The constitution would establish its objectives, powers, membership (which could include director appointees made by council and the Registered Housing Agency), powers and duties of directors, governance, and resourcing. SPVs could be established for a single site or for multiple sites within a municipality. ▪ Subject to its structure and constitution, the SPV would likely be eligible for charitable entity status reflecting its purpose, enabling it to maximise charitable taxation status to support project viability. ▪ The responsibility for the SPV meeting its objectives would sit with the governing board. The SPV could seek to be registered as a Registered Housing Agency or could contract the management of development and tenancies to the Registered Housing Agency member.

Strengths and Weaknesses of Mechanism

Stakeholder	Strengths / Benefits	Weaknesses / Disadvantages
Council	▪ Assets are held and managed in council created vehicle that has a dedicated purpose of delivering Affordable Housing in the municipality. ▪ Provides a vehicle to direct future assets and landowner contributions without the need for tender processes each time opportunities arise. ▪ Flexible – council can appoint members to a SPV Board, and/or appoint Trustee. ▪ Potential to provide for a more collaborative approach with a Registered Housing Agency. ▪ Potential to work directly with the SPV to explore the use of council assets before they are transferred into the SPV. ▪ Trustees are regulated by state legislation.	▪ Once established a council has no or very limited direct control over the SPV. ▪ Requires significant up-front resources to establish and resource in early years, before it generates a revenue. ▪ Requires assets to be placed in SPV for security for borrowing, or for the Housing Agency to guarantee. ▪ Significantly more complex model to establish and communicate to the community. ▪ May limit competition in terms of delivery of contributions.
Registered Housing Agency	▪ Supports new housing outcomes that might not otherwise be realised (i.e. through provision of council land). ▪ Separates investment from other projects / portfolio.	▪ Restricted to deliver outcomes with the purpose of the SPV. ▪ May be limited opportunities over time relative to the effort. ▪ Requires assets to be placed in SPV for security for borrowing, or for the Housing Agency to guarantee. ▪ May be perceived as 'council vehicle' with risks to independence. ▪ Depending on structure, Agency involvement could be a time-limited role.
Landowner	▪ Simple model that realises council objective and removes need to negotiate and get Registered Housing Agency support for any ongoing conditions to apply post-delivery. ▪ Simplifies legal agreement (and resourcing and time to develop).	▪ Adds another layer if negotiation with Trust and Housing Agency is required to confirm how a contribution will be provided.

Key Legal and Risk Considerations

A council-established SPV can be a way to enable a formal and collaborative venture between council and a Registered Housing Agency. However, this mechanism has immediate and long-term legal, feasibility and risk considerations and implications that will need careful assessment by each organisation, including:

- Time and resourcing to establish the entity. Possible opportunity cost of establishing SPV, compared with other opportunities;
- How the SPV is viewed by the State Government and how any funding would need to flow to meet government requirements, noting Registered Housing Agencies are recipients and accountable for funding use but the assets would sit in the SPV;
- How/who the SPV is controlled/managed by once established, including appointment of directors, a board and/or trustees, and the legal obligations and liabilities of these individuals to the SPV;
- How the SPV activities will be undertaken and how these costs will be met before there are revenue-generating assets;
- Criteria and process to appoint any trustee or members to a board;
- What would happen to the SPV assets if it needed to wind-up;
- Registered Housing Agency interest in investing their own funds into SPV assets, if they do not benefit in the long-term.
- If, under third line enforcement, a council can require the direction of the contribution to a specific SPV, or if the landowner can elect whether the SPV, or a Registered Housing Agency, receives its contribution.

Risk considerations

	Risks	Mitigations
Council	**Financial risk** - Significant sunk financial costs to establish SPV, (including creating constitution, functions, etc.) with no guarantee SPV will be successful. - SPV will likely require seed funding to establish operations.	- Few options to mitigate up-front costs. Possibility of cost-sharing with a collaborating Registered Housing Agency, or grant funding, to establish SPV.
	Legal liability risk - No material legal liability risk	
	Reputational risk - SPV may be viewed as part of, or managed by, council, even where council has little direct control. - Actions of SPV could reflect on council.	- SPV with greater autonomy may reflect less on council's public image. - Alternatively, council having greater control of SPV will allow it to better manage SPV behaviour.
	Regulatory compliance risk - Application for registration of SPV on register of housing agencies will require significant resources and expertise. - Once registered, SPV will need to comply with Housing Act 1983, Performance Standards for Registered Housing Agencies and Residential Tenancies Act 1997. Requires staff and management who understand the delivery of Affordable Housing and the obligations under legislative framework.	- Partnership with established Registered Housing Agency (e.g. by appointment as trustee or manager) may bring expertise required to establish and operate the SPV.

	Risks	Mitigations
	Outcome risk ▪ Inexperienced SPV standing alone may have difficulty competing with bigger, more-established entities to get state funding. ▪ State Government needs to understand, and be comfortable with, the SPV structure to ensure that SPV can attract funding grants. ▪ SPV balance sheet may not be able to support loans sufficient to purchase land. ▪ Once established, a SPV is a legally independent entity and is not directly responsible to council.	▪ Council commitment to funding SPV operations and capital expenses for several years to help build balance sheet. ▪ Joint application for State or Federal Government funding with an established Registered Housing Agency may balance inexperience. ▪ Continuing dialogue with funding bodies (e.g. Homes Victoria, lenders, etc) about management and structure of SPV. ▪ Bulk transfer of council land allocated for social housing to SPV can quickly build balance sheet and act as security for borrowing. ▪ SPV constitution should be carefully drafted to ensure SPV remains aligned with council's objectives. Control of board membership can also assist in this regard.
Registered Housing Agency	**Financial risk** ▪ Significant financial costs to establish SPV, (including creating constitution, functions, etc.) with no guarantee SPV will be successful. ▪ SPV will likely require administrative support and assistance from agency to get started.	▪ Few options to mitigate upfront costs. Possibility of cost sharing with council (including payment for agency's time allocated to the SPV), or grant funding to establish SPV.
	Legal liability risk ▪ Where SPV is a trust with Registered Housing Agency as the trustee, the agency will have responsibility to comply with the trust deed. A breach of trustee duties exposes the agency to direct liability.	▪ Ensure agency always acts in Trustee capacity and limits its liability to trust assets as much as possible.
	Reputational risk ▪ Once established, an SPV will effectively be a competitor with other Registered Housing Agencies for funding and delivery of services. ▪ Creates a perception of allegiance/alignment between trustee agency and council. Could be helpful or harmful to both parties' reputation. ▪ Where council has material control over management of the SPV, agency may lose autonomy to make decisions in relation to trust assets.	▪ Agency and SPV may be able to collaborate for future funding rounds. ▪ Agency should carefully consider their degree of autonomy as trustee/manager.
	Regulatory compliance risk ▪ Once registered, SPV will need to comply with Housing Act 1983, Performance Standards for Registered Housing Agencies and Residential Tenancies Act 1997. Requires staff and management who understand the delivery of Affordable Housing and the obligations under legislative framework. ▪ Need to manage separate SPV and agency purposes, which may be different (e.g. SPV may focus on a particular cohort or geographical area).	▪ Registered Housing Agency should be able to deliver expertise required, provided it is funded to resource both itself and SPV.
	Outcome risk ▪ No significant outcome risks.	

