

**FISHERMANS BEND PLANNING REVIEW PANEL: DRAFT AMENDMENT  
GC81**

**SUPPLEMENTARY INFORMATION NOTE**

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|-----------------------------|---|
| <b>SIN NUMBER:</b>          | <b>8</b>  |
| <b>DATE:</b>                | 28 March 2018   |
| <b>PRECINCT:</b>            | N/A   |
| <b>FRAMEWORK REFERENCE:</b> | Affordable housing is referenced at page: <ul style="list-style-type: none"><li>• 15 (context)</li><li>• 27 (Framework goals)</li><li>• 37, 39 and 40 (sustainability goal 3)</li><li>• 50 (sustainability goal 3)</li><li>• 51 (sustainability goals – references 6% affordable housing target)</li><li>• 55 (objective 3.5)</li><li>• 84 (definition)</li></ul> |
| <b>SUBJECT:</b>             | Provision of further information regarding Affordable Housing and intentions regarding the operation of the CCZ in respect of social housing  |
| <b>REQUEST:</b>             | Provide further information to the Panel regarding the approach to Affordable Housing in the draft Framework and how Affordable Housing has been addressed in decisions of Panels and VCAT  |

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**RESPONSE:**

**The draft Framework’s approach to the provision of affordable housing**

1. The Fisherman Bend Framework (**draft Framework**) and the draft Amendment GC81 (**draft Amendment**) seek provision of 6% affordable housing across the Fishermans Bend area (**affordable housing target**).
2. The draft Amendment seeks achieve the affordable housing target via two

mechanisms:

- (a) a voluntary Floor Area Uplift (**FAU**) scheme which will allow exceedance of the relevant maximum Floor Area Ratio (**FAR**) in the proposed Capital City Zone Schedule for provisions of a public benefit in the form of gifting affordable housing to a Registered Affordable Housing Association and secured through a Section 173 Agreement.
  - (b) A provision in the draft local planning policy relating to Fishermans Bend (at clause 22.27 of the Port Phillip Planning Scheme and clause 22.15-2 of the Melbourne Planning Scheme) which provides that it is policy to encourage ‘...the provision of 6% affordable housing through a range of housing models, typologies and occupancies across Fishermans Bend.’
3. This approach has been informed by the current legislative and policy context of affordable housing.
4. In summary, while State, and some local, planning policies encourage the provision of ‘affordable housing’ which is defined in various ways, the existing statutory framework to require the provision of affordable housing does not sufficiently provide the statutory basis to *mandate* the provision of affordable housing via the planning system.
5. The absence of clear statutory objective to facilitate the provision of affordable housing has resulted in the Victorian Civil and Administrative Tribunal and reports of Planning Panels Victoria and Advisory Committee Reports expressing reluctance to mandate conditions on landowners requiring the provision of affordable housing contributed to no established practice regarding timing and types of affordable housing requirements.
6. A review of VCAT decision and Planning Panel and Advisory Committee reports revealed the most common mechanism is via a permit condition requiring entry into a section 173 agreement. However, generally such a condition has only been imposed where the applicant has agreed.
7. The proposed approach in the Amendment is consistent with current practice. It encourages the provision of affordable housing and will facilitate, as appropriate, the imposition of a conditions requiring entry into section 173 agreements securing provision of affordable housing.
8. It is not the role of the Amendment to propose a new legislative framework addressing affordable housing. That requires a State-wide, co-ordinated whole of government approach. It would be inappropriate for the Amendment to propose an affordable housing scheme or mechanism different from the status quo. To do so would prejudice the development of Fishermans Bend at the expense of the rest of metropolitan Melbourne, and the State more broadly.
9. The existing statutory framework (see **Attachment A**) already provides the necessary justification for policies and controls which encourage the provision of affordable housing.
10. However, the commencement of the *Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Act 2017* (HA Act) on

1 June 2018 will provide an additional objective of the PE Act to ‘*facilitate*’ the provision of affordable housing in Victoria and provides a definition of affordable housing. See **Attachment B** as to the relevant provisions. The insertion of these new provisions will provide further statutory support for the provision of affordable housing in Victoria and for this to be addressed in Planning Schemes.

11. The draft Framework adopts the Plan Melbourne affordable housing definition which is as follows:

‘...Housing that is appropriate for the needs of a range of very low to moderate income households, and priced (whether mortgage repayments or rent) so these households are able to meet their other essential basic living costs.’

