

# Making it easier to build small second dwellings

Applicant's guide

DECEMBER 2023



## Accessible version of the document

Please email the Planning team to obtain an accessible version of this document.

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## Acknowledgement of Country

The Department of Transport and Planning proudly acknowledges Victoria's Aboriginal communities and their ongoing strength in practicing the world's oldest living cultures.

We acknowledge their ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices. We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, cultural practices and broader aspirations to achieve self-determination.

We acknowledge the diversity in Victorian Aboriginal communities, and that Victoria is home to many Victorian Traditional Owner knowledge systems, languages, customs and protocol. We acknowledge the historic and ongoing leadership of Aboriginal Victorians in protesting systemic racism and their solidarity and activism in struggles for migrant and refugee rights.



### Description of artwork

Aaron (Gunaikurnai) 'Movements Between the Five Clans' 2019, acrylic on canvas.

'The tracks are going between the five clans of the Gunaikurnai and the hands are the symbols of my spirit travelling around the campsites.'

This artwork was created through programs provided by the Torch. The Torch provides art, cultural and arts industry support to Indigenous offenders and ex-offenders in Victoria. The Torch aims to reduce the rate of re-offending by encouraging the exploration of identity and culture through art programs to define new pathways upon release.









## Contents

<b>Acknowledgement of Country .....</b>	<b>3</b>
<b>Getting started .....</b>	<b>7</b>
Building a small second dwelling.....	7
Step 1: Is my proposed development a small second dwelling?.....	8
Step 2: Do I need a planning permit?.....	9
Step 3: Do I need a building permit? .....	9
Step 4: Could there be any other restrictions on the development of my land?.....	9
Step 5: If I am intending to rent out a small second dwelling now or in the future, will it be suitable as a rental property?.....	9
<b>Frequently asked questions .....</b>	<b>11</b>
Living in a small second dwelling .....	11
Siting and development.....	11
Dependent person’s units .....	12
Agreements and covenants.....	12
Associated structures, fences and solar panels .....	12
Development contributions.....	13
Requirements under planning overlays .....	13
Local matters .....	13
<b>List of resources.....</b>	<b>14</b>
Planning.....	14
Building .....	14







## Getting started

### Building a small second dwelling

This guide outlines the matters to consider when thinking about building a small second dwelling. Following the steps in this guide will help you to understand if you can build a small second dwelling on your land.

This guide has advice to help you understand the requirements that apply. You should always speak with the local council or a registered building surveyor to confirm how your small second dwelling proposal complies with these requirements.

A building permit is always required for a small second dwelling, but a planning permit is only required in some circumstances.

For more information about Victoria's planning system, refer to: [Using Victoria's Planning System](#).

For information about Victoria's building system, refer to: [Victorian Building Authority](#)

## Step 1: Is my proposal a small second dwelling?

Use this checklist to understand whether your proposal to build a new small second dwelling, or convert an existing building to a small second dwelling, is likely to meet the requirements.

Requirement	✓	✗
There is an existing dwelling on the lot.		
The floor area of the proposed small second dwelling, or part of the building proposed to be converted for use as a small second dwelling, is 60 square metres or less in floor area.		
The small second dwelling does not exceed the maximum building height specified in the zone that applies to the land.		
The small second dwelling has a kitchen sink, food preparation facilities, a bath or shower, and a toilet and wash basin.		
There is no small second dwelling already on the lot. (Contact your local council if a dependent person's unit exists on the lot).		
I understand that I would not be able to subdivide the lot to provide the small second dwelling with its own lot.		
I can comply with the requirement that the small second dwelling not be connected to a reticulated gas service.		
If the land is in a Neighbourhood Residential Zone or General Residential Zone and the minimum garden area requirement applies, it is met. (see <a href="#">Planning Practice Note 84 – Applying the minimum garden area requirement</a> for more information).		
If the land is in a Low Density Residential Zone, Township Zone or any rural zone, any access, sewerage, water and electricity requirements specified in the zone are met.		
If the land is in a Rural Living Zone, Farming Zone or Rural Activity Zone, any separation distances from wind farms and from land for which a work authority under the Mineral Resources (Sustainable Development) Act 1990 specified in the zone are met.		

