

NSW Land and Housing Corporation
NSW Aboriginal Housing Office
Department of Communities and Justice



NSW Submission on the Housing Australia Future Fund and National Housing Accord – exposure draft Investment Mandate

November 2023



Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Submitted on behalf of the NSW Government

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First published: November 2023

Department reference number: D23/2633988

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TMP-MC-R-SC-V1.2

Introduction

NSW welcomes the Commonwealth government's housing reforms and its commitment to investing in social, affordable and acute housing through the Housing Australia Future Fund (HAFF) and National Housing Accord (Accord).

We are committed to collaborating at all levels of government to respond to the ongoing affordability pressures, rising cost of living and growing complexity of need that is driving increased demand and unmet demand for social and affordable housing that is being experienced across all States and Territories.

NSW appreciates the opportunity to comment on the Commonwealth Treasury exposure draft of the Housing Australia Investment Mandate Amendment (Social Housing, Affordable Housing and Acute Housing Needs) Direction 2023 (Investment Mandate).

We note that the Investment Mandate (IM) appears to offer a higher degree of flexibility on key points of proposed administration of the HAFF and Accord. This flexibility is welcome and will be critical for its successful implementation and to maximise the potential benefits offered.

Continued flexibility and close collaboration between States and Territories and Housing Australia (HA) on development of the subsequent program guidelines and procurement processes will be essential to ensure the efficient delivery of the HAFF and Accord and to maximise their outcomes in line with the intent of the IM.

NSW Housing agencies (NSW Land and Housing Corporation, NSW Aboriginal Housing Office and the Department of Communities and Justice) in collaboration with NSW Treasury and Landcom, have prepared this submission on behalf of the NSW Government.

We offer the following feedback to support the effective delivery of the HAFF and Accord, under the Housing Australia Future Fund Facility (HAFFF) and National Housing Accord Facility (NHAF), in close partnership between the Commonwealth, States and Territories, to maximise outcomes and minimise unintended challenges for implementation in the future.

We have structured our feedback in three parts:

1. Proposed amendments to wording of the IM
2. Areas for clarification
3. General comments.

1 Proposed amendments to wording of the Investment Mandate

1.1 Flexibility and ongoing collaboration with States/Territories

NSW welcomes the high level, non-restrictive approach that has been adopted in the IM.

This flexibility will offer the best possibility for proponents to bring forward projects with social and/or affordable housing and/or market housing which best suit the context, that will maximise the opportunities available and support the objectives of the HAFF and Accord.

We strongly recommend that to ensure this approach is retained during implementation, HA should be directed in the IM not to limit this flexibility.

Learning from recent experience with implementation of the National Housing Infrastructure Facility Social and Affordable Housing (NHIF SAH), no new requirements or restrictions should be introduced during implementation that limit eligibility for financing on the grounds of:

- Tenure mix
- Housing typology
- Tenant cohort
- Home or land ownership
- Land lease timeframes
- Procurement type including development, redevelopment, greenfield or other acquisition including the ability to purchase homes off the plan for delivery within program timeframes, restorations, or conversions of existing residential or non-residential buildings
- Project scale
- Mix of grants and loans.

To maximise the benefits of the HAFF and Accord, the IM should direct HA to develop its program guidelines and procurement processes in collaboration with States and Territories.

Accordingly, NSW recommends the following amendments to be made to the IM:

S.28 C	Applications for finance under the HAFFF
	<p><u>(a)</u> Housing Australia must consider an application from an entity for the making of a loan or a grant under the HAFFF if the application is made in the manner and form approved by Housing Australia.</p> <p><u>(b)</u> Housing Australia must work in close collaboration with States and Territories to develop suitable program guidelines, procedures and procurement and other practices which retain flexibility in implementation of the HAFF.</p>
S.28 P	Applications for finance under the NHAF

1.2 Value for money and matters for Housing Australia to consider when making financing decisions

Value for money is a key criterion for assessing the eligibility of projects. In its current form the definition of value for money is too narrow and will lead to a disproportionate focus by HA on projects that are low-cost and high yield, as this is the factor that would allow for the greatest number of dwellings to be delivered for the funding provided. To retain the current narrow definition of value for money would overlook the broader range of factors that impact on the ability of projects to deliver maximum benefits. A more comprehensive definition that accounts for these factors will drive better consideration of value.

