



Collateralisation of SAHT Interests Policy

The purpose of this policy is to:

- (a) outline the roles and responsibilities of the SA Housing Authority (the Authority) and Community Housing Provider's (providers) when providers seek to raise debt finance to increase their supply of social and affordable rental housing using government funded assets as collateral for these loans.
- (b) provide a consistent process and framework supporting this activity.

This policy is developed and administered by the Authority on behalf of the South Australian Housing Trust (SAHT).

This policy only applies to instances where providers require the use of government funded assets, or revenue streams generated from these assets to secure debt finance. Government funded assets are those in which SAHT holds a financial or non-financial interest.

Detail

This policy establishes how the Authority will consider proposals from, and provide consent to, providers to use government funded assets as security in a financing agreement for the purpose of funding housing development.

Such requests are contemplated under Section 24 of the [Community Housing Provider \(National Law\) \(South Australia\) Act 2013](#) (the Act), and PART 4, Sections 18 and 19 of the Master Community Housing Agreement (Master Agreement).

The Authority will consider these requests in an open and transparent manner that considers the business imperatives of providers, while appropriately managing any risk to SAHT's financial interest and the strategic intent for social and affordable housing, as outlined in the State-wide strategic plan [Our Housing Future](#), and the [SA Housing Authority Strategic Plan 2020-2025](#).

The Authority will generally support provider requests to use government funded assets as security for debt finance to either:

- improve their financial viability through renegotiation of existing loans to more favourable terms
- grow their rental housing portfolios in South Australia. These assets and income streams must be used to further stock growth in South Australia
- improve or renew existing housing portfolios in South Australia.

Properties under the Housing Management Transfer Deed (Better Places Stronger Communities (BPSC) and Renewing Our Streets and Suburbs (ROSAS)) may only be used as collateral at the Authority's discretion (see section 3.8 Excluded Asset Types).

The Authority will not support provider requests to use government funded assets as collateral to access debt finance for other purposes for example, overdraft facilities or working capital for non-development or housing renewal related purposes.

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The Authority will not support provider requests to use government funded assets as security for projects or refinancing in other jurisdictions.

The Act (Section 24) and the Master Agreement (Part 4) stipulate that a provider must not mortgage or enter arrangements to secure Financial Accommodation against a property without the written consent of SAHT. Section 24 of The Act reads as follows:

24—Dealings with land in which SAHT has an interest

- (1) A community housing provider must not sell, transfer, assign, mortgage or otherwise deal with—
 - (a) land in which SAHT has an interest; or
 - (b) without limiting paragraph (a), land that is subject to a charge under this Division, unless the community housing provider has obtained the written consent of SAHT.
- (2) SAHT must not unreasonably withhold consent under subsection (1).
- (3) Without limiting the grounds on which SAHT may withhold consent under subsection (1), consent may reasonably be withheld if SAHT is not satisfied—
 - (a) that the net proceeds of the sale, transfer, assignment, mortgage of, or other dealing with, the land will be applied by the community housing provider for the further acquisition, development or improvement of community housing (to the extent that the proceeds may be attributed to an interest that SAHT has had in the land after taking into account the provisions of any community housing agreement and any principle prescribed by the regulations); or
 - (b) that significant detriment will not be suffered by tenants of the property (if any) as a result of the sale, transfer, assignment, mortgage of, or other dealing with, the land.
- (4) SAHT may, in respect of the sale, transfer, assignment, mortgage of, or other dealing with, the land to which it has consented, require that money obtained by the community housing provider from dealing with the land be paid to SAHT (after taking into account the provisions of any community housing agreement and any principle prescribed by the regulations and after discharging any encumbrance that ranks ahead of any relevant charge under this Division).

