



*Final Report*

# **Community Land Trusts and Indigenous communities: from strategies to outcomes**

authored by

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## ACRONYMS

ACHP	Aboriginal Community Housing Provider
AHO	Aboriginal Housing Office (NSW)
AHURI	Australian Housing and Urban Research Institute Limited
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALRA	<i>Aboriginal Land Rights Act 1983 (NSW)</i>
ANAO	Australian National Audit Office
ATSIC	Aboriginal and Torres Strait Islander Commission
AWE	Average Weekly Earnings
CAAHC	Central Australian Affordable Housing Company
CATSI Act	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)</i>
CDEP	Community Development Employment Projects
CLT	Community Land Trust
COAG	Council of Australian Governments
DSP	Disability Support Pension
EDTL	Executive Director Township Leasing
FaHCSIA	Australian Government Department of Families, Housing, Community Services and Indigenous Affairs
HOIL	Home Ownership on Indigenous Land program
HRG	Housing Reference Group
IAG	Indigenous Advisory Group
IBA	Indigenous Business Australia
ICHO	Indigenous Community Housing Organisation
LALC	Local Aboriginal Land Council
LGA	Local Government Area
NHMRC	National Health and Medical Research Council
NPARIH	National Partnership Agreement on Remote Indigenous Housing
NSW	New South Wales
NSW ALC	New South Wales Aboriginal Land Council
NT	Northern Territory
NTER	Northern Territory Emergency Response
PARS	Provider Assessment and Registration System
SEARMS	South Eastern Aboriginal Regional Management Services
SIHIP	Strategic Indigenous Housing and Infrastructure Program

TCRH	Tangentyere Council Research Hub
UK	United Kingdom
USA	United States of America
UWS	University of Western Sydney

## EXECUTIVE SUMMARY

There is ongoing government interest in the establishment of home ownership on lands held by Aboriginal and Torres Strait Islander (hereafter, 'Indigenous'<sup>1</sup>) peoples, primarily as a wealth creation or economic development vehicle (see FaHCSIA 2010; COAG Reform Council 2011). Indigenous households express a desire for home ownership, but the number of households that do so is often limited and this desire usually is not underpinned by expectations of capital gain. As with previous research (e.g. Memmott et al. 2009), this project has found that among the Indigenous communities that partnered on the project, aspirations regarding home ownership were more focused on inheritability, stability and the ability for community and households to play a core role in decision-making. There is a potential role, therefore, for diverse housing options that can span the divide between renting and owning, including options involving equity inputs from households if and as appropriate. Likewise, there is a strong desire among communities for such options to be based on community concerns and objectives and to be responsive and appropriate to local conditions.

Building on previous work documented by Crabtree et al. (2012a), this project undertook research into the relevance of housing models based on community land trust (CLT) principles in New South Wales (NSW) and the Northern Territory (NT) in partnership with interested Indigenous community organisations in the two jurisdictions. In NSW, this translated into developing a workable hypothetical long-term leasehold model for an indicative household based on the organisation's household data and organisational objectives. In the NT, this involved a household survey to capture residents' perceptions of housing issues prior to the suite of changes known as the Intervention, now and for the future, as well as stakeholder interviews focused on the core issues regarding home ownership or tenure diversification among Indigenous communities.

This report presents the project's aims, processes, findings, suggestions and tools, including a framework for a spectrum of diverse housing options defined according to their core operational features; a series of steps for identifying program parameters and a corresponding decision-making tool; a long-term lease developed in discussion with a partner organisation (an Aboriginal housing service provider); and financial modelling based on data from this partner organisation. These outputs were achievable only because of the interest and participation of the project's Indigenous partner organisations in the research and have been reviewed and endorsed by the project's two Indigenous Advisory Groups (IAGs).

### Research aims and questions

This project had its point of origin in the AHURI report *Community Land Trusts and Indigenous housing options* (Crabtree et al. 2012a), which outlined the parameters and principles of Community Land Trusts (CLTs) as developed overseas, and their possible resonance with and implications for Indigenous housing in NSW and Queensland. Crabtree et al. (2012a) present a discussion of preliminary legal and financial issues raised by consideration of CLT principles for Indigenous housing in NSW and Queensland, as well as the identification of basic programmatic and enabling policy objectives on the basis of the identification of a suite of indicative organisational types currently operating in the landscape.