Process and Resourcing Considerations

The process to establish a SPV can be complex and resource-intensive, particularly if it involves the establishment of a Housing Trust, requiring:

- Council decision to establish a SPV, likely to require process of assessing benefits and disadvantages and consideration of resourcing;
- Determination of SPV structure and purpose, including any other proposed SPV members;
- Drafting of legal documentation to establish SPV, such as a constitution;
- Advice on taxation, assuming the SPV is intended to have charitable status;
- Registration of entity;
- Appointment of members and representatives and/or a Trustee, depending on SPV structure;
- Establishment of procedures and resourcing to fund staffing until such time as the SPV receives operating income; and
- Agreement to transfer assets into the SPV without a wider procurement process.
- It is expected the considerable external legal and potentially taxation advice will be required to ensure the structure is legal and appropriate for the intended purpose. Establishing the SPV is expected to require detailed drafting and consideration between all parties, including provision of external legal and taxation advice in relation to corporate and/or charitable structures and taxation matters.
- Agreement to transfer assets into the SPV without a wider procurement process.

For a Registered Housing Agency, participation in a SPV arrangement, including securing a contract or Trustee position, is expected to be resource-intensive, due to the need to review the structure, tender and negotiate with the council.

For a landowner, the process and resourcing requirements may be simplified, assuming they accept direction of a contribution to the SPV.

Assessment of Mechanism

Objective	Assessment	Rationale for Assessment
Contribution will be delivered in accordance with an agreement.		▪ Subject to the agreement specifying that the outcome is to be realised through Registered Housing Agency and that the delivery model is appropriate and can be supported by an Agency, there is a reasonable expectation that a contribution will be delivered, reflecting Agency purpose and role. ▪
Contribution will be applied for Affordable Housing purpose for an agreed purpose, term and tenant cohort.		▪ SPV must act in accordance with constitutional objective to provide Affordable Housing. ▪ Registered Housing Agency expected to manage outcome - experienced in determining which households need assistance and that best suits a particular location and development. ▪ Registered Housing Agencies are expected to need to secure funding to acquire assets or develop land (unless gifted), which will result in a requirement to apply the subsidy for a defined period. ▪ SPV and Registered Housing Agency committed to delivery of long-term outcomes.
Development and operational feasibility.		▪ Ownership of land within an SPV presents some risk in relation to likely attraction of government and philanthropic funding to the project as government is not directly entering contract with SPV (funds must go through Registered Housing Agency). ▪ Registered Housing Agencies ability to manage assets dependant on SPV constitution and board membership and the structure of the management arrangement. The greater the input the Agency has into both these factors, the greater its ability to manage SPV assets. ▪ This assessment could be mitigated / move to 'green' through careful consideration to the legal agreement between the SPV and the Agency, or if the SPV is registered as a housing agency.
Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.		▪ SPV constitution will require investment in an Affordable Housing purpose.
Reinvestment of the value of the council contribution in the **local municipality** at the end of an agreed term or dwelling life.		▪ SPV expected to be structured to require investment and delivery within the municipality.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.		▪ Whilst a Registered Housing Agency is only expected to enter an arrangement where it can meet regulatory requirements and manage assets and tenancies, there is a risk the SPV structure impacts on their capacity and/or adds another layer of governance and resourcing requirements. ▪ Ownership of land by a SPV can have an impact on a Registered Housing Agency ability to control outcomes and meet regulatory requirements over time, as it will require SPV approval. ▪ Clear legal agreement will be required to limit the potential risks.

Example – Special Purpose Vehicle (Housing Trust)

Example:	Hobsons Bay Affordable Housing Trust
Local Government	Hobsons Bay City Council
Outcomes	▪ The Trust is in final stages of establishment and subsequently specific Affordable Housing outcomes have not yet been realised.
Background / Structure	▪ Hobsons Bay City Council's Affordable Housing Strategy (2016) identified the need for a Trust as a means for collecting and distributing contributions from the private sector that were expected to be negotiated through the planning process. ▪ A Trust Deed was developed by Council which requires the delivery of Affordable Housing outcomes in Hobsons Bay to benefit people residing in, or with an association with the municipality. The Trust has been structured as a charitable entity. ▪ The Trustee can sell or dispose of assets, borrow money, employee staff, accept donations and manage assets in accordance with its purpose. The value of any assets sold or any cash contributions received must be invested back into Affordable Housing projects in Hobsons Bay. ▪ In June 2020, Council appointed Registered Housing Agency, Housing Choices Australia as the Trustee for a two-year term, with an expectation to renew, subject to performance. ▪ Council allocated $60,000/year to the Trust for the first two operational years to pay for the Trustee management. Following the initial term, Council will determine if Housing Choices should continue to manage the Trust, with an expectation the Trustee will also draw a management fee from the Trust funds. ▪ The rezoning of Altona North Precinct 15 includes requirements for five per cent Affordable Housing to be realised through sale of dwellings at a 25 per cent discount, or for an equivalent payment to be made to a Registered Housing Agency or council. The Trust is intended to be the nominated recipient of any funds paid to council and could also receive land or dwellings, or, subject to funding, purchase dwellings at a discount. ▪ Council will separately assess opportunities to provide land to the Trust for the Trustee to develop.
Key Learnings	▪ Establishment of a Housing Trust is a significant resource-intensive process. ▪ Ensuring the Trust Deed is appropriately structured to enable registration, as a charity requires careful consideration and specialised legal advice. ▪ Registered Housing Agencies are less attracted to Trust models, as they add a layer of separation from the Agency business, and control, and additional governance and reporting. The provision of a package of land sites and/or funding to seed fund a Trust will likely make it more attractive. ▪ The success of the Trust will depend on its capacity to secure contributions, land, financing and funding. This depends on the capacity of the Trustee Registered Housing Agency capacity to secure funding. ▪ How finance is secured will depend on whether the Trust has assets or the Registered Housing Agency is prepared to utilise other assets outside of the Trust as security.

