

Introduction of new planning mechanisms to facilitate the provision of affordable housing

Amendments to the Planning and Environment Act 1987



What is changing?

On the 1 June 2018 several amendments to the *Planning and Environment Act 1987* (the Act) come into operation. The amendments to the Act will facilitate voluntary agreements for the provision of affordable housing as part of development applications.

Why is the Planning and Environment Act being amended?

Homes for Victorians: Affordability, access and choice (March 2017) and *Plan Melbourne 2017-2050* (March 2017) recognised the critical need to increase the supply of affordable housing. Both strategies found that while the planning system alone could not address all of the issues related to the provision of social and affordable housing it is important for the planning system to play its role.

In 2017 the Government introduced amendments to the Planning and Environment Act to facilitate the provision of affordable housing. To support the amendments the Department of Environment, Land, Water and Planning has released web-based guidance including an example Affordable Housing Agreement, guidance on the negotiation of agreements for different parties and guidance on the context for their application.

- The planning system has a role in facilitating affordable housing.
- From 1 June 2018, the Planning and Environment Act 1987 includes a new objective “to facilitate the provision of affordable housing in Victoria”.
- Legislative changes clarify that Responsible Authorities can enter into an agreement with landowners and others under section 173 of the Planning and Environment Act 1987 for the provision of affordable housing as part of a development.
- “Affordable housing” is defined in the Planning and Environment Act 1987

What was the intention of the amendments?

Many councils and proponents for residential developments have tried to negotiate agreements for the provision of affordable housing as part of development applications, often attempting to make use of section 173 of the Act.

These efforts have been hampered by the absence of a clear and transparent process or criteria to guide negotiations; uncertainty about the legal validity of the

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agreements; and the lack of clarity about what is meant by affordable housing. This has sometimes resulted in wasted time and effort, unnecessary costs and; most critically, lost opportunities to increase the supply of affordable housing.

The amendments to the Act provide the certainty and clarity that should make it easier for councils and landowners to enter into agreements for the provision of affordable housing as part of development applications using section 173 of the Act.

What were the amendments?

The amendments made three changes to the Act. It:

i. Made the facilitation of affordable housing an object of the Act

ii. Introduced a definition of affordable housing

The amendment to the Act reads: “For the purposes of this Act, 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.”

iii. Affirms the use of section 173 for voluntary affordable housing agreements.

How and when will the amendments be implemented?

The amendments came into operation on 1 June 2018. To implement the amendments the Department has worked with councils, the residential development industry and the affordable housing sector to develop two instruments and support materials. These instruments and support materials along with the affordable housing amendments create the framework for responsible authorities and landowners to negotiate voluntary affordable housing agreements.

The framework provides greater clarity and certainty on how voluntary affordable housing agreements will be structured and applied and assist councils in their role as planning authorities.

The instruments are:

- An **Order by Governor in Council** which specifies the income ranges for very low, low and moderate-income households for affordable housing that is not social housing.
- A **Ministerial Notice** which specifies the matters that must be considered in determining whether housing provided under an Affordable Housing Agreement is appropriate for the needs of very low, low and moderate-income households.

There are also support materials including:

- An **Example Affordable Housing Agreement** using section 173 of the Act
- **Guidance** for seeking and negotiating affordable housing agreements under the Planning and Environment Act 1987.

Where can I get more information?

Guidance material on negotiating voluntary affordable housing agreements under the Planning and Environment Act, frequently asked questions and links to the Order by Governor in Council, the Ministerial Notice and the Example Affordable Housing Agreement is available from

www.planning.vic.gov.au/affordable-housing

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