

Discussion Paper: NSW Registrar of Community Housing

Affordable Housing in NSW - The housing regulatory perspective

July 2019

This advice is from an independent statutory officer, does not reflect government policy, and is provided pursuant to the Registrar's function contained in section 10(1)(h) of the NSW Community Housing Providers (Adoption of National Law) Act 2012.

FEEDBACK

As part of our engagement process, the Registrar seeks guidance on best practice from providers, peaks and representative bodies and invites written comments on the discussion paper.

Feedback will also help inform and shape input into the options on the National Regulatory System for Community Housing (NRSCH) and the NSW enabling law review.

Comments and feedback will not be released publically.

EXECUTIVE SUMMARY

AIM OF THE DISCUSSION PAPER

This discussion paper aims to identify implications for the regulation of community housing providers (CHPs) arising from emerging risks in managing affordable housing targets and expectations in NSW.

The paper identifies risks in the current affordable rental housing regime in NSW and suggests mitigation strategies so that government affordable housing intentions are implemented in a way that aligns with the objects of the Community Housing Providers National Law (an appendix to the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW)); particularly in relation to outcomes for tenants, use of assets and future investment into additional affordable housing by CHPs.

The Registrar has consulted with the Department of Family and Community Services (FACS); NSW Department of Planning and Environment, Housing Policy (DPE); several community housing providers with large affordable housing portfolios and providers' peak bodies; the then NSW Office of Local Government (OLG); several NSW local government councils and the NSW local government peak body; assessments team in the Registrar's office; and former Housing NSW/FACS officers with experience in the design and implementation of a range of affordable housing initiatives funded by or through FACS.

An initial discussion paper was released for consultation. The advisory group held a workshop to recommend solutions to identified issues. At this stage the advisory group was joined by representatives of the NSW Fair Trading as the regulators of the consumer protection aspect of the building certification process which is one of the areas of risks identified by the advisory group earlier. Other NSW local government councils and the Community Housing Industry Association have also made valuable contribution to the discussion. All members of the group provided insights into different issues surrounding affordable housing in NSW and made suggestions for improvement which are included in this paper.

Some of the solutions and risk mitigation strategies are relatively easy to achieve, others require interdepartmental work and possibly amendments to the planning instruments. All solutions will be sent to the housing agency for review and action.

STRUCTURE OF THIS DISCUSSION PAPER

This paper provides the background about how a range of issues surrounding affordable housing have come to the attention of the Registrar; discusses the concept of affordable housing as described in FACS policies; addresses each identified risk area and suggests mitigation strategies; and summarises the risks, including the anticipated residual risks if suggested mitigation strategies are put in place and regulatory options that would provide independent assurance in the scheme design.

SUMMARY OF KEY DISCUSSION POINTS ARISING FROM COLLABORATION WITH STAKEHOLDERS

1. The gap in strategic stewardship of affordable housing planning and delivery in the context of a range of subsidised housing models needs to be addressed.
2. There is a need for a single register of affordable housing properties in NSW.
3. There has been a surge in requests for registration for affordable housing related community housing providers triggered by the planning regime enabling the construction of additional affordable housing. This is creating a pressure for the Registrar's office beyond the estimated staff establishment.
4. There is currently little government assurance mechanisms in place at the asset and rent level to monitor affordable housing contracts with delivery expectation over the next 10 years.
5. There is lack of coordination between the development approval and property occupancy certification processes for the same affordable housing property that should not be difficult to redress.
6. A broader issue of the lack of requirement to monitor client's pathway through housing products (e.g. from crisis/transitional to social and affordable housing and private market) should be a stewardship issue for the housing policy branch of FACS.
7. There is uncertainty surrounding the future of NRAS subsidies which may pose a challenge for CHPs future planning, especially in relation to properties owned by private developers that community housing providers manage. The providers are considering a range of scenarios about the future of NRAS.
8. There is an overall risk if the issues identified are not addressed. This is referred in this paper as 'risk zero' and the likelihood and consequence of risk zero are discussed throughout this paper and summarised in the end after consideration of mitigation strategies.

BACKGROUND

The Registrar started the discussion about issues associated with regulation of community housing providers that engage in the provision of affordable housing in NSW as a result of being approached by a number of non-traditional organisations who wished to achieve registration as community housing providers for the sole purpose of developing and providing affordable housing. These providers in both business model and volume challenge some of the traditional tenets of the national CHP scheme which is oriented towards the management of social housing by not-for-profits.

A range of initiatives by all levels of government have created the environment in which community housing providers and new applicants for registration are responding to. This necessitates the housing regulator to consider mitigation strategies in order to provide assurance against the risks the regulated sector is exposed to. Some of the risks are outside the Registrar's control and others can be influenced more directly. The Registrar feels an obligation to provide advice to the housing agency so that the identified areas of risk can be mitigated.

Specifically, this paper summarises the observations by the NSW Registrar and relevant stakeholders about affordable housing initiatives and highlights areas of strategic and operational, immediate and longer-term risks associated with affordable housing the housing regulator has observed in dealings with existing providers and new applicants for registration. As commented by members of the advisory group, some of the risks are unintentional consequences of the affordable housing regime in NSW, others may be the result of the pursuit of larger profits and the absence of an appropriate control framework.