Mechanism 4: Legal Agreement (e.g. Heads of Agreement, Joint Venture Agreement, Section 173)

Mechanism:	Legal Agreement
Overview	▪ Involves application of a legal agreement requiring specific outcomes to be delivered and/or managed in accordance with agreed terms. ▪ There are a range of types of legal agreements that could be entered, each with different structures and legal obligations. More than one legal agreement may be put in place in relation to the delivery and/or post-delivery management. ▪ A Section 173 Agreement is a specific type of legal agreement that can be registered on land under the PE Act. Other agreements a council or landowner may utilise to support a contribution include a Heads of Agreement, 'right to lease' or a lease agreement.
Ownership of land	▪ Registered Housing Agency or SPV but could strictly be any person.
Management of assets	▪ Registered Housing Agency
Key Strengths	▪ Commonly used tool to secure an agreement between parties. Range of types of legal agreements. Ability to structure to suit circumstances. ▪ Agreements can be prescriptive and time-limited. ▪ Section 173 Agreement is registered on title and non-compliance can be pursued through a court process.
Key Weaknesses	▪ Requires process to develop, including review by each entity's legal advisers, which can be a time- and resource-intensive process. ▪ Section 173 Agreements remain on title and unless include a sunset clause, can be difficult to amend or remove requiring both landowner and responsible authority agreement or a successful legal challenge. ▪ Section 173 Agreement may impact on Registered Housing Agencies ability to secure funding or financing depending on terms. ▪ Subject to monitoring over time.
Time period dwellings remain as Affordable Housing	▪ Subject to legal agreement between council, landowner and/or Registered Housing Agency/SPV. May be time-limited. ▪ If no agreement once dwellings are completed, decision will be subject to Registered Housing Agency or SPV decision-making.
Responsibility for determining use of land at end of dwelling life	
Level of Resourcing to Implement	▪ Moderate to high.

Application and Reason for Applying

Legal agreements can be structured to confirm shared objectives, requirements of different parties and any conditions, resourcing and governance arrangements for a project.

In the case of a planning process and agreement, a legal agreement may be applied to:

- Support progression of a development prior to a contract of sale being entered or a lease commencing over developed assets; and/or
- Establish requirements once land is transferred, such as to use the land for Affordable Housing for an agreed period.

An agreement could be between a council and landowner/developer, and/or a recipient Registered Housing Agency or SPV. More than one legal agreement may be put in place in relation to the delivery or post-delivery management.

Section 173 Agreement

- A S173 Agreement us established under the PE Act and enables a responsible authority to enter into an agreement with an owner of land in the area covered by a planning scheme. It can be used to establish:
  - Delivery requirements / conditions on the landowner that must be met; and/or
  - Ongoing requirements relating to the use of the land and buildings upon construction completion.
- The detail within a S173 Agreement will need to be determined by the parties and will be site and agreement specific. It is important that any proposed ongoing requirements relating to the land use are supported by a Registered Housing Agency to ensure it does not impact on funding and/or financing or regulatory requirements in relation to management of assets and tenancies.
- Registered on the title to the land, making it 'run with the land' and bind future owners as if they were parties to the original agreement. The agreement will remain on title unless provision is made for its discharge once obligations set out in the agreement are met or the parties agree to amendments. Changes to a S173 Agreement can only be made by the parties to an agreement, unless ordered by VCAT.
- Recommended that any proposed ongoing requirements post-delivery of a contribution are appropriate and supported by a Registered Housing Agency to ensure it does not impact on funding and/or financing or regulatory requirements in relation to management of assets and tenancies.

DELWP has developed a template Affordable Housing Section 173 Agreement available here.

Non-statutory Agreements

- Other types of legal agreements include a Memorandum of Understanding, a Heads of Agreement, an agreement to a sale, a development agreement, a 'right to lease', a lease agreement, or a Joint Venture (JV) or Partnering Agreement.
- A contract of sale is another legal agreement that will be required for any model where land is sold, even if gifted. These agreements are purely contractual in nature, and do not sit on the title.
- These agreements can be used to set terms before land is transferred, requirements of development or post-development, for example:
  - Between a landowner and Registered Housing Agency to establish an arrangement prior to a contract of sale being entered, for example, in relation to the proposed transfer of land and any pre-conditions to the transfer;
  - Between a council and Registered Housing Agency to require a Registered Housing Agency to secure and reinvest the landowner contribution in the municipality should the original dwellings be sold;
  - Where a monetary contribution is being made;
  - Where a Section 173 Agreement is not suitable such as where registration of an agreement on the land would impact on financing and subsequent delivery of the Affordable Housing.