The matters to be considered when making financing decisions must be expanded to direct HA to consider the capacity of projects to meet priority housing demand, and deliver tenant and housing system outcomes, in line with the objectives of the HAFF and Accord.

The value for money consideration therefore needs to be linked to the broader range of matters HA is directed to consider when making financing decisions (as set out in S.28J and S.28V).

This will ensure that government funding reaches where it is most needed, especially in support of financing for projects in regional areas.

Specifying that the value for money consideration must include the importance of housing need in diverse locations, as well as the cost of provision as a basis for assessing appropriate levels of financing for projects will more clearly support this goal.

The IM needs to direct HA specifically to put in place processes to ensure supply of housing which is appropriate for, and targeted to, Aboriginal and Torres Strait Islander people, and which is delivered by and/or for Aboriginal controlled organisations such as Aboriginal Community Housing Providers (ACHPs). This could include targets and/or dedicated funding streams for Aboriginal housing.

An essential factor in assessing if a project represents value for money is whether the State/Territory government considers that the project:

- Meets priority needs, including consideration of relative need compared to other potential projects
- Will deliver high quality homes which are suitable for long term use as social, affordable or acute housing
- Can be harmonised with the existing social/affordable housing or homelessness service system, and continue to add benefits to those systems, and
- Is compatible with other existing/planned portfolios, programs and investments.

States and Territories are closest to the demand, supply and system-operation of the social/affordable housing system and homelessness service system. They are the experts in these matters and the homes financed by HA will become part of these systems.

The IM directs HA to take relevant advice from the National Housing Supply and Affordability Council. However the Council reports exclusively to Commonwealth Ministers, and does not have a reporting or consultation relationship with the Housing and Homelessness Ministerial Council which includes State and Territory Ministers. States and Territories are best positioned to provide specific advice on their housing systems, to complement the advice of the National Housing Supply and Affordability Council to HA.

To reflect the expertise and stewardship of States/Territories, the IM needs to:

1. Recognise explicitly State/Territory stewardship of social/affordable housing systems by requiring HA to seek State/Territory advice regarding priority needs, housing types and management suitable for long term use as social/affordable/acute housing, and existing/planned portfolios, programs and investments.
2. Acknowledge that States/Territories are best placed to identify priority social housing cohorts, using existing social housing eligibility and allocation processes.
3. Acknowledge that States/Territories are best placed to identify priority affordable housing cohorts, to ensure affordable housing is genuinely affordable and allocated to people who need it. The NSW Minister for Housing has tabled affordable housing for discussion at the next Housing and Homelessness Ministerial Council meeting. The intention is to seek Ministers' agreement to work together to develop a nationally consistent approach to affordable housing, to ensure that it is genuinely affordable and allocated appropriately. The approach could be based on principles regarding desired tenant and system outcomes, consistent rent setting methodology to ensure affordability, coordinated eligibility and access criteria, and prioritisation of management by not for profit A/CHPs. The issue of supporting access to housing for essential local area workers who may not otherwise be eligible for affordable housing may also be considered.
4. Acknowledge that States/Territories are best placed to identify priority acute cohorts, using existing homelessness service system processes.
5. Ensure that HAFF and Accord projects are constructed and operated in accordance with existing State/Territory laws, standards, regulatory/compliance requirements, reporting arrangements and policies. This includes ensuring that projects are not financed unless the proposed managers of the social/affordable housing are eligible to do so in the relevant State/Territory. This will reduce complexity and deliver efficiency benefits for providers who will be able to integrate new homes into their broader portfolio and report under existing frameworks, as well as reducing administrative complexity for State/Territory administrators and regulators, and building system capability and accountability.

Other matters to be included in HA's decision making include:

6. Additionality – it is critical that projects demonstrate that the HAFF/Accord payment is necessary to ensure financing enables supply which would otherwise not have happened, or enables the project to deliver more social housing than would otherwise have been the case.
7. Quality and suitability of homes, and access to relevant services and amenity – another driving factor behind value for money considerations is the quality of housing that will be delivered, and its suitability for long-term use as part of the social/affordable housing system or homelessness system. This includes ensuring homes are climate resilient, and not funding

social home buildings in extreme fire/flood prone areas and having regard to sea level rise and evacuation risks.