12. The draft Amendment as exhibited did not define ‘affordable housing’.
13. The revised CCZ Schedule responding to the submissions of the Councils has proposed to define Public Benefit (for the purpose of applying the FAU) as including the provision of ‘social housing’ as one of the three categories of Public Benefit. The term social housing is defined in the revised CCZ as follows:

**Social Housing** has the same meaning as in the *Housing Act 1983*.

14. The Minister’s proposed revisions to the CCZ would provide clarity that it is the intention to provide, *social housing* as a Public Benefit in return for a Floor Area Uplift (FAU).

### **Rationale for 6% contribution**

15. The proposed policy specifies a target of 6% provision of affordable housing over a range of housing types, models and occupancies.
16. This figure is considered to be fair and reasonable having regard to the following:

- The City of Port Phillip currently seek a 6% contribution via its existing planning policies.
- A review of relevant Victorian Civil and Administrative Tribunal decisions and also reports of Planning Panels in Victoria reveal a range of different figures which have been sought by Responsible Authorities, supported by varying levels of justification.
- A 6% affordable housing target is consistent with the level of contribution required in relevant decisions of the Tribunal and Planning Panels which generally range between 5 and 10%.
- The expert evidence of Dr Marcus Spiller and the background report Fishermans Bend Urban Renewal Area: Options for Delivery of Affordable Housing prepared by Judith Stubbs and Associates (June 2013) informing the draft framework in fact support higher contributions.

### **Implications on feasibility**

17. The proposed policy and FAU will not adversely impact development

feasibility having regard to the following:

- The private sector will be provided with an incentive to deliver affordable housing in return for a FAU.
- The proposed mechanism is not mandatory. Landowners may elect whether to participate in the provision of Affordable housing – the developer may opt in or out.
- The proposal provides greater certainty in terms of contribution amount and mechanism making it easier to factor into development feasibilities.

**ATTACHMENTS:**

**Attachment A** – Legislative and policy context (existing)

**Attachment B** – **Recent policy and legislation**

**Attachment C** – Review of relevant cases and Panel reports

**ATTACHMENT A**  
**Legislative and Policy Framework**

***Planning and Environment Act 1987***

1. The *Planning and Environment Act 1987* does not as at the date of this SIN, directly refer to affordable housing.
2. Section 4(1) sets out the objectives of planning in Victoria, including
  - (a) to provide for the fair, orderly, economic and sustainable use, and development of land.
3. Section 4(2) sets out the objectives of the planning framework, which include:
  - (c) to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels.

**Victoria Planning Policies**

***State Planning Policy Framework***

4. Clause 11.02-2 (Urban growth – structure planning) includes:
  - a. the objective:

To facilitate the orderly development of urban areas.
  - b. as a strategy to achieve that objective, to:

Develop precinct structure plans consistent with the Precinct Structure Planning Guidelines (Growth Areas Authority, 2009) approved by the Minister for Planning to:  
...  
Create greater housing choice, diversity and affordable places to live.
5. Clause 11.06-2 (Metropolitan Melbourne – housing choice) includes the objective:

To provide housing choice close to jobs and services.

  - a. as a strategy to achieve that objective, to:

Facilitate development that increases the supply of affordable and social housing in suburbs across Melbourne.
6. Clause 11.07-1 (Regional Victoria – regional planning) includes:
  - a. the objective:

To develop regions and settlements which have a strong identity, are prosperous and are environmentally sustainable.
  - b. as a strategy to achieve that objective, to:

Promote liveable regional settlements and healthy communities by:  
...  
Improving the availability of a diverse range of affordable accommodation, including social housing, in regional cities and locations with good access to transport, commercial facilities and community services.
7. Clause 16 (Housing) states that:

Planning for housing should include providing land for affordable housing.
8. Clause 16.01 (Residential development) includes Clause 16.01-1 (Integrated housing) and Clause 16.01-5 (Housing affordability), which are of particular relevance.

9. Clause 16.01-1 includes:
  - a. the objective:
    - To promote a housing market that meets community needs.
  - b. as strategies to achieve that objective, to:
    - Ensure that the planning system supports the appropriate quantity, quality and type of housing, including the provision of aged care facilities, supported accommodation for people with disability, rooming houses, student accommodation and social housing.
    - Facilitate the delivery of high quality social housing to meet the needs of Victorians.

10. Clause 16.01-5 provides as follows:

**Objective**

To deliver more affordable housing closer to jobs, transport and services.

**Strategies**

Improve housing affordability by:

Ensuring land supply continues to be sufficient to meet demand.

Increasing choice in housing type, tenure and cost to meet the needs of households as they move through life cycle changes and to support diverse communities.

Promoting good housing and urban design to minimise negative environmental impacts and keep down costs for residents and the wider community.

Encouraging a significant proportion of new development to be affordable for households on low to moderate incomes.

Increase the supply of well-located affordable housing by:

Facilitating a mix of private, affordable and social housing in activity centres and urban renewal precincts.