Strengths and Weaknesses

	Strengths / benefits	Weaknesses / disadvantages
Council	▪ S173 Agreement is registered on title and provides council with assurance as to delivery. ▪ Terms can be upheld by law. ▪ Agreements establish clear requirements on landowner and any future owner. ▪ Agreements can establish level of detail that is not appropriate go to in planning controls. ▪ Agreements can manage a relationship between landowner and a Registered Housing Agency and potentially council during the pre-transfer stage to ensure pre-conditions are met before sale. ▪ Unlike restrictive covenants, a S173 Agreement can include positive covenants and performance criteria or more innovative arrangements.	▪ Ongoing S173 Agreement may impact on the assessment of a property value and on financing and ability for Affordable Housing to be delivered. ▪ Development of an agreement can be a costly and resource-intensive process. ▪ Long-term agreements will require resourcing to monitor over time. ▪ Other forms of agreements not registered on title may be more readily contestable. ▪ Flexibility within contract arrangements could be later cause for different interpretation or dispute.
Registered Housing Agency	▪ Agreements establish clear requirements on landowner and/or Agency – providing certainty as to outcome. ▪ Agreements can manage a relationship between the Agency and landowner and/or Agency and council.	▪ Ongoing S173 Agreement may impact on the assessment of a property value and on financing and ability for Affordable Housing to be delivered. ▪ Development of an agreement can be a costly and resource-intensive process. ▪ Long-term agreements will require resourcing to monitor over time. ▪ Other forms of agreements not registered on title may be more readily contestable. ▪ Flexibility within contract arrangements could be later cause for different interpretation or dispute. ▪ An ongoing S173 on title cannot work for a shared equity Affordable Home Ownership model where purchasers need to secure a mortgage, as the S173 can constrain value, use and, therefore, lending.
Landowner	▪ Legal documents, including S173s are commonly used tools to secure an agreement.	▪ S173 Agreement is registered on title and is disclosed to future purchasers (market risk). ▪ Agreements can impact on market value and project financing. ▪ Resourcing required to develop agreements. Landowner bears costs of developing S173.

Key Legal and Risk Considerations

Legal agreements could include:

- An agreement between the council and Registered Housing Agency setting out the terms of the land transfer, lease or sale potentially including the terms of use post-development; and/or
- A S173 Agreement registered on title, setting out terms of the development and/or use of the land or dwellings over time;
- A contract of sale.

A pre-transfer agreement such as a Heads of Agreement or a 'Right to Lease' could cover:

- Pre-conditions the parties agree must be met before land will be transferred, such as the Registered Housing Agency securing of funding for development or the council clearing the land;

- Use of an agreed monetary contribution;
- Agreement to prioritise a particular tenant cohort;
- Design, community engagement and/or planning approval terms or processes, for example, key stages that the Registered Housing Agency must engage with the council or community engagement requirements;
- The provision of other contributions the council will make towards reducing costs or the subsidy gap;
- Requirements relating to the use of the land and dwellings post construction, such as an agreement to a term of use; and/or
- Reporting on use over time.

When coupled with regulation of a Registered Housing Agency, the agreement could provide the council with confidence that a contribution will be used for the intended purpose and managed without the need for an ongoing S173 Agreement.

A S173 Agreement may provide a higher level of assurance and control over development and/or land use over time because it is registered on title, therefore enabling council to undertake legal action if requirements are not met.

Application of a S173 Agreement requires careful consideration to ensure that it will not unduly impact on the Registered Housing Agency's ability to secure and manage debt, operations and obligations to funders, noting:

- A S173 Agreement that limits the use of the land to Affordable Housing use effectively limits the development value to 'below market' as a full market return cannot be realised by any landowner on the assets;
- A financier will carefully consider the terms of a S173 Agreement to determine if it will impact on its ability to recover financing in the event a Registered Housing Agency was unable to meet repayments and the land had to be sold, and if this impacts on the amount and/or terms of financing.

Should a council require higher level of assurance that an Affordable Housing outcome will be delivered for an agreed period, or directed to a specific use, a time-limited S173 agreement may be an appropriate 'middle ground' that reflects the value of the council contribution, without overly restricting the Registered Housing Agency's ability to develop and prudentially manage the tenancies and assets.

A Contract of Sale will be required where land is sold (including if land is gifted), to ensure the legal transfer of title, with obligations on the vendor (council) in relation to details that must be included in the contract.

A legal agreement such as a Heads of Agreement between the landowner and Registered Housing Agency could also be required to outline the contribution and process for the landowner to provide.

Risk considerations

The key risk consideration for both councils, landowners and Registered Housing Agencies relate to the terms of the agreement and how adaptable they are to changing conditions over time. Key risks include:

- Terms are harsh, inflexible or create an unnecessary burden on one of the parties;
- The agreement does not provide clear ways of dealing with issues that might arise (e.g. an agreement does not include discussion as to what happens if finance cannot be obtained);
- Inconsistent or undefined terminology, which can be ambiguous for parties when later interpreting the agreement;
- Default risk and loss; and
- Supervision risk – managing each parties' obligation.

With any agreement, the best ways to mitigate risks are:

- Careful consideration of the terms during drafting, with a view for how circumstances may change in future and input from qualified lawyers experienced in these forms of agreements;
- Having terms which are only as prescriptive as is necessary to achieve the aims of the agreement;
- Maintaining a good relationship between the parties, so that any disagreements can be resolved in good faith; and
- Providing for either party to seek to vary or amend the terms by agreement.

Other risk considerations include:

	Risks	Mitigations
Council	**Financial risk** ▪ Depending on nature of the agreement and the allocation of risk in the agreement, significant costs may be incurred in negotiation and due diligence without guarantee the agreement will proceed.	▪ Few options to mitigate upfront costs. Parties should bear their own legal costs at this stage.
	Legal liability risk ▪ Breach of agreement terms will typically give rights to damages or termination to Registered Housing Agency.	▪ Council should have staff responsible for managing the agreement to ensure compliance with the terms.
	Reputational and regulatory compliance risks ▪ No material risks.	
	Outcome risk ▪ Inconsistent or poorly defined terminology results in different interpretation / dispute over expectations at a later date. ▪ The cohort or location in need of appropriate Affordable Housing outcomes may shift over time, causing the agreement to lose relevance. ▪ Agreement may not appropriately provide for certain contingencies leaving the parties without guidance as to how to proceed.	▪ Opportunity to review and adapt the agreement during the term. ▪ Include an option to review and adapt the agreement during the term. ▪ Agreement should be appropriately drafted by a lawyer, and 'stress-tested' against a range of potential scenarios by the parties.
Registered Housing Agency	**Financial risk** ▪ Depending on nature of the agreement and the allocation of risk in the agreement, significant costs may be incurred in negotiation and due diligence without guarantee the agreement will proceed.	▪ Limited options to mitigate upfront costs. Parties should bear their own legal costs at this stage.
	Reputational risk ▪ Once established, an SPV will effectively be a competitor with other Registered Housing Agencies for funding and delivery of services.	▪ Agencies may be able to collaborate for future funding rounds.
	Regulatory compliance risk ▪ Terms of the agreement may impose additional reporting requirements to council, requiring the Registered Housing Agency to track and manage these requirements.	▪ Only include reporting requirements if necessary and seek to limit duplication (i.e. accept Registered Housing Agency reporting on outcomes within annual report). ▪ Reporting obligations to be added to the Registered Housing Agency's existing reporting program once the agreement is entered.