8. Recognition of State/Territory contributions – greater recognition of the full spectrum of state government contributions beyond the investment of land or funds, including for example the potential development rights over geographies; opportunities to co-plan asset management approaches; planning reforms and assisted planning pathways, and other in-kind contributions such as support for ACHP and Community Housing Provider (CHP) participation. NSW supports in principle the concept of layering different funding and activities to maximise outcomes, however the Commonwealth Government should fully fund its commitments, so that any contribution by States/Territories can lead to even greater levels of new supply.
9. Speed and certainty of delivery – HA needs to ensure financing is granted to projects which will deliver new supply within reasonable timeframes, to avoid proponents securing allocations of finance which are then not used.
10. Employment outcomes – greater overall diversity in employment, as well as apprenticeships, is desirable, including a target for Aboriginal employment as part of workforce considerations for project financing (ie broaden employment participation targets beyond gender).

While ability to attract private finance is an ambition of the HAFF and Accord, some organisations such as ACHPs may be unable to secure private finance for example due to land use constraints. State government agencies, such as the NSW Aboriginal Housing Office (AHO), could support delivery with or on behalf of ACHPs, where they request this support. AHO could also manage full capital grants or delivery on Aboriginal owned land, again where landowners request government supported delivery. This needs to be acknowledged by HA in its financing decisions, in order to avoid penalising proposals from such organisations.

Accordingly, NSW recommends the following amendments to be made to the IM:

S.28 D (e)	the project delivers value for money, in terms of <u>the full range of matters to be considered when making financing decisions specified in S.28J</u> the amount of housing delivered as compared to the amount of government support provided.
S.28 Q (e)	the project delivers value for money, in terms of <u>the full range of matters to be considered when making financing decisions specified in S.28V</u> the amount of housing delivered as compared to the amount of government support provided.
S.28 E (1)	HAFFF projects
A project is a HAFFF project if:	
	(a) all dwellings proposed to be designed, constructed or made available under the project are located in a State or Territory; and (b) the project proponent declares in the application mentioned in section 28C that all dwellings are HAFFF construction compliant or will be when the dwellings are made available; <u>and</u>

	<u>(c) management of all social, affordable and acute dwellings will be harmonised with the existing social/affordable housing and homelessness system in the relevant State/Territory, including being managed, or owned and managed, by an entity which is eligible to manage the dwellings as part of the social/affordable housing and homelessness system in the relevant State/Territory, in accordance with relevant laws, standards, regulatory/compliance requirements and policies.</u>
S.28 R (1)	NHAF projects
A project is a NHAF project if:	
	<u>Apply equivalent amendments as for S.28 E (1)</u>
S.28 J (1)	Matters to be considered when making financing decisions
In making a financing decision under this Part, Housing Australia must have regard to the following:	
	<p>(a) <u>the extent to which the financing decision would increase one or more of the following on an equitable, as needs basis across Australia (including in regional, rural and remote Australia), taking into account differing level of need and cost of provision, and taking into account advice of the relevant State/Territory government that the project meets priority needs, is high quality and suitable for long term use as social/affordable/acute housing, can be harmonised with the existing social/affordable housing and homelessness system, and is compatible with other existing/planned portfolios, programs and investments:</u></p> <p>(i) social housing;</p> <p>(ii) affordable housing;</p> <p>(iii) housing that addresses an acute housing need;</p> <p>(b) <u>the likely effect of the project on the supply and ongoing availability of social housing and affordable housing, and housing addressing acute housing needs, including speed and certainty of delivery of supply, and the extent to which the project can leverage additional future supply through refinancing or attracting capital or other resources external to government;</u></p> <p>(c) whether the dwellings constructed under the project:</p> <p>(i) are close to work, schools, transport, <u>health services</u> and other amenities; and</p> <p>(ii) support improved productivity, <u>community participation</u> and liveability;</p> <p>(d) the extent to which the project's workforce (whether or not employed directly by the project proponent) will support greater participation of apprentices, in particular female <u>and greater diversity of employment including female and</u></p>

