

# Community Housing use of property as security for debt finance procedure

## Procedure details

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Community Housing use of property as security for debt finance procedure version 1

Confidentiality level: Public

Name of applicable policy: Community Housing Property Transaction Policy

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Comments: This procedure applies to South Australian Housing Authority staff and has application for Community Housing Providers operating under various agreements with SAHT.

## Approvals and review

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**Policy Custodian** - Joe Noone

Date of approval: 6 September 2018

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**Policy Content Architect** -

Date of review:

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**Delegate** - Michael Buchan

Date of approval:

**Endorsed:**

**Date of endorsement:**

# SA Housing Trust



Government  
of South Australia

# Community Housing use of property as security for debt finance procedure

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# Community Housing use of property as security for debt finance procedure

## 1 Procedure details

This procedure establishes how the South Australian Housing Authority (the Authority) will consider proposals from, and how the South Australian Housing Trust (SAHT) will provide consent to, community housing providers (CHPs) to use properties in which SAHT has an interest as collateral in a financing agreement for the purpose of further housing development. Such requests are contemplated under Section 24 of the *Community Housing Providers (National Law) (South Australia) Act 2013 (the Act)*, and Part 4 of the Master Community Housing Agreement (Master Agreement).

The Authority will consider such requests in an open and transparent manner that considers the business imperatives of CHPs, while appropriately managing any risk to SAHT's financial interest and the strategic intent for social and affordable housing.

This procedure links to the Community Housing Property Transaction Policy.

## 2 Scope

This procedure applies to requests relating to borrowing against properties that are subject to or bound by a Master Agreement between a CHP and the South Australian Housing Trust.

## 3 Community Housing Provider seeks approval

The Act and the Master Agreement stipulate that a CHP must not mortgage or enter into arrangements to secure Financial Accommodation against a property under the Master Agreement without the written consent of SAHT.

Approval must be given by the Authority prior to the execution of any contracts by the CHP for the acquisition of land and/or purchase or construction of dwellings that rely on financing under this procedure. Contracts may be entered into *subject to* SAHT's approval.

Generally, requests from a CHP should:

- Be in writing to the Authority and typically via a Project Proposal<sup>1</sup>;
- Include detail of geographical addresses, legal descriptions (Certificate of Title reference, Deposited Plan number and allotment numbers), Valuer General Valuation, and property type (e.g. NBESP, SACHA Funded Asset) of all properties which are the subject of the leverage request. Note, it is preferred that Stimulus (i.e.

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<sup>1</sup> The Master Agreement refers to a requirement to seek consent via a "Consent Application". This will normally take the form of a Project Proposal, as requests to use properties as security are most likely to be associated with a specific project proposal.

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NBESP, usually Supported tenant type) stock and Affordable stock be leveraged if suitable before SACHA-funded Assets (formerly debentured stock) are leveraged.<sup>2</sup>

- Provide complete details (including plans) of the proposed Project including expected dwelling outcomes, estimated timeframes for planning approval, construction commencement and completion dates;
- Include detail of financial analysis undertaken for the proposed Project including cash flow projections for the life of the project/debt facility, any feasibility studies, projected surplus/deficit and market valuation of the finished Project;
- Include proposed project funding details with proposed level of security required by the financier over the Project Properties, terms of finance (interest rate, length of mortgage, Loan to Value Ratio being applied by the financier) and include a copy of the Letter of Offer from the finance provider (if available);
- Include a schedule for repayment of debt and timeframe for removal of Financier's mortgage over collateralised stock in which SAHT has an interest;
- Address any existing mortgage or financing agreement over the Project Properties;
- Advise full contact details of relevant officers of the community housing provider.

### 4 The Authority assesses request

The Authority will review the request and commence the following process:

- advise the CHP the request is being processed and if necessary seek additional information from the CHP.
- provide the CHP with a preliminary estimate of the timeframe for the approval and documentation process. It should be noted that this is subject to change, depending on the profile of the proposal, emerging legal or project issues.
- assess the proposal taking account of matters which will vary depending on the specific circumstances, but may include:
  - proposed form of development,
  - project viability,

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<sup>2</sup> An objective of the Stimulus (or NBESP - Nation Building Economic Stimulus Program) program was for these properties to be leveraged for further development. Being built more recently, they are usually worth more, and so mortgaging them will generate more borrowings for similar administrative effort. Furthermore, older debentured stock are more likely to be redeveloped or sold, in which case mortgages would need to be lifted and replaced (again incurring administrative effort).

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- planning considerations,
  - yield in social housing,
  - benefit to current and future tenants,
  - opportunity costs (i.e. what might be a better use of the asset),
  - risks,
  - track record of CHP in development and delivering agreed outcomes,
  - development capacity and capability of the CHP,
  - financial capacity of the CHP,
  - terms of finance
- if consent is to be provided, determine appropriate conditions (see following section)
  - in conjunction with the CHP, prepare documents for the consent to use properties as security for debt finance, and approval of the Project by the appropriate Authority delegated officer or Minister as appropriate.
  - inform the CHP of the outcome of this process.