**If you answered yes to all questions**, your proposal is likely to be able to be assessed as a small second dwelling. Siting, design and amenity requirements will need to be met. Some of these can be adapted based on your lot. Go to step 2.

**If you answered no to any of these questions**, it is likely that your proposal would not meet the requirements of a small second dwelling. You may choose to discuss options with your local council.



## Step 2: Do I need a planning permit?

Many small second dwellings won't require a planning permit, though some will. Planning permit requirements are generally set out in the zones and overlays that apply to the land. To find out which zones and overlays apply to your land, you can enter your address and receive a planning property report at [planning.vic.gov.au](http://planning.vic.gov.au) or speak to your local council.

There may be more than one reason you require a planning permit for a small second dwelling. For example, you may need a planning permit under the zone and under one or more overlays.

The planning permit requirements that apply to a small second dwelling are summarised here. You should always check the planning scheme for the current requirements and always confirm what requirements apply by speaking to your local council.

If your land is in a:

- Low Density Residential Zone – no planning permit is required.
- General Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone, Township Zone – no planning permit is required unless your lot size is less than 300sqm.
- Rural Living Zone, Farming Zone, Rural Activity Zone – no planning permit is required unless a permit is required for earthworks or because the dwelling is proposed to be located less than a setback distance specified in the zone.
- Green Wedge Zone, Green Wedge A Zone, Rural Conservation Zone – a planning permit is always required.
- Other zones – check the planning scheme.

If your land is in an overlay, check the requirements of the planning scheme to see if a planning permit is required or whether other requirements apply. If your land is in a Heritage Overlay, Neighbourhood Character Overlay or Design and Development Overlay, no planning permit is required for a small second dwelling if the building height does not exceed 5 metres and is finished in muted tones and colours.

Some planning permit applications can be assessed under the fast-track VicSmart process in 10-days. Check with your council to see if your proposal is eligible.

## Step 3: Do I need a building permit?

Yes. A building permit is always required to construct a small second dwelling. A building permit is issued under the *Building Act 1993*. Building permits are documents certifying that a proposed building complies with the relevant building regulations.

A building permit will specify that either an occupancy permit or a certificate of final inspection is required on completion of the building work.

## Step 4: Could there be any other restrictions on the development of my land?

Sometimes special circumstances apply to the use and development of land. The following are some matters to be aware of:

- Restrictive covenants – if a restrictive covenant applies, the land owner will need to check if the construction of a small second dwelling would result in breach of the covenant.
- Section 173 agreements – if an agreement under section 173 of the *Planning and Environment Act 1987* applies, conditions or restrictions on the use or development of land could also apply.
- Easements – an easement may mean there are restrictions on the use of that piece of land.

## Step 5: If I am intending to rent out a small second dwelling now or in the future, will it be suitable as a rental property?

The residential tenancy requirements that apply to a dwelling also apply to a small second dwelling, including room sizes, facilities and smoke alarms. Minimum rental standards also apply. More information is available from [Consumer Affairs Victoria](http://ConsumerAffairsVictoria.gov.au).





# Frequently asked questions

## Living in a small second dwelling

### Who can live in a small second dwelling?

Anyone. There are no limitations on tenancy for a small second dwelling. It can be rented, used as long-term or short-term accommodation or used by a family member and not rented out.

The residential tenancy requirements that apply to a dwelling will also apply to a small second dwelling. These include requirements relating to room sizes, facilities and smoke alarms.

More information about renting housing is available from [Consumers Affairs Victoria](#).