	Risks	Mitigations
	Outcome risk ▪ Inconsistent or poorly defined terminology results in different interpretation / dispute over expectations at a later date. ▪ The cohort or location in need of appropriate Affordable Housing outcomes may shift over time, causing the agreement to lose relevance. ▪ Agreement may not appropriately provide for certain contingencies (e.g. major damage to the land and buildings), leaving the parties without guidance as to how to proceed.	▪ Ensure clarity of outcomes and expectations in drafting. ▪ Include an option to review and adapt the agreement during the term. ▪ Agreement should be appropriately drafted by a lawyer, and 'stress-tested' against a range of potential scenarios by the parties. ▪ Engage funders early and share proposed terms of the agreement. ▪ Consider how third parties may view agreement when drafting.

Key Process and Resourcing Considerations

The process and resourcing to develop and execute a legal agreement is expected to involve drafting of terms, review by each organisation and their legal advisers, potential third-party scrutiny, for example if the agreement is part of an amendment and planning panel process.

The level of resourcing to implement a legal agreement can be significant for all entities, depending on the complexity of the arrangement. Over time standard agreements and Section 173 Agreements may be developed.

Assessment of Mechanism

Objective	S173 Agreement	Other Legal Agreement	Rationale for Assessment
Contribution will be delivered in accordance with an agreement.			▪ Section 173 Agreement is registered on title and can be used to set conditions of development and occupancy, providing for a high level of certainty that contribution will be provided (subject to development proceeding). ▪ Legal agreement provides a high level of assurance that delivery terms will be met (subject to development proceeding).
Contribution will be applied for Affordable Housing purpose for an agreed purpose, term and tenant cohort.			▪ Level of confidence will depend on terms of the agreement and the monitoring of it over time. ▪ A Section 173 Agreement expected to provide a higher degree of assurance as to use as it is registered on title.
Development and operational feasibility.			▪ Subject to terms of agreement and assessment of impact of terms on value by financier or funder.
Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.			▪ Level of confidence will depend on delivery model and terms of the agreement. ▪ Could move to green if terms require reinvestment in Affordable Housing, or if the dwellings will be owned by a Registered Housing Agency.
Reinvestment of the value of the council contribution in the **local municipality** at the end of an agreed term or dwelling life.			▪ Level of confidence will depend on terms of the agreement and the monitoring of it over time.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.			▪ Agreement may impact on Housing Agency ability to meet regulatory requirements if it unduly impacts on ability for Agency to undertake its role. ▪ Careful consideration of terms of agreement are required to move to green (high) rating.

Example: Section 173 Agreement and Other Legal Agreements

Example:	Section 173 Agreement and Legal Agreement to Secure Delivery
Outcome	▪ Intended outcome – eight Affordable Housing dwellings owned and managed by a Registered Housing Agency.
Background / Structure	▪ The following is an example of a negotiated Affordable Housing Contribution that is subject to a planning approval and is subsequently de-identified. ▪ The project is for a rezoning of land (planning scheme amendment) for approximately 140-lot subdivision. ▪ The landowner has agreed, subject to the amendment approval, to gift eight serviced lots, representing approximately six per cent of total yield to a Registered Housing Agency to develop and manage as Affordable Housing. ▪ The following legal agreements are intended to govern the arrangement: ▫ Section 173 Agreement between the landowner and council, setting out requirements on the landowner, including pre-conditions in relation to Affordable Housing that must be met for the landowner to be able to proceed to stage two of the development and the Section 173 agreement to be discharged. This includes evidence of an agreement with a Registered Housing Agency, funding and financing and planning and building approval for the Affordable Housing, and transfer of title of the lots to the agency for nil consideration. ▫ A Heads of Agreement between the landowner and a Registered Housing Agency, which will reflect the obligations of the Section 173 Agreement on the landowner and confirm that upon the Agency meeting pre-conditions, the landowner will transfer the title to the lots. ▫ The Registered Housing Agency is expected to need to enter a range of legal agreements, including: - Funding agreement with government and/or philanthropic investors; - Financing agreement with a lender; - Consultancy contracts to support planning and design; - Building contract; - Tenancy management agreements.

Mechanism 5: Mortgage Instrument

Mechanism:	Mortgage instrument
Overview	▪ A mortgage instrument is a written contract that provides a party, typically a lender, certain rights over a property value which can include rights to compel a sale in the event of a default. ▪ Mortgages can also be used to secure an interest or 'equity stake' and its repayment upon any future sale of the land.
Ownership of land	▪ Registered Housing Agency or SPV. ▪ Individuals under an Affordable Home Ownership arrangement.
Management of assets	▪ Registered Housing Agency.
Key Strengths	▪ Commonly used financial mechanism to secure value of a land contribution should the land ever be sold. ▪ Does not limit the property value, use of the land, or owner's ability to secure and apply debt finance. ▪ Mechanism to support home ownership sales where other mechanisms such as Section 173 Agreement could impact on delivery.
Key Weaknesses	▪ Potential to be a disincentive for the asset owner to significantly invest in improvements over time if the mortgagee has a share in the future property value. ▪ Application requires a legal agreement to be in place and the terms of the agreement. ▪ Subject to agreement on investment, the council may need to decide on expenditure of any returned equity at a future point – no guarantee of reinvestment in Affordable Housing.
Responsibility for determining use of land at end of dwelling life	▪ Registered Housing Agency. ▪ If land is sold, council's contribution as a proportional equity share is repaid and the (future) council is responsible for determining use of funds, unless an agreement with the Registered Housing Agency is in place requiring reinvestment.
Level of Resourcing to Implement	▪ Moderate in first instance depending on process to develop the associated legal agreement. Once developed the legal agreement can be applied as a standardised arrangement.

