

8 November 2023



Director
Housing Australia Future Fund Unit
Housing Division
Treasury
Langton Cres
Parkes ACT 2600
Via email: housing@treasury.gov.au

Dear Director,

Submission of UDIA National: Amendments to the Housing Australia Investment Mandate Direction

Thank you for the opportunity to provide our comments on the proposed amendments to the Housing Australia Investment Mandate Direction (**Proposed Amendments**) to establish the administration of the Housing Australia Future Fund Facility (**HAFFF**) and the National Housing Accord Facility (**NHAF**).

The Urban Development Institute of Australia is the development industry's oldest and most representative peak body for development and construction. UDIA's members span the entire housing market across 2,000+ member organisations – from top tier global enterprises, large and small housing providers, community housing providers, specialist consultants and local governments.

UDIA's members deliver new homes across the spectrum for all Australians, including most affordable housing. Most housing created by our members is sold near or below median house prices.

Comments on the Proposed Amendments

UDIA National supports the HAFF, the NHAF and the Proposed Amendments. The HAFF and the NHAF represent a significant opportunity for Australia to put in place a framework that can be built upon by Governments to tackle housing affordability, provide affordable housing and support real options for Australians to access the fundamental right to long term, secure shelter.

In line with our discussions with Treasury and Government, our primary concern is to ensure that the Proposed Amendments provide Housing Australia (**HA**) the necessary range of options and flexibility to respond to the market over the next 25 years. This will enable HA to meet the challenges that will inevitably arise, in order to achieve the goals set by the Federal Government. We are pleased to see that the Proposed Amendments provide HA with the ability to mobilise a range of delivery solutions and pivot as needed to respond to market conditions.

We set out below our comments on the Proposed Amendments. The path to the successful delivery of the Government’s goals is greater optionality and flexibility. In line with this approach, our comments address aspects of the Proposed Amendments which can be improved to allow HA to respond more dynamically to challenges.

- **A pathway for developments needs to be provided for projects:**
 - **With existing DA approval.**
 - **Application for DA submitted prior to October 1st, 2023 or that can be assessed under the former National Construction Code.**
 - **Greenfield/Brownfield redevelopments that cannot comply with greenfield energy and liveability standards. – E.g. Rural & low income areas will struggle to deliver housing.**

The Challenge

- High costs associated with the NCC energy and liveability standards will make it difficult and likely impossible to deliver housing or apartments in some regional and low income areas where project viability is already marginal and realistic supply options are limited.
- Where projects are marginally viable, there may be affordable/social housing “black spots” in crucial regional and low income areas.
- Under the current Proposed Amendments, a project must be HAFF construction compliant to qualify for a loan or grant under the HAFF¹. Similarly, a project must be NHAF construction compliant to qualify for a loan or grant under the NHAF².
- For a project to be HAFF construction compliant the relevant dwellings must comply with *‘the standards in the NCC relating to energy efficiency ... and ... liveable housing design’*³. In the case of the NHAF, construction compliance is determined with reference to whether the relevant dwellings comply with the NCC energy standard (or with the relevant State or Territory standard) and the NCC liveable design standards⁴.
- The Proposed Amendments expressly exclude brownfield/refurbished developments (and older DA approvals) unless those developments are redeveloped to a standard on par with a greenfield development.
- In metropolitan areas, projects already approved (or submitted prior to October 1st 2023) may have significant cost and time delay implications if they are to be re-designed to conform to the draft HAF requirements of all dwellings in the development, achieving a minimum 7-star NATHERS rating and consistent with new NCC LHA Standards.
- This will exclude almost all building refurbishment as the energy standards are cost prohibitive. While the development may be able to add affordable housing, they will not be

¹ Section 28D(a) as read with Sections 28E(1) and (4).

² Section 28Q(a) as read with Sections 28R(1) and (4).

³ Section 28E(4).

⁴ Section 28R(4).

able to easily change the project build standard. In effect it means Government loses the advantage of quick delivery in the first 18 months of the HAFF.

- Excluding such developments from the HAFF and the NHAFF will limit the effectiveness of these initiatives, by making marginal projects unviable, especially in regional or low-income areas where refurbishments offer a more cost-effective solution to delivering social and affordable housing. This will inevitably impact on the number of homes that can be delivered and may result in low-income and regional areas being excluded from the benefits of the broader initiative to create new supply.
- Although we support the goals of maximising energy efficiency and liveability, making these requirements an absolute pre-requisite is likely to be counterproductive by excluding developments in areas of greatest need. HA should have the ability to determine that some lesser standard can be met for affordable and social housing where there is good reason and no other compliant projects are immediately available.