	<p><u>Aboriginal apprentices and female trade apprentices in the building and construction industries;</u></p> <p>(e) the extent to which financing the project would assist Housing Australia to achieve the outcome mentioned in section 10A;</p> <p>(f) <u>whether finance under the HAFFF is needed to encourage private sector participation in financing the project, leading either to additional supply or a greater proportion of social housing than would have been delivered without HA financing, and exempting from this consideration projects proposed by organisations which are not able to secure private finance such as Aboriginal Community Housing Providers;</u></p> <p>(g) <u>whether finance under the HAFFF would complement, leverage or support other State or Territory finance or activities, acknowledging that State/Territory finance or activities may include access to land, planning reforms, practical support for ACHP and CHP participation in procurement processes, development rights over geographies, collaborative asset management and sector stewardship and regulation;</u></p> <p>(h) any relevant report by or advice from the National Housing Supply and Affordability Council covered by subsection (2);</p> <p>(i) the object of the Act and the limits set in the Act;</p> <p>(j) where the project proponent is a HAFFF special purpose vehicle – the extent to which its underlying eligible members will be involved in the project over its duration;</p> <p>(k) where the project proponent is a constitutional corporation – the extent to which the support would assist the corporation in the performance or development of its activities, functions, relationships or business.</p>
S.28V	Matters to be considered when making financing decisions
In making a financing decision under this Part, Housing Australia must have regard to the following:	
	<u>Apply equivalent amendments as for S.28 J (1)</u>

1.3 HAFFF Special Purpose Vehicles

It is noted that eligible project proponents for HAFFF may include an entity that is a HAFFF special purpose vehicle (SPV). As it stands in the IM, there is concern that the SPV structure could be used by non-housing, private sector companies to access government subsidies through the creation of an SPV that includes a CHP or other entity without meaningful participation by that entity or a direct social and affordable housing system benefit.

The community housing sector in NSW is well established and has demonstrable capacity to participate in partnership projects under the HAFF. Careful consideration needs to be given to the flow of funding and financing, risk allocation, and the appropriate role and contribution of private sector partners through SPVs. This includes consideration of additional safeguards to ensure that the long-term benefits of projects delivered with financing from HA are retained in the social and affordable housing system and will be managed by entities that are accountable within it.

A relatively straightforward way to achieve this would be for SPVs to be required to register as a CHP. The NSW preferred position however is for a registered A/CHP to be included in the SPV as the lead proponent and designated entity responsible for ongoing management of the homes for the duration of the project to ensure that housing design and delivery decisions are appropriate for and will benefit social and affordable housing tenants and residents long term and not be driven by or skewed to commercial considerations.

Accordingly, NSW recommends the following amendments to be made to the IM:

S.28 F (2)	An entity is a HAFFF special purpose vehicle if:
	<p>(a) it has a purpose of undertaking any of the following kinds of projects:</p> <ul style="list-style-type: none"> (i) projects to increase available social housing or affordable housing, or both; (ii) projects to address acute housing needs; and <p>(b) at least one of its members is an entity mentioned in paragraphs (1)(a) to (h) <u>which will remain involved for the duration of the project and which will be responsible for management of all social, affordable and acute homes supported by Housing Australia financing.</u></p>

1.4 Affordable housing commitments under the Accord

States/Territories have already committed under the Accord to match the delivery of Commonwealth-funded affordable homes with the same number of State/Territory-funded affordable homes.

Accordingly, NSW recommends the following amendments to be made to the IM:

S.28 V (f)	<p>whether finance under the NHAF would complement, leverage or support other Commonwealth, State or Territory finance or activities, <u>acknowledging that no further contributions from States/Territories are anticipated for NHAF-financed projects, as States/Territories have already committed to matching affordable housing new supply under the Accord;</u></p>
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2 Confirming NSW's interpretation of the Investment Mandate

2.1 State/Territory participation

NSW welcomes the inclusion of State and Territory governments as eligible proponents for the HAFF and Accord projects in the IM, alongside the aim of continuing to contribute to the development of the community housing sector.

The NSW government has proven itself a willing and ready participant, including in partnering with A/CHPs. This has been demonstrated by our response to the Social Housing Accelerator Fund and Implementation Plan.

The flexibility for States and Territories to directly participate in HAFF projects will be extremely valuable in locations where A/CHPs may not be as ready to participate in the HAFF, or if there are projects aimed at cohorts for which A/CHPs may require high levels of grant payments to support project viability.

The NSW government is mindful that financing requirements may, at times, limit the capacity of the A/CHP sector or individual A/CHPs to be able to participate and it will be important for State and Territory governments to have the flexibility to step up their involvement as necessary.

Accordingly, NSW advises its expectation that, in line with the IM, States and Territories will be able to put forward HAFF projects, either to invest the funds directly and/or to secure financing allocations which States/Territories can deploy in partnership with A/CHPs. The IM should be amended to make this clearer. The range of circumstances in which State/Territory direct participation may be preferred can be developed collaboratively with HA during the development of program guidelines.

