

CLT Decision Making Toolkit

For Aboriginal Community Housing Providers in NSW

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Introduction

What is this Toolkit about?

This Decision Making Toolkit (“the Toolkit”) is designed to assist Aboriginal organisations with an interest in housing to make decisions about if and how they want to offer more housing and tenure options to their members. The primary objective of the Toolkit is to identify which tenure, financial and legal option(s) best meet the community’s and organisation’s needs – in particular, whether a Community Land Trust (CLT) model would fit.

CLTs provide an alternative model to both renting and mainstream (and expensive) home ownership. As developed in the United States of America, they are a form of common land ownership where land is held by the community and leased on a long term basis to members of the community or other organisations. Buildings and services on that land are then held as owned or leased properties by residents, businesses and/or other community housing providers. Ground leases are inheritable, and properties on leased land can be bought and sold at prices determined by a resale formula. This arrangement can offer many of the widely acknowledged benefits of home ownership, including resident control over a dwelling, security of tenure and transfer of occupancy rights, and the potential for asset wealth building. CLTs are specifically designed to achieve these benefits under financing, pricing and regulatory arrangements that improve affordability for residents, while also protecting the long term affordability of the housing that is held for future generations.

Community Land Trusts are well known in the USA and have successfully developed and maintained affordable homeownership. They are **not** property trusts as understood in Australia.

In Australian law, it is not possible at the moment to separate title to housing from title to land, so there are two ways that CLTs might be set up – via a long term leasehold or a modified shared equity scheme. Long-term leases look the most appropriate for Aboriginal community land as they keep the stock in community hands and can be very flexible in terms of cost and allocating responsibility for repairs and maintenance between the organisation and the resident.

How was it developed?

This Toolkit was developed as part of AHURI-funded research conducted by the University of Western Sydney, which looked at how a CLT model could be used by an Aboriginal Community Housing Provider in NSW. We know all communities are different, so the actual decisions made in that project can’t be applied in other communities. But we hope that the process the case study organisation went through, and the questions they needed to answer for themselves, will be helpful for other communities and organisations to think about.

Who is this Toolkit for?

The Toolkit has been written with existing Aboriginal Community Housing Providers (ACHPs) that already have housing stock, in mind. If you are considering setting up a new organisation, or changing the purpose of an existing one, the Australian CLT Manual (see below) may be a more useful starting point as it discusses the process of establishing a CLT from scratch.

How do we use the Toolkit?

This Toolkit is designed to be read alongside the Australian CLT Manual ("the Manual"). To obtain a hard copy please contact UWS (see "Where can we find more information?", below). It can also be downloaded for free at:

<http://site.ebrary.com/lib/sydneydash/docDetail.action?docID=80115260>

Neither this Toolkit nor the Manual is a substitute for professional legal or financial advice. It is designed to guide your organisation through a series of questions to help think about the housing aspirations of your community, and then which tenure, financial and legal options would best meet them.

The toolkit is divided into the following sections, or Steps:

1. **Who can decide?**
 2. **Community and household aspirations**
 3. **Is a new program needed?**
 4. **Organisation health check**
 5. **Current stock – characteristics**
 6. **New program elements**
 7. **Policy, tenure and legal settings**
 8. **Design objectives and costs**
- Appendix 1 – Property Inventory**

At each step we have listed a number of issues for your organisation to think about. We have included talking points, and for some questions, some examples from our case study research. There is also room for you to add your own notes. Many of the decisions you make in one step will influence other steps – these cross-references have been noted on each page. Lastly, the related parts of the Manual it relates to are listed for each issue.

Where can we find more information?

For more information or to request a copy of the Manual please contact:

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Abbreviations used in this Toolkit

AC	Aboriginal Corporation
ACHP	Aboriginal Community Housing Provider
AHO	Aboriginal Housing Office (NSW)
AHURI	Australian Housing and Urban Research Institute Ltd.
ALRA	Aboriginal Land Rights Act (NSW)
ATSIC	Aboriginal and Torres Strait Islander Commission
CLT	Community Land Trust
FaHCSIA	Australian Government Department of Families, Housing, Community Services and Indigenous Affairs
IBA	Indigenous Business Australia
LALC	Local Aboriginal Land Council
NSWALC	New South Wales Aboriginal Land Council
PARS	Provider Assessment and Registration System

Terms used in this Toolkit

The Toolkit uses the following Terms. These definitions only apply when the Term has a capital letter – e.g., Resident, not resident.