Ensuring the redevelopment and renewal of public housing stock better meets community needs.

**Local planning policies**

*Port Phillip Planning Scheme*

11. The Municipal Strategic Statement of the Port Phillip Planning Scheme at clause 21.04 (Land Use) references affordable housing as follows:

**Clause 21.04-1 Key issues**

...

Future housing development must respond specifically to the need for more affordable housing, for housing which is accessible and adaptable for people with disabilities and for older persons (to enable ‘aging in place’), and larger dwellings suited to households with children. The private housing market is currently not adequately providing for all of these housing types.

....

**Objectives and Strategies**

...

3. To support a diverse range of housing types to suit the needs of Port Phillip’s community.
- 3.1 Support private, public and community sector involvement in the provision of housing to

ensure that a range of housing choices is available. 3.2 Support the retention and provision of affordable housing (public, community and private) for lower income households, including the provision of rooming / boarding houses, single bedroom and bed-sit flats, and crisis accommodation.

...

5. To create an environment in which the arts can flourish. 5.1 Support and encourage independent artist-managed exhibition spaces. 5.2 Support and encourage the development of affordable housing / commercial spaces suitable for use as artist residencies / studios.

12. The Employment and Dwelling Diversity within the Fishermans Bend Urban Renewal Area policy at clause 22.15 of the Port Phillip Planning Scheme and 22.27 of the Melbourne Planning Scheme relevantly provide:**Clause 22.15-1 Policy Basis**

...

To support this growth, it is important to ensure dwelling diversity, affordable housing and employment opportunities (sic) are provided consistent (sic) with the Vision for Fishermans Bend.

...

#### **22.15-3 Policy**

Where a permit is required for use and / or development of land, it is policy to:

##### **Dwelling Diversity and Affordable Housing**

Encourage development on sites greater than 3,000m<sup>2</sup>, proposing more than 300 dwellings or proposing more than 1 building, to prepare a master plan for the whole site that includes provision for:

- Publicly accessible spaces that accommodate local passive recreation that are consistent with the Open Space Key Element of the Strategic Framework Plan;
- Diversity of land uses, including non-residential floor space (see 'Employment');
- Diversity of dwelling types and sizes, including an affordable housing component; and
- Diversity of built form typologies, including low and medium rise buildings.

Encourage all new development that proposes accommodation uses and is over 12 storeys in height should provide at least 30% of dwellings as 3-bedroom units.

Encourage all new development that proposes accommodation uses and is over 12 storeys in height, to allocate at least 6% of dwellings as affordable housing to a registered housing association or provider.

13. This local policy defines affordable housing in clause 22.15-3 as:

**Affordable Housing** is generally defined as housing where the cost (whether of mortgage repayments or rent) is no more than 30% of a low-to-moderate household income.

#### *Definitions*

14. The Victoria Planning Provisions include no definition of 'affordable housing' or 'social housing'.

***Plan Melbourne 2017-2050***

15. Clause 9.01 in the Victoria Planning Provisions requires planning and responsible authorities, where relevant, to consider and apply Plan Melbourne 2017-2050: Metropolitan Planning Strategy (Department of Environment, Land, Water and Planning, 2017) (**Plan Melbourne**).
16. Direction 2.3 in Plan Melbourne is to:

Increase the supply of social and affordable housing.
17. Plan Melbourne describes what is meant by ‘affordable housing’ and ‘social housing’ as follows:<sup>1</sup>

Affordable housing is housing that is appropriate for the needs of a range of very low to moderate income households, and priced (whether mortgage repayments or rent) so these households are able to meet their other essential basic living costs.

Social housing is a type of rental housing that is provided and/or managed by the government (public housing) or by a not-for-profit organisation (community housing). Social housing is an overarching term that covers both public housing and community housing.
18. Policy 2.3.3 in support of direction 2.3 is to:

Strengthen the role of planning in facilitating and delivering the supply of social and affordable housing.
19. In relation to policy 2.3.3, Plan Melbourne states

There is a pressing need to increase the supply of social and affordable housing for households unable to afford market-rate housing.

The supply of social and affordable housing is largely dependent on the availability of subsidies to cover the gap between what very low income households can pay and the cost of providing housing. However, the land-use planning system can be reformed and strengthened to help support and facilitate the delivery of more social and affordable housing.

There are currently several planning-related barriers to the delivery of more social and affordable housing— including a lack of clarity in legislation and planning provisions on what constitutes affordable housing, and the absence of clear planning tools or mechanisms to require the provision of social or affordable housing as part of the planning process. Current approaches (such as requiring section 173 Agreements under the Planning and Environment Act 1987 or applying requirements through tools such as Development Plan Overlays) have been criticised for not being sufficiently robust and inequitably applied.