There have also been a number of relevant developments and policy announcements as well as findings in Registrar's other analytical work that are taken into account in the current discussion paper including:

- the announcements of the investment into affordable housing by the current Commonwealth government;
- the establishment of the Affordable Housing Bond Aggregator by the Commonwealth government and issuing of the first lot of bonds to registered providers for both social and affordable housing products;
- discussions between the Registrar's office and a range of stakeholders concerning boarding housing as a component of the affordable housing spectrum;
- the campaign the NSW Registrar's office is conducting with registered providers who are the recipients of different National Rental Assistance Scheme (NRAS) initiatives about their plans for tenants and properties as the current assistance starts coming to an end;
- the new structure of NSW government agencies.

It is also of note that the definition of affordable housing varies across Australian and international jurisdictions with some definitions ranging from accommodation for the homeless to specialist rural rental housing. Some academic research considers affordable housing to be the layer between government subsidised housing for people on very low and low incomes and market priced rental housing. This indicates that affordable housing in its different forms has appeared on all governments' and all housing regulators' radars as a form of housing that registered providers engage in. It ranges from government investment through public subsidy, either through grants, operating subsidies, or planning gain, and is, by the requirements of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) owned and managed by registered community housing providers.

For the purpose of our discussion, affordable housing is housing that is targeted to specific income groups and has been funded or facilitated by government in range of ways, including direct subsidies, asset transfers, planning incentives or joint project requirements.

This discussion paper also suggests the necessary changes to relevant policies and behaviours to assist with the aims of affordable housing initiatives. If adopted the changes would position the regulatory system in a way that it can identify and help with the mitigation of different risks.

HOW AFFORDABLE HOUSING CAME TO THE REGISTRAR'S ATTENTION

Housing affordability and supply of affordable housing has been on the Commonwealth, state and local government agenda for a number of years intensifying more recently as housing affordability, especially in metropolitan areas, declined.

A range of initiatives have been put in place at different levels to increase both supply and affordability, including creating the Council of Australian Governments National Affordable Housing Agreement.

Affordable housing has appeared on the horizon and then impacted operationally on the NSW housing regulator in a number of ways.

A. The Registrar has observed diversification of registered community housing businesses and their plans for increased number of affordable housing properties (in addition to social housing). A strong motivator for such diversification has been providers' desire to maintain their financial viability amidst increased contract reporting demands and rising costs.

B. In assessing registered providers' 10 year strategic forecasts the Registrar is monitoring their consideration of financial viability and business planning as NRAS and other affordable housing initiatives start coming to an end. This will create a subsidy gap that registered providers are expected to respond to. Providers are already considering how they will deal with a number of NRAS properties and with residents both in properties allocated to them and in those where community housing providers have a fee for service arrangement with for-profit property owners.

C. A number of funding initiatives including Social and Affordable Housing Fund 1 and 2, the National Housing Investment Finance Corporation, NSW Government vesting program include affordable housing targets.

D. Enabling planning policies. The Affordable Housing Rental State Environmental Planning Policy (AHRSEPP) has acted as an enabler of additional affordable housing units by developers as a condition of development approvals resulting in for profit organisations approaching the Registrar's office for registration as a community housing provider.

AFFORDABLE HOUSING IN NSW

What is affordable housing

While the definition of affordable housing varies across Australian jurisdictions the general tenet is that it is housing appropriate for the needs of a range of very low to moderate income households and priced so that these households are also able to meet other basic living costs such as food, clothing, transport, medical care and education. Based on a number of studies by charity organisations, housing is considered affordable if it costs less than 30% of gross household income.

Housing types

Affordable housing may include a range of housing types and sizes and may include boarding houses, bedsitters, single or multi-bedroom units or houses. It is only available in some locations where high need has been identified and where satisfactory infrastructure and services are available.

Ownership of affordable housing

Although affordable housing is sometimes available for purchase, it is most commonly available for rent. **Hence this paper focuses on rental affordable housing.**

Affordable rental housing may be owned by private developers or investors, local government, charitable organisations or community housing providers. It is mostly, but not entirely, managed by not for profit community housing providers, and sometimes by private organisations. In NSW Ministerial guidance directs that affordable housing is managed by registered community housing providers.

The difference between affordable and social housing

According to the FACS policy affordable housing is open to a broader range of household incomes than social housing, so households can earn higher levels of income and still be eligible. Households do not have to be eligible for social housing to apply for affordable housing, though people who are eligible for social housing may also be eligible for affordable housing properties.

Affordable housing is managed similarly to private rental properties but there are certain eligibility criteria that must be met and the tenant/asset managers are required to be registered community housing providers. When there is a vacancy for an affordable housing property, providers advertise and people submit an application to the manager as they would if they were applying for a property in the private rental market. Some providers may keep waiting lists for affordable housing.

THE SCALE OF THE ISSUE

As at 30 June 2018, 27 registered community housing providers that have a relationship with FACS managed 6,348 affordable housing properties under various programs. The majority of these properties are linked to NRAS. Compared to the number of general purpose housing properties (that is, excluding crisis and transitional properties) managed by all providers that have a relationship with FACS (27,248), the number of affordable housing properties represent around 20 percent of the social housing properties. Projected development by registered community housing providers, as reported by the Community Housing Industry Association NSW (CHIA NSW) is additional 1,794 affordable housing properties by 2020.¹

There are also registered providers and applicants for registration as community housing providers who have no relationship with FACS as they do not manage social housing tenancies or have no connection to NRAS. The indications these providers and applicants for registration have given to the Registrar's office is that they will be managing in excess of a thousand affordable housing properties within the next few years.