The Terms are the same as those used in the Australian CLT Manual.

Agreement	This refers to the document that the Resident and the organisation enter into, whether it is a long-term lease or a co-ownership deed.
Premium	This refers to the upfront price that the Resident pays to secure their occupancy of the home.
Resident	This is the occupant of the home who enters into an Agreement with the organisation.
Reversion Price	This is the price calculated when the Resident decides to sell their interest in the home.

Step 1: Who can decide?

1.1 Who are the relevant Aboriginal people to discuss any changes to housing options?

Talking points

It is very important that the relevant people are involved in consultation and decision-making. These could include:

- existing members and tenants
- Native Title holders or registered claimants,
- other Traditional Owners
- other Aboriginal people

Decisions made here relate to...

These sections of this Toolkit:
6.2 Eligibility and inheritance

These sections of the Australian CLT Manual:
3.1 Rationale and objectives

YOUR ORGANISATION'S NOTES

Step 2: Community and household aspirations

2.1 What are the objectives in regards to the landholdings for current residents and members?

Talking points

- What are the priorities for residential property - stability, inheritability, affordability, equity building, wealth creation, other? These outline the priorities for any housing programs and inform clauses in the legal agreement
- Do people understand different tenure forms, and where do see themselves on the spectrum? This is important so they are making informed choices
- Is there a desire for tenure forms other than renting? Do people want something like home ownership?
- Is market housing (rental and/or to buy) unaffordable to your community? This will let you know whether there is a need to provide affordable options
- How important is holding property in perpetuity and maintaining affordability and control?

Case study examples

The case study in our research wanted an option for their current tenants who could not afford private market home ownership, but could afford to, and wanted to, leave social housing.

Decisions made here relate to...

These sections of this Toolkit:

6.1 Demand for new housing forms

These sections of the Australian CLT Manual:

3.1 Rationale and objectives

Appendix 5 Model Lease / deed

YOUR ORGANISATION'S NOTES

2.2 Stewardship and commercial objectives: What are the objectives in regards to the landholdings?

Talking points

- Does the organisation want to hold all property in perpetuity? Keep some in perpetuity and dispose of /deal with some property (for example some sales, some commercial leasing)? Will there be development of vacant land? Is there a desire for freehold sales and if so, will stock be replaced?
- What are the priorities for non-residential land - cultural, commercial activities, businesses?

YOUR ORGANISATION'S NOTES

2.3 Culturally significant land

Talking points

- Are there any culturally significant lands or sites that should not be built on, sold, leased or developed?

YOUR ORGANISATION'S NOTES

Step 3: Is a new program needed?

3.1 Do we want a new program? Why?

Talking points

- What housing programs have we run in the past?
- What are our current housing programs?
- Do we currently have the capacity to undertake the sorts of programs we need to?
- Is there a gap between aspirations and current programs and capacity?

Case study examples

The case study in our research had members who had experience with a previous LALC home ownership scheme, and had learned what did and didn't work in their community.

Decisions made here relate to...

*These sections of the Australian CLT Manual:
3.1 Rationale and objectives*

YOUR ORGANISATION'S NOTES

Step 5: Current stock characteristics

Appendix 1 of this Toolkit provides a property inventory form, which can be filled out for each land holding. It includes space for answering these questions at a per-property level.

5.1 Holdings – Residential land and housing

Talking points

- What tenure options does the organisation currently offer?
- What residential landholdings are owned/managed by the organisation?
- Are there other parties involved – LALCs, TOs, native title holders, Government (if subject to a Crown lease)?
- How many properties have caveats placed by ATSIIC/FaHCSIA/AHO on the titles?
- How many are freehold? Are there any restrictions on these?
- How many are subleases from government e.g. Housing NSW, AHO, other?
- Is there undeveloped residential land available for building on?
- Is there enough cash to purchase new residential land (with or without housing already on it?)
- Any residential land surplus to requirements?

