



Attachment 5 to Item 4.3.1

Draft Distribution Plan

Date of meeting: 30 January 2024
Location: Council Chambers
Time: 6:30 p.m.

Western Sydney Affordable Housing Contribution Scheme **DISTRIBUTION PLAN**

DRAFT
October 2023

1 INTRODUCTION

1.1 Purpose

This Distribution Plan (the Plan) sets out the operational policy for how contributions received under the Regional Affordable Housing Contribution Scheme (the Scheme) are to be distributed to *Eligible Affordable Housing Providers* under commissioning arrangement for the delivery of affordable housing.

This Plan must be consistent with the provisions of the adopted Scheme.

The Plan is a non-statutory operational policy of the local councils included in the Scheme for the administration and governance of a regional approach to delivery of affordable housing. For the Plan to be in force for each local council participating in the Scheme it must be adopted by formal resolution by each participating local council.

The local councils included in the Scheme are:

- Blacktown City Council
- Blue Mountains City Council
- Camden Council
- Campbelltown City Council
- Fairfield City Council
- Hawkesbury City Council
- Liverpool City Council
- Penrith City Council, and
- Wollondilly Shire Council.

This Distribution Plan may be amended from time to time without requiring amendment of the Scheme or the relevant Environmental Planning Instrument. Amendments to the Distribution Plan require agreement by formal resolution of all local councils participating in the Scheme.

The Distribution Plan will be made available electronically on participating council websites to accompany the Scheme.

This Distribution Plan is effective from XX XX XXX

1.2 Principles

The principles guiding the Plan include:

- efficient and effective delivery and management in-perpetuity of quality affordable rental housing supply in Western Sydney for very low, low and moderate income households
- cooperation between Western Sydney local councils to distribute affordable housing contributions through a regional approach, in partnership with NSW Department of Communities and Justice (DCJ - to be Homes NSW)

- delivery, ownership, and management of affordable housing utilising the expertise and resources of the Community Housing Sector and NSW Government housing providers and the regulatory framework established under the Community Housing Providers Act 2012.
- amplification of the overall supply of affordable housing through distribution approaches that are competitive and leverage external financing and/or land assets, and
- transparent reporting on the collection, management, and expenditure of contributions as per the intent of the Scheme.

1.3 Governance

A Distribution Plan Committee will be formed by the Western Sydney Planning Partnership Control Group to monitor regional implementation of the Plan and to make recommendations to participating councils on any proposed amendments to the Plan.

This will involve:

- a Senior Officer from each local council participating in the Scheme being a member of the Committee
- meetings being held on an ad-hoc basis to review and monitor the regional arrangements established under the Plan
- recommendations from the Committee to participating councils being first unanimously adopted by all Committee members, and
- recommendations from the Committee being reported to local councils to consider by formal resolution where these involve amendments to the Plan.

2 MANAGEMENT OF CONTRIBUTIONS

2.1 Use of contributions

As per the Scheme:

Each Council will collect contributions from development in accordance with this Scheme and will ensure that these funds and any interest that is accrued are used for the purpose of affordable housing including: the reasonable costs for the administration and review of the Scheme, and the reasonable costs for the administration of the commissioning process that is required to support delivery¹.

For the purposes of this Plan, affordable housing is as defined under State Environmental Planning Policy (Housing) 2021, namely:

- housing for very low, low or moderate income households where no more than 30% of gross income is paid in rent, or
- housing for households eligible to occupy rental accommodation under the National Rental Affordability Scheme where the rent is no more than the rent that would be charged if the household was to occupy rental accommodation under that scheme.

¹ WSPP (2023) 'Draft Affordable Housing Contributions Scheme'

Contributions collected for affordable housing under the Scheme may be used for the following purposes:

- capital costs incurred in the delivery of affordable housing including the design, approval, and construction of affordable housing dwellings
- capital costs incurred in the acquisition of land for affordable housing, and
- capital costs incurred in the provision of any supporting infrastructure directly related to the provision of affordable housing required under a development consent.