Around 50 percent of all new applicants for registration as community housing provider intend to provide affordable housing.

Similarly, according to the University of NSW City Futures Research Centre of March 2019, around 30 percent of unmet present and projected housing need is for affordable housing.²

There is an unknown number of affordable housing properties that are developed under the NSW planning instrument but have not come to the attention of the NSW Registrar.

It is reasonable to assess that affordable housing is a sizeable and growing proportion of subsidised housing in NSW which can only be delivered by community housing providers.

¹ Community Housing Industry Association NSW (December 2018), *State of the Industry 2018*.

² City Futures Research Centre, UNSW Built Environment, UNSW Sydney (March 2019) *Estimating need and costs of social and affordable housing delivery*

IDENTIFIED RISKS AND SUGGESTED MITIGATION STRATEGIES

In consideration of the above scale of the affordable housing, the advisory group has identified the following risks and suggested corresponding mitigation strategies.

There is an overarching risk for the people of NSW if changes required to address specific risks identified below as 1 – 7 are not attended to. For reference purposes this is referred to as 'Risk Zero'. Consultation with stakeholders has suggested ways forward in mitigating identified risks.

There is a need for a single authority for affordable housing planning, delivery and controls in the context of a range of subsidised housing models

Funding initiatives for affordable housing come from a range of sources:

- from the vesting targets in cases where FACS transferred property titles to registered community housing providers;
- funding and subsidy programs by the Commonwealth and NSW governments specifying affordable housing targets;
- Landcom land releases for the purpose of enabling additional affordable housing;
- NSW planning policies.

However, there isn't a single oversight mechanism that would determine how all these initiatives work together and what are the broader impacts of different affordable housing programs on the overall provision of subsidised housing; often referred to as 'stewardship'. As different funding opportunities become available to registered community housing providers, providers are competing for additional assistance on the basis of their own business and viability considerations. Specific affordable (versus social) housing targets are linked to specific programs (such as SAHF 1 and 2) but the overall impact of the new supply is not considered.

For example, DPE and Landcom act as enablers of additional affordable land/housing supply but have no post-implementation function to follow through what happens with the releases and whether the original purpose of the enabling policy/land release has been achieved in practice.

FACS acts as market stewards but only deal with properties it funds or operationally commissions through a range of different programs. FACS administers NRAS subsidy payments where the Commonwealth Department of Social Services (DSS) is satisfied with recipient providers' reporting on the compliant utilisation of the subsidy. DSS's monitoring capability is limited to funding transaction assurance.

None of these agencies can produce a comprehensive picture of the affordable housing market in NSW nor can they advise on changes in the affordable housing market/s. The NSW Registrar may appear to be better placed to do so; however, have no clear regulatory design to do so.

What is the risk if the situation remains as is and what are the mitigation strategies that would reduce the risk (risk zero)

Likelihood: very high.

Consequence/s: The dispersed accountability has led to uncoordinated responses to government policies and uncertainty about the number of affordable housing generated.

A number of affordable housing properties may become market priced in the absence of a control mechanism that this does not happen. The loss of affordable properties from the market creates additional pressures on the social housing system.

Nature of the risk: strategic, long-term (already happening), policy based.

Can the NSW Registrar help with the solution: in part.

The Registrar probably has the most comprehensive picture of the issues surrounding affordable housing delivered by registered community housing providers due to the requirement that providers of such housing must be registered community housing providers in NSW³. A number of affordable housing providers have no connection with FACS.

The Registrar is aware of some of the developments by virtue of assessing existing providers' business and future plans and dealing with new applicants for registration. However, a cross-departmental/cross-government nature of the emerging risks associated with regulation of providers involved in the provision of affordable housing challenges the traditional resourcing model for the Registrar as well as accountabilities for stewarding the program and the Registrar has raised the matter with a number of government partners.

An increase in the supply of affordable housing will require a shift in resources based on the regulatory activities required to be undertaken by Registrar. Growth in the sector can see an increase in regulation of financial risk. This discussion paper highlights that changes to incentives (and in particular an increase of incentives) for affordable housing supply may drive further registration demand. This is closely monitored by all Registrars.

Mitigation strategies suggested by the advisory group: If FACS strategic housing policy area, subject to appropriate resourcing, were to assume the ownership for the delivery of all government housing strategies, including a range of affordable housing initiatives, solutions could be formulated from a single source, and the desired affordable housing outcomes would be monitored by a single or a range of regulators. As the only common denominator for all affordable housing providers is that providers must be registered community housing providers, appropriately resourced Registrar's office can conduct annual assessment of registered community housing providers that are delivering affordable housing. This can be done on a property basis, upon the receipt of relevant information from local consent authorities.

Immediate action: The Registrar to brief FACS housing policy and the Secretary on the issue for further action at the appropriate level.