The planning system will be reformed to facilitate the delivery of more social and affordable housing. These reforms will clearly define social and affordable housing, create a clear head of power for affordable housing contributions, and clarify the role the planning system has to play in the delivery of new housing. Reforms will also include new planning provisions or tools to deliver social and affordable housing. These reforms will explore inclusionary zoning and mechanisms to capture and share value created through planning controls.

New provisions or tools will be developed in consultation with the community-housing sector, the residential development industry and local government.

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<sup>1</sup> Page 55.

## ATTACHMENT B

### Recent policy and legislation regarding Housing Affordability

#### *Homes for Victorians: Affordability, access and choice (2017)*

1. *Homes for Victorians: Affordability, access and choice (Homes for Victorians)* was released by the Victorian Government in March 2017 as a ‘coordinated approach across government’.
2. Homes for Victorians includes definitions of ‘affordable housing’, ‘public housing’, ‘community housing’ and ‘social housing’. These are consistent with the definitions in Plan Melbourne (which was released shortly after Homes for Victorians, also in March 2017).
3. Affordable housing is defined as follows:<sup>1</sup>

Affordable housing is housing that is appropriate for the needs of a range of very low to moderate income households, and priced (whether mortgage repayments or rent) so these households are able to meet their other essential basic living costs.
4. Initiative 2 in Homes for Victorians is:

Increasing the supply of housing through faster planning.
5. Of particular relevance is initiative 2.4:

Inclusionary housing to increase the supply of social and affordable housing.
6. Homes for Victorians proposes as follows with respect to inclusionary housing in major developments:<sup>2</sup>

The responsibility for making sure we have more affordable homes should also belong to developers.

It’s why there is growing appetite from local councils to apply affordable housing provisions as part of both rezoning, and permit applications for major developments.

Already a number of developers are offering packages that include the delivery of affordable housing, in exchange for rezoning approval or a permit uplift condition through a value capture style agreement. The partnership could take one of a number of forms:

  - transfer of ownership of an agreed number of dwellings to a community housing association or the Director of Housing for use as social housing;
  - the sale of dwellings to a community housing association at an agreed discounted price to be used in perpetuity as affordable rental; and
  - offering units for sale to first home buyers through a shared equity scheme.

A clear framework will be developed to give developers, the community and local councils certainty around how a voluntary benefits scheme could be applied.

To provide a clear framework for these voluntary arrangements, the following will occur:

  - a legal definition of social and affordable housing will be put into legislation;
  - the Victorian Planning Provisions and State Planning Provision Framework will be amended to provide clear direction;

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<sup>1</sup> See page 7.

<sup>2</sup> See page 23.

- a new voluntary tool will be developed to enable affordable housing agreements; and
- a new value capture tool will be developed to set out how these arrangements can be structured.

This will enable councils to set up voluntary arrangements with developers and land owners to provide affordable housing in exchange for rezoning.

A total of \$4.7 million has been allocated to implement these reforms.

### ***Victoria's 30-Year Infrastructure Strategy (Infrastructure Victoria, 2016)***

7. Infrastructure Victoria released its *Victoria's 30-Year Infrastructure Strategy (Strategy)* in December 2016.
8. The Strategy identifies 19 needs, including at number 7:  
Provide better access to housing for the most vulnerable Victorians.
9. Recommendation 7.3 in support of that need is to:  
Reform planning provisions to support the development of well-located, affordable housing.
10. This recommendation refers at 7.3.2 to 'affordable housing planning mechanisms' and provides as follows:  
Review planning provisions and implement inclusionary zoning and/or provide incentives to deliver affordable rental housing in areas that are appropriate for high and medium density housing and close to public transport and services within 0-5 years. Inclusionary zoning should be considered primarily for government land and in areas where government is undertaking actions that will provide uplift to private land values (such as improved public transport access or land rezoning). Other incentivised planning provisions, such as floor area ratio bonuses, are appropriate for development on privately owned land. This work should be done in consultation with local government, the private sector and community housing organisations (ref. SAH and AHR).

### ***Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Act 2017 (HA Act)***

11. Arising out of Homes for Victorians, the State Government passed the HA Act which will commence operation on 1 June 2018.
12. The HA Act introduces a framework into the planning system to allow for the provision of affordable housing via voluntary arrangements with the private sector.
13. Key changes comprise:
  - Inserting a new objective in the *Planning and Environment Act 1987* (PE Act) seeking 'to facilitate the provision of affordable housing in Victoria
  - Inserting new section 3AA(1) and (4) in the PE Act containing a definition of affordable housing which is:  
'(1)...affordable housing is housing, including social housing, that is appropriate for the housing needs of any of the following—  
(a) very low income households;

- (b) *low income households*;
- (c) *moderate income households*.