Consistent with the Scheme, and where reasonable and justifiable, affordable housing funds may also be used for administration or review of the Scheme and this Plan. This may include the following:

- preparation and review of the Scheme, including studies that support the review and update of the contributions rates
- preparation, monitoring, and review of the Plan
- meeting the reasonable costs of individual local councils incurred in the financial and legal management of contributions, including the transfer as part of the commissioning process of funds to eligible affordable housing providers
- meeting the costs of managing contributions made in the form of land, including the transfer as part of the commissioning process of land to eligible affordable housing providers
- costs associated with the administration of the sub-region commissioning process, including the preparation of partnership agreement with DCJ, seeking and evaluating expressions of interest (including undertaking due diligence) and entering into legal agreements with eligible affordable housing providers
- costs incurred by DCJ in administration of the commissioning process, and
- other reasonable costs required to ensure the efficient and effective administration of the Scheme, including this Plan, and the delivery of affordable housing by eligible affordable housing providers.

2.2 Collection of contributions

Each local council in the Scheme will be responsible for the imposition of conditions of consent on development for the collection of affordable housing contributions as per the Scheme, and the collection and management of these contributions.

Each Council will retain ownership of contributions until they are transferred to an eligible affordable housing provider². This would include:

- in the case of the financial contributions, each local council in the Scheme will maintain a separate restricted fund for affordable housing contributions
- any interest accruing to a local council from these contributions will be retained in the fund for use in providing affordable housing

² WSPP (2023) 'Draft Affordable Housing Contributions Scheme'

- land can only be contributed in lieu of a monetary contribution where it is evaluated by both DCJ and councils within the relevant sub-region as being suitable for the delivery of affordable housing, including in terms of location and supporting infrastructure, and where this is likely to deliver at least an equivalent affordable housing delivery outcome to that which would have been delivered through a monetary contribution.
- In the case of land contributions, any revenue received by local councils from the interim use of such land pending its use as affordable housing where this is in excess of land holding costs, is to be paid into the fund for affordable housing contributions, and
- local councils will manage and report on these funds, including the transfer of funds to eligible housing providers, as part of their annual report.

2.3 Transfer of funds to eligible affordable housing providers

Transfer of contributions from a local council to an eligible affordable housing provider will occur as a result of the commissioning process described in this Plan. Local councils will transfer funds directly to the eligible affordable housing provider once DCJ has entered into a suitable agreement to deliver affordable housing with the housing provider.

Where the agreement is with a community housing provider (CHP):

- DCJ will enter into a Community Housing Assistance Agreement (CHAA) which will, amongst other matters:
 - specify the location, type, number, and quality of affordable housing dwellings to be delivered, and
 - provide for DCJ to require the placing of a restriction on title to ensure the provision of affordable housing in perpetuity.
- DCJ will ensure compliance by the CHP with the terms of the CHAA, and
- the CHP will be the owner of any affordable housing asset delivered pursuant to a CHAA.

Where affordable housing is to be delivered by a NSW Government housing provider:

- DCJ and the NSW Government housing provider will enter a binding and perpetual contract stipulating the location, number, type, and quality of affordable housing to be delivered, and
- the NSW Government housing provider will be the owner of any affordable housing asset delivered pursuant to the contract entered with DCJ.

In the case where land is dedicated in lieu of a monetary contribution for affordable housing:

- the development of the dedicated land for affordable housing will be considered through the commissioning process identified in this Plan
- the value of land to be dedicated will be taken to have the same value as the monetary contribution that would otherwise have been made, irrespective of any changes in land value which may have occurred between its dedication and its commissioning for affordable housing delivery
- where the land is to be provided by a NSW Government housing provider to augment the delivery of affordable housing by those providers under the Scheme, its market value will be treated for bid evaluation purposes as though a leveraged third-party contribution, in the same

way that CHP-leveraged funding under through the National Housing Finance and Investment Corporation and other affordable housing funding schemes would be evaluated, and

- where a participating local council determines to dedicate suitable land to facilitate the delivery of affordable housing under the Scheme, the council will be entitled to a monetary contribution from its affordable housing fund equal to the market value of the land at the time of dedication.

3 SUB-REGIONAL POOLING

3.1 Sub-regional pooling

As per the Scheme:

Distribution of contributions collected under this Scheme will be through these contributions being pooled for use across a sub-regional grouping of LGAs, instead of being limited to distribution in the source LGA.

These pooled contributions can be allocated to affordable housing projects located within the boundaries of the sub-region from which the contributions were collected, including in the adjoining LGA from where the contribution was collected.

This approach will allow sub-regional groups of local councils to gain economies of scale and greater flexibility in the delivery of affordable rental housing³.

Sub-regional pooling of funds enhances opportunities for securing suitable sites and projects and increases the scale of contributions available to eligible affordable housing providers.