NSW further advises its expectation for States/Territories to layer finance from HA into projects delivering State/Territory affordable housing commitments under the Accord, where for example this leads to additional supply or other efficiencies. The IM should be amended to make this clearer.

2.2 Confirmation of construction compliance

The IM requires proponents to declare to HA that the homes financed under the HAFF and Accord are compliant, including with construction requirements. NSW requests confirmation that certification of construction compliance will be carried out by qualified entities, monitored by HA, and that cost of certification can be included in the project. For consideration, under the NSW Social and Affordable Housing Fund homes must be certified by appropriately accredited certifiers depending on the attribute, ie LHA accredited for Livable Housing Australia and higher level accreditation for occupation certificate and other characteristics (Architect for Apartment Design Guidelines). This has led to some proponents implementing higher QA standards than required by the program guidelines.

2.3 Definition of local governing body

NSW requests confirmation of the definition of “local governing body” (S.28F, S.28S, S.28U). It would be helpful for some examples to be provided. Where financing is provided to Councils, NSW considers that funds should only be provided through partnerships which include a CHP as the lead proponent. NSW further requests HA to set out how pass through of funding from States to local governing bodies would be administered.

2.4 Reporting requirements

NSW requests confirmation of details relating to reporting under the HAFF and Accord. For example:

- How will reporting be integrated into existing reporting frameworks to reduce regulatory burden?
- Who is responsible for reporting on financing from other sources?
- How is “completion” defined?

3 Comments for consideration to maximise the effectiveness of the HAFF and Accord

NSW welcomes the Commonwealth Government’s housing reform agenda, which includes the HAFF and Accord, as supply of more affordable, stable housing will help people experiencing housing affordability crisis.

To maintain this intent, it would be helpful for HA to set out principles or priorities which focus on tenant outcomes, beyond homes being “well located”.

In addition, HA’s activities to promote financing opportunities under the HAFF and Accord is focused on identifying entities whose businesses may benefit. This activity should more closely be linked to tenant outcomes, and the objectives of generating more appropriate homes for people and families in need.

NSW recognises that investment under the HAFF and Accord has the potential to create employment and training opportunities, such as apprenticeships. Prioritising projects which maximise these opportunities is supported in principle.

NSW notes that construction projects which access HA funding or finance may require the construction companies participating in these projects to have Federal Safety Commissioner (FSC) accreditation. NSW supports the accreditation scheme’s intention of improving building industry safety. However, the scheme’s strict application to HAFF and Accord projects will limit availability of builders, delaying timeframes, increasing costs and reducing overall new supply. It is resource-intensive to achieve accreditation and even where companies are willing to consider undertaking the process, the timeframe is lengthy, due to lack of availability of auditors. In particular, this is very likely to negatively affect Aboriginal housing projects which prioritise use of First Nations builders. Projects in regional and remote areas, where few construction companies hold this accreditation,

and modular or off-site manufactured housing projects would also be constrained or delayed. NSW recommends greater flexibility in application of the Scheme, based on compliance with state-based work health and safety regimes, which should be sufficient for construction companies to participate in these projects.

While noting the establishment of the research function within the National Housing Supply and Affordability Council, NSW considers that HA needs to maintain its research capability. HA's research has been valuable for its broad scope and applicability to the production of housing.

While noting the different processes for developing the HAFF and Accord, NSW considers that consistent implementation would benefit project proponents. For example, the different HAFF and Accord requirements relating to energy efficiency could add cost and complexity where proponents, builders or private finance partners are involved in multiple projects.

The Explanatory Memorandum includes home ownership in the definition of affordable housing but is silent on what outcomes and policy considerations would drive HA to finance affordable home-ownership over or as part of affordable rental projects. NSW considers that affordable housing needs to be genuinely affordable and allocated to people who need it, including people on very low, low and moderate incomes. This is best achieved by focusing delivery on affordable rental housing, and by ensuring that affordable housing is provided in perpetuity. Where a project involving home ownership is proposed to be financed under the HAFF or Accord, consideration needs to be given to the overall increase in social housing enabled as part of the project. In NSW, the AHO has a mandate to improve rates of Aboriginal home ownership and there are programs to facilitate public housing tenants to purchase government-owned homes, however other parts of the social housing sector focus almost exclusively on rental housing. Further, it is noted that compliance processes for home ownership would need to be considered, including monitoring of eligibility and affordability outcomes.