
NSW Community Housing Partnership Framework

Prepared by the NSW Community Housing Industry Council
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Communities and Justice

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Foreword

I am pleased to present to you, on behalf of the Community Housing Industry Council (the Council), the NSW Community Housing Partnership Framework (the Framework) and accompanying Guidance Notes.

These documents respond to a Council business plan goal to develop a shared understanding of financial risk allocation and management in transactions across the community and affordable housing industry.

The Framework sets out objectives and principles to guide NSW Government transactions with registered community housing providers (CHPs) for the delivery of social and affordable housing infrastructure and services. The Guidance Notes support the implementation of this Framework. The Guidance Notes are intended to be 'living documents' and will be reviewed and updated over time.

These documents provide practical advice to government agencies and registered CHPs so they can enter into clearly defined and mutually beneficial business partnerships for social and affordable housing transactions. The approach proposed is not mandatory, but rather aims to represent 'good practice' options for all parties. It encourages all parties engaged in structuring, negotiating and contract drafting to consider the analysis and recommendations carefully when entering into these transactions, and implement it where possible and appropriate.

The documents have been developed with broad input from a wide range of stakeholders with expertise in this area from across the community housing industry. This includes government agencies (the Department of Communities and Justice, Land and Housing Corporation, the Aboriginal Housing Office, Landcom, Department of Planning and Environment and NSW Treasury), community housing providers and industry partners from the legal, procurement and financial sectors.

All Council members, including those from the government agencies represented, have endorsed or endorsed in principle the documents for publication and implementation.

We hope you find these documents useful and that they add value to any social and affordable housing transaction you are considering. If you have any comments or feedback you would like to provide, please email the NSW Community Housing Industry Council secretariat at:
NSWCommunityHousingIndustryCouncil@facns.nsw.gov.au

Trevor Danos AM

Chair – NSW Community Housing Industry Council
August 2022

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1. Overview

This Framework sets out the proposed objectives and principles for partnerships between the NSW Government and registered community housing providers for the delivery of social and affordable housing infrastructure and other services. As used in this document, ‘partnership’ includes all forms of collaboration, joint venturing and other formal and informal ways of working together.

The Framework is supported by Guidance Notes that are intended to provide practical advice that makes it easier and cheaper for NSW Government agencies and registered CHPs to do business – while retaining the flexibility for a tailored and nuanced approach to individual transactions to reflect NSW Government policy objectives and project-specific requirements.

Both the Framework and Guidance Notes are non-binding and supplementary to the requirements of regulation and legislation.

The NSW Government is a leader in partnering with registered community housing providers (CHPs) to deliver more and better quality social and affordable housing. These partnerships are underpinned by the sector’s legislatively recognised role in the *NSW Housing Act 2001* and the *Community Housing Providers (Adoption of National Law) Act 2012*, and their regulation through the National Regulatory System for Community Housing (NRSCH).

This Framework sets out the proposed objectives and principles for NSW Government partnerships with registered CHPs for the delivery of social and affordable housing infrastructure and other services.

2. Community Housing

Community housing refers to housing solutions offered by community housing providers for people who are unable to access secure, affordable and appropriate housing in the private market. It encompasses crisis housing, transitional housing, general social housing, affordable housing and private rental assistance products that are delivered within the NSW Government’s housing assistance policy framework. Increasingly, community housing providers are also diversifying their business into other forms of assistance, for example disability housing.

Historically, government both owned and managed the vast majority of housing assistance assets and services – through the NSW Land and Housing Corporation (currently part of the Department of Planning, Industry and Environment) and government housing services (currently the Department of Communities and Justice).

Over the last 30 years, NSW Government housing strategies have increasingly recognised the importance of partnerships to ensure the sustainability of these housing assistance assets and services – with local government, other NSW Government agencies, the private sector and non-government organisations all playing a greater role. Central to many of these strategies have been the role of registered CHPs.

Registered CHPs are formally recognised under NSW Government legislation as sharing a commitment to client outcomes and working within the NSW Government’s social policy framework. They are independent of, but regulated by, the NSW Government – and are required to meet both the eligibility criteria and statutory requirements under the National Regulatory System for Community Housing (NRSCH).

As at 8 March 2022, there were 186 registered CHPs operating within the NSW jurisdiction. Of these, 176 were registered under the NRSCH and ten (10) under the NSW Local Scheme (NSWLS). Thirty-three (33) of these CHPs are Aboriginal community controlled organisations. Currently, registered CHPs manage around a third of NSW’s social housing.