The distribution of the funds for each sub-region for affordable housing delivery by eligible affordable housing providers will be through the commissioning process described in this Plan.

Key fund distribution arrangements are as follows:

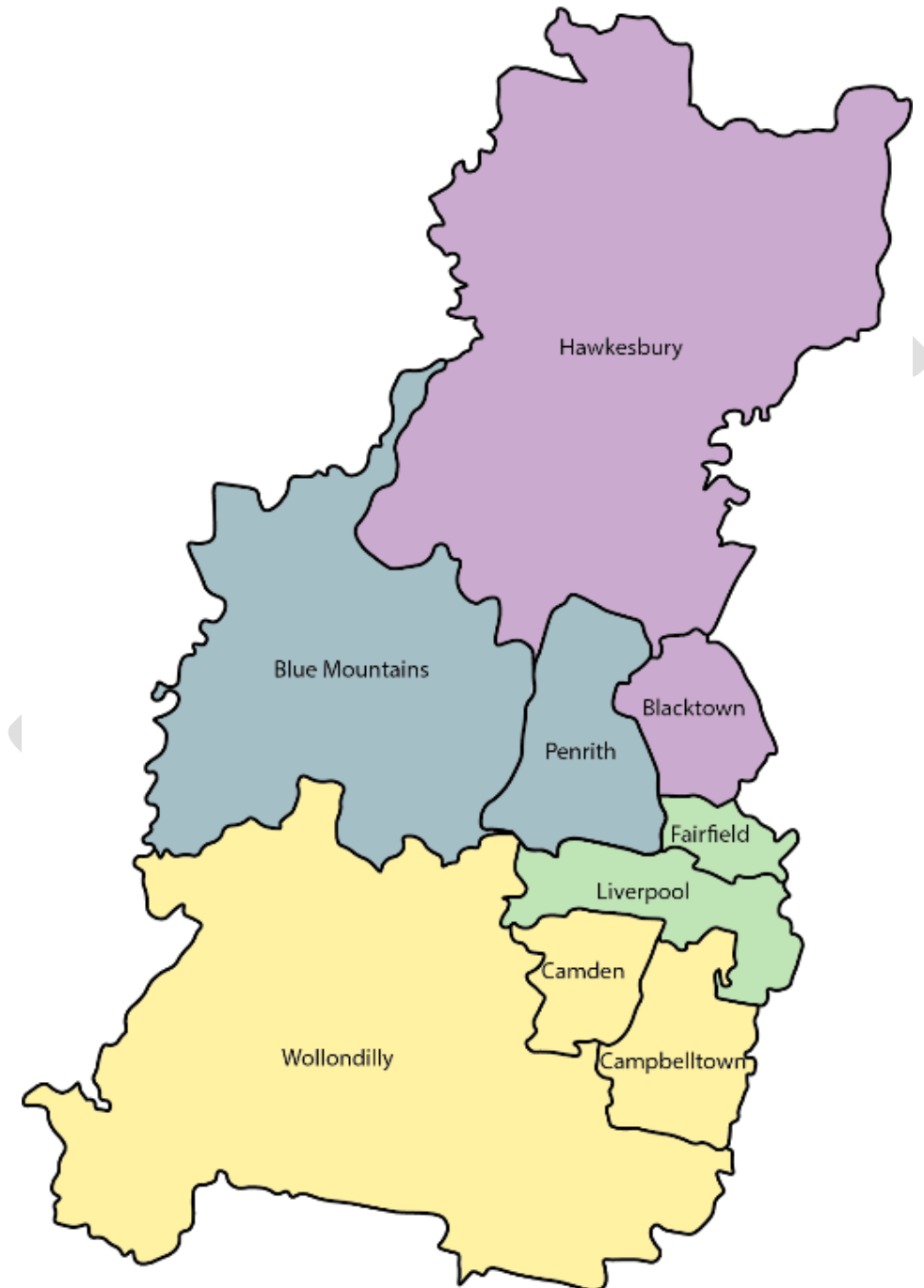
- local councils do not transfer funds into a sub-regional pool 'account' or to DCJ but instead manage their funds until the commissioning process has selected eligible housing providers and CHAAs or DCJ/NSW Government housing provider contracts are in place
- once providers have been selected and CHAAs or contracts are in place, local councils will transfer affordable housing funds or land directly to the selected eligible housing providers
- each local council will provide a report on the available contributions that can be distributed for the sub-region prior to each commissioning processes commencing for that sub-region
- subject to available contributions and market factors, there will be at least one annual commissioning round seeking expressions of interest and proposals for the delivery of affordable housing for each of the sub-regions
- the criteria for evaluating which eligible housing provider expressions of interest and proposals will be funded are outlined in this Plan, and
- this includes encouraging the proportionate distribution of affordable housing across a sub-region relative to the quantum of contributions collected per LGA.