Approval must be given by the Authority prior to the execution of any contracts by the provider for the:

- acquisition of land and/or purchase or construction or improvement of dwellings that rely on financing under this policy.
- sale or disposal of properties fully or partly funded by government. Under this policy, sale proceeds would be distributed in the following order:
 - Financier – addressing any outstanding loan balance
 - SAHT – recovering SAHT's financial interest in connection with the property.
 - Provider – any residual balance.

It is a requirement that providers seek specific approval from the Authority in writing for any future project that is proposed to be funded by debt secured by government funded assets.

➤ **Loan arrangements**

Providers may request the Authority's approval to enter new loan arrangements for a variety of reasons, including the following examples:

- a) Project Finance
Providers often require debt funding to fund or part fund housing development projects under existing Government supported programs and initiatives. Examples include development outcomes from the ROSAS lease transfer program, the [Community Housing Asset Renewal Program](#) and other ad hoc opportunities.
- b) Government Grant Programs
From time to time, government capital grants are made available to providers to support costs associated with the development of new social/affordable housing stock (for example, the Affordable Housing Innovations Fund (AHIF)). In these circumstances, providers are encouraged to source debt finance to leverage additional housing outcomes beyond those that could be financed through the government funding alone. These projects must be financially sustainable with loan repayments expected to be met through rental income streams, or sale of completed stock.

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c) Refinancing on more favourable terms/Debt consolidation

It is possible that providers may be able to renegotiate existing debt facilities on more favourable terms, for example through consolidating their loans and/or taking advantage of a low interest rate environment.

d) Accessing Equity in Existing Loans

Under normal circumstances, providers may build equity in most developments funded through debt finance and other equity contributions. Equity growth may result from conditions including:

- Increases in the market value of properties over time, which may rise at a faster rate than CPI indexation of government grants.
- Decreases in debt levels as loans are repaid.
- Expiration of term bound agreements after which time any financial obligations to government are terminated.

These circumstances may give providers the opportunity to leverage new debt against existing collateralised assets to facilitate growth in housing stock.

➤ **Costs incurred by the Authority**

Considerable costs can be incurred in preparing contractual documentation supporting debt financing of projects. These costs can include fees associated with seeking legal advice on developing or modifying contracts, internal Authority staff time in populating existing contract templates and conveyancing fees in placing and/or lifting charges registered at the Lands Titles Office.

Any reasonable costs incurred by the Authority in preparing contractual documentation and conveyancing for these arrangements, and in the assessment of the proposed facility (including assessing the financial viability of a provider and/or project cashflows) may be passed on to the provider.

The Authority will only recover reasonable costs and will advise up front if these costs will be passed on to the provider prior to them being incurred.

➤ **Information Required Prior to Contract Execution of a Finance Facility**

Providers are required to:

- Include detail of financial analysis undertaken for the proposed Project(s) including cash flow projections for the life of the project/debt facility, and projected surplus/deficits.
- 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 provider.

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

- advise the provider the request is being processed and if necessary, seek additional information from the provider.
- give the provider 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.
- may request access to any due diligence assessment undertaken by the financier, if reasonable.

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- assess the proposal taking account of matters which will vary depending on the specific circumstances, but may include:
 - proposed form of development (including density, type, and titling of dwellings),
 - project viability, including an assessment of project development cash flows and timing/need for market sales
 - impact of proposed project(s) and debt on the overall financial viability of the provider.
 - development expertise of the provider
 - review of NRSCH (or equivalent) compliance determination reports
 - aggregated value of SAHT's exposure

The Authority, in conjunction with the provider, will prepare the following contract documents (for review by the Crown Solicitors Office as required):

- Deed of Priority
- Deed of Consent

These documents are defined in detail in Section 7 Definitions.

Note that it will always be a requirement that providers seek specific approval from the Authority in writing for any future project that is to be funded by debt secured by government funded assets. These projects can only draw upon the approved debt facilities when added to an existing Deed of Consent.

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.