...

(4) *In this section—*

***low income households*** means households with a household income within the income range specified as a very low income range by Order under section 3AB;

***moderate income households*** means households with a household income within the income range specified as a moderate income range by Order under section 3AB;

***social housing*** has the same meaning as in section 4(1) of the Housing Act 1983;

***very low income households*** means households with a household income within the income range specified as a very low income range by Order under section 3AB.’

- inserting new section 3AB in the PE Act enabling the Governor in Council, on recommendation of the Minister make an order published in the Government Gazette which may specify the above income ranges based on Australian Bureau of Statistics data
- inserting new section 3AA(2) in the PE Act requiring consideration to be given to any notice in the Government Gazette in ‘*what is appropriate for the housing needs of very low income households, low income households and moderate income households*’.
- inserting new section 3AA(3) in the PE Act which prevents any notice published in the Government Gazette from including price ranges or prices for the purchase or rent of housing
- inserting a new section 173(1A) in the PE Act specifying that a Responsible Authority may enter into a Section 173 agreement for the provision of affordable housing.

**ATTACHMENT C– REVIEW OF RELEVANT DECISIONS OF VCAT AND  
REPORTS BY PLANNING PANELS COMMENTARY REGARDING THE  
PROVISION OF AFFORDABLE HOUSING**

**Part 1: VCAT decisions**

| Decision  | Context and relevance  |
|---|--|
| <p><i>Willowe Pty Ltd v Glen Eira CC</i> [2016] VCAT 140<br/>and<br/><i>Willowe Pty Ltd v Glen Eira CC</i> [2015] VCAT 1123<br/>- see [25] and [50]</p> | <ul style="list-style-type: none"> <li>• Proposal for a 6-storey mixed-use development accommodating 97 dwellings.</li> <li>• Tribunal accepted that applicant’s intention to dedicate 12 dwellings to affordable housing was a relevant factor in considering appropriate yield.</li> <li>• Applicant accepted condition requiring a section 173 agreement to ensure provision of affordable housing.</li> <li>• Condition specified transfer to ‘the Ripponlea Housing Project Ltd or such other operator as approved by the Responsible Authority’. The agency had accepted offer prior to hearing.</li> </ul>  |
| <p><i>Haines Street Holdings Pty Ltd v Melbourne CC</i> [2015] VCAT 1428<br/>- see [17] and [62]-[69]</p>   | <ul style="list-style-type: none"> <li>• Proposal for a 13-storey building accommodating 143 dwellings.</li> <li>• Draft DDO included requirement that a permit could only be granted for a building above a certain height if it provided a ‘demonstrable benefit to the broader community’, such as affordable housing.</li> <li>• Applicant accepted condition requiring a section 173 agreement to gift a one-bedroom dwelling (equivalent to 5% of dwellings above preferred height in DDO) to a housing trust for affordable housing.</li> <li>• Condition specified transfer to ‘Housing Choices Australia as trustee of the Inner City Social Housing Trust, at the cost of the owner of the land’. The agency had accepted offer prior to hearing.</li> </ul> |
| <p><i>Women’s Housing Limited v Hobsons Bay CC</i> [2014] VCAT 1121<br/>- see [1]-[4] and [19]-[25]</p>   | <ul style="list-style-type: none"> <li>• Proposal for social housing in 3-storey building accommodating 21 dwellings.</li> <li>• Council refused application on neighbourhood character, amenity and car parking grounds.</li> <li>• Applicant submitted that concessions should be made because of social housing use.</li> <li>• Council proposed condition requiring a section 173 agreement to ensure social housing use in long term.</li> <li>• Applicant objected to condition and noted Director of Housing already had interest registered on title.</li> <li>• Tribunal agreed with council’s concern that Director could remove interest at any time and the greater certainty provided by a section 173 agreement was required.</li> </ul>                 |