Application and Rationale for Applying

In relation to an Affordable Housing Contribution arising from a planning agreement, a mortgage instrument could be applied by:

- A Registered Housing Agency to secure the value of the contribution made by a landowner that supports an Affordable Home Ownership arrangement, providing the Agency with a right to a proportion of the end dwelling value when it is later sold, or refinanced to then reinvest;
- A council in partnership with a Registered Housing Agency, to secure the value of the landowner contribution;
- The Director of Housing where there is agreement with a Registered Housing Agency because of a funding agreement.

Strengths and Weaknesses

The benefits and disadvantages are considered the same for all stakeholders and include:

Strengths / benefits	Weaknesses / disadvantages
▪ Commonly used mechanism to protects an interest in property and provide for repayment if the dwelling is sold. ▪ Protects a contribution to Affordable Housing without limiting the use of the dwelling or its value through a Section 173 Agreement. ▪ Bank supported mechanism to support shared equity outcomes. ▪ Does not limit Registered Housing Agency securing financing or reduce the value of the asset for debt purposes.	▪ Not commonly used mechanism by councils – requires knowledge to understand how to apply and an agreement as to reinvestment if land is sold. ▪ Repayment of investment on any future sale is second to payment of debt to bank. ▪ May not be any more effective than a Section 173 Agreement.

Key Legal and Risk Considerations

A mortgage is a registered interest on a property title. In commercial lending, this underlying agreement is a loan agreement between lender and borrower. The interest granted by the mortgage is the right to sell the property where the conditions of the underlying agreement are not met.

Where a council seeks to register a mortgage to secure an Affordable Housing outcome realised as a result of a planning contribution this will likely be recorded as a 'second mortgage' (with a primary lender as the first mortgagee) and requires a legal agreement between the dwelling owner and the party seeking to register an interest (e.g. council and/or the lender).

In addition to providing a right to sell the property on default of the underlying agreement, a mortgage can also secure a payment to council on terms defined by the agreement. For example, a Registered Housing Agency could secure an agreed 'equity share' percentage of the total property value post-completion, for any Affordable Home Ownership arrangements it facilitates with a contribution, requiring payment back to council of this percentage, should the land ever be sold.

Where there are multiple mortgages on title to particular property, an agreement which stipulates the priority amount or amount secured and payable to each lender, called a 'Deed of Priority', must be entered. Primarily, the first mortgage will rank above the second, i.e. if the owner defaults and the property is sold to cover the debt, the initial mortgage will be satisfied first, with remaining funds directed to repaying the second mortgage. The deed will contain provisions for the first mortgagee to consent to the second mortgage and that limit the amount of money the first mortgagee is entitled to be paid in priority.

A mortgage which secures an Affordable Housing outcome also requires a more bespoke form of agreement and must be used in combination with another legal agreement relating to the transaction. This agreement would need to establish an interest in the land for the mortgagee sufficient to provide grounds for the mortgage, and in what circumstances the mortgage can be enforced to sell the property.

Council will need to consider what it requires the Registered Housing Agency do with any return if the property was to be sold in the future. This could include a requirement for re-investment in new Affordable Housing or could provide the council at that time to determine the desired investment. Realisation of long-term Affordable Housing outcomes are therefore subject to other agreements and/or future council decisions.

Risk considerations:

	Risks	Mitigations
Mortgagee (Council, Director, or Agency)	**Financial and legal liability risks** ▪ No material risks.	
	Reputational risk ▪ Enforcement of a mortgage is a worst-case scenario and might indicate a failure of the Affordable Housing project.	▪ Enforcement of the mortgage should be a last resort only, after negotiations and discussions with landowner.
	Regulatory compliance risk ▪ May require ongoing monitoring of Registered Housing Agency's performance of the underlying agreement.	▪ Consider reporting requirements being embedded in an agreement and/or ensure resourcing to monitor over time.
	Outcome risk ▪ Mortgage cannot be used to compel a Registered Housing Agency to deliver an outcome. Enforcement will not deliver the outcome, only financial compensation to mortgagee.	▪ Mortgage can be used with other means of securing a contribution.
Mortgagor (Landowner)	**Financial, reputational and outcome risks** ▪ No material risks.	
	Legal liability risk ▪ Agreement is challenged.	▪ Ensure drafting considers all circumstances and is undertaken with appropriate legal guidance.
	Regulatory compliance risk ▪ Existing mortgagees or lenders with a general security agreement may require consent process or priority deed prior to registration of the mortgage.	▪ Registered Housing Agency to proactively engage with their lenders and funders to confirm council second mortgage will be acceptable.

Key Process and Resourcing Considerations

The *Transfer of Land Act 1958* obliges the first mortgagee to present a certificate of title to enable registration of a subsequent mortgage. The first mortgagee (typically a lender/funder such as the National Housing Finance and Investment Corporation or a bank) cannot stop the registration of a second mortgage by a council, however, they may require a deed of priority as a condition of approving the second mortgage.

The process to apply a mortgage instrument requires agreement between the parties and the support of the first mortgagee (the bank), which is expected to include:

- Agreement as to the value of the council contribution (i.e. as a percentage of total end project value) and for the registration of a second mortgage to secure the council interest;
- Drafting of legal documentation reflecting the arrangement, which is expected to include an agreement between council and the Registered Housing Agency, and a deed of priority with the lender;
- Review of the legal arrangement by the first mortgagee (lender);
- Signing of legal agreements including deed of priority; and
- Registration of interest as a second mortgage on title.

The resourcing to apply a second mortgage instrument is expected to be moderate to high in the first instance, subject to the resourcing required to develop a legal agreement. Development of a deed of priority will require legal advice and a process of bank review.