The Authority will provide the final documents to the provider electronically. The provider should execute all contract documentation in accordance with its constitution and the requirements of the Act its entity is incorporated under, and ensure the Financier does the same. The provider 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 provider, and one held by the Authority.
- Deed of Priority (3 copies): two of which will be returned to the provider (one to be provided to the Financier), and one held by the Authority.

Note that in accordance with the *South Australian Housing Trust Act 1995 (s.7)* and the *Public Finance and Audit Act 1987 (s.18)* the SAHT must obtain approval from the Treasurer if a provider is requesting financial assistance via an increase in the collateral being used under an existing approved facility or an increase in the overall debt facility. Note that no minimum financial threshold applies. This approval must be obtained prior to execution of the contract documents above

➤ **Collateralisation of Assets – Order of Priority**

The Authority may require the provider to allocate certain Government funded assets to the provider's security pool in priority to others. For example, the Authority will generally require Government funded assets to be allocated to the security pool in the following order of priority:

1. National Building Economic Stimulus Plan (NBESP) properties.
2. Affordable Housing Innovations Fund (AHIF) properties.
3. SACHA Funded Assets (as that term is defined in the Master Community Housing Agreement).

The SAHT will consider the transfer of its financial interest in a property (secured by a Deed of Statutory Charge or Covenant) to accommodate a provider's financing request, at its sole discretion, acting reasonably.

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In regard to forming a position on collateralisation of government funded assets, the following items are of importance:

- SAHT's instrument of security (primarily the Statutory Charge/Covenant) must always be first registered on title.
- Cross-collateralisation of assets should be avoided, however, where required SAHT may nominate reciprocal cross-collateralisation rights.
- Financiers will be granted first priority to accessing their funding in the advent of default by the provider and the SAHT will take second priority.

Provider owned assets that have a non-financial SAHT interest on title may be used as collateral. Examples of these properties are provider owned outcomes constructed under the ROSAS and BPSC lease transfer programs. SAHT will not unreasonably withhold its consent to these properties being used as collateral.

The Authority will manage the process of registration of the security instruments over the respective Certificates of Title and liaise with the financier's conveyancing team.

➤ **Excluded asset types**

Note that SAHT-owned assets and/or land that are transferred to providers for the purpose of redevelopment under the Housing Management Transfer Deed program (ROSAS and BPSC) lease transfer programs, or other such programs/projects where providers are to return stock to the Authority, may be used as security in financing arrangements at the Authority's discretion. These arrangements typically involve the transfer of SAHT-owned assets/land to the provider with SAHT's interest protected via a Deed of Statutory Charge or Covenant.

➤ **Gearing Ratio**

The Authority will apply a Gearing ratio on providers where they are collateralising government funded assets.

In determining the Gearing ratio for an individual provider, the amount is calculated as total repayable debt divided by total assets (the Gearing ratio as used in NRSCH financial reporting currently set at 30%). It is a measure of an organisations sustainable debt level and is monitored by Registrars to ensure the providers capital structure is viable in the long term.

Each provider reports on its organisation's historical and forecast Gearing ratio through its Financial Performance Report. The Authority will use the latest available Financial Performance Report to review a provider's Gearing ratio and may request that a provider provides an overlay of the proposed debt facility on this ratio.

The Authority has absolute discretion as to whether and in what circumstances it will allow assets that SAHT has a financial interest in to be collateralised. The Authority will reasonably allow a provider to exceed the Gearing ratio if it is satisfied that the provider will bring the ratio under the National Regulatory System for Community Housing (NRSCH) threshold in the short to medium term and the Authority's Audit Risk and Finance Committee approves this departure.

➤ **In the Event of Default on the Loan by a Provider**

Under the Deed of Priority in the event of default by a provider and the forced sale of the project property, the financier recovers its outstanding loan balance as the first priority, then SAHT recovers its interest and finally the provider receives any remaining equity from the sales proceeds. There is no further provider liability beyond what can be recovered through the sale of the project property.