NSW Government partnerships with registered CHPs are required to meet the same standards that apply to all funding and capital transactions – namely to:

- comply with the NSW Government Procurement Policy Framework – based around the objective of achieving best value for money in delivering government services, and the principles of value for money; fair and open competition; easy to do business with; innovation; and sustainability
- ensure contractual and commercial arrangements are fit for purpose in achieving NSW Government policy objectives – within acceptable financial and risk constraints
- deliver contractually agreed outcomes for the people of NSW.

However, the legislatively recognised role and regulated nature of community housing means NSW Government contracts with registered CHPs are different to those with the private sector – and have the potential to deliver unique benefits. Specifically:

- The NSW Government has a market stewardship role to develop community housing as a viable and diversified component of the NSW social housing sector – recognising the core alignment between the government’s policy objectives and registered CHPs’ social purpose.
- Registered CHPs are required to demonstrate their commitment to social and affordable housing outcomes – with specific performance requirements to protect tenants and community housing assets that are monitored and enforced by the NSW Registrar for Community Housing (regardless of their specific contractual obligations).
- Registered CHPs are expected to leverage access to finance and concessions available to charities to enhance the achievement of government policy objectives across a continuum of social and affordable housing solutions.
- Registered CHPs are expected to leverage local and community networks to support socially integrated housing services and place planning – in partnership with both local and state government agencies, community organisations and the private sector.

3. Community Housing Partnerships

The NSW Community Housing Partnership Framework (Partnership Framework) outlines the objectives and principles for applying the NSW Government Procurement Policy Framework and the standard elements of commercially focused contracting – in a way that is fit for purpose for partnering with registered CHPs.

These partnerships cover long-term arrangements between the NSW Government and registered CHPs for the delivery of social and affordable housing infrastructure and services – which may include:

- Asset vesting – where NSW Government assets are transferred to registered CHPs for the purposes of providing more and better quality social and affordable housing.
- Management transfers – involving long-term leasing of housing assets to be managed and maintained by registered CHPs.
- Precinct asset development and place-planning – long-term arrangements to redevelop existing NSW Government land and assets to improve community and housing outcomes.
- Social and affordable housing programs – program-specific arrangements to support delivery of NSW Government social and affordable housing priorities.

While the Partnership Framework only applies to not-for-profit organisations that are registered and regulated under the NRSCH, its scope reflects the broad diversity of registered CHPs – covering:

- Tier 1 registered CHPs with the demonstrated capability to manage large-scale, capital-intensive, commercially focused partnerships
- Tier 2 registered CHPs with the demonstrated capability to leverage additional finance and assets for precinct-specific or regional partnerships
- Tier 3 registered CHPs with the demonstrated capability to manage small-scale, local partnerships
- There are now 33 Aboriginal community-controlled CHPs registered under the different tiers of NRSCH, including those registered under NSW Local Scheme (NSWLS) – seven registered at tier 2 and 26 at tier 3. These organisations state within their charter their explicit social purpose of serving either a discrete or broad set of Aboriginal communities/groups in NSW and are recognised as being authentically embedded within recognised Aboriginal communities. Partnerships with ACHPs present unique opportunities of investing in First Nations economic development through procurement activity.

4. Scope

The focus, scale and complexity of community housing transactions are both diverse and changing – reflecting a growing range of government agencies partnering with registered CHPs; new and innovative finance and funding models to deliver social and affordable housing infrastructure and services; and increasing registered CHP capability to participate in a wider range of large-scale, capital-intensive, commercially focused transactions.

The Partnership Framework is intended to ensure all transactions between the NSW Government and registered CHPs are underpinned by a common set of objectives and principles in order to maximise the benefits in both achieving NSW Government policy objectives and delivering social and affordable housing outcomes – in particular:

- Adopting a consistent whole-of-government approach – to realise the benefits of community housing transactions across a wider range of government agencies and transactions.
- Improving program and project designs – by leveraging a values-based approach that recognises the shared commitment to deliver more and better quality social and affordable housing.
- Lowering transaction costs of tendering and compliance – to optimise the resources available for services and infrastructure.
- Ensuring the sustainability of commercial arrangements – by appropriately taking into account how commercial principles and risk allocation decisions impact viability and vulnerable tenants.

While the scope of the Framework is defined broadly, the Framework is non-binding and supplementary to the requirements of regulation and legislation – recognising the need for flexibility to allow a tailored and nuanced approach to meeting NSW Cabinet directives and project-specific requirements.

5. Objectives

The objectives of the Partnership Framework are:

- to achieve best value for money – by aligning the shared commitment of the NSW Government and registered CHPs to public value outcomes with fair and transparent competition
- to make it easier for the NSW Government and registered CHPs to do business and to engage in partnerships – by leveraging regulatory and standardised transactional controls to streamline and simplify partnership arrangements as well as procurement and contracting arrangements within the NSW Government Procurement Policy Framework
- to encourage partnerships between the NSW Government and registered CHPs including on Land and Housing Corporation (LAHC) land and property through the Direct Dealing Framework
- to promote innovation – by leveraging registered CHP access to finance, concessions and networks to promote new models and greater flexibility to better meet future demand and changing needs
- to promote viability and sustainability – by adopting commercial principles and contract conditions that appropriately take into account their potential impact on registered CHP viability and outcomes for vulnerable tenants.