| Decision   | Context and relevance  |
|--|--|
| <p><i>Green v Hobsons Bay CC (Red Dot)</i> [2013] VCAT 2091</p> <p>- see [142]-[165]</p>           | <ul style="list-style-type: none"> <li>• Proposals for multiple apartment buildings and townhouses from 3 to 6 storeys.</li> <li>• Council and objectors submitted that permits should contain conditions requiring a section 173 agreement for 10% of dwellings to be for affordable housing.</li> <li>• Applicant objected to condition.</li> <li>• Tribunal raised concerns regarding lack of statutory control for requirement within the planning scheme and uncertainty of condition.</li> <li>• Proposed condition did not make clear whether the affordable housing should be provided to an agency at no charge. Tribunal concerned regarding acquisition without compensation.</li> <li>• No agency identified prior to hearing as wishing to acquire dwellings. Tribunal considered unlikely they would want to on the open market and noted limited government funding available.</li> <li>• Tribunal concerned applicant may be unable to comply with condition without agency willing to accept dwellings.</li> <li>• Tribunal agreed with applicant that smaller dwellings will encourage provision of affordable housing in any case.</li> <li>• Condition not imposed.</li> </ul> |
| <p><i>Richmond Icon Pty Ltd v Yarra CC</i> [2013] VCAT 298</p> <p>- see [33]-[38]</p>              | <ul style="list-style-type: none"> <li>• Proposal for 9 storey mixed-use development.</li> <li>• Local policy recommended no development above 5-6 storeys unless ‘specific benefits’ could be achieved, such as affordable housing.</li> <li>• Tribunal noted the term ‘affordable housing’ rarely has objective criteria attached and is not necessarily the same as social housing.</li> <li>• Tribunal satisfied that increased supply of one and two bedroom apartments in this location contributed to housing affordability objectives.</li> </ul>  |
| <p><i>East Brunswick Village Pty Ltd v Moreland CC</i> [2012] VCAT 1307</p> <p>- see [35]-[40]</p> | <ul style="list-style-type: none"> <li>• Proposal for mixed use development accommodating approximately 1,000 dwellings.</li> <li>• DPO required ‘significant proportion of new development’ to be ‘affordable for households on low to moderate incomes’.</li> <li>• Council proposed condition requiring applicant to partner with a registered housing association to provide 2.36% of dwellings as permanent rental for households in lowest 40% of income to maintain existing ‘social mix’, with the association to meet 50% of costs.</li> <li>• Applicant objected to condition.</li> <li>• Tribunal raised concerns regarding uncertainty of affordable housing and social housing definitions and lack of clarity in planning framework for requirement.</li> </ul>  |

| Decision  | Context and relevance   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• Tribunal noted no evidence a housing association was ready to partner with applicant and therefore compliance with condition may be beyond applicant's control.</li> <li>• Condition not imposed.</li> </ul>   |
| <p><i>Taras Nominees Pty Ltd v Yarra CC</i> [2010] VCAT 1917</p> <p>- see [31]-[46]</p>               | <ul style="list-style-type: none"> <li>• Existing permit for 3 to 7 storey mixed-use development.</li> <li>• Applicant seeking deletion of condition requiring occupants of one block to be 'eligible for housing under the "Victorian Affordable Housing Growth Strategy" or similarly approved affordable housing scheme'.</li> <li>• Condition was originally accepted by applicant when a funding arrangement was in place for a housing association to purchase that block.</li> <li>• Funding program was then over-subscribed and housing association no longer wished to purchase. Applicant had investigated alternative funding sources without success.</li> <li>• Tribunal considered it 'unrealistic and unreasonable' to expect applicant as a private developer to use the block for social housing.</li> <li>• Tribunal drew distinction with <i>Merri Merri</i> case (see below) where council sought to impose condition against applicant's wishes and without involvement by a housing association.</li> <li>• Tribunal deleted condition.</li> </ul> |
| <p><i>Merri Merri Developments v Darebin CC (Red Dot)</i> [2010] VCAT 1045</p> <p>- see [27]-[47]</p> | <ul style="list-style-type: none"> <li>• Proposal for 93 dwellings across 4 storey apartment building and townhouses.</li> <li>• Council supported amended proposal at hearing subject to conditions including written undertaking for a minimum of 15% of dwellings to be used for social housing.</li> <li>• Tribunal considered the term 'social housing' to be vague and uncertain, but different to 'affordable housing'.</li> <li>• Council offered no justification for 15% as appropriate figure or evidence of housing agency interested in acquiring the dwellings.</li> <li>• Tribunal found no policy support in the planning scheme for the condition and raised concern about compulsory acquisition without compensation.</li> <li>• Tribunal agreed with applicant that condition had equity and nexus problems.</li> <li>• Tribunal considered that 'anything more than market provision' would require more consideration, planning and preparation.</li> <li>• Condition not imposed.</li> </ul>   |

