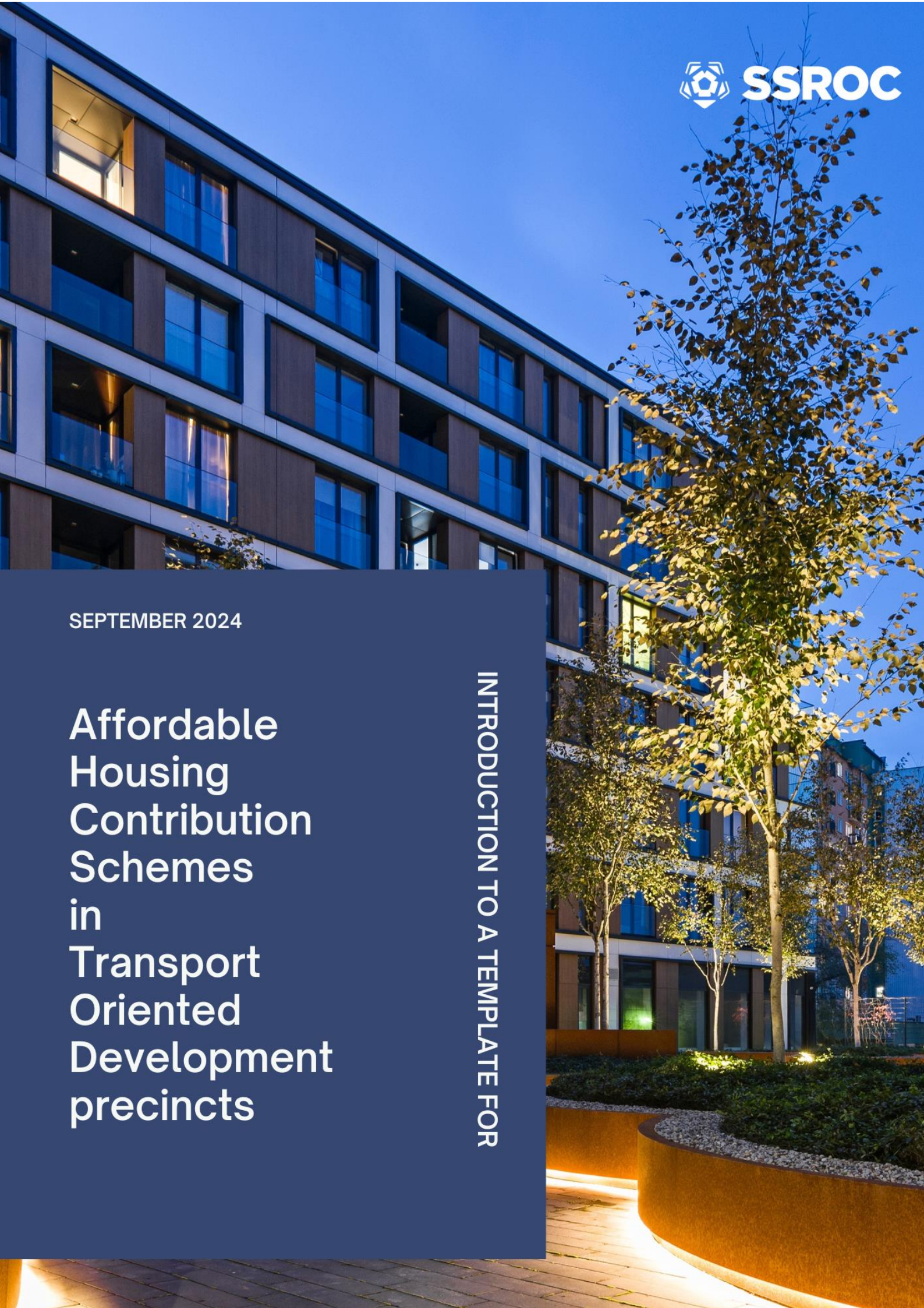


SEPTEMBER 2024

**Affordable
Housing
Contribution
Schemes
in
Transport
Oriented
Development
precincts**

INTRODUCTION TO A TEMPLATE FOR



Introduction

The introduction of the TOD program

The NSW Government introduced the Transport Oriented Development (TOD) program in December 2023.

The Transport Oriented Development (TOD) program *'will increase the capacity for well-located homes, close to jobs and in places where people want to live.'*

'The increase in housing capacity at the TOD locations is a key opportunity for the government to secure affordable housing at these well-located sites, now and into the future.' [DPHI Guidance to Transport Oriented Development, May 2024]

Under Part 2 of program, *'the NSW Government will establish inclusionary zoning around the TOD locations to deliver affordable housing close to jobs, recreation, amenities and services. A mandatory minimum 2% affordable housing contribution will apply for all new developments.'* [DPHI TOD Program December 2023]. The rate of contribution will be increased in the future. [DPHI Guidance to the Transport Oriented Development].