## Siting and development

### How is the 60 square metre floor area for a small second dwelling measured?

The 60 square metres is the total floor area of the small second dwelling, measured from the outside of external walls or the centre of party walls, and includes all roofed areas.

### Can I convert a garage or other building into a small second dwelling?

You can convert a garage or other building into a small second dwelling if it:

- meets the definition of a small second dwelling;
- complies with any planning scheme requirements;
- complies with the building requirements.

Speak with the local council or a registered building surveyor for more information.

### Can a 'tiny home' be a small second dwelling?

A 'tiny home' can be a lawful small second dwelling if it meets the specified planning and building requirements. Other regulations including local laws may apply.

Speak with the local council or a registered building surveyor for more information.

### What are the siting, design and amenity requirements for a small second dwelling?

They are set out in the planning scheme and the Building Regulations 2018. The requirements in both systems are generally similar and can be found in:

- Clause 54 of the planning scheme (One dwelling on a lot or a small second dwelling) which applies in residential zones when a planning permit is required (except the Low Density Residential Zone)
- Part 5 of the *Building Regulations 2018* which applies in all other circumstances.

### What is the minimum garden area requirement, and will it apply to a small second dwelling?

The minimum garden area requirement applies to all land in the Neighbourhood Residential Zone and to specified land in the General Residential Zone, and must be met when constructing or extending a small second dwelling.

More information about minimum garden area is available in [Planning Practice Note 84 – Applying the minimum garden area requirement](#).

### What if an approved building envelope applies to the lot?

A lot with an approved building envelope may override the siting requirements in the planning and in Part 5 of the *Building Regulations 2018*.

Further information about building envelopes is available in *Building Practice Note SI-02: Building Envelopes*.

### **Can I remove vegetation to build a small second dwelling?**

A planning permit may be required to remove, destroy or lop vegetation on your property (including trees or shrubs – either native or exotic species).

### **What if I want to develop a small second dwelling on an easement?**

An easement on the land may mean there are restrictions on the use of that land. For example, a utility company may use the land for pipes or power infrastructure, and you may not be able to build on that part of the land. Easements are recorded on each property's Certificate of Title.

You can purchase a Certificate of Title at [Landata](#).

### **What happens if I want to connect a small second dwelling to reticulated gas?**

Small second dwellings cannot be connected to a reticulated natural gas supply. The Victorian Government has announced a phase out of natural gas connections for new homes that require a planning permit and all small second dwellings. [Victoria's Gas Substitution Roadmap](#).

## **Dependent person's units**

### **Can a dependent person's unit still be built?**

A small second dwelling provides a similar function to a dependent person's unit without the restrictions on tenancy and with proper siting, design and amenity requirements.

A dependent person's unit must meet the new requirements in the planning scheme for a small second dwelling unless it is subject to the transitional provisions in the planning scheme at Clause 52.04 (Transitional provisions for a dependent person's unit).

Speak with the local council or a registered building surveyor for more information.

### **Can an existing dependent persons unit or granny flat stay on the land?**

Existing, lawful dependent person's units will remain lawful following the changes. They will not need to meet the requirements for a small second dwelling unless you want to change the use of the building to a small second dwelling.

### **I was in the process of building a dependent person's unit or granny flat that doesn't meet the new requirements. Can I still build it?**

The transitional provisions in the planning scheme at Clause 52.04 (Transitional provisions for a dependent person's unit) may apply.

Speak with the local council or a registered building surveyor for more information.

## **Agreements and covenants**

### **What if a section 173 agreement applies to the land?**

A section 173 agreement sets out conditions or restrictions on the use or development of land, to achieve other planning objectives in relation to the land that may affect the development of a small second dwelling.

More information about section 173 agreements is available at [Agreements](#).

### **What if a restrictive covenant applies to the land?**

A restrictive covenant is a private treaty or written agreement between landowners that limits the way land can be used and developed. If a registered restrictive covenant applies to your land, you will need to check if the construction of a small second dwelling would result in breach of a restrictive covenant.