The Framework objectives and the principles outlined below can be applied by both NSW Government agencies and registered CHPs. They are aimed at facilitating the most effective working partnerships between government agencies and registered CHPs in order to foster development of NSW social and affordable housing. Their implementation will require joint action and joint obligations.

6. Principles

Commissioning, procurement and contracting arrangements for social and affordable housing partnerships between the NSW Government and registered CHPs are underpinned by a set of principles which commit the parties to work together collaboratively and in good faith to achieve the best possible outcomes for social and affordable housing tenants and assets and the best value for money from government investments.

This means all initiatives and contracts that come within the ambit of the Framework are planned, designed and implemented in a way that seeks to ensure the specific NSW Government objectives and financial/risk constraints for the initiative can be achieved through commercial arrangements and contract conditions that are consistent with the following principles.

Practice advice and tools for operationalising these principles are presented in separate Guidance Notes.

Values-based approach

Transactions between the NSW Government and registered CHPs that come within the ambit of the Framework are underpinned by a set of values that ask parties to work together collaboratively and in good faith. These values will be explicitly highlighted in all procurement and contracting documents.

- Trust: developing and maintaining a level of trust and adherence to agreed decisions between the parties.
- Openness and transparency: keeping both parties informed of the other's intentions, direction and way of working to avoid surprises.
- Flexibility: adapting to changes through dialogue between the parties.
- Interdependence: recognition of the separate but interrelated interests, rights and responsibilities of both parties.

Commitment to shared public value outcomes

NSW Government agencies are required to maximise value for money in delivering social and affordable housing outcomes – while registered CHPs are required to support these outcomes through regulatory arrangements to protect tenants and community housing assets and to contribute to socially inclusive communities.

Commercial arrangements and contract conditions for initiatives that come within the ambit of the Framework should explicitly reflect the partnership commitment of NSW Government agencies and registered CHPs to shared outcomes – including the specific client outcomes that social and affordable housing is intended to deliver. This can be achieved by ensuring:

- procurement frameworks and subsequent contracts include explicit partnership commitments describing how the parties will work together to achieve an agreed set of shared outcomes for the project
- contracts include a “best endeavours clause” to require all parties to operate in a way that supports the achievement of these shared outcomes

- where feasible, outcomes will be articulated in a way that can be quantified, measured and reported – to promote greater transparency and accountability
- contracts including payment mechanisms that reward registered CHPs for achieving client outcomes linked to the social policy objectives of the transaction.

A key part of a commitment to shared public value outcomes is avoiding and managing disputes – covered in Guidance Note 7: Avoiding and managing disputes.

Collaborative approach to design

Registered CHPs that seek to partner with the NSW Government are expected to leverage client, community and business resources and networks to add significant value to housing initiatives.

Commissioning and procurement processes for initiatives that come within the ambit of the Framework should maximise engagement with registered CHPs to ensure the design and specifications appropriately leverage registered CHP resources and networks to deliver the required NSW Government objectives. These initiatives should have a documented strategy for collaboration – which may include:

- Prior to the formal tendering process, market sounding sessions between the NSW Government and registered CHPs to ensure the proposed design and specifications maximise the stated public value outcomes.
- Procurement strategies that promote specific opportunities for competitive dialogue and negotiation about aligning proponent proposals with the stated public value outcomes.
- Early engagement with registered CHPs about the most effective role for private sector developers and finance partners in initiatives that come within the ambit of the Framework (which may include separate procurement processes for the development phase and the service delivery phase; working through co-design principles to identify the best solution; and/or government selecting a lead registered CHP as the service operator and then collaboratively designing the procurement process to engage the development and finance partners).

To promote transparency and independence, the commissioning and procurement framework for initiatives that come within the ambit of the Framework should document:

- how the parties will work together to ensure the design is fit for purpose
- how decisions and changes as a result of the collaborative approach to design will be documented and communicated to the parties (and if changes are not made, the rationale for why this is not appropriate).

Flexibility to innovate

Registered CHPs operate in a competitive market — needing to demonstrate their competitive advantage over other sectors, and within the industry, their competitive advantage over other registered CHPs.

To leverage this competitive market, the NSW Government will maximise the flexibility in program designs and project specifications to allow registered CHPs to propose innovative models for using revenue streams and assets to best meet the stated objectives or project-specific commercial, legal or risk constraints.