Following discussions with the Department of Planning, Housing and Infrastructure, it is clear affordable housing contribution schemes for the TODs (that will supersede the general TOD provisions for affordable housing) need to be submitted Council by Council, rather than collectively. This template scheme has been prepared by Resilient Sydney and SSROC to assist councils. It aims to help local Councils to establish compliant Affordable Housing Contribution Schemes (AHCS) for their TOD precincts with the capacity to receive monetary contributions as well as in-kind affordable dwellings.

Under Section 7.32(3(b) of the NSW Environmental Planning and Assessment Act 1979, a condition can only be imposed by a Council to levy a developer contribution for affordable housing if the developer contribution for affordable housing is in an LEP and the condition is in accordance with an affordable housing contribution scheme.

The TOD AHCS template

This TOD AHCS template aims to provide an important form of assistance to local councils to ensure the effective provision of more affordable housing supply in the TOD precincts. Adopting this template approach should streamline and simplify a scheme's preparation by a local council and hasten their approval by the Department of Planning, Housing and Infrastructure.

It has been designed to apply to those TOD precincts listed in the Housing SEPP, Chapter 5 where there are not currently affordable housing contribution schemes established. Some parts of the template will need to be modified if applied in the Accelerated TOD precincts as these are not covered by Chapter 5 of the Housing SEPP.

There are five foundational policy building blocks underpinning and forming the content of this TOD AHCS template (TOD template) that is being recommended to local councils. Collectively they gather useful precedents and good practice for the preparation of the clauses and contribution calculations that are provided in the model scheme.

The policy measures include:

- The TOD Program 2023
- The Housing SEPP 2021, as amended with chapter 5, Transport oriented development, in May 2024

- The National Housing Accord and the associated [National Planning Reform Blueprint](#) – with reforms to support the rapid delivery of social and affordable housing and the monitoring of progress of the achievement of agreed social and affordable housing targets^{1,2}.
- The NSW Government’s AHCS adopted for Bays West (now a part of the TOD program)
- Ministerial statements and departmental guidance about the TOD program.

Replacing Housing SEPP TOD Affordable Housing provisions with an Affordable Housing Contribution Scheme

To overcome current legislative limitations on the contribution arrangements and shift from the statewide program settings, it is highly beneficial for local councils and communities to move to replace the Housing SEPP Chapter 5 provisions with their own local Affordable Housing Contribution Scheme (AHCS). This will enable the affordable housing arrangements to be more effective and tailored to their community and council context.

To maintain policy alignment, this template scheme broadly adopts the published TOD program settings, as its starting point.

The Housing SEPP, Chapter 5 clause 156(3) notes that a “requirement under provision of another chapter of this policy (the Housing SEPP) *another environmental planning instrument...* that requires the development to provide affordable housing prevails over this section.” The AHCS will therefore prevail over the TOD affordable housing provisions.

A local AHCS and Affordable Housing Program provides additional flexibility to enable the receipt of monetary contributions, which is not an option under chapter 5 of the Housing SEPP, and Regulations. With smaller lot sizes enabled by the TOD program and Housing SEPP and the initial low minimum contribution rate (2%), means some affordable housing contributions of in-kind developments will be lost when there are smaller developments less than 2,000m². Fractional parts of dwelling unit contributions also cannot provide viable housing accommodation and would be lost without monetary contributions.

Councils and community housing providers (CHPs) alike have found that contributions provided in the form of strata dwellings, can impose high ongoing operating costs through strata levies, depending on the property. This can make these affordable dwellings financially marginal and even unviable to maintain and manage from the discounted tenant rents received.

The template scheme delivers greater clarity around the practical arrangements for conditioning development consents and the role of councils in the management of schemes including the ability to collect monetary contributions.

Adopting a scheme will help to avoid the unintended loss of affordable housing opportunities due to the inability to collect part dwelling contributions. The existing powers, under the other sections of the SEPP (Chapter 2), can be used to establish affordable housing contribution schemes. Monetary contributions help contribution schemes to maximise the amount of affordable housing supply by working together with a range of measures such as: the escalation and indexing of contribution rates; their dedication to not-for-profit CHPs who have access to lower cost borrowings and GST exemptions; and the ability to combine with land dedications.

Once a local council has an AHCS adopted by the Minister, any monetary contributions or dedications of land for the purpose of providing affordable housing within TOD precincts must be provided in accordance with the rates specified in the AHCS.

¹ Australian Government Treasury, Implementation schedule for the National Housing Accord <https://treasury.gov.au/sites/default/files/2023-11/has-nsw.pdf>

² The Planning Blueprint includes the commitment by state and territory governments to consider the phased introduction of inclusionary zoning and planning to support permanent affordable, social and specialist housing in ways that do not add to construction costs.