The core principles of CLTs are perpetual affordability and community benefit, as locally defined and articulated. Those principles enable a diverse sector of providers at various scales to offer a range of housing tenures and other activities in response to identified community needs and objectives. Most CLTs focus on intermediate tenures such as resale-restricted

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<sup>1</sup> The authors are aware of and sensitive to the fact that naming protocols vary between Aboriginal and Torres Strait Islander communities and organisations. This naming protocol was approved by the project's Indigenous Advisory Groups. It is hoped this protocol does not cause offence; the authors take responsibility if any such offence is caused.

home ownership, but this is often as part of a broader portfolio including affordable rental housing and other tenures such as cooperative housing. This diversity of tenures in response to contextual concerns is a core feature of interest in exploring the relevance of CLT-type programs for Indigenous housing in diverse locational and socio-economic contexts in Australia. Crabtree et al. (2012a) noted that the promotion of the establishment of 'mainstream' home ownership on Indigenous lands (as opposed to more nuanced models based on CLT principles) raises primary issues in regard to low employment and income levels, organisational capacity, land subdivision and the limited nature of the market. That report highlighted that the promotion of home ownership as a wealth creation vehicle in Indigenous communities needs to be cognisant of the reality that, for many communities, the objective might not be realised. Consequently, the report stated that:

Policy interventions and program developments therefore need to be considered carefully in order to not unduly expose Indigenous populations to any unreasonable risks of market-based ownership. (Crabtree et al. 2012a, p.1)

Acknowledging this constraint, in their earlier research Crabtree et al. (2012a) found interest among Indigenous organisations in NSW and Queensland in the principles of CLTs as an appropriate alternative to potentially risky 'mainstream' home ownership. However, interviews with Indigenous community organisations, government stakeholders and not-for-profit agencies and the existence of ongoing work on Indigenous land tenure reform and home ownership by several agencies in Queensland, suggests that the research and development landscape for tenure issues in that state is cluttered. To avoid contributing to communities' concerns and to that clutter, and in the absence of a prominent community partner, the team decided not to undertake further work in Queensland at the time of this project's inception.

As this project was mindful to work where there was interest in CLT principles, the researchers responded to interest from a previous NSW partner to Phase 2 of the earlier study (Crabtree et al. 2012a) and to interest expressed by agencies in the NT. Tasks were developed in meetings and workshops with partner organisations. Consequently, the research sought to work towards a feasible model that could encapsulate household and organisational concerns in NSW and investigate the implications of CLT-type models in the Territory.

To address these aims, two research questions were posed:

1. What does a fully developed working CLT program for Indigenous housing look like in NSW?
2. What are the issues raised by consideration of a CLT model in the NT?

## **Research process**

To answer these two questions, a similar methodological approach combining engagement and iterative methods was taken in both jurisdictions. It needs to be stated that the research was not concerned with a particular form of tenure; its aim was to document the articulation of particular principles in different jurisdictions and create outputs of use to the project's partners. The core principles of CLTs are perpetual affordability and community benefit; internationally, these are implemented in different ways according to local aspirations and conditions (see Crabtree et al. 2012b). In line with that international methodology, considering these principles with the partner organisations in NSW and the NT led to very different research tasks.

In NSW, the project worked with South Eastern Aboriginal Regional Management Services (SEARMS), an organisation that had participated in the research documented by Crabtree et al. (2012a) and consequently had expressed a desire to implement CLT housing in its region. The partner organisation felt that a model of resale-restricted home ownership based on an ongoing partnership between itself and resident households was worth investigation and later development, as they felt some of their members' residents had the capacity to support a subsidised mortgage. As such, the NSW research tasks were:

1. A household survey to determine household characteristics, capacity to service a loan and indicative market. The survey is provided in Appendix 1 and analysed in Section 4.2.
2. Determination of core programmatic objectives—tenure form, price, etc.
3. Creation of Additional Lease Conditions in light of the objectives identified in 2 above, to be appended to an extant lease drafted for CLT purposes. The latter involves the creation of a two-year Initial Period in which the resident pays funds into a dedicated account towards a deposit for payment at two years of a lease Premium analogous to purchase. The terms of the lease and Additional Conditions are provided in Appendix 2.
4. Financial modelling for an indicative household at the intended purchase price including costs to the household and organisation. This is summarised in Section 4.4 and detailed in Appendix 3.