Initiatives that come within the ambit of the Framework should have a documented strategy for innovation — which may include:

- Explicitly adopting standard regulatory and community housing agreement contractual controls over the use of assets and funding (rather than project-specific controls) to remove constraints on innovation.
- Market sounding sessions between the NSW Government and registered CHPs to explore opportunities for innovation.
- Flexible specifications in Requests for Proposals that allow proponents to propose innovative models.

Standardisation of core terms and conditions

While flexibility is needed to ensure a tailored and nuanced approach to different transactions between the NSW Government and registered CHPs, contracts with registered CHPs for initiatives that come within the ambit of the Framework should be underpinned by common terms and conditions.

Common terms and conditions are intended to provide a streamlined and standardised set of legal requirements and contractual terms (including undertakings, warranties, events of default and indemnities) for all community housing transactions involving registered CHPs — which can then be built upon to incorporate program-specific specifications that require a material variation from standard terms and conditions.

In recognising variations between agency-specific policies and guidelines pertaining to procurement and contract negotiations, the CHIC will undertake further work on the scope and focus of appropriate core terms and conditions.

Fit-for-purpose risk allocation

Registered CHPs that seek to enter into large-scale, capital-intensive, commercially focused partnerships with the NSW Government must have the resources and business experience to appropriately analyse and price risk — and to undertake the sophisticated due diligence to understand the potential impacts on their business. Many risks involved in community housing projects are quantifiable and able to be adequately insured against at a reasonable cost. Where such an insurable risk is appropriately allocated to a registered CHP, in general it should obtain the required insurance.

At the same time, commercial arrangements and contract conditions for initiatives that come within the ambit of the Framework should explicitly reflect the partnership commitment to ensure registered CHPs remain financially viable, and that the commercial and public value basis for the allocation and pricing of risk is fit for purpose. Specifically:

- Initiatives that come within the ambit of the Framework will include an explicit articulation of the proposed risk/opportunities allocation between the parties – and document the rationale for risk transfers and the information that will be made available to proponents to quantify and price risk. Unless explicitly identified and expressly dealt with in a tailored way, any material risk that is outside of the control of registered CHPs should not be transferred by the NSW Government without due consideration of whether:
 - the risk is quantifiable, and its financial consequences can be capped
 - the risk is quantifiable and able to be adequately insured against or passed on to a third party by the registered CHP
 - the risk can be adequately addressed through a relief event and/or compensation event mechanism
 - the risk can be adequately addressed as a shared risk between the registered CHP and the NSW Government (e.g. site availability, remediation of contamination, project-specific change in law or policy).
- Initiatives that come within the ambit of the Framework will support competitive dialogues and negotiation over the “best-for-project” approach when government partners are unable to provide or fully warrant the information needed to quantify and price risk.
- Where it is identified that it is not feasible or appropriate to competitively price risk, the NSW Government will endeavour to provide cost benchmarks, capped exposures or price adjustment mechanisms that can be assumed in tendering – subject to adjustment through competitive dialogues prior to contracting.

Minimising compliance and reporting burden

To leverage the existing NRSCH regulatory and community housing agreement contractual compliance and reporting obligations, the NSW Government will, in any initiatives that come within the ambit of the Partnership Framework, maximise the use of these existing controls as the default arrangements for compliance and performance reporting – and any departure from them should have to be explained on an “if not, why not” basis. Additional compliance and reporting requirements will be introduced solely on the basis of the need to manage program-specific compliance or performance risks.

Practice advice on minimising compliance and reporting burden is covered in Guidance Note 6: Minimising compliance and reporting burden.

7. Guidance notes to support implementation

Seven Guidance Notes have been developed to help NSW Government agencies take advantage of the benefits of partnerships with registered community housing providers and to implement this Framework.

The Guidance Notes provide practical advice and tools that make it easier and cheaper for NSW Government agencies and registered CHPs to do business – while retaining the flexibility for a tailored and nuanced approach to individual transactions to reflect NSW Government objectives and project-specific requirements. They are non-binding and supplementary to the requirements of regulation and legislation.

The practice advice available in each Guidance Note is as follows:

- A collaborative approach to design is outlined in Guidance Note 1: Engagement and co-design
- Partnership approaches to risk allocation are covered in:
 - Guidance Note 2: Managing risk associated with unforeseen circumstances
 - Guidance Note 3: Managing risks associated with information provided / not provided during procurement processes
 - Guidance Note 4: Managing risks associated with change of law
 - Guidance Note 5: Managing risk associated with compliance failures and default
- Minimising the compliance and reporting burden is covered in Guidance Note 6.
- Managing disputes is covered in Guidance Note 7: Avoiding and managing disputes

Click [here](#) to go the Guidance Notes.