The framing of contribution schemes provides greater certainty and proactively regulates the delivery, standard and use of affordable housing. This good practice contribution scheme provides greater transparency, clarity and accountability and stronger risk management around affordable housing outcomes. The process for choosing the registered CHP managing the affordable rental housing, and allocations of affordable housing dwellings to eligible applicants are also made easier by this scheme. The adoption of such a scheme also establishes a ready and useful framework to add new locations in the future as opportunities arise.

For local councils with more than one TOD precinct, the template can be adapted to provide a single TOD contribution scheme but still capture any important differences applying in the precincts.

A Good Practice Affordable Housing Program Model

The good practice model template aims to provide a clear, straight forward and accelerated pathway for preparing and then quickly establishing an AHCS in response to the NSW Government's TOD program.

As the TOD program introduces mandatory inclusionary zoning, several key components of the TOD affordable housing contribution schemes have been already determined and therefore shape this model scheme. This includes setting the spatial coverage of the individual TOD precincts, the initial contribution rate for affordable housing, and the justification for the imposition of a contribution requirement. The scheme also includes a central role for registered community housing providers delivering affordable housing on a continuous basis. This makes the preparation of a compliant scheme much more straight forward.

A key benefit of the early adoption of an AHCS is that it will give communities, developers and local council planning officers clarity and greater confidence in the Development Application process and knowledge of the expected outcomes. In particular, it will help council planning officers to more readily assess and recommend Development Applications as well as appropriately stipulate development approval conditions. This clarity will reduce the likelihood of disputes and unnecessary delays to new well-located housing supply.

While there are other options³ for local councils to structure their AHCS, this model scheme seeks to maximise the affordable housing outcomes that can be delivered over time⁴.

This key element can be achieved by engaging a CHP to make best use of the synergies that arise from their ownership and management of the affordable housing.

A Council Distribution Plan for contributions

The template establishes provisions for distributing affordable housing contributions in the TOD precincts to registered CHPs who will hold title and maximise affordable housing outcomes. A good practice model distribution plan then becomes a key focus for a council's consideration. Councils make use of the distribution plan to set local parameters for allocating affordable housing contributions to CHP(s). This is also achieved through a related renewable 10-year contribution agreement to optimise long term affordable housing outcomes.

The scheme, and the contribution Distribution Plan in particular, outline a council's policy for administering affordable housing contributions, describes both the types of affordable housing dwelling that are needed in the precinct, and how the funding and dwellings will be allocated and transferred to CHPs.

Escalation of the contribution rate

³ A template for more generic AHCS that includes different combinations of affordable housing ownership and ownership is available at <https://ssroc.nsw.gov.au/projects/affordable-housing/> including council ownership and partnering.

⁴ Different options for council partnerships with CHPs are explored and evaluated in a report by the Paxon Group, *Local Government for the Provision of Affordable Housing*, October 2022, <https://communityhousing.org.au/wp-content/uploads/2023/06/CHIA-NSW-Local-Council-Partnerships-for-Provision-of-Affordable-Housing.pdf> A more generic template suited to a range of ownership options developed by Resilient Sydney is available at https://ssroc.nsw.gov.au/wp-content/uploads/2023/03/Resilient-Sydney_DRAFT-AHCS-template_FINAL98.pdf

The initial 2% contribution rate is an acknowledged minimum low starting rate. To have a more meaningful impact on the future supply of affordable housing, it is crucial the minimum contribution rate increases over time and that the method and timeframe are specified at the outset to ensure developers can factor this into feasibility and how land is valued. The DPHI Guide to Transport Oriented Development notes that the affordable housing requirement is planned to be increased over time.⁵

This template scheme provides for the contribution rate to increase in two incremental steps over time. Feasible contribution rates are not the same across all TOD precincts.

The upper limit or ceiling contribution rates comes from applying the upper and lower baseline rates for affordable housing contributions of 5% and 10% that were adopted in the current Greater Sydney Region Plan.^{6 7}

Two escalation stepped rates are proposed in the template to reflect differences in the underlying land values of the upzoned sites. The base set of escalation rates with a ceiling rate of 5% (Table 1) aim to reflect precincts with lower land and unit prices and/or to provide a lower hurdle rate to strongly encourage development.

The set of escalation rates with a ceiling of 10% (Table 1A) reflects precincts with higher land and unit prices. However, it is recommended that rates over 5% should be confirmed based on feasibility testing in the location.

Ownership transferred to CHP

Given the worsening housing affordability crisis, there is an imperative for measures to maximise the affordable housing supply the TODs (and leverage other planning mechanisms and funding opportunities provided).

This model affordable housing program includes arrangements for transferring ownership of the affordable homes to a recommended CHP. Furthermore, monetary contribution balances raised by the contribution scheme will also be transferred directly to the CHP to build or purchase affordable housing.

