

SA Housing Trust

Community Housing Property Transaction Policy

Policy details

Community Housing Property Transactions Policy

Confidentiality level: Public

Policy Author: Monique Pringle

Date of review: August 2018

Next review date: August 2021

Published date:

- New policy or changes to existing policy:

This policy applies to SA Housing Authority staff undertaking work on behalf of the South Australian Housing Trust (SAHT) and to Community Housing Providers operating under the Master Agreement.

Consultation with key stakeholders has been sought and considered:

Compulsory considerations

- This policy has been reviewed in its entirety for relevance, and is up to date.
- All feedback, issues and questions has been considered and addressed.
- The policy has been considered to make sure it doesn't have a disproportionate effect on any one social group - eg Aboriginal and/ or Torres Strait Islander people.
- Corporate and organisational risks have been considered and assessed.
- This policy complies with the [SAHT policy framework](#).
- Staff will be notified of any policy changes when the policy has been approved.

Approvals and review

Policy custodian – Joe Noone, Manager, Industry Partnerships

Date of approval: 6 September 2018

Policy Content Architect -

Date of approval:

Delegate - Michael Buchan, Chief Executive

Signature:

Date of endorsement:

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Government
of South Australia

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1 Policy details

Community Housing Providers (CHPs) seeking to transact on property in which the South Australian Housing Trust (SAHT) has an interest under the Master Community Housing Agreement (the '**Master Agreement**'), are required to seek the consent of SAHT as required under that Master Agreement and section 24 of the *Community Housing Providers (National Law) (South Australia) Act 2013* (the '**Act**').

This policy sets out how South Australian Housing Authority (the Authority) will support and where required, provide consent on behalf of SAHT to Community Housing Providers (CHPs), including any conditions that may be attached to the consent.

The Authority will consider such requests in an open and transparent manner that takes account of the business imperatives of CHPs, while appropriately managing any risk to SAHT's financial interest and strategic intent for social and affordable housing. The Authority will not unreasonably withhold consent to CHPs wishing to undertake a property transaction where it is demonstrated that the net proceeds will be reinvested into community housing outcomes, there is no reduction in the number of housing outcomes and that significant detriment will not be suffered by tenants of the property.

This policy is supported by the following Community Housing Core Operating documents:

- Property Disposal Procedure
- Property Sale to Tenant Procedure
- Merger Easy Guideline
- Community Housing Asset Renewal Program Guideline
- Community Housing use of property as security for debt finance procedure

The following Core Operating documents are superseded by this policy and related procedures:

- Community Housing Policy - Property Acquisition and Disposal
- Community Housing Procedure – Property Sale to Tenant
- Community Housing Procedure - Property Transfer
- Community Housing Procedure - Property Return/s

2 Scope

This policy does not apply to:

- Properties leased to CHPs under the SAHT's Housing Management Transfer programs (Better Places Stronger Communities program and the Renewing our Streets and Suburbs);
- Transactions initiated by the Authority;

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- Properties leased to community housing providers under any *Specialised Housing Programs*¹;
- New or additional bids for funding².

This policy is not intended to change the existing process for the Community Housing Asset Renewal Program (CHARP).

This Policy will:

- Establish the grounds on which consent will be granted to sell, transfer, assign, mortgage or otherwise deal with land in which the SAHT has an interest and any conditions which may be attached to that consent;
- Set out the conditions required (See Appendix 1 for various scenarios); and
- Clarify grounds for Appeal against a decision by the Authority to withhold consent.

3 SAHT Consent Considerations

The overarching considerations applied by the Authority when assessing requests are that the transaction:

- Aligns to the CHP's Asset Management Plan;
- Maintains any existing financial interest of the SAHT;
- Suitably manages any risk to the Authority and SAHT;
- Maintains or increases the number of community housing outcomes available to vulnerable people (loss of outcomes may be considered in exceptional circumstances where a greater need is being met);
- Does not compromise any strategic initiative of the Authority or government (e.g. major redevelopment);
- Has no significant detrimental impact on tenants;
- Has been duly authorised by the provider and does not involve any conflict of interest; and
- Considers the aims of the SAHT Strategic Asset Management Plan.

Additional considerations to property transactions may include:

- Evidence of transparent commercial methodology used to maximise sales price;
- Any obvious impediments overlooked by the CHP (e.g. planning restrictions);
- Social mix within the area
- Demand for public and community housing in the property location;

¹ Specialised Housing Programs include: Transitional Housing Program, Crisis Housing Program, Specialised Lease Program, Community Lease Program, Disability Housing Program, Boarding House Program.

