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PUBLIC CHURCH PARTNERSHIPS:

**Barriers to Accessing of Church Assets
For Community Housing**

A Discussion Paper

Developed by Churches Community Housing Inc
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Executive Summary

Churches Community Housing Inc (CCH) seeks to facilitate Public Church Partnerships (PCP) based on the understanding that churches have underutilised land/buildings that can be developed as viable community housing projects in New South Wales.

There are two significant barriers to the effective use of church land/buildings (which are owned outright by the churches) in community housing projects: *title* and *equity*. These barriers are interrelated with each other and have been a consistent stumbling block to delivering significant increases of 'low cost' community housing stock within NSW.

Churches are often obliged to retain title to their assets and seek either a shared equity arrangement amortised over 20 years (for example) until the church has full equity or a full grant with contract. State housing agencies often come to the table with the expectation of sharing title and equity - forever. Over the last 12 months \$10 million dollars worth of church assets have been offered with only \$3.6 million possibly progressing. \$6.4 million of potential community housing assets have been withdrawn primarily due to title/equity issues.

PCPs delivering community housing services are an arrangement between a government department and a church, where *each contributes resources to the creation of a service*. The central purpose is to deliver a housing service under specified terms and conditions rather than acquiring an asset for the State. There are three fundamental principles for a successful partnership: (1) it is *long term*; (2) it is about the *delivery of services*; and, (3) it is a *risk sharing* relationship.

How can we break the barriers? This Discussion Paper proposes two main models.

The first, is a *full grant with 20 year contract agreement of service*. This model is closely aligned with churches current experience of partnerships with government, especially in the fields of health and education. An agreement setting out the timeframe and the broad scope of services would be signed with the possibility of extensions.

The second, is a *grant amortised over 20 years with as service agreement*. This is essentially the same as above except it amortises the grant over a period of time.

This Discussion Paper also briefly presents the models developed in Victoria, South Australia, and Queensland.

CCH believes that the requirements of both government and churches can be addressed by looking to current models of partnerships in other service areas such as health and education. CCH seeks a policy framework for PCPs for community housing provision and the development of a standard contract. PCPs can stretch the limited resources of both churches and government to deliver real improved outcomes for the people of New South Wales.

If you have any comments or contributions to this topic please make contact with Churches Community Housing Office. Thank you.



1. Churches Community Housing

1.1 Churches Community Housing Inc (CCH) was established in 1996 to assist churches and church agencies in NSW to develop community housing outcomes in partnership with the NSW Government.

1.2 CCH seeks to facilitate public church partnerships based on the understanding that churches have significant underutilised land/buildings that can be developed as viable community housing projects. CCH encourages dialogue between the parties by educating churches, by facilitating meetings and projects, and by mediating between churches and public agencies to deliver an increase in the number of community housing units for people in housing need.

2 Aim of Briefing Paper

2.1 This discussion paper seeks to place before churches and government two significant barriers to effective utilisation of church land/buildings in public church partnerships: *equity* and *title*. These barriers are interrelated with each other and have been a consistent stumbling block to delivering significant increases of “low cost” community housing stock within NSW. Two options are identified which may enable significant growth in community housing.

3 What is not being addressed

3.1 This barrier of title/equity is not to be confused with the ongoing discussion by *providers* of title in relation to asset and financial viability. That discussion is developed by the following organisations:

- NSW Federation of Housing Associations (NSWFHA) in “*Options on Title for Community Housing Providers in NSW*” discussion paper 1998;
- Association to Resource Co-operative Housing (ARCH) in “*Partnerships for Sustainability in the NSW Co-operative Housing Sector*” report November 2001;
- National Community Housing Forum (NCHF) “*Viability and Community Housing*” November 2001 and “*Title and Financial Independence*” December 2001;
- Community Housing Federation of Australia (CHFA) “*Community Housing: building on success*” October 2001.



4 Overview of Church Delivered Services

4.1 Churches are significant providers of social services in NSW and are continually responding to local needs in tailored ways.

4.2 Churches have built up and developed assets in every town, region and suburb in NSW. This church owned and operated infrastructure is immense. Churches operate property portfolios that are larger than some public property portfolio, and, as such, churches have extensive experience in asset identification, development, management and maintenance.