³ NSW is the only jurisdiction with this requirement assisting monitoring of risks in NSW but highlighting the futures in strategic policy position across governments.

There isn't a single register of affordable housing properties

A number of partners consulted in the preparation of this paper have commented on a very practical issue of the lack of a common register of affordable housing properties. This is due to the nature of different origins of affordable housing supply. Monitoring performance of affordable housing initiatives as well as compliance with funding and enabling laws would be greatly facilitated if there were such a register. If there were a single source of stewardship in the design of affordable housing scheme, that instance would be in a position to request that a single register is formed and maintained. This may be best done as a part of the existing community housing register.

What is the risk if the situation remains as is and what are the mitigation strategies that would reduce the risk (risk zero)

Likelihood: very high.

Consequence/s: uncoordinated responses to government policies. Unsystematic and partial measures at different levels of government. No stewardship of the whole system and no coordination among affordable housing enablers and partial stewards; also, no coordination with other types of subsidised housing.

Nature of the risk: strategic, already happening with long-term consequences if not remedied.

Can the NSW Registrar help with the solution: yes in part.

Mitigation strategies suggested by the advisory group: Registrar to bring to the attention of the FACS Secretary so the matter can be resolved at the appropriate level. With appropriate resourcing, Registrar can combine the information already collected by FACS Community Housing and Pathways from 33 providers who own and manage the majority of affordable housing properties in NSW and add to it additional property based information using its current provider management system to record affordable housing properties managed by registered community housing providers. Such records can be made available to interested parties upon agreement.

Impact on oversight of CHPs through attention of the Registrar being drawn by unfunded but necessary regulatory activity in the affordable housing space.

The Registrar's office has experienced unplanned pressures on its resources as a result of the lack of the overall strategic planning and monitoring of the delivery of affordable housing as part of the government subsidised housing responses. These pressures include a surge of registration demands and associated compliance monitoring by the Registrar's office.

The AHRSEEP is a policy designed by the NSW Department of Planning and Environment with several aims, the main one being to enable additional affordable housing supply into the housing market. The AHRSEPP allows developers to increase floor density in new developments in suitable locations (e.g. close to public transport, schools, shops, medical centres) with an attached condition of development approval: that a certain percentage of the development is used as affordable housing which must be managed by a registered community housing provider. As a result the Registrar's office has seen a surge in registration enquiries by developers and real estate agents who manage developers' properties. A number of those non-traditional organisations have achieved registration as community housing providers. These organisations often have no contractual relationships with FACS.

The community housing regulatory scheme allows for for-profit organisations to apply for registration, however the scheme is not well resourced for assessing the number

and type of providers that are seeking entry into the registration system for the purpose of delivering affordable housing.

What is the risk if the situation remains as is and what are the mitigation strategies that would reduce the risk (risk zero)

Likelihood: very high

Consequence/s: opportunistic responses to the housing need through the registration process. Use of the NRSCH for other purposes than participating in the subsidised housing system. Undue pressures on the Registrar's office which is not sufficiently resourced to monitor performance of providers such as developers and real estate agents at the unit level (performance at the unit level would be the only appropriate measure to monitor and provide data on the effectiveness of the system).

Nature of the risk: strategic and operational, long-term, happening already.

Can the NSW Registrar assist with the solution: Part of the solution is defining the requirements for registration, monitoring, reporting and compliance and designing an appropriate regime to implement. The NSW Registrar is dealing with an absence of such design by imposing additional standard conditions of registration to for-profit registered community housing providers who are applying to become registered community housing providers for the sole purpose of managing the affordable housing portion of the new developments under the AHRSEPP. The additional conditions of registration include limiting provider's registration to only managing affordable housing; increasing the frequency of compliance assessments to annual⁴; and requesting additional information at the time of compliance assessment, most likely on a property level. This artificial mechanism allows the Registrar to mitigate the risk of the appearance of new, for-profit, applicants to assure the implementation of planning policies; and to support the government intention to reduce pressures on the subsidised housing system by people who may not be eligible for social housing but still cannot afford to pay market rents in areas where they work.

This 'a posteriori' solution imposes further unplanned impact on Registrar's resources as imposed conditions need additional layers of regulatory monitoring than standard.

The Registrar's office is resourced by FACS on the basis of regulating community housing providers that have a relationship with FACS, which is the minimum resourcing demand.

One of the consequences of the lack of overall stewardship of the affordable housing scheme has been that the Registrar has not been involved in the scheme design phase, nor in the development of assurance mechanisms that affordable housing policies will indeed be implemented as planned. The Registrar learnt about the issue through increased interest in registration as community housing providers by property developers and real estate agents.

The Registrar is working with the Community Housing and Pathways branch as well as with other relevant agencies and other Registrars to examine ways to reduce monitoring of CHPs, in order to focus existing resources on new affordable housing risks.

⁴ From the usual biennial as these developers and real estate agents are generally registered as Tier 3 community housing providers and Tier 3 registered providers' compliance is generally assessed every two years

Mitigation strategies suggested by the advisory group: at the Secretary level discuss with NSW Planning, NSW Fair Trading and other relevant agencies the establishment of the single source of accountability for affordable housing delivery in NSW; provide data at property level concerning regulated providers to substantiate claims.