## Part 2: Planning Panel and Advisory Committee reports

| Report   | Context and relevance   |
|--|---|
| <p>C88 Hobsons Bay Planning Scheme<br/>Precinct 15, Altona North<br/>- See Chapter 7</p>         | <ul style="list-style-type: none"> <li>• Council supported a mandatory 10 per cent affordable housing requirement, which is consistent with its adopted <i>Affordable Housing Policy Statement 2016</i>.</li> <li>• The Precinct 15 landowners of noted a State Government affordable housing policy framework was not in place and reliance on ‘untested’ local policy should not be given significant weight. They considered there should be further negotiation around a provision that does not exceed a contribution equivalent to 5 per cent of the dwelling yield at a below market rate. The VPA supported this approach.</li> <li>• The Panel concluded the site should provide affordable housing opportunities through a five per cent contribution of affordable housing at a 25 per cent discount to an appropriate agency.</li> <li>• The VPA supported addition of the following six principles in the Comprehensive Development Plan to deliver affordable housing: <ul style="list-style-type: none"> <li>○ Voluntariness</li> <li>○ Accountability</li> <li>○ Local provision</li> <li>○ Perpetuity</li> <li>○ Portability</li> <li>○ Needs appropriate housing.</li> </ul> </li> <li>• The Panel concluded that without a statewide policy framework in place, any notion of mandatory requirements, including the gifting of housing stock, cannot be supported. On this basis, the Panel did not accept the evidence from Dr Spiller that 300 dwellings should be gifted by the landowners to Council or a Housing Trust.</li> <li>• The Panel considered any requirement to provide affordable housing must be via a negotiated agreement, that, inherently, must be to the satisfaction of both parties.</li> <li>• The Panel considered that the issue of what constitutes affordable housing to be a moot point. Consistent with Council’s reference to Yarra Planning Scheme Amendment C185 Panel Report, the Panel said it was not for the Panel to define what constitutes affordable housing (whether it is solely market housing or social non-market housing), particularly given the State Government is seeking to resolve that issue.</li> </ul> |
| <p>Former Moonee Ponds Market Site Advisory Committee, April 2017<br/>- see sections 3.3-3.5</p> | <ul style="list-style-type: none"> <li>• Planning permit application for 6-30 storey development accommodating 695 dwellings.</li> <li>• Preferred height in structure plan for 10-16 storeys.</li> </ul>   |

| Report   | Context and relevance  |
|--|--|
|  | <ul style="list-style-type: none"> <li>• Council proposed condition requiring sale of 9 dwellings (5% of dwellings above preferred height) to a ‘registered housing provider’.</li> <li>• Committee considered no statutory ‘hook’ to require such housing through application.</li> <li>• Applicant ‘lukewarm’ in objecting to condition.</li> <li>• Committee queried how condition would work in practice, for example, whether sale would be at market or reduced rate.</li> <li>• Committee nevertheless supported condition.</li> </ul>  |
| <p>Government Land Standing Advisory Committee, Tranche 4, Part 95 Williamsons Road, South Morang, March 2017</p> <p>- see section 4.2</p> | <ul style="list-style-type: none"> <li>• Owner proposed to rezone land from Public Use Zone to Mixed Use Zone with a Development Plan Overlay.</li> <li>• Council submitted DPO should include a requirement for a section 173 agreement ensuring 5% affordable housing on site.</li> <li>• Recently approved Clause 21.09-3 stated that ‘Council aims to achieve the inclusion of 5% social housing and 10% affordable housing in the structure planning of any established or greenfield housing development’.</li> <li>• Owner objected to requirement.</li> <li>• Committee recommended requirement in the DPO for section 173 agreement that the owner will provide 5% of the total number of dwellings ‘for the purpose of social housing developed in association with an accredited housing association’.</li> <li>• Committee considered Clause 21.09-3 could have more clearly expressed the 5% provision as a ‘requirement’ but that Council had been ‘consistent and clear in its intention’.</li> </ul> |
| <p>Amendment C221 to the Melbourne Planning Scheme (West Melbourne Waterfront), January 2017</p> <p>- see section 9.2 and appendix D</p>   | <ul style="list-style-type: none"> <li>• Proposal to rezone site from Commercial 2 Zone to Mixed Use Zone with a Development Plan Overlay.</li> <li>• Proponent proposed requirement for owners to enter section 173 agreements to provide affordable housing.</li> <li>• Requirement for 15% of residential floor area above 10 storeys ‘to be held in a Trust and managed as affordable housing, with the sole purpose of the Trust to be the provision of affordable housing’ or ‘provided to a housing provider at nil cost’.</li> </ul>   |