Transferring ownership of dwellings and monetary contributions do not diminish the capacity of councils to decide on certain aspects of the supply and delivery of the affordable housing through legal covenants and other scheme arrangements. For example, the future recycling of dwellings at the end of their useful life could be included to ensure the reinvestment occurs locally. Councils may also consider including local tenant selection criteria as part of their schemes or projects. The CHP would manage the tenants and undertake tenant selection according to the policy.

The business case for giving title to CHPs is strong. CHPs are specialised in this field and can support long-term outcomes by enabling more efficient management of affordable housing. They also have the ability to deliver further homes through leveraged finance.

It provides an effective risk-based response to help councils avoid growing unfunded long-term asset maintenance and depreciation liabilities. The transfer of ownership to a registered CHP avoids the liabilities and compliance responsibilities that accrue directly from council ownership of the affordable housing assets as they age. The stipulation that the affordable housing must be retained in perpetuity places another financial constraint on council.

⁵ This is correct at the time of writing, when the Government has indicated an intention to increase the rate but has given no timetable.

⁶ <https://www.planning.nsw.gov.au/sites/default/files/2024-04/greater-sydney-region-plan.pdf> pages 69-70

⁷ Greater Cities Commission, *The Six Cities Region Discussion Paper* (Sept 2022), noted 'The Commission will work with local councils, state and federal agencies and industry to improve delivery of affordable housing, including new financing mechanisms, with a 10 per cent affordable housing target for new rezonings where there will be a housing uplift. Section (3.6) p42'

The business case and other evidence is further detailed in the section directly following this Preface, in recognition that this is a departure from some council's past practice.

Monitoring and Reporting Outcomes

Under the Local Government Act, each elected council is accountable to the community they serve, for the affordable housing arrangements arising from these planning contributions. The NSW Government sets the legislation and policy framework for how councils collect and administer contributions, which is governed by the Environmental Planning and Assessment Act 1979. This responsibility will now include monitoring and reporting on the implementation of the TOD program.

This template seeks to streamline reporting arrangements for the use of affordable housing contributions schemes, and the monitoring of affordable housing targets and outcomes in the TOD program.

Coherent reporting procedures will enable councils to assess the alignment of affordable housing provision with the council's strategic housing objectives. The proposed reporting relies on robust regulation of CHPs under the National Registration System for Community Housing (NRSCH). The NRSCH recognises that an efficient and effective community housing industry is crucial to the financial wellbeing of CHPs and the sustainability of services to tenants.

In NSW, regulatory activity is overseen by the independent NSW Registrar of Community Housing (the Registrar). The Registrar undertakes regular compliance checks of CHPs against a series of regulatory standards. This ensures a sustainable, well-managed and well-governed community housing industry, and provides councils with assurance about the performance of CHPs as affordable housing providers.

The template arrangements require reporting that is a streamlined, transparent and efficient for council and the CHP. It aims to promote and monitor good program delivery by the recommended CHP.

Further Assistance available to help councils work with CHPs

Homes NSW and other NSW Government agencies are able to assist local councils with their schemes. In particular, to develop and implement the council's contributions Distribution Plan and provide help with contracting of CHPs. This assistance can include the provision of model contract agreements for providing funding and for ongoing partnerships. It can extend to an end-to-end process and service that can include collection and disbursement of affordable housing contributions.

Homes NSW (contact CAH@homes.nsw.gov.au)

- Managing the tender process
- Contracting CHPs
- Collection and disbursement of funds
- Advice about the NSW Affordable Housing Ministerial Guidelines 2023-24
<https://www.facs.nsw.gov.au/download?file=843446>

NSW Office of the Registrar of Community Housing

- The Registrar can provide lists of registered CHPs.
<https://www.nsw.gov.au/housing-and-construction/housing-assistance/rch-resource-library/local-scheme-register-community-housing-providers>

The Community Housing Industry Association (CHIA) NSW has produced a range of resources for local councils seeking to work with registered community housing providers.

https://communityhousing.org.au/wp-content/uploads/2023/07/LG-Resource-Bank_FINAL_May2023.pdf

Operationalising the Program

To operationalise the Program and fully deliver the good practice outcomes that this model scheme intends, local councils will need to prepare and adopt a suite of supporting documents. These documents include:

- The TOD LEP amendment
- The Program (presumably adapting this template to local needs and context)
- The Contribution Distribution Plan
- A contract agreement with the Recommended CHP around agreed arrangements and expectations for property and tenancy management protecting council's long-term interests.