Lack of assurance that affordable housing properties developed under ARHSEPP are used for the purpose for which the development approval was given by councils for the whole period of approval (10 years) and that the rent is set at the appropriate level

Under the AHRSEPP affordable housing properties must be used as affordable housing for at least 10 years as a condition of the development approval and must house eligible clients. The consent authority for development approvals and enforcement of conditions of approvals are local councils.

The Registrar understands there is no systemic monitoring system following development applications approvals given by councils and no assurance that properties are indeed used for the purpose of providing affordable housing, that is, applying income eligibility criteria, and that the rent is charged below the market rent for the area for the full 10 year period. While councils have powers to monitor compliance with development consents and to issue orders under section 124 of the *Local Government Act 1993 (NSW)*, they don't have regular programs of monitoring compliance with conditions of DA approvals, but are more likely to act by exception through a costly process that may involve the Land and Environment Court.

This issue also highlights the absence of accountabilities for the stewardship for the affordable housing initiatives.

Some developers of affordable housing are likely to be dealing with large, already registered community housing providers, while others seek to become registered providers themselves, or get their long term Real Estate agent partners to seek registration. In the absence of the register of affordable housing properties approved by local councils and follow up systems, it is impossible to obtain assurance that all approved affordable housing developments are indeed used for the purpose for which they were approved.

What is the risk if the situation remains as is and what are the mitigation strategies that would reduce the risk (risk zero)

Likelihood: very high.

Consequence/s: affordable housing properties becoming market priced properties for rent or resale before the ten year period. There may be an expectation that the housing regulator would monitor the conditions of development application approvals given by local government councils for which the Registrar is not adequately equipped.

Nature of the risk: strategic and operational, immediate to long-term.

Can the NSW Registrar assist with the solution: yes in part. As the Registrar regularly monitors compliance of registered community housing providers, with appropriate resourcing, the Registrar could add the element of compliance with development conditions for affordable housing properties approved by local councils; noting this requires monitoring at the asset and rent level which is a level of scrutiny not currently included in the design of the NRSCH.

Mitigation strategies suggested by the advisory group: Registrar to raise issues identified with the FACS Secretary so attention of relevant parties can be drawn and appropriate cross agency responses implemented.

Lack of coordination between different elements of the approval process for the same property

A compounding problem is the lack of operational coordination between different parts of the development approval, development and occupancy certification process.

Once a council gives a consent to a development application and imposes conditions of approval, it can take several months if not years for the property to be constructed. Property then must be assessed for its suitability to be occupied.

Occupancy certification can be done either by the council or by a private certifier. Private certifiers do not need to follow some of the aspects of the DA approval given by the council and a property that was approved by the council as affordable housing may lose that characteristic in the occupancy certification process. This may lead to unethical developers renting or on-selling the property at a full market rental/price. One of the suggested solutions is the education of private certifiers.

While there are legislative provisions under the *Environmental Planning and Assessment Act 1979* (NSW) including the possibility of referral to and investigation by the NSW Fair Trading against the certifier, the absence of an ongoing control regime may lead to unethical practices, whether deliberate or unintended.

Under section 6.10 of the Environmental Planning and Assessment Act, an occupation certificate can only be issued (by either a private certifier or council) if the following preconditions are satisfied:

1. An occupation certificate must not be issued unless any preconditions to the issue of the certificate that are specified in a development consent have been complied with.
2. An occupation certificate must not be issued to authorise a person to commence occupation or use of a new building (or part of a new building) unless:
 - (a) a development consent is in force with respect to the building (or part of the building), and
 - (b) in the case of a building erected pursuant to a development consent (other than a complying development certificate), a construction certificate has been issued with respect to the plans and specifications for the building (or part of the building), and
 - (c) the completed building (or part of the building) is suitable for occupation or use in accordance with its classification under the Building Code of Australia, and
 - (d) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
3. An occupation certificate must not be issued to authorise a person to commence a new use of a building (or of part of a building) resulting from a change of building use for an existing building unless:
 - (a) a development consent is in force with respect to the change of building use, and

(b) the building (or part of the building) is suitable for occupation or use in accordance with its classification under the Building Code of Australia, and

(c) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

If an occupation certificate is issued without satisfying these requirements, this would be the basis for a complaint and investigation into the conduct of a certifier (council or private) by Fair Trading.

The issue with the practices of the delivery of affordable housing reported by community housing providers is that once the development is complete and occupational certificate issued, whether through a private certifier or through council, there is no assurance that the affordable housing component is delivered to a registered community housing provider (which is a condition of development approval) for tenancing. Even when the process is followed, the occupational certificate will be issued to the developer by supplying a property management agreement to council/private certifier. Once the occupancy certificate is obtained a developer can behave unethically and rent the property privately at full market rent and not pass on the keys/possession to the nominated registered community housing provider.

While a certifier is required to obtain suitable evidence that relevant conditions of development consent have been met, the occupational certificate does not have to include a statement to this effect, nor reiterate relevant conditions.

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What is the risk if the situation remains as is and what are the mitigation strategies that would reduce the risk (risk zero)

Likelihood: very high.

Consequence: uncoordinated process continues opening an avenue for the intended affordable housing becoming market priced housing well before the ten year mark.