The Solution

- The Proposed Amendments should:
 - Ensure 7-star NATHERS ratings requirement are **averaged** across the dwellings in a project to allow apartment complexes/medium density to satisfy the requirements and not inhibit supply numbers by virtue of the constraint as drafted; and
 - Ensure there is flexibility for HA to fund developments that do not meet 7-star energy (average) or liveability standards, where there is a good reason for the change to meet other important objectives and no other compliant projects are available in the immediate region/suburb/area.
 - Provide for the ability to assess projects that have existing approvals or were submitted prior to the new NCC taking effect and not explicitly exclude them.
- **Implementation review to enable implementation to be optimised within 18 months.**

The Challenge

- The HAFF and Accord are complex initiatives that need to be reviewed and adjusted in the early stages of establishment in order to optimise their operation – There is no explicit review period for the HAFF and NHAFF as the Investment Mandates for the funds.
- We are aware the HAFF has a review in 2026, and review of the HAFF Investment Mandate should be done at the same time.
- We are pleased to see that Housing Australia is required to report frequently to the Minister on its activities. We also consider that there is the need for periodic reviews of the implementation of the HAFF and the NHAFF.

- Periodic reviews provide HA with the ability to identify and report on aspects of the implementation that require enhancement or modification as a result of emerging market factors. This allows HA to take reactive measures.

The Solution

- We recommend an implementation review to match the HAFF in 2026, to allow for the collection and analysis of sufficient data on progress. It is also short enough to allow Housing Australia to respond dynamically.
- Further periodic review(s) of the Investment Mandate Direction at a later date(s) would be worthwhile given it is meant to operate over 25 years but it is likely the market will evolve and innovate over that time.

Separately we note three issues which are relevant to the Proposed Amendments but do not alter the wording:

- 1) **In the absence of specific worked definitions for social, acute and affordable housing, the Explanatory Memorandum references to affordable housing should not become a default criteria.**

The Explanatory Memorandum refers to affordable housing being for the purpose of reducing or eliminating housing stress for low to moderate income households, where housing stress is typically defined as spending more than 30 per cent of household income on housing costs.

Government specifically elected to not define social and affordable housing to maintain flexibility with the varied state and territory definitions. In keeping with that logic, we expect that the Explanatory Memorandum reference would not become a de facto criteria for affordable housing.

In the specific case of affordable housing, narrowing the definition so rents are based on tenant income will lead to uncertainty for private sector investors (both delivery and institutional partners) regarding expectation or consistency of returns. Spot criteria without a clear definition would be sub-optimal and counter-productive.

For affordable housing, if any definition is eventually adopted nationwide, it will need to dovetail with all the existing definitions and remain simple without reference to eligible persons.

Specifically, the use of income based definitions for affordable housing is **inappropriate** for two reasons:

- a) **It is extremely difficult to predict viability of a project based on incomes of future tenants which may change** – This will make it very impractical to evaluate the risk of the project and undermines the ability of project providers to scale availability of affordable housing. The uncertainty of income means much higher availability payments would be unavoidable.
- b) **Using an income based threshold definition would undermine the policy for other Government initiatives where the threshold is meant to be more accessible** – The obvious

example is GST which has an affordable housing definition of ~25% discount to market rent or sale price. Adopting an income based threshold would undermine the policy intent of the GST as there would be a range of housing eligible under the GST that could never be built due to a more restrictive income definition.

- 2) **SPV requirements under 28F and 28S should remain widely specified to ensure the HAFF and NHAF are as flexible as possible and avoid creating “choke points” where the SPV is identified as a specific type of vehicle** – The HAFF and NHAF SPV are a positive addition to the list of eligible entities and it should be left to market to develop this concept in a way that fosters investment and innovation to deliver against the Governments housing targets.

Any further specification would narrow the possible outcomes and involve additional cost to comply. We consider that all relevant eligible entities have been already listed in the legislation and there is no need to further specify a complicating (or duplicating), secondary entity. The SPV already needs to include one of the other listed entities.

- 3) **Government’s ongoing support of complementary initiatives in coordination with the HAFF program – HAFF will otherwise be held back by lack of land, infrastructure, planning approval and affordability across the board.**

Success across the entire housing continuum hinges on solving some of our most basic problems – finding more development ready land, reducing cost of construction, rebuilding capacity, building enabling/supporting infrastructure and streamlining planning and regulations.

We know the Federal Government is aware of the issues with housing supply, skilled workers, planning and infrastructure, and is looking to develop strategies to solve these problems. Critically however, solutions for issues like land supply, planning and infrastructure need to be implemented across the entire housing spectrum, otherwise affordability, capacity building and supply of affordable and social housing will be impacted by shortages in the at-market housing.

The HAFF and the NHAF will need to form part of a broader initiative aimed at addressing the systemic shortages of affordable and social housing in Australia and requiring the mobilisation of support and resources from a range of stakeholders.

We are keen to discuss our comments with you at your earliest convenience.

Please do not hesitate to contact the UDIA National Head of Policy and Government Relations - Andrew Mihno on 0406 454 549 to discuss this submission.



Col Dutton

UDIA National President