Further generic guidance about establishing an AHCS is available at

[Resilient Sydney – Affordable housing contribution scheme – DRAFT supplementary implementation guide](#)

Further advice about the generic process for gaining approval for the AHCS LEP amendment is outlined in the DPHI *Guideline for Developing an Affordable Housing Contribution Scheme*, 2019, is at www.planning.nsw.gov.au/sites/default/files/2023-06/guideline-for-developing-an-affordable-housing-contribution-scheme.pdf pages 25-28. DPHI may seek to streamline and accelerate these steps, given that mandatory inclusionary zoning in TOD tier 2 precincts is an integral part a NSW Government initiative and an exhibited and consulted upon planning policy.

The *AHCS TOD template* and the *Introduction to the AHCS TOD template* will be reviewed periodically. Readers should check the SSROC website <https://ssroc.nsw.gov.au/projects/affordable-housing/> for updated versions of these documents incorporating changes to policy and recommended provisions.

The case for CHP ownership of affordable housing

The value proposition for CHP ownership

This good practice model affordable housing program seeks to transfer ownership of the affordable homes to a recommended Community Housing Provider (CHP). This position is primarily taken because it will maximise affordable housing outcomes in most contexts, and especially for the TOD program. Furthermore, monetary contributions raised by the contribution scheme will also be transferred by council directly to the CHP to build or purchase affordable housing.

While some councils with affordable housing programs⁸ have elected to retain title in the council's name, this approach is not considered to be the most advantageous one for the TOD program⁹. The rest of section outlines the key reasons underpinning this thinking and how the affordable housing can still remain secure as a community asset.

The general transfer value proposition

Over the last 30 years not-for-profit community housing in NSW has grown from a fledgling industry when affordable housing was first being introduced to one which now manages more than 54,000 plus social and affordable homes, with a combined asset value of more than \$12.8 billion.¹⁰ This pipeline is set to grow over the next five years through Federal Government programs like the Housing Australia Future Fund, Social Housing Accelerator Fund, and National Housing Accord.

Registered providers have an impressive track-record as medium-scale residential builders who have accelerated the delivery of affordable housing. The community housing industry has become more sophisticated over the last decade through a diverse range of partnerships with government at all levels, private industry institutional investors, and other not-for-profit organisations. Skilled expertise-based boards of company directors and property staff remain a critical part of this success.

Unlike most developers who are required to provide a quick return on investment to their shareholders, a not-for-profit CHP's perspective is one of making stable, long-term investments in communities and places. Asset-owning CHPs have an ongoing interest to invest for success in the communities where their tenants reside. The Commonwealth is now supporting the growth of community and affordable housing with the establishment of the \$10 billion Housing Australia Future Fund¹¹. Additional asset growth from contribution schemes will enable even more borrowing as individual CHPs' balance sheets get stronger and grow larger.

Not-for-profit registered CHPs typically provide a suite of specialist services backed by teams of professional staff and sophisticated integrated tenant and asset systems to deliver quality tenancy and property services. CHPs have a track record of delivering effective services, with 81% overall tenant satisfaction¹², together with cost efficiencies realised through increased scale in their portfolios. This finding is backed by independent research by the Committee for Sydney, *Bringing affordable housing to scale*.¹³

“Community housing providers, which reinvest their surplus into more housing for people in need, should be the primary owner and manager of permanently affordable housing.”¹⁴

¹⁰ <https://communityhousing.org.au/wp-content/uploads/2024/02/CHIA-NSW-Community-Housing-Snapshot.pdf>

¹² <https://communityhousing.org.au/wp-content/uploads/2024/02/CHIA-NSW-Community-Housing-Snapshot.pdf>

¹³ <https://sydney.org.au/wp-content/uploads/2022/12/Committee-for-Sydney-Bringing-affordable-housing-to-scale-December-2022.pdf>

¹⁴ Ibid page 14

The value of partnering with CHPs and transferring ownership was confirmed in a 2022 report by the Paxon Group (property consultants) which considered various affordable housing partnership models for local government when delivering affordable housing. The report¹⁵ found that partnering with CHPs added value in the delivery, operation, management and maintenance of affordable housing. It also found that this value was enhanced when ownership was transferred over to the CHP, as the CHP was then able to leverage that housing to borrow money and provide more affordable housing outcomes.

The Paxon Group report estimates this value to be around \$60,000 per dwelling, as well as the costs avoided by councils for future liabilities associated with maintaining and renewing the properties. It also estimates that this partnership approach generates up to 21-27% more affordable housing over the longer term¹⁶.

In contrast, those local councils who have retained ownership of their affordable housing portfolios have not leveraged additional growth and operate with a high council administrative staff to dwelling ratios. While many of the day-to-day risks of providing tenancy and property management services to the affordable housing tenants have been contracted to CHPs through management agreements, these arrangements still do not adequately mitigate the growth of long-term maintenance and depreciation liabilities for councils, as the asset owners, nor do they provide visibility of the risk to ratepayers as the affordable housing portfolio grows older. Limiting a CHP's involvement to tenancy management also reduces the scope for providers to fund additional wrap-around support services for tenants. As part of their registration requirements, registered CHPs are regularly assessed against a number of operational standards, including relating to asset management, maintenance, tenant satisfaction and on-time delivery of projects. To achieve this, CHPs put in place long term asset portfolio management plans and financial provisions for maintaining and renewing housing assets they own, once they reach the end of their useful life.