³ WSPP (2023) 'Draft Affordable Housing Contributions Scheme'

3.2 Sub-regional groups of LGAs

The sub-regional groups of LGAs under this Scheme are:

- Blacktown City and Hawkesbury City councils LGAs
- Blue Mountains City and Penrith City councils LGA
- Liverpool City and Fairfield City councils LGAs
- Camden, Campbelltown City, and Wollondilly Shire councils LGAs.



Map - Sub-regional groupings of LGAs for 'pooling' of contributions for distribution

4 COMMISSIONING

4.1 Commissioning of affordable housing delivery

As per the Scheme:

Each local council participating in the Scheme will enter into a partnership agreement with NSW Department of Communities and Justice to manage the commissioning process for eligible affordable housing providers.

A commissioning process will be established for each sub-region of LGAs as identified in the Distribution Plan.

The timing for expressions of interest rounds for the commissioning process will be identified in the Distribution Plan⁴.

DCJ will work with local councils to lead the commissioning process to select eligible housing providers to deliver affordable housing under the Scheme. The key features of the commissioning process are as follows:

- partnership agreements will be entered into between each participating local council and DCJ to authorise DCJ to be the agent for commissioning affordable housing delivery on behalf of the councils
- a separate commissioning process will be undertaken by DCJ for each of the four sub-regions
- subject to available contributions and market factors, it is intended there be at least one annual round seeking expressions of interest and proposals for the delivery of affordable housing for each of the sub-regions, with this to occur following the release by councils of their annual report early in the financial year
- each council is to inform DCJ of the affordable housing contribution funds they have available for sub-regional pooling
- DCJ will commence the sub-regional commissioning process through a call for expressions of interest from eligible affordable housing providers
- the EoI process will be managed by DCJ, including guidance developed in consultation with local councils on what matters need to be addressed by housing providers in an EoI
- DCJ will convene an evaluation panel for each sub-region to assess EoIs comprising senior representatives from each local council within that sub-region
- short-listed EoI applicants will be invited by DCJ to submit proposals, with the sub-regional evaluation panels evaluating proposals to select which eligible housing providers will be asked to deliver affordable housing in that sub-region
- DCJ will then negotiate and enter into CHAAs for CHPs or contracts with NSW Government housing providers and will then enforce compliance by the provider with those agreements and contracts
- local councils will transfer the required affordable housing contributions funds or land assets directly to the selected housing providers once agreements and/or contracts are in place

⁴ WSPP (2023) 'Draft Affordable Housing Contributions Scheme'

- DCJ will be the final arbiter on the selection of eligible housing providers in the event that unanimous agreement cannot be reached by an evaluation panel
- evaluation panels may seek expert advice to assist in their deliberations, including financial, legal and probity advice where required
- the reasonable administrative costs incurred by DCJ and local councils through the commissioning process, including the costs of procuring expert advice, are to be met from affordable housing contribution funds, and
- DCJ will report to councils on progress against milestones for delivery of affordable housing as provided for under CHAAs or NSW Government housing provider contracts.

The flow chart below provides an example of the potential role of DCJ, councils and housing providers in the commissioning process (flow chart is from DCJ for regional councils and would be varied for this distribution plan).