4.3 Many of the major service programs (for example, health and education) undertaken by churches may involve some form of public investment, ranging from provision of capital grants to recurrent funding and/or “one off” assistance. When churches develop a particular project, for example, a school - they will often contribute the land with the government (usually Federal) providing capital grants for infrastructure. The church and public agency enter into a partnership funding arrangement setting out each parties’ rights and responsibilities. Normally the Federal Government has a 20-year pro rata interest reflecting their contribution. In Year One this may be 80% Government equity and 20% Church equity declining over the 20 years of the agreement until the Government equity is nil. The church signs an agreement to deliver education services over this 20-year period. If the buildings use changes to a non-educational usage then the church has to pay out the governments remaining equity.

4.4 It is this context which church administrative managers (especially central office managers) bring with them when they enter the discussion of providing community housing utilising church land/buildings. Their starting point is that churches will retain title with a shared equity based on contributions which will be amortised over 20 years (for example) until the church has full equity. As the Reverend Harry J. Herbert from the Uniting Church said: “I have always been surprised that this issue is such a problem for the Department of Housing, because in my experience churches have been used to different arrangements and I wonder why it has proved to be such a debating point.”

5 Churches Community Housing Role in Facilitating Partnerships

5.1 CCH works closely with the Department of Housing, specifically the Office of Community Housing and the Housing Finance Investment Group, to ensure that proposals are appropriately located and targeted, and that the church/church agency has the capacity to fulfil its obligations under the funding guidelines. CCH provides information to public agencies and churches regarding options and methods for utilising church-owned assets for community housing, and facilitates the development of the partnership through brokerage and mediation. CCH performs its role as objective facilitator, seeking mutually beneficial outcomes for both churches and public agencies.

6 Current Provision of Housing Services

6.1 Churches are competent providers of holistic housing services and have for many years provided comprehensive housing for aged persons, crisis and refuge accommodation, housing for people recovering from alcohol and substance abuse, supported housing for people with disabilities and generalist community housing. The Aged & Community Services Association of NSW and ACT estimates that 90% of hostels for the aged, 60% of nursing homes and 50-60% of self care units for the aged are managed by church-based organisations.¹

6.2 Many of these services were established or operate without any public funding, however, Churches also work cooperatively with public agencies to provide a range of housing and housing related services. These public church partnerships deliver improved social outcomes for some of the most disadvantaged and high needs groups within NSW, services that may never have been provided (or in a severely limited way) if either church or government tried to go it “alone”.

Public church partnerships “stretch” the limited resources of both churches and public agencies and deliver real measurable improved outcomes for the people of NSW.

6.3 The concept of partnerships as a way of maximising resources to generate new community housing units has received a lot of attention. However, the potential for partnerships in New South Wales is far from realised. Over the last twelve months \$10 million dollars worth of church assets have been proposed for public church partnerships (representing 8 different churches/agencies) with only \$3.6 million likely to progress. Of those progressing, projects that are located in the inner ring of Sydney will usually have churches contributing between 50% to 60% of the equity with the public agency contributing the remainder. The other \$6.4 million of potential assets have been withdrawn due to a range of inter-related issues including title and equity. Many more millions of dollars worth of church assets have been unsuccessfully offered. Proportionately, public church partnerships that are progressed to actual delivery of new housing units are far fewer than those that have been offered. **The substantial stumbling block is the question of title/equity.**

¹ Anecdotal Information received through a telephone interview in February 2002.



7 Church Denominations Vary in Their Legal Structures

7.1 Churches approach the question of title and equity from the perspective of *stewardship* and legal rights and responsibilities. Churches have a sense of *stewardship* over the property that has been entrusted to their care. This sense is based on the notion of “holding in trust” for future generations what has been developed by past and current generations over the years. As well, each major denomination has been established and is governed by an Act of Parliament. Ordinances under each Act govern their dealings with property to which they are stewards in trust. Consequently, for many churches, legal and institutional restrictions will not allow them to share, diminish, or relinquish title. These twin realities of stewardship and legal responsibilities have not been fully understood or appreciated by public agencies in relation to housing projects. Within these operating constraints churches are interested, indeed compelled by the gospel, to respond to social need and in many cases, bring substantial resources to contribute to a partnership with government in providing effective community building programs.

8 What is a Partnership?

8.1 A public church partnership delivering community housing services is an arrangement between a government department/agency and a church/church agency, where **each contributes resources to the creation of a service** which delivers community housing. At the very core of a public church partnership is that the public agency is not primarily acquiring an asset; it is purchasing a service under specified terms and conditions within a collaborative framework.