When considering ownership, it is important to recognise that whoever owns the affordable housing is responsible for paying for its operations, maintenance and eventual building replacement – whoever owns it pays for it – and not all costs can be effectively passed on to the managing provider.

Comparison could be made to initial local council forays into disability care and residential aged care accommodation. The private and not-for-profit sectors in these industries, overseen by enhanced regulation have eclipsed the benefits of council ownership. Local councils that initially responded to the community's unmet need for older person housing began to directly invest and engage in its delivery¹⁷. Since then, councils in urban contexts have steadily withdrawn from this direct delivery model, in recognition of the growth of a competitive, professional, regulated industry that has become larger, more integrated, specialised and now supported by complex client and government funding and financing arrangements. A very similar situation has emerged for affordable housing.

As a highly regulated community housing industry, councils can rely on registered CHPs with public assets and finances, in a similar way that successive NSW and Commonwealth Governments have entrusted them with social housing assets and management. Legislative protections ensure affordable housing assets remain in the system, even if an individual housing provider ceases trading. Rigorous selection of the Recommended CHP, contribution agreements, covenants on title of Affordable housing and audited reporting contribution to council will collectively work to assure ongoing performance.

There is a growing number of precedents where local councils have elected to transfer affordable housing properties and/or contributions to CHPs as part of their affordable housing contribution schemes. These include the City of Sydney, Penrith City and Shoalhaven councils. These councils have each been able to achieve strategic control and tailored protections to ratepayer funds through the adoption of contribution Distribution Plans and agreements with the CHP(s) chosen by the council to operate as their partner(s).

¹⁵ The Paxon Report was a funded project of the Department of Community and Justice commissioned by Community Housing Industry Association NSW.

¹⁶ <https://www.facs.nsw.gov.au/providers/housing/affordable/develop/chapters/partnering>

¹⁷ The 2024 National State of the Assets Report (NSoA) Report highlights that council buildings and facilities in total \$8.3bn are in poor condition, \$7.2bn have poor function and \$8.3bn have poor capacity. <https://alga.com.au/2024-national-state-of-the-assets-report/>

The transfer value proposition in the TOD context

The case for transferring the affordable housing asset to CHP is even stronger and clearer in the TOD context. While the scale is initially small, the in-kind dwelling transfers of strata apartments can involve higher costs and risks to councils¹⁸.

The TOD program without an affordable housing contribution scheme will provide almost entirely strata apartments as dwellings in-kind within the TOD precincts. Ownership brings many hidden risks to councils. Many of these risks cannot be effectively contracted out of to a managing CHP. Council would become one of many owners, in multiple new Owners Corporations. The discounted rent collected may not be sufficient to pay both property-related costs of the strata unit and the cost of CHP management. The apartments will typically be scattered across residential developments adding to the complexity of relationships with various strata bodies.

Record keeping and decision-making is time consuming and often complex in a disparate portfolio of strata buildings - making it harder to determine and manage budgets and finding the most effective solutions to building defects or around mitigation or adaptation to climate impacts.

A recent National Survey conducted by the strata *Owners Corporation Network*¹⁹ found:

- 25% of owners corporations have insufficient funds to fulfill their scheduled capital works program for the next two years and have, or are about to raise, a special levy.
- Insurance costs are increasing and there is uncertainty related to making claims
- 95% of buildings reported the cost of common property strata insurance has increased in the last two years. The median increase was 23% and the average 30%.

Strata committees and owners corporations may well look to councils as fellow strata apartment owners for support to approve and fund building refurbishments or address serious building defects. Other owners could see councils as having unconstrained resources available to financially support the other strata owners to meet needs to upgrade their building.

Under the template scheme model these and other financial risks associated with strata ownership will be passed onto the recommended CHP. CHPs will be better equipped than councils to manage these risks. Given the core business of CHPs is the provision of affordable housing, their involvement facilitates the achievement of economies of scale and portfolio optimisation through greater volume of properties managed, tax concessions and efficiency through greater experience in the sector. Any excess revenue achieved from housing will be directed into further affordable housing due to the purpose of a CHP and the oversight provided through legislation and regulation.

With permission, CHPs can sell and replace strata apartments, keeping the affordable housing local and maintaining a continuity of service to tenants. The sale of individual strata apartments can enable the CHP to acquire whole buildings that then avoid ongoing strata fees.