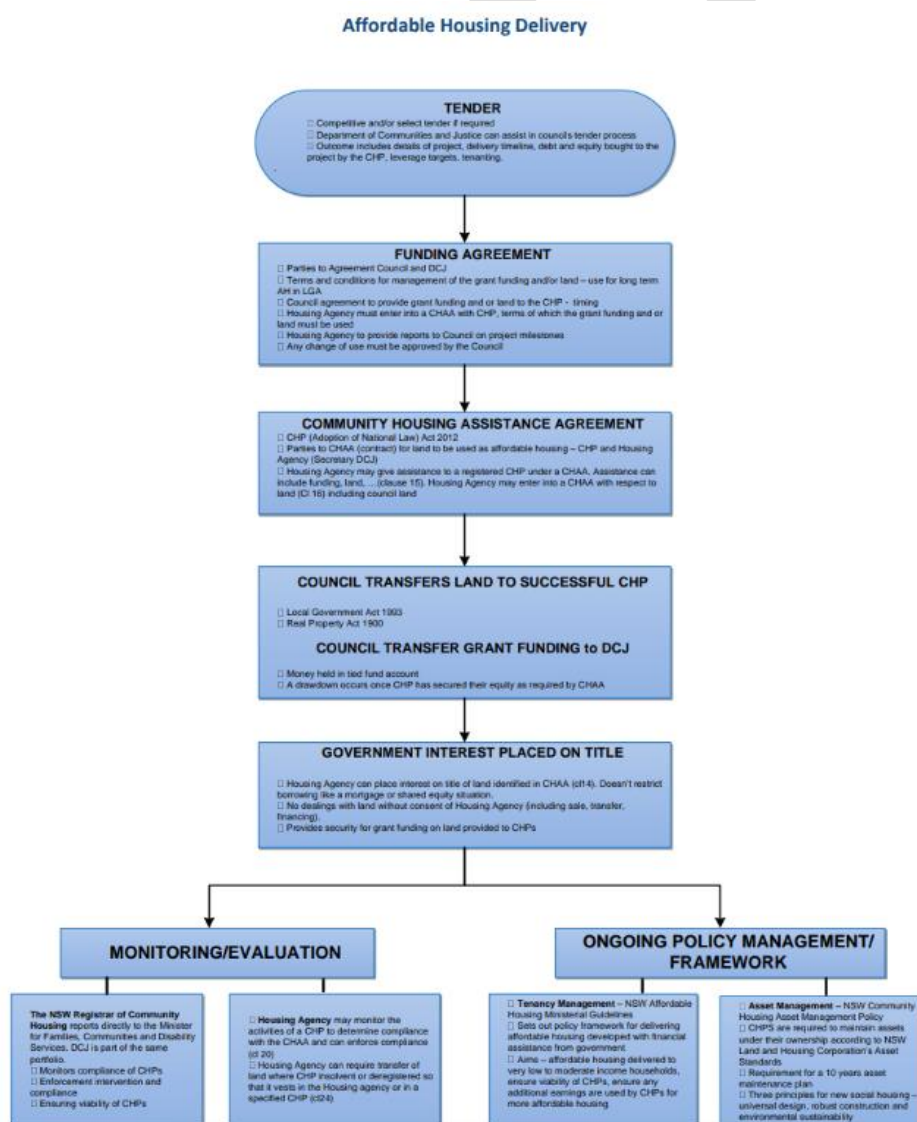


Figure – NSW DCJ example delivery process

This commissioning process will allow eligible affordable housing providers to submit Expressions of Interest to deliver affordable housing by utilising contributions that have been collected through this Scheme⁵.

DCJ, in consultation with local councils, will specify the matters that eligible affordable housing providers will need to address in an EoI. This will include:

- for a CHP, ability, and likelihood to leverage funding from third-party sources to augment affordable housing contributions
- for NSW Government housing providers, capacity to contribute land or other capital to offset affordable housing delivery costs
- commitment to in-perpetuity provision of affordable housing under the Scheme
- evidence of expertise and experience in designing, constructing, managing, and maintaining affordable housing
- evidence of capacity to deliver affordable housing which meets location, typology, quality, and delivery timing, and
- commitment and capacity to build to a high quality and level of amenity, with best-practice energy efficient design and standards to minimise environmental impact and reduce operational costs.

The commissioning process for affordable housing delivery will prioritise the allocation of contributions on a competitive basis, based on assessment criteria, for evaluation of expressions of interest, which are identified in the Distribution Plan⁶.

Criteria for the evaluation of EoIs and proposals will also have regard to the principles in SEPP (Housing) 2021 including:

- extent of contribution to the creation of mixed and balanced communities
- extent of contribution to creation of a socially diverse residential population representative of all income groups
- availability of affordable housing for very low, low and moderate income groups at an appropriate rate of gross household income
- extent to which the housing is appropriate for meeting the needs of more vulnerable members of the community including the elderly and people with a disability
- level of consistency with construction standards of other dwellings in the locality to reflect and enhance the locality
- mitigation of loss of existing affordable rental housing, and
- avoidance or mitigation of adverse climate and environmental impacts.