In the Northern Territory, the team approached all Land Councils and appropriate Town Camp organisations to scope interest in participating in the research. Preliminary meetings were held with Yilli Rreung Housing Aboriginal Corporation and Tangentyere Council; Tangentyere Council had substantial interest and capacity, while the Central Land Council participated via an interview with their Chief Executive Officer.

In formally endorsing the project, the Tangentyere Executive requested that this involve a survey of 150 households across all Town Camps to capture residents' housing aspirations and understandings. This was viewed as a crucial first step in considering future tenure options and objectives and was consistent with the processes by which CLTs had developed internationally and with the research methodology. Discussion of perpetual affordability and community benefit in the context of Town Camps raised core concerns regarding past governance arrangements and changes to these under the *Northern Territory National Emergency Response Act 2007* and *Stronger Futures in the Northern Territory Act 2012*, as well as changes to local government under the *NT Local Government Act 2008* as experienced by Town Camp residents.

Consequently, the project contracted the Tangentyere Council Research Hub to undertake the survey of 150 households across the Town Camps. The survey is analysed in Chapter 6 and included as Appendix 6. This created a substantial and invaluable data set and led to the creation of a housing terminology brochure for Town Camp residents (see Appendix 8).

The workshops with Tangentyere Council researchers and policy staff also generated a diagram of Town Camp governance before and after the Northern Territory Emergency Response (NTER), which was circulated among Tangentyere and Town Camp residents at Tangentyere's request. This is shown in Figure 10 in Chapter 5. A review of the current leasing situation in the Town Camps is provided in Chapter 7 with a view to considering how a long-term lease between the relevant Indigenous community organisation and a householder might be deployed in that jurisdiction. This review was performed in response to Tangentyere's interest in this as a tenure option, and in light of parallel discussions regarding the deployment of long-term leases at the household or community level on community land elsewhere in the Northern Territory (see Terrill 2009 and Ross 2013 for a discussion of relevant issues).

Chapter 8 presents primary community and householder issues arising from both NSW and the NT and resultant program implications. It identifies a potential model that takes into account individual and community priorities and concerns and a streamlined process for the development of programs at the level of individual organisations.

Chapter 9 concludes the report by outlining core policy implications and reflects on the project's primary themes.

## Key findings

### *Core housing issues*

In NSW, three core issues were identified:

1. Interest in home ownership exists within the partner Indigenous communities, but is minimal and potentially impacted by current household debt.
2. Current sub-leases to government need exit clauses.
3. Current caveats on title, where these exist, require a streamlined and expeditious removal process developed and supported by the relevant government department.

SEARMS felt there was a bottleneck in their rental stock due to a lack of affordable purchase options that households might otherwise move into. They were also concerned that their member organisations were constrained in their activities, especially with regard to existing sub-leases to government and title caveats, which they believed might prevent the ready development of tenure options other than community rental housing.

While SEARMS currently has a surplus with which they can buy freehold property, and the organisational capacity to develop a home ownership type model, its member organisations might not. It is therefore possible that SEARMS would need financial support to provide below-market ownership options on an ongoing basis. This funding requirement may also be the case for similar umbrella organisations.

Three core issues were identified also for the NT:

1. Interest in home ownership exists among the partner Indigenous communities but is entwined with issues of community governance and not usually driven by expectations of capital gain.
2. The retention of community integrity under any proposed new models or programs is of primary concern to households and organisations. This includes considerations in regard to housing allocations and the treatment of visitors.
3. Current tenure and governance arrangements are complex but appear open to speedy amendment by government.

The survey of Alice Springs Town Camps highlighted many intertwined issues impacting on the resident population. Numerous policy changes were combining to substantially affect community capacity and wellbeing: residents and other stakeholders highlighted a desire for renewed community governance and drew attention to the harm generated by recent policy changes. While home ownership has been discussed intermittently in the Town Camp communities, most residents would not be able to sustain a mortgage and see issues such as community control and autonomy as more important objectives. Moreover, many communities felt they owned their homes already due to underlying perpetual leases and their capacity to self-govern in the past. There was interest in models that acknowledge and honour that tenure and history and which might be achieved through long-term leases between the relevant community organisation and householders.