In alignment with the TOD objectives the template scheme seeks to maximise affordable housing long term outcomes by using registered CHPs who can mix contributions or land with other funding available to them, including low-cost finance from the Housing Australia Future Fund and the value of their tax exemptions. The template assumes the adoption of a 'best in class' investment strategy by carefully selecting the Recommended CHP from registered Tier 1 and 2 CHPs with capacity to leverage the transfer of dwellings and monetary contributions to deliver more affordable housing.

Generally, one Recommended CHP is advisable for a TOD precinct. This will simplify accountability, the distribution and administration of contributions and reporting. It will also reflect the constraints on the scale of the potential affordable housing supply while increasing the Recommended CHP's opportunities for leveraging finance.

¹⁸ The amount of affordable housing produced from TOD contributions annually is likely to be small with a just few dwellings added annually (estimated to fluctuate between 2 - 6 dwellings p.a. per precinct) bringing with them higher administrative and reporting overheads as well as growing long term asset liabilities.

¹⁹ https://ocn.org.au/wp-content/uploads/2024/06/Strata-Disaster-Report-V10_interactive.pdf page 29

The broad array of professional specialist services backed by integrated tenant, applicant, asset maintenance and financial service systems help deliver stable, quality tenancy and property services to all tenancies, including the small initial number of TOD program households. At the same time, efficiencies can be achieved through economies of scale from a much larger portfolio. Tenant transfers to housing opportunities outside the local TOD program and precinct will enable households in need to find to more appropriate accommodation that better matches households' changing needs and life stage.

The benefits to stakeholders

There are four main groups who benefit from transferring ownership to CHPs. Clearly the biggest beneficiaries are the applicants and tenants facing financial hardship and unstable rental accommodation, who can access safe appropriate long-term affordable accommodation.

Below is a list of the key benefits for the key stakeholders.

1 *Low and moderate income households in housing stress – new tenants*

- As a result of additional homes that can be leveraged from CHP ownership of dwellings, more households in housing stress will be able to access long-term affordable housing.

This is achieved through:

- access to \$10 B in Housing Australia Future Fund to mix with developer contributions, CHP equity and debt financing to fund additional affordable housing
 - access to sites owned or acquired by the CHP
 - access to surplus government land made available to CHPs as a grant or discounted purchase
 - new diverse and adaptable housing built by the CHP is likely to be designed to respond to gaps in the housing market is providing for sale such as dwelling size.
- * Registered CHPs enjoy privileged access provided by the Commonwealth Government to long-term, low-cost institutional loans from the Housing Australia Future Fund that enable CHPs to securely produce on average 27% more affordable housing than if councils own the property.

2 *Tenants*

- Community housing tenants have high rates of tenant satisfaction²⁰. Due the longevity of the asset management arrangements, tenants receive better long-term maintenance. Maintenance is the biggest area influencing tenant satisfaction²¹. Therefore, there are fewer disputes and delays over the scope of repairs, as replacement of building fabric and fixtures is the responsibility of the property owner, and repairs and long maintenance are undertaken by the property owner thinking about the life of the asset.
- Registered CHPs have GST tax concessions and other favourable tax concessions lowering the burden of ongoing property maintenance costs and driving the maintenance dollar further, so their properties are sustainably kept in better repair.
- CHPs manage larger portfolios of homes. As a result, there are more and more flexible opportunities for existing tenants to be rehoused if their needs change. For example, to meet the changing needs as tenants age in place and households grow or shrink, as well as to help solve intractable disputes with other tenants or the neighbours.

3 *Local Councils*

²⁰ <https://communityhousing.org.au/wp-content/uploads/2024/02/CHIA-NSW-Community-Housing-Snapshot.pdf>

²¹ CHPs are regulated against a range of performance benchmarks, including on repairs and tenant satisfaction.

<https://www.nsw.gov.au/housing-and-construction/housing-assistance/rch-resource-library/sector-performance-report-2023>

- Transferring affordable housing to CHPs should result in lower costs to council and therefore avoid putting pressure on using the rates from ratepayers to meet property costs in the future. With the asset owned by the Recommended CHP, council will not need to fund or provision for long-term replacement costs of the affordable housing. It will improve a council's risk profile for any unfunded liabilities that would be associated with owning the affordable housing assets. The template scheme will also avoid council staffing costs associated with managing homes (e.g., Affordable housing officers, additional asset and corporate services staff). It should enable councils to focus on their core business while improving services for local residents. The new affordable housing supply will help to improve the availability of the workforce of essential workers for the benefit of local businesses and communities.
- The model scheme helps councils to avoid taking on the risks and responsibilities that follow from being, at the end of the day, the accountable landlord. It precludes many of the potential challenges and conflicts that may arise, especially when this affordable housing role has not been part of a Council's core business. Accordingly, councils do not have a potential legal responsibility for addressing applicant appeals and tenancy complaints nor trying to solve neighbour conflicts fairly nor the day-to-day performance of the CHP as the tenancy manager. Where a council chooses to transfer ownership to a CHP, councils are able to focus on the needs of entire community through roles like strategic placemaking, community engagement, and optimising the local planning settings unhindered by a service provider's operational concerns. At the same time, council will still set the strategic priorities and policies that guide their affordable housing contribution scheme delivering affordable housing in their area.
- Councils retain control of shaping the strategic housing directions through the adoption of the Program's Distribution Plan and through 10-year contribution agreement (for the receipt of affordable housing contributions with the recommended CHP) to achieve tailored, responsive housing services and provide high quality dwellings that contribute to the public domain.