⁵ WSPP (2023) 'Draft Affordable Housing Contributions Scheme'

⁶ WSPP (2023) 'Draft Affordable Housing Contributions Scheme'

The commissioning of affordable housing will consider the principles for the location of affordable housing as set out in the Distribution Plan⁷.

Evaluation of EoIs and proposals for the delivery of affordable housing will also be assessed against locational criteria which prioritise locations that are accessible and have an identified affordable housing need. Specifically, affordable housing projects are to prioritise the location of dwellings in accordance with the following criteria:

- locations with high numbers of very low, low and moderate income employees, such as service centres or 'keyworker' precincts (e.g., hospitals)
- areas well-serviced by public transport, being no more than 800m from a train station or 400m from a bus stop, unless it can be demonstrated that other suitable transport options are available or will be available in the future
- areas with access to open space and social infrastructure (including schools, libraries, and community centres) or proposed social infrastructure and open space, and
- avoidance of highly constrained areas or areas subject to significant environmental hazards, including high flood and significant bush fire risk.

Finally, the commissioning process is to account for the proportion of affordable housing contributions collected at the individual LGA-level across sub-regions. Specifically:

- delivery of affordable housing under the scheme, while considering locational priorities at a sub-regional level, must also have regard to the extent to which affordable housing is delivered equitably across each of the participating local councils based on the quantum of affordable housing contributions each local council contributes to the sub-regional pool.

Transfer of contributions (including financial and/or land contributions) from a Council to an eligible affordable housing provider will be undertaken after the NSW Department of Communities and Justice has entered into a Community Housing Assistance Agreement (CHAA) or similar agreement with the provider following the commissioning process.

This CHAA will ensure that the funds will be used for Affordable Housing consistent with the requirements of this Scheme⁸.

The objectives of DCJ in entering a CHAA are to:

- support the growth of CHPs and increase supply of affordable rental accommodation
- enable CHPs to strategically manage assets to best meet future housing and resident needs, and
- provide a secure asset base for CHPs to leverage additional finance for investment in affordable housing.

CHAAs provide for CHPs to receive assistance to deliver affordable housing. Pursuant to the Scheme, this will take the form of affordable housing monetary, or land contributions transferred from local councils to the CHP.

⁷ WSPP (2023) 'Draft Affordable Housing Contributions Scheme'

⁸ Id

CHPs may also access other assistance under a CHAA, including assistance provided under the National Rental Affordability Scheme.

CHAAs consist of a set of common terms and a list of affordable housing policies. CHPs must comply with those terms and policies and CHAAs are binding on CHPs.

To enter into a CHAA, CHPs must be registered under the National Regulatory System for Community Housing as prescribed by the *NSW Community Housing Providers (Adoption of National Law) Act 2012*. Failure of a CHP to comply with a CHAA may be cause for a review of their registration status.

CHPs must allocate affordable housing in accordance with the NSW Affordable Housing Ministerial Guidelines. Amongst other matters, when making an allocation a CHP should balance the needs of households in housing stress with the requirement to generate sufficient income to meet finance and other operating costs.

4.2 Eligible affordable housing providers

Eligible affordable housing providers are defined in this section⁹.

Housing providers that can seek contributions to deliver and manage affordable housing are both the community housing sector providers and the NSW Government housing providers.

DCJ has the key NSW Government role in the delivery of affordable rental housing.

- DCJ works with the private, not-for-profit sector and local government to broker partnerships to deliver affordable housing including through the National Rental Affordability Scheme, Social and Affordable Housing Fund and a range of other projects and programs
- This occurs under the legislative framework provided by the Housing Act 2001 and the Community Housing Providers (Adoption of National Law) Act 2012 (CHP Act).
- The objects of the CHP Act include:
 - facilitating government investment in the community housing sector
 - ensuring protection of that investment
 - ensuring community housing is developed as viable and diversified, and
 - supporting the provision of registered community housing for people on very low, low, and moderate incomes.
- The NSW Community Housing Registrar is an independent statutory officer appointed by the NSW Minister for Families, Communities and Disability Services under the CHP Act. Functions include:
 - assessing the suitability of entities to be registered
 - registering CHPs and canceling registrations
 - monitoring compliance and exercising enforcement and intervention functions
 - examining governance, management, probity, tenancy and asset management, community engagement, and financial viability and sustainability
 - periodic formal compliance assessments - annually for the larger providers, every two years for smaller CHPs
 - undertaking ad hoc compliance assessments triggered by complaints and notifications received by the Registrar.
- The Secretary DCJ is a Housing Agency under the CHP Act and is able to give assistance (funding, land, etc..) to a registered CHP through a CHAA.