Decisions made here relate to...

These sections of this Toolkit:
Appendix 1: Property inventory

YOUR ORGANISATION'S NOTES

5.2 Holdings - other

Talking points

- Other non-residential landholdings?
- Culturally significant land?
- Any current commercial leases in place?
- Any new commercial lease possibilities?
- Are there any current plans for development? For what purpose?
- For LALCs - Consistency with Community Land and Business Plans?
- How many lots have caveats placed by ATSIC / FaHCSIA / AHO on the titles?
- Any non-residential land that is surplus to requirements?

Decisions made here relate to...

These sections of this Toolkit:
Appendix 1: Property inventory

YOUR ORGANISATION'S NOTES

Step 6: New program elements

6.1 Demand for new housing forms

Talking points

- Is the local housing market affordable and appropriate in relation to household income and capacity?
- What are the core housing objectives? Are new tenure forms needed to meet those aspirations?

Case study examples

The case study in our research felt there was no incentive for people to move out of social housing, and that there were serious barriers in the private market (racism as well as affordability)

Decisions made here relate to...

These sections of this Toolkit:

2.1 Housing objectives

5.1 Current residential landholdings

YOUR ORGANISATION'S NOTES

6.2 Eligibility and inheritance

Talking points

- Who can determine what the eligibility criteria are?
- Who should be eligible? This can be as per your current eligibility policies, or modified to suit the new tenure form (especially if the objectives are to provide housing for a different target group within your community)
- What are the rules about inheritance (known as succession of tenancy for rentals)? Should it be means tested? Limited to certain family or community members?

Case study examples

The case study in our research restricted eligibility to current residents that met a minimum income threshold, as this matched their aim to free up social housing for people on their waiting list.

Decisions made here relate to...

These sections of this Toolkit:

1.2 Who can decide

These sections of the Australian CLT Manual:

18.4 and 20.2 Transfer to devisee under Resident's will

YOUR ORGANISATION'S NOTES

6.3 Area of operation

Talking points

- Which area(s) would the CLT operate in?
- Are there any LALC boundaries, or other organisations, we need to be aware of? There may be a need for consultation.

Decisions made here relate to...

These sections of this Toolkit:

1.1 and 1.2 Who can decide

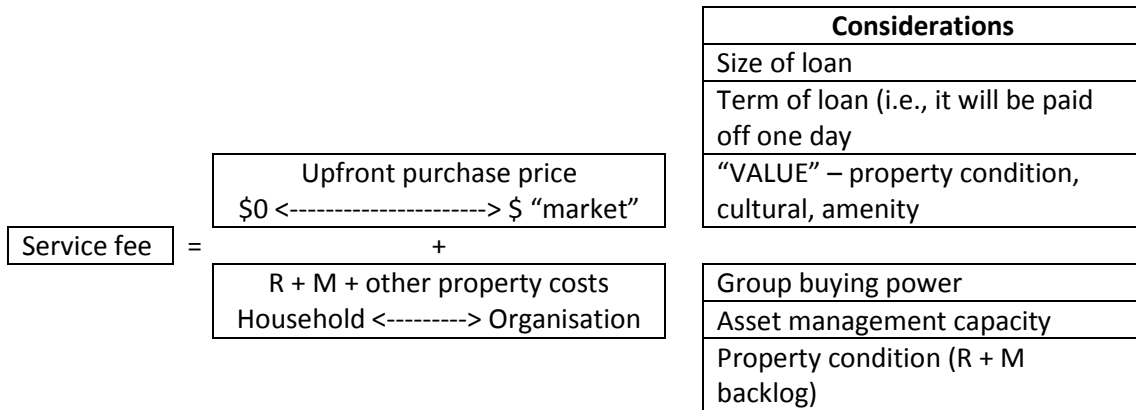
These sections of the Australian CLT Manual:

3.3 CLT service area and scale

YOUR ORGANISATION'S NOTES

6.4 Price setting

Price setting for a CLT can be thought of as a spectrum from renting to owning. There can be either a low, or no, upfront price (in which case there would be a higher weekly fee to cover costs), or an upfront price much like purchasing in the private market. There are different pros and cons to each.