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Under the Deed of Priority, SAHT has a first option to purchase the property should the provider default on its loan. In this case, SAHT would pay the financier the outstanding loan balance with respect to the property and assume outright ownership of the property. This option is designed to protect tenant outcomes and allow the retention of strategically important properties that otherwise would be sold on the open market.

Definitions

Term:	Meaning
Government funded assets	Assets in which SAHT has a financial or non-financial interest on title.
Collateralisation	An interest in or right over property which secures the payment of a debt or other monetary obligation or the performance of any other obligation.
Deed of Priority	<p>The Deed of Priority is executed by the provider, SAHT and the financier. It specifies the order of priority of security instruments relating to the property (irrespective of the order of lodgment of security instruments on the title) and grants financiers first priority to accessing their funding in the event of default by the provider. To date in South Australia, this is a non-negotiable condition of providing debt finance required by all financiers. The SAHT's interest ranks as second priority.</p> <p>The Deed of Statutory Charge/Covenant 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 in that the bank will notify SAHT prior to taking any action such as re-mortgage or sale of the properties.</p>
Deed of Consent	<p>The Deed of Consent sets out the terms of the agreement between SAHT and the provider in relation to the use of properties as security for debt finance. It will normally indicate that consent is provided for a specific project(s), and any conditions that may be imposed, including the placement of a Deed of Statutory Charge over the delivered project outcomes, and reference to an agreed Deed of Priority.</p> <p>The Deed of Consent may also indicate the terms upon which future projects may be considered (for example, as debt is repaid, thus freeing up further borrowing power for the provider). Note: it will always be a requirement that providers seek specific approval for any future project that is to be funded by debt secured by government funded assets.</p>
Project Agreement	<p>A Project Agreement should describe the inputs and outputs of the project, and the obligations of both parties during and at the end of the project. It should be developed as soon as the details of a project are sufficiently formed for the purpose of clear documentation.</p> <p>For projects under the Master Agreement, the Project Agreement will take a form like that prescribed by the Master Agreement (or as 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.</p>

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Deed of Statutory Charge	<p>The Deed of Statutory Charge secures SAHT's interest in Project Properties. The amount secured by a Deed of Statutory Charge is defined as the Contribution Repayment Amount for all Project Property as specified in the Deed.</p> <p>There will always need to be a Deed of Statutory Charge or Covenant 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 (since 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/Covenant on some or all of the project land throughout the project, (or over alternative property), in order to protect SAHT's interest.</p>
Cross Collateralisation	<p>Cross-collateralisation is a term used when the collateral for one loan is also used as collateral for another loan. Sometimes financiers require additional security beyond the project properties to satisfy their LVR benchmarks.</p> <p>In essence, should the provider default on their loan repayments or face insolvency, the bank would be able to recover their outstanding loans through the sale of properties on all securitised stock at their discretion. This would not necessarily be in proportion to the funding inputs into individual properties.</p>
General Security Agreements	<p>In response to changes to the <i>Personal Property Securities Act 2009</i>, most financiers have now incorporated clauses around General Security Agreements into collateralisation requirements within their loan documentation.</p> <p>As part of these lending arrangements, banks now require borrowers to enter security arrangements which include:</p> <ul style="list-style-type: none">(a) registered security over titles (i.e. mortgages) for project properties, and(b) a General Security Agreement over all personal property of the organisation.

Related Information

Controlling Documents

This procedure is based on and complies with:

- [Community Housing Provider \(National Law\) \(South Australia\) Act 2013](#)
- Master Community Housing Agreement
- [Our Housing Future](#)
- [SA Housing Authority Strategic Plan 2020-2025](#)
- [Community Housing Property Transaction Policy](#)

Supporting Documents

The supporting documents listed below are available on request from housingpartnerships@sa.gov.au

- [Community Housing Asset Renewal Program \(CHARP\) Guidelines](#)
- Deed of Consent template
- Deed of Statutory Charge template
- Project Agreement template
- Deed of Priority template