Nature of the risk: The success of many years work to bolster affordable housing supply and therefore reduce pressures on social housing undermined by operational weaknesses. With proper mitigation steps may be resolved relatively quickly; education is required.

Can the NSW Registrar assist with the solution: the Registrar can work with Planning and Fair Trading to implement minor changes to the certification system for affordable housing properties.

Mitigation strategies suggested by the advisory group: work on a coordinated response by all government agencies and enable data collection at property level by the Registrar involving regulated providers.

One of the suggested solutions has been not to issue occupational certificate until there is conformation from the registered community housing provider that there is not only a property management agreement in place but also that there has been a handover of keys to the provider. This process, if communicated clearly, would require the developer and a provider to work together during the property delivery phase to ensure compliance with the development approval. It would also alleviate the need for council to be involved in the occupational certification process and the follow up on the compliance with development approval conditions. In addition, there needs to be a reporting line back to council or government if it is identified that the developer has not met their affordable housing obligation.

A more invasive solution would be for councils to impose a condition of consent that would prohibit an occupational certificate being issued unless the principal certifying authority has been given a copy of the handover declaration from the registered community housing provider. If this condition were imposed, the certifier would need to be satisfied the condition was met, before issuing an occupational certificate. This may necessitate liaison with NSW Planning and Environment as the custodians of legislation and policies that deal with issuing occupational certificates. Councils could be provided a sample condition to show how the condition could be worded so it's clear to everyone involved.

In addition to the operational solution listed above, some of the advisory group participants suggested a policy based solution for dealing with the concerns over the malpractices reported against some of the for-profit affordable housing providers. They recommended that the NSW & local governments should rethink the use of the planning system to support those developers who will engage not for profit registered community housing providers to manage affordable housing properties. This can be done through the provision of incentives such as additional density bonuses to encourage developers to use the not for profit providers, as this would provide better assurance of quality service delivery under the Registrar's monitoring regime, in addition to surpluses generated by the not for profit providers being reinvested towards the development of additional affordable housing and services for the people in NSW.

Lack of requirement to monitor client's pathway through housing products

This issue was brought up in discussions with several practitioners. A strength of CHPs over government public housing is their ability to manage various types of housing solutions and diversify their business such that they can assist targeted social housing recipients through pathways to self-supported living. Hence CHPs are investing in processes to monitor progress by individual clients from social to affordable housing and out of the subsidised housing system. This is however not a regulatory nor a contract requirement. It may become a requirement under the Human Services Outcomes Framework. Unlike public housing, there is no pathway program for affordable housing stewarded by FACS. Hence, there is a systemic weakness in delivering on key government intent.

What is the risk if the situation remains as is and what are the mitigation strategies that would reduce the risk (risk zero)

Likelihood: very high.

Consequences: lack of appropriate data to establish the baseline and success of affordable housing program(s). Poorly informed government housing policies.

Nature of the risk: strategic; long-term and necessary considering the adoption of the Human Services Framework.

Can the NSW Registrar help with the solution: in the first instance, the Registrar is happy to bring the matter to the attention of housing policy experts; the Registrar's oversight may be extended as required if scheme design occurs and regulatory involvement deemed necessary.

Mitigation strategies suggested by the advisory group: Registrar to bring to the attention of the FACS Secretary (as the Housing Secretary under NSW Community Housing Law), in an effort to engage FACS policy and industry organisations to establish and implement a system for monitoring and reporting at the individual client level extending beyond FACS contracted providers.

The future of NRAS subsidies – risk of viability for registered community housing providers and risks for tenants in houses owned by private developers that community housing providers manage

National Rental Affordability Scheme (NRAS) subsidies will start ceasing over the next eight years. In the 2014-15 Budget, the Government announced it would not progress with any further NRAS rounds and that the scheme would be capped at 38,000 allocations. In coming years, many CHPs that were successful in obtaining NRAS subsidies will begin to see financial incentives associated with the scheme cease as the 10 year funding timeframe for each NRAS round is reached. Other providers offer fee for service management of NRAS properties and will be affected by the ending of NRAS incentives.

If no new subsidies are identified a large number of affordable housing properties may be lost from the housing market with investors likely to sell the properties or to raise rents to the full market value. Community housing providers are considering a number of scenarios and avenues for both maintaining their financial viability and retaining the tenants without the NRAS subsidy.

Providers are placed in the most difficult situation if they are managing properties for which private, for profit developers are receiving subsidies. Occupants of these properties have a lease with providers, not with property owners and providers may be looking at a prospect of rehousing those tenants in properties in their own portfolio or terminating the tenancies.

The Registrar has been aware of the issue and has conducted a campaign to ascertain providers' plans with respect to NRAS properties and the tenants in those properties as well as providers' financial viability. Initial indications are that the sector is planning for the wind-down and is diversifying in response. If no replacement subsidies are available, providers cannot be expected to continue to self-fund subsidised affordable housing properties with existing tenants. In the longer term this would represent a significant dip into expected investment into additional affordable housing properties that would otherwise be delivered by providers and added to the subsidised housing market numbers. The Registrar may also be placed in the tenuous position of requiring CHPs to divest themselves of affordable housing stock in order to remain viable to manage their social housing stock.