### *A potential model*

This report articulates a number of core principles and parameters for a potential housing model informed by resident and stakeholder consultations in NSW and the NT and earlier research in Queensland (e.g. Memmott et al. 2009; Crabtree et al. 2013; Crabtree et al. 2012a; Crabtree et al. 2012b). Two core principles are identified: that the community has an ongoing presence and governing role; and that a range of appropriate options, including equity-based options, should be available that do not render Indigenous land vulnerable. Accordingly, the core operational parameters for a potential model of housing in Indigenous communities are:

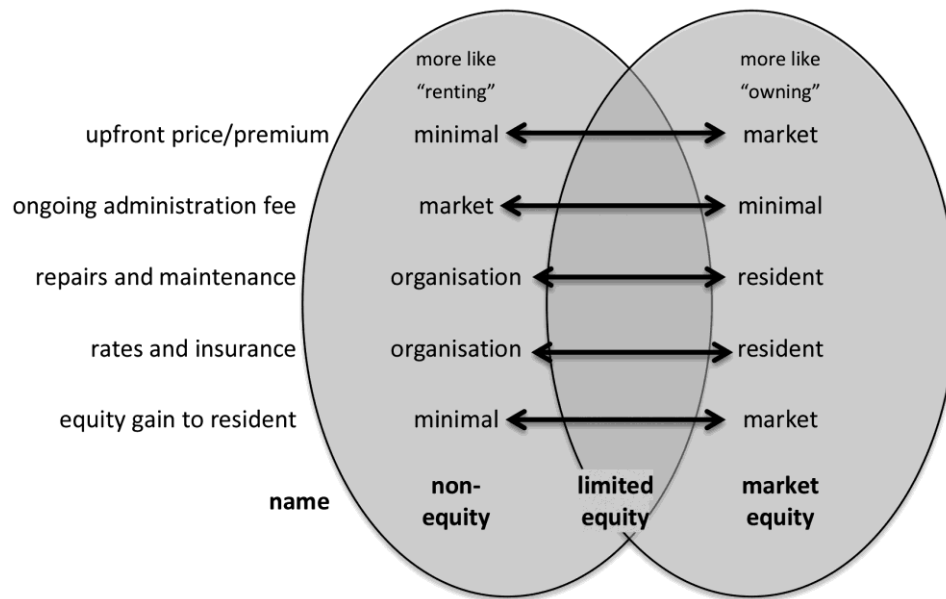
1. Retention of an interest in the property by the relevant Indigenous organisation.
2. Determination and implementation of an appropriate legal agreement according to context and aspirations.
3. Inclusion of an upfront price and ongoing administration fee set according to aspirations, capacity and objectives.
4. Articulation of repairs and maintenance, inheritance, use, etc. in the legal agreement.
5. Articulation of any equity treatment at termination of the agreement in the legal agreement.

This model is explained in Chapter 8. It is important to note that no reference is made to tenure form and that the model does not presume that there will or will not be an equity component. The *Australian Community Land Trust Manual* (Crabtree et al. 2013) explains the use and applicability of two tenure options that can be implemented to meet the above objectives: a renewable 99-year lease; or a co-ownership deed. The lease option perhaps has more flexibility with regard to offering a range of pricing choices. The lease can be implemented on Indigenous land subject to a perpetual lease assuming required approval processes are followed, while the deed can be implemented on freehold land. The lease needs to sit outside of residential tenancies legislation, so in the Northern Territory would require an amendment to the *Residential Tenancies Act 1999* (NT) to create an exemption category (see Crabtree et al. 2013, Appendix 8).

Crucially, the model we present in this report provides a core suite of operational considerations and guiding parameters without mandating a particular tenure form or equity allocation. This is a vital requirement and aspect of the model as it allows for flexibility and diversity of programs according to community aspirations and context within a defined set of parameters. This enables program viability within a coherent framework and reflects the project's consideration of affordability and stewardship in diverse contexts. This is an innovative approach to provision and policy development, as it allows clear definition of policy objectives and directives without prescription as to tenure form. Sensitivity and flexibility according to context is crucial in the development of housing policy appropriate to identified community priorities, circumstances and needs—especially in respect to Indigenous housing policy.