| Report  | Context and relevance  |
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| <p>Amendment C185 to the Yarra Planning Scheme, January 2017</p> <p>- see sections 5 and 7.3</p>                    | <ul style="list-style-type: none"> <li>• Proposal to rezone land and planning permit application for mixed use development.</li> <li>• Proponent accepted permit condition proposed by council for a section 173 agreement requiring owner to enter an ‘arrangement with a state government accredited housing association in respect of 5 percent of the total number of dwellings to be purchased or managed by that accredited housing association as affordable housing within the meaning of that affordable housing agency’s remit’.</li> <li>• Panel considered there was local policy support and precedents for the 5% requirement, although the examples provided were not contended at Panel hearings.</li> <li>• Panel noted it would not have supported a requirement for the dwellings to be gifted to a housing association.</li> <li>• Council and proponent did not attempt to distinguish between affordable housing and social housing.</li> <li>• Panel noted there are no generally agreed definitions but considered it was not its role to define the terms.</li> <li>• Panel accepted the definition of ‘affordable housing’ was effectively being passed on to the housing association as the implementer.</li> </ul> |
| <p>Flemington Hill and Epsom Road Advisory Committee, Stage 4, June 2016</p> <p>- see section 7.4</p>               | <ul style="list-style-type: none"> <li>• Proposal to rezone two precincts to a Comprehensive Development Zone.</li> <li>• Proponent accepted a requirement for ‘5% of new dwellings to be held in Trust and managed as affordable housing’.</li> <li>• Council sought 10%.</li> <li>• Committee supported 5% provision, with no discussion in the report regarding 10%.</li> </ul>   |
| <p>Amendment C123 to the Moreland Planning Scheme (Coburg Activity Centre), October 2014</p> <p>- see section 8</p> | <ul style="list-style-type: none"> <li>• Proposal to apply Activity Centre Zone to the Coburg Activity Centre.</li> <li>• Council proposed a requirement that developments of 10 or more dwellings must ensure that 20% of dwellings are affordable and targeted to people in the lowest 40% of income groups.</li> <li>• Panel acknowledged submissions and evidence that, in the absence of government funding support, the requirement could have a perverse outcome, undermining redevelopment objectives for Coburg and associated benefits for the broader community.</li> <li>• Panel considered there is an equity argument that broader societal needs should be met through the broader tax base rather than individual developments, unless there is a framework in place.</li> <li>• Panel considered that justification for such prescriptive requirements would need to include affordability criteria, the</li> </ul>   |

| Report   | Context and relevance   |
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|  | <p>proportion and type of dwellings to be provided, housing sub-market analysis, mechanisms to secure long term augmentation of supply, and responses to identified needs.</p>  |
| <p>Amendment C134 to the Moonee Valley Planning Scheme (MSS Review), May 2014<br/>- see section 5</p>            | <ul style="list-style-type: none"> <li>• Council proposed a strategy in the MSS encouraging 10% affordable housing provision for residential developments of 10 or more dwellings.</li> <li>• Panel considered this was not ‘practical or possible’ to mandate through the MSS.</li> <li>• The Panel recommended the strategy be amended to the following: ‘For residential developments of 10 or more dwellings, encourage the provision of affordable dwellings’.</li> </ul>  |
| <p>Moonee Valley Racecourse Redevelopment Advisory Committee, Stage 4 (December 2013)<br/>- see section 14.2</p> | <ul style="list-style-type: none"> <li>• Proposal to apply Activity Centre Zone.</li> <li>• Council proposed requirement for a section 173 agreement requiring 5% provision of affordable housing to be delivered through the National Rental Affordability Scheme.</li> <li>• Proponent objected that this requirement was not imposed elsewhere and was a tokenistic response.</li> <li>• Committee noted 5% affordable housing contributions included in the Yarra Planning Scheme for the Amcor and Channel 9 redevelopment sites and considered this to be a ‘fair proportion of the overall development quota’.</li> </ul>  |
| <p>Amendment C104 to the Yarra Planning Scheme (Channel 9 Site), October 2011</p>                                | <ul style="list-style-type: none"> <li>• Proposal to rezone land from Industrial 1 to Mixed Use and apply the Development Plan Overlay.</li> <li>• Draft development plan provided for at least 5% of homes to be affordable housing (owned and managed by a registered housing provider).</li> <li>• Provision not contested or discussed in Panel report.</li> </ul>  |
| <p>Amendment C70 to the Monash Planning Scheme, June 2008<br/>- see section 9.4</p>                              | <ul style="list-style-type: none"> <li>• Proposal to rezone land from Business 3 to Business 2 with Incorporated Plan Overlay and planning permit application.</li> <li>• Permit application included 39 apartments to be used as affordable housing.</li> <li>• Panel supported the provision of affordable housing on site and recommended a condition to maintain it in perpetuity.</li> <li>• Condition requires a section 173 agreement requiring ‘execution of an on-going management agreement for the affordable housing complex with a suitable affordable housing agency to ensure that the apartments are either sold or leased to the agency and thereafter made available to suitable candidates for no more than 30% of their income or at least 15% less than market rental rates; or by some other means which is to the satisfaction of the Responsible Authority’.</li> </ul> |