The Registrar is not in position to follow up with private for profit recipients of NRAS subsidies regarding their plans to either sell the properties at market value, rent them at market rent, or make use the tax benefits associated with the provision of affordable housing without government subsidies.

On the other hand, the continuation of the incentives similar to NRAS is also possible and has been signaled by both Commonwealth Government and the Opposition. The Registrars should be considered in any scheme design that sees renewed or increased levels of national subsidies for affordable housing and more affordable housing supply.

What is the risk if the situation remains as is and what are the mitigation strategies that would reduce the risk (risk zero)

Likelihood: high without further extension of subsidies.

Consequence: insecurity of tenure for tenants of affordable housing properties other than Round A of NRAS. Loss of affordable housing properties (over 5,000 to be progressively lost by 2026 in the estimate of FACS). Pressure on the social housing system and possibly volatile rental market, especially in Sydney.

Nature of the risk: strategic and operational; immediate risk.

Can the NSW Registrar help with the solution: The national Registrars will be happy to work with providers and their peak bodies, FACS commissioning and other government areas with responsibility for the supply of affordable housing.

Mitigation strategies suggested by the advisory group: to participate in finding solutions with all relevant parties.

RISK CONSIDERATIONS

The risk matrix below:

- lists the risks identified in discussion with participants,
- classifies identified risks by
 - nature,
 - consequence and
 - likelihood,
- considers the adequacy of the existing risk controls,
- summarises mitigation strategies suggested by the advisory group,
- suggests required efforts (easy-difficult) and resources to mitigate the risk,
- the role of the Registrar and other regulators in risks mitigation strategies,
- considers residual risk if mitigation strategies are implemented, and
- suggests risk monitoring and review.

Risk identified	The type of risk	The harm it can cause (consequence)	Is it likely to happen is it happening (likelihood)	Current risk controls and their adequacy	Suggested mitigation strategies	Efforts and resources required to implement mitigation	The role of the housing regulator in risk mitigation	Projected residual risk if mitigation strategies are put in place	Residual risk monitoring and review
1. Absence of stewardship of affordable housing planning and delivery	Strategic	<p>Uncoordinated responses to government policies.</p> <p>Uncertainty about the number of affordable housing generated.</p> <p>A number of affordable housing properties may become market priced.</p> <p>Additional pressures created on the social housing system.</p>	This is already happening.	<p>Department of Planning and Environment as the owner of State Environmental Planning Policies acts as an enabler of some affordable housing initiatives; local government councils have powers but no resources to monitor conditions of development consents that involve affordable housing. FACS monitors some of the delivery of the affordable housing and relies on the Registrar for overall performance of providers; NSW Treasury funded programs (SAHF 1 and 2) involve some contract monitoring.</p> <p>Department of Social Services monitors some aspects of the delivery of NRAS properties.</p>	FACS Secretary to discuss strategies with other relevant agencies for an oversight system of the delivery of affordable housing properties in NSW.	<p>Inter-departmental coordination is considered necessary. The efforts are unlikely to be resource neutral but will fill in the existing gap.</p> <p>Councils to notify the monitoring group of who should be registered as a community housing provider</p>	<p>The Registrar has a system in place of annual assessment of registered community housing providers but has no knowledge of who may providing affordable housing unless notified by the housing agency or approached by the applicant.</p> <p>The Registrar can build into their system additional aspects of assessment of affordable housing providers with appropriate resources.</p>	<p>If all providers of affordable housing achieve registration and their performance is monitored, the identified risks associated with the lack of the stewardship of the system would be minimized.</p>	<p>The Registrar can report on the performance of the sector or parts of the sector relying on their data collection and assessment of providers.</p> <p>The overall delivery of affordable housing should be monitored and reported on by the system stewards.</p>

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				Absence of agreed stewardship role of the Housing Secretary and coordination of affordable housing solutions.					
2. Lack of a single register of affordable housing properties in NSW.	Strategic and operational	Uncoordinated government policies with respect to affordable housing. Unsystematic and partial	Already happening	As above, some partial controls are in place with powers not exercised due to lack of resources.	Establish the register accessible to providers and applicants. FACS Secretary to discuss with relevant counterparts the interagency coordination of such register.	Consider expansion of existing registers such as the expansion of the existing Community Housing Providers Regulation Information System (CHRIS) register to include all registered providers' properties by location, type and purpose.	The Registrar is already using the Salesforce based system that can be expanded to include property data. The effort will not be cost neutral but it is an existing system, used nationally by housing registrars as well as by FACS.	Once established, with appropriate stewardship and maintenance, the risk can be expected to be minimized.	Periodic reporting by the custodian of the register and comparison of data across enablers of the system and agencies involved in the delivery.
3. Impact on oversight of CHPs through attention of the Registrar being drawn by unfunded but necessary regulatory	Operational with impact on government affordable housing strategic	Opportunistic responses to affordable housing needs and lack of measur	High (happening already)	Registrar's additional standard conditions of registration; however, this measure cannot operate in isolation.	Whole of government response using the process already applied by the Registrar to provide assurance that properties are used for the purpose for which they were intended	Appropriate resourcing of the Registrar's office is required.	Central.	The risk would be minimised and responded to in a timely manner.	Periodic reporting to the stewarding agency, providers and the public about the use of affordable housing properties.