Talking points

- How will the house price be set? Will it be related to market, land value, cost, average incomes, or a combination?
- Where along the renting to owning spectrum will the property(ies) be?
- How will property valuations be done?
- What will the resale formula be? Related to market value? Would capital gains be restricted? How do we treat improvements made by households, such as renovations or extensions?

Decisions made here relate to...

These sections of the Australian CLT Manual:

Chapter 4 Legal issues of ownership

3.1 Rationale and objectives

3.1.3 Resale formula

YOUR ORGANISATION'S NOTES

6.5 Rights and responsibilities

Talking points

- What is the balance of the responsibility for the property (e.g. minor and major repairs, rates, insurance) between organisation and resident?
- How frequent and thorough will property inspections be?

Decisions made here relate to...

These sections of the Australian CLT Manual:
3.1.4 Repairs and improvements

YOUR ORGANISATION'S NOTES

6.6 Finance and training for residents

Talking points

- Do we want households to use only approved lenders – if so, who? (IBA, Credit Unions, Banks, Vendor finance?)
- Who should deliver what financial training / counselling / support?

Decisions made here relate to...

These sections of the Australian CLT Manual:
3.1.2 Development and householder training

YOUR ORGANISATION'S NOTES

Step 7: Policy, tenure and legal settings

7.1 Government and Non Government Organisations

Talking points

- Is Government supportive of the new program? Which agencies do we need “on side”?
- How can the organisation gain State government support?
- How can the organisation gain Local government support?
- How can the organisation gain Federal government support?
- Are there Non Government Organisations, including Aboriginal peak bodies, who can support the new program?

Case study examples

The case study in our research identified the AHO, FaHCSIA and NSWALC as organisations they needed to have on board for their new program.

Decisions made here relate to...

*These sections of the Australian CLT Manual:
3.5 Potential partners*

YOUR ORGANISATION'S NOTES

Appendix 1: Property Inventory

To be completed for each land parcel that could be used in a CLT

Lot	<i>(Insert details here)</i>
No. of dwellings on lot	<i>(if lot is undeveloped, write '0') (Is there one dwelling on this lot, or several? - i.e. is it a former Reserve or Mission?)</i>
Name of community	<i>(Insert details here)</i>
Existing title holder i.e. owner on the legal title	<i>(E.g. the organisation, AHO, other)</i>
Form of title (i.e. freehold, leasehold or other)	<i>(Insert details here.)</i>
Title Conditions such as Caveat (if any)	<i>(Insert details here)</i>
Details of any known sub-leases or other informal arrangements	<i>(Insert details here)</i>
Details of current legal access (whether by public road, private road, lease, or easement)	<i>(Insert details here)</i>
Details of current land use(s)	<i>(Insert details here)</i>
Inventory of Assets	<i>(Insert details here) (i.e. housing, any other structures)</i>
Inventory of Liabilities	<i>(Insert details here)</i>
Details of services to the land (utility and other)	<i>(Insert details here)</i>
Are there any particular factors or features about the land that could 'make or break' a decision to deal with this land? For example: Native title rights; Existing Crown title; A proclaimed mineral field; A heritage protection order; land subject to contamination; or no options for providing legal access.	<i>(If the answer to any one of these factors is 'Yes', then any land dealing would not be able to proceed, unless the particular impediment can be addressed or satisfactorily remedied.)</i>
Valuation	\$
Income	\$ <i>(i.e. gross rent received)</i>
Outgoings	\$ <i>(i.e. repairs, maintenance, rates, insurance, admin costs)</i>
Current Zoning	<i>(Note if current zoning allows for greater density)</i>
Infrastructure and municipal service provision	<i>(Insert details here)</i>