Assessment of Mechanism

Objectives	Assessment	Rationale for Assessment
Contribution will be delivered in accordance with an agreement.	N/A	▪ Not applicable – mortgage instrument does not influence development.
Contribution will be applied for Affordable Housing purpose for an agreed purpose, term and tenant cohort.		▪ Mortgage instrument does not negatively influence asset use.
Development and operational feasibility.		▪ Mortgage instrument does not negatively influence development or asset use.
Reinvestment of the value of the contribution in an **Affordable Housing outcome** at the end of an agreed term or dwelling life.		▪ Subject to the land being sold, the interest secured by the Registered Housing Agency or council is protected by the mortgage instrument and the subsequent reinvestment of this value in Affordable Housing will depend on any associated legal agreement and/or the decision of council at the time. There is subsequently some medium risk the value is not reinvested in Affordable Housing depending on the model.
Reinvestment of the value of the council contribution in the **local municipality** at the end of an agreed term or dwelling life.		▪ Depends on terms of agreement. Potential for a council's interest resulting from a contribution to be returned to council and reinvested of this value in the municipality. Alternatively, return could be to Registered Housing Agency to reinvest in Affordable Housing in their preferred location.
Housing Agency can meet regulatory requirements and prudentially manage asset over an agreed term.		▪ Subject to terms of underlying agreement. Mortgage instrument has no or minimal impact on Housing Agency ability to meeting regulatory requirements and manage assets over an agreed period.

Example – Mortgage Instrument

Example:	Mortgage Instrument to Secure Value of Contribution
Local Government	▪ City of Whitehorse
Outcome	▪ Intended outcome – 10 Affordable Home Ownership Dwellings
Background / Structure	▪ As part of a planning permit process the landowner agreed to support the delivery of Affordable Housing by contributing to either support a Registered Housing Agency to purchase the dwellings or to secure Eligible Households to purchase under an appropriately structured Shared Equity Home Ownership arrangement. ▪ A 25 per cent discount to market value, translated to a 25 per cent shared equity contribution was agreed. To ensure a contribution would be made an option for the landowner to provide a monetary contribution was also reflected in the permit condition. ▪ The landowner worked with the Registered Housing Agency, National Affordable Housing Consortium (NAHC) to explore options to realise the contribution. ▪ Due to the premium price points within the development (and subsequent high owners corporation costs), and a lack of government funding at the time to support rental outcomes, the parties agreed to a Shared Equity Home Ownership arrangement to be delivered across multiple sites using the landowner contribution. ▪ The process of delivery involves: ▪ Memorandum of Understanding between the landowner and NAHC confirming the value of the contribution. ▪ NAHC subsidiary business 'BuyAssist Australia' identifying properties that fit the price point for Eligible Households (with reference to the PE Act income eligibility) and sourcing Eligible Households to purchase (assisting them through the mortgage process). ▪ Individual household purchaser entering a legal agreement with NAHC which reflects the benefits of the shared equity arrangement and provides for NAHC to register a second mortgage on the dwelling and subsequently have a right to a proportional value of the future property value if it is sold or refinanced. ▪ Purchaser household entering a contract of sale with the landowner. No deposit or mortgage lenders insurance is required as borrowing is less than 80 per cent of market value. ▪ Upon settlement NAHC places a second mortgage on title. The household is responsible for all ownership costs and should they refinance or sell the property, the proportional equity stake (i.e. 25 per cent of property value) is repaid to NAHC to then reinvest in future shared equity home ownership.
Key Learnings	▪ Flexibility to allow for different delivery options within a permit condition can support delivery of a contribution in an appropriate and affordable housing outcome. In some instances this may require translation of the value of the contribution to a monetary figure to be utilised in other developments. ▪ A mortgage instrument does not impact on the ability for the Eligible Household to secure financing as it does not limit value of the dwelling or ability to recover funds should the property be sold. ▪ By having a Registered Housing Agency manage the process and secure the contribution there is high level of assurance that the contribution will be directed to Eligible Households, that affordability is achieved and that the contribution is reinvested in Affordable Housing in the future. ▪ A council could enter a legal agreement with the Registered Housing Agency to require any future receipt of funds to be reinvested in the local government area.

CONCLUSION

There is a significant need to increase the supply of dedicated Affordable Housing in Victoria, with corresponding social and economic benefits for individuals and the community.

The planning system is part of a suite of tools that can be utilised to support an increase in Affordable Housing supply in Victoria. The primary means of using the planning system to secure an Affordable Housing Contribution is through either a planning scheme amendment embedding an incentive and voluntary based approach or by a site-specific planning negotiation between a council and a landowner.

How an Affordable Housing Contribution is structured, delivered, developed, owned and managed over time requires careful consideration to determine an appropriate and feasible structure.

Registered Housing Agencies are well-placed to support the realisation and appropriate management of Affordable Housing arising from a contribution.

Whilst the resource does not cover every question, circumstance or process, it is intended that it supports improved and consistent knowledge and capacity building within councils and across landowners and Registered Housing Agencies to support exploration and application of planning agreements to support Affordable Housing outcomes.

Councils and Registered Housing Agencies are encouraged to refer to a range of other resources to support the delivery of Affordable Housing, including:

- Affordable Housing Agreements: Advice for local government and community housing organisations
- Agreement for lease (AFL) template
- Head lease template

Feedback

CHIA-Vic, MAV and the report authors welcome feedback to the guide and the provision of additional case studies to reference on our websites. Feedback can be provided to admin@chiavic.com.au.