² These bids are dealt with through SAHT's *Real Property (Off-Market) Sales Policy* or the State Government's *Guidelines for the Assessment of Unsolicited Proposals*.

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- Property amenity – i.e. if the property has particular amenity features that are in high demand e.g. disabled modifications;
- Adjoining ownership by other providers with potential for longer term/asset redevelopment opportunities.

4 Property Transactions

4.1 Sale

Community housing providers may seek consent for the sale of property including to eligible tenants or on the open market.

In addition to the overarching considerations in section 2 the following transaction specific requirements are applied when assessing requests:

- The sale price must not be less than 90% of the current market value as determined by an independent valuation funded by the CHP;
- The Total Sale Proceeds (see section 7 Definitions) must be applied by the CHP for the further acquisition, development or improvement of community housing in South Australia in areas of equal or greater need in such a manner and timeframe as required by the Authority or that the proceeds be returned to the Authority³;

Where consent is provided to reinvest the proceeds of sale:

- the CHP will enter into a Project Agreement (where an alternate property has been identified), or a Deed of Consent, with terms that address use of the asset or funds, protection of government's financial interest, the CHP's Portfolio Profile and Fixed Payments; and
- a Bank Guarantee or alternative suitable instrument of security will be established to safeguard government interest; and
- such other conditions may be applied as the Authority determines at its absolute discretion.

4.2 Transfer

Community Housing Provider to Community Housing Provider

Community housing providers may negotiate, subject to SAHT's consent, the transfer of individual property (vacant or tenanted) to other registered community housing providers including property swaps.

Where consent is provided, the Authority will normally apply conditions to that consent, including that:

³ Deed of Statutory Charge (clause 10) and Community Housing Providers (National Law) (SA) Act 2013 (s24(3)a).

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- substantially the same terms and conditions (including in relation to Portfolio Profile outcomes and Fixed Payments) are transferred to the acquiring provider;
- a tripartite Agreement be entered into with SAHT to ensure that the liabilities associated with property and tenancy management at any point are clearly articulated;
- a suitable agreement has been negotiated between the CHPs in relation to transferring maintenance funds to ensure the ongoing maintenance of the property;
- the CHP and SAHT execute a Deed of Statutory Charge over the transferred properties on substantially the same terms, conditions and value as any original instrument of security.

In addition to the matters set out in section 3 SAHT Consent Considerations, the Authority may also consider the following when determining whether to provide consent to these transfer transactions:

- Any significant impact to financial viability of the transacting providers taking into account property condition and maintenance liabilities;
- Potential for longer term redevelopment opportunities which align to approved asset management plans;
- Potential to support longer term merger opportunities;
- Complexity of the transaction i.e. the number of parties involved.

4.3 Mergers

The Authority will support ongoing and appropriate consolidation of the sector to ensure that community housing assets are appropriately managed and leveraged to maximise housing outcomes. Refer to the [Merger Easy Guide](#) for information relating to these transactions.

4.4 Mortgage

The Authority encourages the prudent use of assets in which SAHT has an interest to expand the supply of community housing, but is also required to ensure that the public investment in these properties is not unreasonably put at risk.

SAHT's consent is required where a community housing provider wishes to use a property (in which the SAHT has a financial interest) as collateral in a financing agreement for the purpose of further housing development.

Generally this consent must be given prior to the execution of any contracts by the CHP for the acquisition of land and/or purchase or construction of dwellings.

Where it is necessary to secure specific land or fix construction costs for specific projects, the contract must be made subject to SAHT's approval of collateral over the properties as well as any finance approval condition.

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In addition to the matters set out in section 2 Consent Considerations, the Authority will also require the following in order to provide consent for these transactions:

- That purpose of the project supported by the leverage arrangement aligns with the Authority's strategic policy directions and priorities.
- That the CHP is a registered Tier 1 or 2 CHP under the National Regulatory System for Community Housing, and has no financial or development related compliance issues associated with their registration.

For such transactions, the Authority will normally apply the following conditions to that consent:

- That the CHP enters into a Project Agreement which specifies the legal description, geographical location and funding sources/arrangements;
- Registration of a Deed of Statutory Charge over the project land to secure SAHT interest amounting to the security reduction over the original property/ies;
- That the CHP provide a Bank Guarantee to secure funds from the sale of stock over which SAHT has an interest or Statutory Charge;
- The preparation of a *Deed of Priority* to set out the payment priority if financiers require a mortgage on property title; and
- Such other conditions as the Authority determines at its' absolute discretion.