### 5 Terms and Conditions related to Consent

Consent to borrow against property in which SAHT has an interest will normally be subject to specific conditions as contemplated in Clause 18.7 of the Master Agreement. Such conditions are likely to include, but not be limited to:

- A requirement that each individual Project that seeks to use funds secured by assets under the Master Agreement be endorsed by the Authority
- Completion of a Deed of Priority that is satisfactory to the Authority
- A Deed of Statutory Charge being placed on the resultant Project property (the outcome of the Project)
- A Deed of Statutory Charge over alternative properties, or other form of security, to ensure SAHT's interest is secured to the greatest extent possible, and address situations where SAHT's interest is exposed due to the proposed debt arrangement (refer to Fact Sheet for various scenarios)

### 6 Prepare legal documentation

Following receipt of the delegated approval, the Authority in conjunction with the CHP will prepare the following contract documents (for review by the Crown Solicitors Office as required):

- **Deed of Consent:** this sets out the terms of the agreement between SAHT and the CHP in relation to use of properties for security for debt finance. It will normally indicate that consent is provided, for a specific project, and any conditions that may

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be imposed, including the placement of a Deed of Statutory Charge over the delivered project outcomes, and reference to an agreed Deed of Priority.

The Deed of Consent may also indicate the terms upon which *future* projects may be considered (e.g. as debt is repaid, thus freeing up further borrowing power for the CHP). Note: It will always be a requirement that CHPs seek approval for any future project that is to be funded by debt secured by assets in which SAHT has an interest. It is also possible (but less likely) that consent to use properties as security for debt be given without an agreed project being immediately available. Terms of the Deed of Consent would then also include consent being subject to a satisfactory Project Agreement being entered into within a reasonable timeframe, and a Deed of Statutory Charge being placed over the Project outcomes.

Where a Project Agreement can be completed immediately, and the consent to mortgage properties is restricted to a specific project, there may not be a need for a Deed of Consent as the Project Agreement may include appropriate clauses about consent to borrow against properties for the purpose of the project.

Depending on the information at hand at the time of drafting the Deed of Consent, any Project Agreement, Deed of Priority, and Deed of Statutory Charge, may be attached to the Deed of Consent.

- **Project Agreement:** As soon as the details of the project are sufficiently formed for the purpose of clear documentation, a Project Agreement should be developed that describes the inputs and outputs of the project, and the obligations of both parties during and at the end of the project. For projects under the Master Agreement, the Project Agreement will take a form similar to that prescribed by the Master Agreement (or updated from time to time). In the case of the ROSAS Housing Transfer Management Program, the Project Agreement will likely take the form of an Approved Project Plan under the Housing Transfer Management Deed, Development Deed and approved Investment and Asset Management Plan.
- **Deed of Statutory Charge:** There will always need to be a Deed of Statutory Charge over the Project Properties at the end of the Project, and that is unlikely to be able to be completed until the project is well developed and maybe not until construction is complete (e.g. legal references and valuations will change where land subdivision occurs). Depending on the project, and on the financing proposal, it may be necessary to register a Deed of Statutory Charge on some or all of the project land throughout the project, (or over alternative property), in order to protect SAHT's interest. In addition, if the subject land is still subject to a debenture at the beginning of a project, then consideration should be given to developing a Deed of Statutory Charge to coincide with the Deed of Priority, and ensure it is registered first on the title ahead of the Deed of Priority. Where a property is to be redeveloped in the near

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future, duplicative effort in registering charges should be avoided, provided SAHT's interest is protected adequately. Each project and its inherent risks will be considered on its merits.

- **Deed of Priority:** The Deed of Priority details the payment priority if repayment of secured funds is required. It provides certainty that the financier's claim essentially has first priority in the event of a default by the CHP, and that the SAHT's interest rates as second priority, and further sets out some process matters to be followed in event of a default. The Deed of Statutory Charge will be registered first on the title, before the Deed of Priority, providing some protection of the SAHT's interest in the event of a default.

The standard format for each of these documents will be the templates provided originally as attachments to the Master Agreement, or as updated from time to time, and as amended to suit the specific circumstances of each individual project, or those developed for specific programs. The Crown Solicitors Office may be consulted in the drafting of these documents. Scenarios are listed in a Fact Sheet on Sharepoint that identify some of the more common project types and relevant documentation.

### 7 Execution of legal documents

The Authority will provide the final documents to the CHP electronically. The CHP should execute all contract documentation in accordance with their constitution and the requirements of the Act their entity is incorporated under<sup>3</sup>, and ensure the Financier does the same. The CHP should return to the Authority executed hard copies of the following (as applicable):

- Deed of Consent (2 copies) – one of which will be returned to the CHP, and one held by the Authority
- Deed of Priority (3 copies): two of which will be returned to the CHP (one to be provided to the Financier), and one held by the Authority
- Deed of Statutory Charge (3 copies) – one of which will be returned to the CHP, one held by the Authority, and one registered on the Certificate of Title
- Project Agreement (2 copies) – one of which will be returned to the CHP, and one held by the Authority

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<sup>3</sup> E.g. Associations Incorporation Act 1985 and Corporations Act 2001 (Cth).

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## 8 Conveyancing

The Authority's Conveyancing team will manage registration of the Deeds over the respective Certificates of Title.

## 9 Related information

### 9.1 Controlling documents

This procedure is based on and complies with:

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

Approvals will be obtained in accordance with the relevant delegations of authority.

### 9.2 Other documents and resources

The supporting documents listed below are available at [www.sa.gov.au/communityhousing](http://www.sa.gov.au/communityhousing) and on sharepoint:

- Community Housing Asset Renewal Program (CHARP) Guidelines
- Deed of Consent template (under development)
- Deed of Statutory Charge template
- Project Agreement template
- Deed of Priority template
- Fact Sheet on Scenarios for contract documentation where debt financing exists

### 9.3 Date this procedure applies from

TBA

### 9.4 Version number

1

### 9.5 Disclaimer

This procedure can be changed, withdrawn or replaced at any time.