8.2 The National Community Housing Forum (NCHF) notes that:

Increasingly, there is a view in government that publicly funded capital assets should be viewed as public assets. From this point of view, the assets are seen as held in trust for the government, and increasingly leased from government. The public interest is seen as a control of a public *asset*. But this mistakes the public interest (in fact, it confuses the public interest with the corporate interest of a public agency). Rather the public interest relates to a public, housing outcome (note the comma). Government should ensure that the capacity to provide that outcome is secure and sustainable. But efficiency requires that the provider control how assets are managed to achieve that outcome.²

8.3 Fundamental to these partnerships are the following principles:

- Common goals for the *long term* provision of social and fiscal outcomes that are in the public interest;
- Reciprocal rights and responsibilities setting out a framework in the contract providing some certainty for the parties in the *delivery of services* (this contract does not and cannot specify all elements and allow for all possible outcomes) and;
- A *risk sharing* relationship entered into to deliver certain public policy outcomes (this implies that both parties have something to gain or lose) built on trust, like all successful partnerships.

² NCHF, *Title and Financial Independence*, 3.



9 Potential of Public Church Partnership's

9.1 Public church partnerships have a proven record of delivering housing options for a wide range of people (see #6.1). By using a vacant or underutilised church asset as a base for a social housing development, government's capital investment is greatly reduced. Churches hold significant assets in high need areas. Often these areas have little or no land available for purchase. When land is available it is generally outside of the cost-benefit parameters of public agencies. By entering into a public church partnership underutilised church owned land can be made available to deliver improved housing outcomes in areas government would otherwise be locked out of under current budget parameters. The main beneficiaries are people with high needs who would be unable to access any housing in their current local community - they would be forced to either live on the street or move. By providing more community housing outcomes in high need areas significant benefits are delivered to the community. Much has been written of these benefits elsewhere.

9.2 Many churches and particularly church agencies are looking to develop their assets for community housing. The potential is enormous and largely untapped. Not only are community housing units delivered but also integrated care management packages are often included in these projects. It is these linkages to support services that is a vital factor in enabling both public agencies and churches to respond to locally identified needs that build up and support sustainable communities. The benefits to government, churches and the community have already been demonstrated through those church-based organisations that currently provide housing.



10 NSW Government and Department of Housing

10.1 The Housing Policy Green Paper released in 1995 acknowledges the desire of government to provide a framework for the delivery of a range of options for housing choice in all areas of the state, especially in Sydney where much of the housing needs are concentrated

“if clients are going to exercise effective housing choice in future, there must be an adequate supply of well located and appropriate housing at the lower cost end of the market. There must also be high quality services provided to attract customers and a greater choice of providers.”³

10.2 Tenants In Common:

Currently, a Tenants-in-Common title arrangement is the Office of Community Housing (Department of Housing) preferred model for entering public church partnerships. When this type of arrangement can be negotiated, there are nevertheless, some significant inequities with it. OCH - on behalf of the government - expects to retain the same proportion of its initial contribution for the duration of the partnership. In other words, a shared equity arrangement in perpetuity. A partnership based on shared equity will increasingly become inequitable, as the land values will increase over time while what is built on the land will depreciate. As churches normally contribute the land component in a public church partnership they often express a number of significant concerns with this (see #7.1) leading to withdrawal of the offer in many instances. Some Housing Officers have indicated that this Tenants-in-Common in perpetuity is a requirement of Treasury, however no official policy has ever been cited or tabled.

10.3 According to the “Evaluation of Housing Partnership Models” produced by the Department of Urban Affairs and Planning:

The HPP [Housing Partnership Program] guidelines required partners to enter a Tenants-in-Common title arrangement, sharing equity in proportion to their contributions to capital costs...However this title arrangement did not accommodate all types of contributions. The unique nature of partnership projects requires title arrangements to be developed on an individual basis. Depending on the complexity of the project, this may require legal advice and additional resources.