This approach provides councils with clear and simpler administration responsibilities by relying on existing NSW Government and Commonwealth Government regulation of CHPs for all internal financial and service matters. The NSW Registrar oversees the NRSCH in New South Wales²². The Registrar of Community Housing registers CHPs and will check their compliance with the NSW Ministerial Affordable Housing Guidelines when requested by the council. The Registrar works closely with the Australian Competition and Consumers Commission ACCC and the Australian Charities and Not-for-profits Commission (ACNC) that also regulate registered charitable not for profit CHPs.

Under the TOD SEPP, affordable rental housing will be required to be provided in perpetuity. The national registration system for community housing means that the CHP assets continue to be protected even if the provider ceases to operate. In the unlikely event this occurs, the subject housing is transferred to another registered CHP under the supervision of the Regulator.

When a registered not-for-profit CHP with charitable status is engaged by council, capital gains and operating surpluses remain in the affordable housing system for the community's long-term benefit. Again reducing the need for intensive council oversight.

- Robust accountability is maintained through specific reporting undertakings made by the CHP to council on the use of affordable housing dwellings, funds and land provided by the contribution scheme.
- An established program of yearly reporting will also lighten the regulatory load on council officers and reduce council costs of Program administration. The details of the

²² Community housing providers that operate in NSW need to be registered under the NRSCH to participate in the TOD program. The Registrar also monitors them and takes action when needed. The Registrar and his/her office do this through the National Regulatory System for Community Housing(NRSCH) and the NSW Local Scheme. The Registrar is independent and reports directly to the Minister for Housing.

contribution agreements with CHPs should be designed to lower the ongoing reporting impost on council administrative staff while ensuring the affordable housing outcomes continue to support council's housing and place strategies.

- The template scheme arrangements should significantly lower, if not remove, the financial risks and liabilities councils would otherwise be exposed to as the asset owner.
- Under the Local Government Act, councils are expected to apply sound financial management principles that require responsible and sustainable spending and investment, and consideration of intergenerational equity. The transfer of affordable housing assets reduces exposure to financial risks of unfunded long-term maintenance liabilities. Under the Australian Accounting Standards these liabilities will require the preparation of financial statements identifying liabilities, a structured risk-based approach and need to be provisioned despite the programmatic limitations on rental income, that expose ratepayers to meeting shortfalls.
- Under such title arrangements councils do not have long term liabilities for building replacement and insurance etc. nor any future obligations for rehousing affordable housing tenants, nor the need to maintain ongoing time intensive relationships with multiple strata owners and managers.
- The proposed arrangements avoid development risks associated with council designing and constructing purpose driven affordable housing. Similarly, when day-to-day maintenance is assigned to a managing CHP, with council in ownership, councils will find it complex and difficult to be assured that the assets are properly maintained and managed for the long-term, because day to day and long-term maintenance responsibilities are split.

4 The recipient CHPs

- A number of benefits accruing to the CHP owning the affordable housing assets and to the broader community should include:
 - delivering more efficient services due to increased economies of scale with lower cost per dwelling unit ratios.
 - Making use of monetary contributions to acquire affordable housing in the local area by undertaking affordable housing developments or acquiring existing apartment blocks that can be managed entirely by the CHP with lower overheads. This approach avoids expensive strata arrangements for single apartments with high fixed costs and fees or incurring asset sale costs and extended sales process delays where the AH dwelling may be unable to be occupied.
 - If in-kind dwelling contributions are to be made under the scheme, enabling the ability to trade in the housing assets for other, more suitable, affordable housing, and similarly escaping from expensive strata arrangements for single apartments with high fixed costs and fees to buildings managed entirely by the CHP with lower costs.
 - building stronger CHP balance sheets that enable further CHP borrowings to better serve their communities.
 - bringing together partnerships and housing deals to deliver more creative urban design outcomes (e.g. site consolidations) with private sector developers and Government agencies like Landcom.
 - generating long-term incentives for good, sustained housing performance to ensure that contribution contract with council is renewed in the future.
 - entrenching a long-term commitment to their neighbourhoods and communities²³.

²³ This benefit can be identified and realised as part of the selection process for the Recommended CHP. Council can seek information about the CHPs' plans for, and history of, engagement and community building in a certain area and the support services that they can bring to assist residents.