⁹ WSPP (2023) 'Draft Affordable Housing Contributions Scheme'

- Where land is provided (including by a local council) DCJ can place government interest on the title requiring a dealing application for assessment by DCJ if the CHP proposes sale, transfer etc.
- The CHP Act also gives DCJ power to monitor a CHP to determine compliance with the CHAA and can require a CHP to meet specified standards and targets to ensure assistance is used for the purposes for which it was provided.
- Where a CHP becomes insolvent, registration is cancelled and DCJ can require that the land affected by government interest vests in DCJ as a Housing Agency or in an alternative and specified CHP.

The following affordable housing providers will be eligible to submit expressions of interest, and be eligible to receive contributions because of the commissioning process:

1. *Tier 1 and Tier 2 registered community housing providers, as registered by the NSW Registrar of Community Housing at the time of commissioning*
2. *Tier 3 registered community housing providers, as registered by the NSW Registrar of Community Housing at the time of commissioning, only where it is demonstrated that the development activity would be small-scale and low risk*
3. *The NSW Government Aboriginal Housing Office (to be renamed Housing NSW)*
4. *The NSW Government Land and Housing Corporation (to be renamed Housing NSW), or*
5. *The NSW Government Landcom¹⁰.*

4.3 Ownership and in-perpetuity provision of affordable housing

Ownership and ongoing management of the affordable housing dwellings constructed with contributions from this Scheme will be held by the eligible affordable housing provider¹¹.

The ownership and ongoing management of affordable housing provided for under the Scheme will rest with the CHP or NSW Government provider.

There are significant benefits in CHPs owning property rather than councils retaining ownership or part ownership, viz:

- the affordable housing will be provided in perpetuity in the LGA as interest is registered on title
- it is more likely to result in leveraging additional affordable housing supply as the CHP can use asset ownership to leverage additional funds to invest in additional affordable housing, with specific leveraging targets being able to be set in CHAAs
- it strengthens the financial position of CHPs which can improve service delivery to affordable housing clients
- it lowers the cost of affordable housing as the charitable status of not-for-profit CHPs gives CHPs access to tax concessions and Commonwealth and State government grant programs, and
- ownership of dwellings by CHPs ensures there are no ongoing maintenance liability, property management and asset replacement costs for local council - scarce local council resources do not need to be allocated to managing a likely growing class of affordable housing assets.

¹⁰ WSP (2023) 'Draft Affordable Housing Contributions Scheme'

¹¹ Id

For NSW Government providers, who will typically contribute land as part of the delivery of affordable housing under the Scheme, asset ownership and management accountability for the assets appropriately sits with those entities as they have capacity to leverage significant economies of scale across their portfolios to efficiently and effectively maintain housing assets.

The Community Housing Assistance Agreement (CHAA) will ensure that the affordable housing dwellings (or the equivalent number of dwellings created) are retained as affordable housing in perpetuity. The details of this agreement will be identified in the Distribution Plan¹².

Under the Scheme, CHPs pursuant to a CHAA, and NSW Government housing providers pursuant to a contract with DCJ, will be bound to deliver affordable housing funded under the Scheme in perpetuity.

In order to respond to shifting affordable housing demands over time, including changes in household demographics, key worker employment locations and accessibility to community infrastructure, and in order to renew affordable housing assets as they reach the end of their economic life, and subject to agreement being reached with both DCJ and the local council, affordable housing assets either whole or part funded under the Scheme may be 'recycled' by CHPs and State Government providers on the proviso that all proceeds from any asset recycling are reinvested in the provision of affordable housing in the subject LGA.

These constraints on asset recycling are to be provided for under the CHAA or DCJ/State provider contract.

For CHPs, DCJ will also place a covenant on title requiring affordable housing to be provided pursuant to that title in perpetuity unless otherwise agreed under asset recycling arrangements. Any new title issued to a CHP under an asset recycling agreement will be similarly covenanted to provide affordable housing in-perpetuity.

DCJ will enforce compliance with CHAAs and NSW Government provider contracts. Local councils will not have a compliance role.

¹² WSPP (2023) 'Draft Affordable Housing Contributions Scheme'