State and local governments do not create or enforce restrictive covenants. This is done by owners of the land who benefit from the covenant.

More information about restrictive covenants is available at [Restrictive Covenants](#).

## **Associated structures, fences and solar panels**

### **Can I build a deck, verandah or pergola for a small second dwelling?**

Yes, however a planning and building permit may be required.



### **What are the fencing requirements for a small second dwelling?**

There are no fencing requirements between an existing dwelling and a small second dwelling. You can decide if you want to install fencing between the backyard of the existing dwelling and the small second dwelling, or provide a shared backyard.

### **Can a small second dwelling have solar panels?**

Yes. Check with your local council to see if you are in a heritage area. A planning permit may be required for solar panels in heritage areas if they are visible from the street, a lane or a park.

## **Development contributions**

### **Is a development contributions levy or a community infrastructure levy payable for a small second dwelling?**

A small second dwelling will normally be exempt from these levies.

Other contributions required by other government authorities such as water authorities will still apply.

## **Requirements under planning overlays**

### **In a Heritage Overlay, do the services for a small second dwelling need a planning permit?**

Services normal to a small second dwelling (for example cooling or heating systems, hot water service, shade sails and others) are exempt from requiring a planning permit. These services are listed in clause 73.01 (General terms) of planning schemes.

### **In the Design and Development Overlay, does a small second dwelling need to comply with requirements even if a planning permit is not required?**

Yes, any requirements that apply whether or not a planning permit is required continue to apply.

### **In the Neighbourhood Character Overlay, do local variations to clause 54 standards apply to a small second dwelling?**

Yes, if a planning permit is required for a small second dwelling under the Neighbourhood Character Overlay.

### **In a Heritage Overlay is a planning permit required to alter and demolish my existing dwelling to build a small second dwelling?**

Yes. A planning permit is required to alter or demolish your small second dwelling.

## **Local matters**

### **How is waste and recycling managed for a small second dwelling?**

Bin and recycling enclosures should be located on the property for convenient access by residents of a small second dwelling and the existing dwelling. Some councils provide residents with options to increase the number of bins provided and to change the size of some bins at a cost.

Contact your local council for more information.

### **Will a small second dwelling have its own street number?**

The council is generally responsible for assigning street numbers to properties within the municipality.

The display of street numbers is the obligation of the property owner. Street numbers must be clearly displayed in a prominent position to allow the property to be quickly and easily identified and located. This is most important in an emergency situation, but also for deliveries, service authorities, and visitors to the property.

Contact your local council for more information.

### **Does a small second dwelling need a separate electricity or water meter?**

You may be able to utilise existing utility services to the existing dwelling on the lot.

Contact your utility provider for more information.

### **Will additional fees need to be paid to the local water authority?**

Contact your local water authority to find out if fees apply.

# List of resources

## Planning

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<a href="#">Planning website</a>	Information about small second dwellings
<a href="#">Guide to Victoria's Planning System</a>	A guide to interpretation and administrative procedures about the planning act and planning schemes
<a href="#">Planning property report</a>	Summary of planning information for an address in Victoria
<a href="#">Find your planning scheme</a>	Check the planning scheme for your local area
<a href="#">PPN16: Making an application for one or more dwellings in a Residential Zone</a>	Guide for applicants about what to look for in a planning scheme, and information to provide with an application under the residential development provisions
<a href="#">PPN27: Understanding the residential development provisions</a>	Information about the interpretation and application of the residential standards in clause 54 and 55
<a href="#">PPN84: Applying the minimum garden area requirement</a>	Guide to the minimum garden area requirement in the Neighbourhood Residential Zone and General Residential Zone
<a href="#">VicSmart Permits</a>	More information about VicSmart planning applications

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## Building

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<a href="#">Victorian Building Authority (VBA)</a>	Information and resources about building in Victoria
<a href="#">BPO1: When is a building permit required?</a>	More information about building permits

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