10.4 Two examples of public church partnerships that did not eventuate:

- In recent years a large church based organisation applied for assistance under the Office of Community Housing’s, Partnerships in Community Housing (PICH) funding program to develop housing on land they purchased from the Department of Housing. They were told that the only terms acceptable for a partnership were a ‘Tenants-in-Common’ title arrangement. Tenants-in-Common requires the group to relinquish a proportion of the title and the government’s equity in the project remains the same in perpetuity. The group withdrew its submission, strongly objecting to the intransigence of the public agency to negotiate acceptable terms for both parties.
- In the early 1990’s, *Burnside*, a welfare branch of the Uniting Church, set aside \$1 million dollars to assist with the development of youth housing co-operatives. A legal entity was established (The NSW Community Housing Trust) to facilitate the merging of private sector

³ NSW Government *Housing Policy Green Paper*, 9.



and public monies to develop and expand community housing. (This was before the establishment of the Office of Community Housing) The Trust spent nearly three years unsuccessfully negotiating with government in relation to how each party would secure its interest in the partnership. Eventually, Burnside withdrew its money and the Trust ceased to operate. Not one unit of housing was delivered, and \$1 million dollars worth of opportunity was lost.

10.5 What are the some of the perceived strengths and weaknesses of Tenants-in-Common:

Strengths:

- public access to land not otherwise available;
- in perpetuity government equity seen as adding to public assets;
- maximise government capital investment via partnerships.

Weaknesses:

- forever tied to government with resulting lack of flexibility;
- input focused, that is, once the initial increase in housing stock has taken place no further growth is possible;
- the land value increases which is not reflected in percentage equity terms.

11 Areas of Agreement/Disagreement

11.1 Churches and government share common ground in some significant areas, especially in the desire to work together to provide increased services to people with high and complex needs.

Areas of Agreement:

- the current chronic shortage of affordable housing where it is needed;
- increasing numbers of people with complex and high needs who are homeless or are in danger of being homeless;
- the increasing requirement to link housing with support services;
- the failure of the private market to provide appropriate housing for all segments of the housing market;
- limited budgets of both churches and governments and the possible synergy created by working in partnerships; and
- the potential of underutilised church assets in strategic locations.

11.2 While these areas of agreement are encouraging there has been no fundamental commitment to work through the areas of disagreement from public agencies (from the perspective of churches) though the issues are acknowledged.

Areas of Disagreement:

- in relation to title and equity the twofold requirement of stewardship and legal duties of churches;
- the fixation on assets by public agencies rather than being focused on increasing services;
- the lack of acknowledgment of the significant experience in church organisations in relation to asset management and property development;
- the inability to develop a generic legal agreement that is satisfactory for both parties; and
- the lack of long term commitments to financial and program certainty to ensure whole of life project feasibility.

11.3 Over the last decade many potential public church partnerships have been unable to proceed due to unacceptable terms and conditions imposed by one of the potential partners. More often than not, the terms were dictated by public agencies that have refused to negotiate a progressive reduction of equity. Other attempts to negotiate ways to secure government's interest that don't involve title have also failed.

11.4 Partnerships do exist in NSW where government has not required equity in perpetuity in the development. These notably include Health and Education (see #4.3) as well as some other Federally funded programs. The typical terms of entering into a partnership with the NSW Department of Housing (as defined in the now defunct Housing Partnerships Program guidelines) however has been a Tenants-in-Common in-perpetuity arrangement. For a church to consider this



arrangement, they are required to relinquish sole title. In many cases, this is not possible due to institutional restrictions as well as good governance issues. If the government is serious about unlocking the significant potential in public church partnerships in relation to community housing then it will have to come to terms with these issues.

11.5 Additionally, government has seemingly adopted varying positions over the years that indicate that there is a policy vacuum determining how it engages not only churches, but also the community in general, in partnerships.



12 Possible Models to Break the Barriers

12.1 Full Grant with 20 year (for example) Contract Agreement of Service:

This model is closely aligned with churches current experience of partnerships with government, especially in the field of health and education. The church/agency would provide land/assets with the public agency bringing resources to either build or redevelop existing assets. An agreement would be signed setting out the broad scope of the services to be delivered and the duration of the agreement. This model potentially leads to a higher success rate in moving potential project offers to approved projects delivering services to those in housing need. The public interest is to increase services to vulnerable people with often high and complex needs in secure long-term housing. Churches and government both share an interest in delivering stable long-term projects.

12.2 Some Strengths:

- clearer finance, accounting & asset accountability;
- increase in stock & geographical spread of stock, especially in high cost areas;
- ability to access private sector funding to further increase stock numbers as there is title with full equity to borrow against;
- facilitates effective asset management including upgrade and redevelopments;
- certainty of service with potentially limited impact from changing government priorities in housing; and
- funder/provider clarification.