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activity in the affordable housing space.	outcomes	can be used to support governance This removes NRSCH from the strategic design phase of the affordable housing planning and creates Registrar's office which is not sufficiently resourced to monitor performance of providers such as developers and real (performance at the unit level would be the only appropriate measure to monitor and provide data on the effectiveness							
4. There is no assurance		Uncoordinated responses to	High (already happening).	At present, local government councils as consent authorities	As the Registrar regularly monitors compliance of	The monitoring of the appropriateness of the use of	The NSW Registrar can certainly assist with the solution of the	While the risk of the lack of performance by individual	The Registrar can provide performance data to the agency

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that affordable housing under the rental SEPP are used for the purpose for the whole period for which the development approval was given by councils and that the rent is set at the appropriate level		government policies. Unsystematic and partial measures of the effectiveness of affordable housing solutions at different levels of government. No stewardship of the system and no coordination with other types of housing.		have the powers to conduct post DA approval inspections and take action if the conditions are not complied with. Such actions are resource intensive and costly and may involve a protracted process in the Land and Environment Court while the intent of the government policy is not being met.	registered community housing providers, with appropriate resourcing, the Registrar could add the element of compliance with development conditions for affordable housing properties approved by local councils; noting this requires monitoring at the asset and rent level which is a level of scrutiny not currently included in the design of the NRSCH.	affordable housing properties developed under the RAH SEPP by the NSW Registrar of Community Housing would require modifications to the CHRIS system to enable the collection and assessment of data at the asset level as well as resourcing the Registrar's office at the analyst level so the resources allocated to the Registrar by FACS for the purpose of regulation of community housing providers funded through FACS are not repurposed for the monitoring of and possible enforcement action against providers that have no relationship with FACS.	problem. It must be understood the whole of government response is required.	registered providers can be monitored and corrective action put in place by the Registrar, the monitoring of deliverables of affordable housing against the government objectives should be measured by the agency that assumes the overall stewardship role.	assuming the overall stewardship of the system at required frequency.
5. There is lack of coordination between the	Due to lack of operational	Uncoordinated process opens an avenue for the intended	Already happening	There are powers in the EPA Act, but these are retroactive	Work on a coordinated response by all government	Education of councils and private certifiers.	Can coordinate the response and liaise between providers, NSW government	Significantly reduced risk.	Occasional spot check by selected councils and Registrar's enforcement

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development approval and property occupancy certification processes for the same affordable housing property that should not be difficult to redress.	coordination the strategic efforts of the government may be undermined.	affordable housing becoming market priced housing well before the ten year mark. Can the NSW Registrar assist with the solution: the Registrar can work with Planning and Fair Trading to implement minor changes to the certification system for affordable housing properties.			agencies and enable data collection at property level by the Registrar involving regulated providers. Certification authorities not issue occupational certificate until there is conformation from the registered community housing provider that there is not only a property management agreement in place but also that there has been a handover of keys to the provider. Reporting line back to council or government if it is identified that the developer has not met their affordable housing obligation. Councils may impose a condition of consent that would prohibit an occupational certificate being issued unless the principal certifying authority has been given a copy of the	Some registered providers have already devised a form to enable the change which the Registrar will be happy to share with local councils and NSW Fair Trading. Councils could be provided a sample condition to show how the condition could be worded so it's clear to everyone involved.	agencies and local councils.		response if they become aware of malpractice.

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					<p>handover declaration from the registered community housing provider.</p> <p>If this condition were imposed, the certifier would need to be satisfied the condition was met, before issuing an occupational certificate. This may necessitate liaison with NSW Planning and Environment as the custodians of legislation and policies that deal with issuing occupational certificates.</p>				
6. A broader issue of the lack of requirement to monitor client's pathway through housing products (e.g. from crisis/transitional to social and affordable	Strategic	Uncertainty of the success of the overall government policy.	Happening already.	Planned Human Services Framework.	Human Services Framework that some community housing providers are investing into.	Engage providers in the provision of broader services with appropriate funding.	<p>Bring issues to the attention of housing strategy experts.</p> <p>Expand monitoring of providers' performance once the scheme is designed; participate in the scheme design early.</p>	Long term strategy is required.	To be discussed at the housing strategy level.

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housing and private market) that should be raised with the housing policy branch of FACS.									
7. There is uncertainty surrounding the future of NRAS subsidies which represents a risk for the registered community housing providers and for tenants in houses owned by private developers that community housing providers manage. The Registrar and	The expense may be met by providers , at the expense of future investment into more subsidised housing.	Cost to providers at the expense of contributing to increasing the number of housing solutions.	Providers are already planning for it and, if further subsidies are not identified by the government, providers are prepared to share the cost of the lack of commitment by the government, but at the expense of future investment into additional subsidised	Uncertain. There are some promises by the current government and the opposition about the increase of affordable housing supply, however, without a definitive delivery program.	Consider the impact on the sector once the Government plans for the continuation of subsidy are known.	Different engagement will be required in case subsidies cease and if they continue and increase.	The Registrar will continue to work with the sector and the government on the implementation of solutions.	This will depend on the government decision regarding the continuation of affordable housing subsidies.	The Registrar will be happy to share their data in the monitoring and review process.

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providers are considering a range of scenarios about the future of subsidies.									

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