Refer to

- Community Housing Use of Property as Security for Debt Procedure, and
- The Authority's Instrument of Financial Delegations relating to SAHT Operations.

4.5 Property Disposals to support a development proposal

The Community Housing Asset Renewal Program (CHARP) Guidelines provides further information in relation to the redevelopment of community housing assets in which SAHT has an interest. CHARP developments are only open to CHPs registered as Tier 1 or 2's under the National Regulatory System for Community Housing and which have signed the Master Agreement.

CHPs are encouraged to discuss their proposals with the Authority staff including their Business Relations Specialist and the Senior Financial Analyst. Refer to the CHARP Guidelines for further advice regarding development opportunities.

5 Insurance Funds

The Deed of Statutory Charge requires that following the destruction of buildings and settlement of any claim (other than by reinstatement or replacement of the buildings) the CHP must pay the Contribution Repayment Amount to SAHT.

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The Authority may consider giving consent to an alternative proposal from the CHP that is consistent with the principles under this policy, and which will be agreed in a Project Agreement (or initially a Deed of Consent to be followed by a Project Agreement).

For further detail, including in relation to Bank Guarantees, refer to the relevant procedure eg: Property Disposal Procedure, CHARP Guidelines, or Fire sales, Project Agreements and Bank Guarantees Guideline.

6 Grounds of Appeal

A community housing provider acquires a right of appeal under section 25 (1) of the Act should SAHT unreasonably withhold consent to sell, transfer, assign, mortgage or otherwise deal with land that is subject to or bound by a Community Housing Agreement. The appeal must be lodged with the South Australian Civil and Administrative Tribunal. The Appeal must be lodged within 1 month of the original decision.

7 Definitions

“Total Sale Proceeds” is defined in the Deed of Statutory Charge as the total of the sales proceeds from the sale of the Project Property after the amount of:

1. any Financial Accommodation for which the Property has been used as security and which ranks in priority to SAHT pursuant to a deed of priority entered into between SAHT, the Community Housing Provider and the Financier; and
2. the incidental Sales costs (being the costs of and incidental to both the preparation and execution of the sales agreement and the brokerage or conveyancing of the Project Property),

have been deducted.

8 Related Information

8.1 Controlling documents

This policy is based on and complies with:

- The Community Housing Providers (National Law) (South Australia) Act 2013
- The Master Community Housing Agreement

Approvals will be obtained in accordance with:

- The Authority’s Instrument of Financial Delegations relating to the SAHT operations

8.2 Supporting documents

The supporting documents listed below are available at www.sa.gov.au/communityhousing:

- Community Housing Property Disposal Procedure

Community Housing Property Transaction Policy

- Community Housing Property Sale to Tenant Procedure
- Community Housing Use of property as security for debt finance procedure
- [Community Housing Merger Easy Guide](#)
- [Community Housing Asset Renewal Program \(CHARP\) Guidelines](#)
- Guideline: Fire Sales, Project Agreements and Bank Guarantees

8.3 Related policies and other documents

- [Community Housing Maintenance Accommodation Standards](#)
- Community Housing Property Sale Request Form

8.4 Date this policy applies from

TBA

8.5 Version number

Version 1

The online version of the policy is the approved and current version. There is no guarantee any printed copies are current.

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Appendix 1 - SCENARIOS CONTEMPLATED UNDER PROPERTY TRANSACTION POLICY AND PROCEDURES

		Replacement property scenario			
SALE	Sale Type	Replacement property identified and immediately available	Replacement property to be purchased but not yet identified	Replacement property is portion of development of assets NOT under Master Agreement	Replacement property is portion of development of assets under Master Agreement
	To tenant	Property Sale to Tenant Procedure	Property Sale to Tenant Procedure	Property Sale to Tenant Procedure	CHARP Guidelines apply
	Open Market	Property Disposal Procedure	Property Disposal Procedure	Property Disposal Procedure	CHARP Guidelines apply

		Asset type		
REDEVELOP		SACHA Funded Asset under Master Agreement	Other asset under Master Agreement	CHP asset without SAHT interest
	Applicable procedures	CHARP Guidelines	CHARP Guidelines to be expanded to accommodate	If selling asset under Master Agreement to facilitate development, then Property Disposal Procedure or Property Sale to Tenant Procedure

		Transfer scenario		
TRANSFER		CHP to CHP e.g. exchanges	Merger	Windup involving EOI for asset transfers
	Applicable procedures	Property Disposal Procedure	Merger Easy Guide	Expression of Interest Guidelines

MORTGAGE	Applicable procedures	Community Housing Use of property as security for debt finance procedure
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