12.3 Some Weaknesses:

- change in government policy settings re low income support which may impact on income streams;
- time limited framework (though there is the strong possibility of renegotiating a new service agreement after the initial terms of the contract);

12.4 Within this model, we see a sharing of *risk* by both the government and the church. For government the risk can be characterised as a “handing over (of) public resources to ‘private’ organisations” however “this is made possible without the political risk of government itself being seen to increase public debt.”⁴ For churches the risk is in “locking in” property/land to a *single* use for a determined time frame which reduces their flexibility with potentially no financial rewards. The positive for both is the public church partnership delivering sustainable long term housing services for the people of NSW who are in need.

⁴ NCHF, *Title and Financial Independence*, 3



12.5 Grant with Amortisation over 20 years with Service agreement:

This proposed model is essentially the same as above except it amortises the government grant over a period of up to 20 years (depending on the project). The strengths and weaknesses are basically the same except for the following:

- the equity percent changes over a defined period of time;
- no increase in stock after initial build due to government caveat over properties. As noted by NCHF “title does not confer financial control while other charges, mortgages and caveats are in place.”⁵

12.6 One of the greatest barriers to churches entering into a partnership with government in New South Wales, has been the inability to negotiate a satisfactory arrangement for sharing equity. In recent times there have been calls for a different way of conducting partnerships, that is, of substituting current models for a model which includes grant and/or amortisation. These calls are generally coming from churches. Churches have argued they would increase their involvement and/or be involved for the first time if models that included grant and/or amortisation.

12.7 An Example:

In the mid 1990s, one large church-based organisation negotiated the terms of at least three separate government funded developments whereby they retained sole title on their land, and the government’s investment was amortised over 15 years. Discussions were carried out at a State and Federal level. The terms of the partnerships were agreed upon and documented with the church group believing that they were developing a protocol for future partnerships with government. Unfortunately, these partnerships proved to be one-off arrangements and no on-going protocol was in fact established.

⁵ NCHF, *Title and Financial Independence*, 2



13 Potential Models From Other Jurisdictions

13.1 The following summaries describe how in other States, the issues of title, sharing of equity and amortising government's investment in a partnership have been resolved to realise the potential partnerships in those jurisdictions.

▪ 13.2 **Victoria:**

In Victoria, the Director of Housing, who is the legal entity, gives a grant to a church or community group. The grant is amortised across the term of a negotiated contract. If a church or community group wish to withdraw from a partnership, they are liable for the value of the government's portion not yet amortised. The value is established by a set formula which takes into account the current market value of the property.

• 13.3 **South Australia:**

South Australia works within a 'collaborative policy framework' which sets out agreed principles by which the resources of the government and churches can be brought together and committed in a collaborative manner to meet the housing needs of people who cannot access affordable and secure housing.

13.4 In South Australia, the government's contribution in a project is amortised over a maximum period of thirty years. On completion of the term, the church will retain the land including all improvements.

13.5 The church cannot withdraw from a project in less than twenty years without the permission of all parties. However, if they withdraw after twenty years but before the end of the term, they are liable for the remaining government investment established by a pro-rata formula that takes into account the current market value of the property.

• 13.6 **Queensland:**

The Queensland government also enters into partnerships where its investment is amortised over a negotiated period of time.

14 Government Benefits From Working With Churches

14.1 CCH would argue that for government to either provide a grant with contract or to amortise its investment in partnership over a reasonable period of time is a much more secure and cost effective investment than working with the for-profit private sector. When working with a church or church agency, the likelihood of extending the contract beyond the agreed period is much higher than with a private investor, who would be looking to realise the capital gain on the asset as soon as the contract has expired. Churches also bring considerable resources in other areas to a partnership including the following services: individual case management, counselling, budgeting and life skills education, disability support, employment referral and support, and community linkages.

15 Churches Preferred Outcomes

15.1 It is the view of CCH that alternatives exist to the current restrictive terms applied to public church partnerships in community housing provision, where the needs and concerns of both churches and government can be satisfactorily addressed by looking to current models for partnership in other service areas that deliver significant outcomes.

16 Recommendations Regarding Title and Equity in Partnerships

16.1 Churches Community Housing strongly recommends that in consultation and collaboration with the church sector:

- a **policy framework** is developed in NSW for public church partnerships for community housing provision.
- A **draft contract** for public church partnerships for community housing projects is developed that works from either grant with contract or amortisation with contract for a determined time period.

16.2 These actions should deliver substantial increases in churches ability to make available underutilised land/assets for partnership with government to deliver increased services to the people of New South Wales.