ATTACHMENT 1: KEY CONSIDERATIONS

A council, landowner and Registered Housing Agency are expected to need to consider a range of factors in determining an appropriate contribution, including:

Considerations	Questions
Objectives	▪ Is the council's primary focus the amount of Affordable Housing provided, a targeting to lower income groups, or certainty of delivery? How are these things balanced/traded off? ▪ What are Registered Housing Agency objectives in terms of priority locations, tenant cohort, investment and ownership? ▪ What are the landowner objectives in terms of yield, development model and ongoing ownership? ▪ What are the State Government objectives and how do these inform decisions on locations, type of households to be prioritised, affordability benchmarks, dwelling type, and ownership and management structures?
Planning context	▪ What is the planning proposal – amendment to zone, permit approval? ▪ Is there opportunity or a request for planning dispensations or an increase in yield above preferred height controls? Is council willing to consider incentives (subject to design and core planning requirements)? ▪ What is the potential value of any incentive and what level of Affordable Housing could this support in terms of a value share agreement? ▪ How should an agreement be reflected in the planning controls?
Built form outcomes	▪ What is the proposed development outcome (apartments, houses, townhouses)? ▪ What dwelling typology, size (bedroom numbers) and amenity is required to respond to demand? ▪ Should the Affordable Housing be reflective of market dwelling composition or is a different mix required?
Delivery	▪ How is the landowner intending to deliver, i.e. subdivision, apartment development, house and land? ▪ What are the options for a landowner to contribute and facilitate outcomes? Is more than one option possible? ▪ What is the cost implication of each option? How does this impact the amount of Affordable Housing that could be realised, investment required by other parties, and/or the households that are supported? ▪ What are the council, landowner and Registered Housing Agency preferred delivery model(s)? ▪ How do financiers and investors view different models? ▪ How would any home ownership model work? ▪ Who will own the dwellings upon completion?
Affordability and Allocation	▪ Who are the intended beneficiaries (tenants/purchaser)? ▪ What is affordable in terms of rent or purchase price? How is this determined? What impact does this have on the delivery model and viability for the purchaser or Registered Housing Agency? ▪ Who will be responsible for confirming household eligibility and allocation? How will eligibility be confirmed over time? What will occur if a tenant is no longer eligible?

Considerations	Questions
Funding and Financing	▪ What is the indicative value of a landowner contribution? ▪ What are the estimated operational costs and return? ▪ How does household priority groups and/or delivery model impact on potential contributions? ▪ What contributions could other parties make, such as Registered Housing Agency securing debt? ▪ What is the subsidy gap after accounting for landowner, council and/or Registered Housing Agency contributions (subsidy gap)? ▪ Is there a reasonable likelihood of government funding being attracted to the project at the point development occurs? What is an acceptable level of reliance on other funding? ▪ Should there be a 'fall back' position included such as provision of a monetary contribution where funding is not secured and Registered Housing Agency ownership does not eventuate? How would this be administered and does this impact on the amount and timing of the Affordable Housing that could be realised?
Risks	▪ What are the risks associated with development of the Affordable Housing and who is responsible for each risk? ▪ Is there a reliance on market sales for the Affordable Housing to be delivered? ▪ What are potential risk mitigations?
Resourcing	▪ What is the level of resourcing required to negotiate and confirm details of a contribution? ▪ Is the delivery model complex and likely to require significant council, landowner and/or Registered Housing Agency resourcing to determine an appropriate legal agreement? ▪ What resourcing is required to deliver and who is responsible? ▪ What resourcing is required to monitor compliance over time and who is responsible?
Process to secure outcomes over time	▪ What is an appropriate period the dwellings should be retained in an Affordable Housing purpose? ▪ What are the options for ensuring the delivered housing is appropriately managed as Affordable Housing over time? ▪ Is it appropriate or necessary for council to have a supervisory role with respect to the use or management of Affordable Housing? What is the appropriate role for a council and for a Registered Housing Agency? ▪ Who is responsible for any reporting over time? What resourcing is required and how is this funded?

Key Consideration - Amount of Affordable Housing

Unless set out within a local planning policy, a council and landowner will need to determine the amount or percentage of Affordable Housing that will be delivered on a site-by-site basis.

In developing a policy position and undertaking a negotiation a council should carefully consider:

- Site and planning context;
- Proposed development outcomes including other proposed community outcomes;
- Development feasibility, costs of an Affordable Housing contribution and planning incentives or value proposed to offset costs;
- Registered Housing Agency preferences and capacity;
- Whether other investment is likely to be required and available.

The amount of Affordable Housing that could be feasibly realised will depend on the delivery model and expected reliance on funding or financing of other parties. Gifting dwelling for example is a higher cost / value than gifting land.

As different discounts or subsidy is required to support affordability for the end user/tenant, councils will need to consider what trade-offs they will accept between the percentage, the means of delivery and household priority groups.

Landowners will need to consider the percentage, the delivery model and cost and feasibility impact, against any planning benefit such as uplift in value or additional dwelling density.

Key Consideration - Planning Incentives and Landowner and/or Developer Contributions

An agreement to an Affordable Housing Contribution is expected to require a landowner and/or developer to contribute financially for the outcome to be realised, either as a foregone return and/or by directly meeting costs.

Contributions could be supported by the landowner accepting a lower return, supporting the developer to meet the costs of delivery, and/or a developer reducing their profit.

Costs could be offset by incentives which 'give back' or offset some of the landowner or developer costs through the planning approval. This could include:

- Acceptance that a result of a rezoning to a higher and best use, there is an increase in the underlying value of the land that is appropriate to share, and that is sufficient to counteract the impact of the Affordable Housing contribution (i.e. cost is reflected in the residual land value but land value has increased sufficiently due to the rezoning);
- A streamlined assessment process that reduces risks and/or time and costs;
- Additional density or floor area (subject to meeting other planning and design objectives), which increase the number of dwellings the developer can sell at full market value, helping to counteract the costs of the Affordable Housing Contribution;
- Dispensations such as allowance for smaller lots for Affordable Housing or reduced carparking requirements.

Key Consideration - Types of Affordable Housing

Types of Affordable Housing (program responses) that could be agreed to be delivered under an agreement, include:

- Supported, transitional or crisis housing owned and managed by a Registered Housing Agency and allocated to households on the Victorian Housing Register (VHR);
- Social Housing managed by a Registered Housing Agency and allocated to households on the VHR;
- Affordable rental housing allocated to households on the VHR or that meet the PE Act income criteria; and/or
- Affordable Home Ownership, where housing is sold to individuals under a structured home ownership program such as a shared equity arrangement with a landowner contribution provided to reduce household borrowing requirements and affordability of the purchase.

There are also hybrid models emerging such as 'rent-to-buy' that could be structured to meet the matters set out under the PE Act. New models may also be developed over time.

Note:

This paper does not contemplate 'market priced' Affordable Housing being delivered as the State Government has not established a framework for this to occur, and the emphasis under the PE Act is to support very low to moderate income households that cannot afford market priced dwellings without experiencing housing stress.