Figure 1 below shows the primary variables within the proposed housing model. Organisations can choose where within each variable they wish to situate each aspect of their arrangement. This could be uniform for all households or tailored for each household, or the organisation might create a suite of template agreements that represent differential treatment of each of the issues on the spectrum—in effect, creating a range of standard 'non-equity', 'limited equity' and 'market equity' options within their portfolio that can be premised on the same underlying tenure and deliver the same occupancy and inheritance rights to all residents, irrespective of equity and cost variables.

**Figure 1: A spectrum of housing options according to key variables**



The model deliberately avoids the terminology of ‘renting’ and ‘owning’ as many of the resulting options will likely combine characteristics of both categories. It also respects communities’ histories in place and acknowledges traditional ownership. For many communities it makes little sense to talk of creating ownership structures when core aspects of ownership have been practiced for generations, if not millennia. Currently the concepts suggested here for the sake of reporting are ‘non-equity’, ‘limited equity’ and ‘market equity’, which roughly correspond to analogous models internationally (see Crabtree et al. 2013). However, a different nomenclature might be determined in the future to be appropriate.

*The NSW working model—long-term leasing*

The NSW feasibility study determined that a leasehold model was preferable for SEARMS, as this meant that the underlying title would remain with the organisation, which was a core objective of the organisation. However, final determination of the legal form is pending deliberation and endorsement by the SEARMS Executive. SEARMS intend to purchase two newly built homes using their existing capital reserve. The houses would be made available to households on annual gross household incomes of \$65 000 to \$80 000, who would enter into a renewable and inheritable 99-year lease that would restart at sale or inheritance, effectively acting in perpetuity while allowing for equity input and withdrawal if required. As most of the households surveyed were carrying moderate levels of debt (see Chapter 4), the extant CLT lease was amended under SEARMS direction to include a two-year Initial Period during which the resident would pay an agreed amount into a joint account on top of their administration fee. At the end of the Initial Period, that fund would be used as the resident’s deposit to then secure a mortgage for the remaining Premium amount, with an estimated total Premium of \$160 000. The CLT lease, commentary and Additional Conditions are provided in Appendix 2; the survey and financial feasibility study are presented in Chapter 4 and the underlying financial modelling in Appendix 3.

*A streamlined process and decision-making tool*

In light of the initial meetings and workshops in which the above spectrum of options emerged, it was deemed appropriate that the project develop a CLT Decision-Making Tool (‘the CLT Tool’) to help communities determine whether they need to offer additional housing options and, if so, to determine the relevant operational parameters. The CLT Tool outlines a series of eight clear steps that a community or organisation needs to follow in order to identify needs,



objectives and program elements. It was developed in partnership with SEARMS and reviewed and endorsed by both Indigenous Advisory Groups (IAGs). It is provided in Appendix 4. The steps are discussed in Chapter 8 and expanded in the CLT Tool. They are:

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

### *Possible policy implications*

Chapter 9 discusses policy implications and the overarching framework for these steps. Each of the steps above highlights a potential role for government. Core among these are:

- Provision of a centralised and accessible information service regarding appropriate possible housing models.
- Funding and requirements for governance and capacity building at the organisational level, including training programs and information.
- Survey and/or subdivision work (if not already performed).
- Access to title documents and provision of explanatory materials.
- Removal of caveats or termination of subleases to government; other changes to title if organisation requests, e.g. transition to freehold.
- Funding for repairs if needed.
- Matched deposit scheme.
- Underwriting of loans where used, or of scheme.
- Deployment and/or funding of an appropriate process to assist residents' transition into new arrangements (this might be performed by Indigenous organisations).
- Provision of gap funding to cover income shortfall to organisation.

These could sit within an enabling policy framework that focuses on the establishment and support of diverse tenure options for Indigenous communities as outlined by the core operational parameters and variables outlined in 'A potential model' section above. This could provide the framework for consistency and regulation of the sector's objectives, while enabling those objectives to be delivered through models that are appropriate and responsive to the Indigenous context and retained in Indigenous hands. This is in line with recent and ongoing calls for the greater involvement of Indigenous organisations and communities in the development and implementation of delivery models appropriate to their context and needs (see Milligan et al. 2013).

# 1 INTRODUCTION

This project builds on earlier research undertaken through the AHURI project *Community Land Trusts and Indigenous housing outcomes*. The study presented an overview of the CLT sectors in the United States of America (USA) and United Kingdom (UK) (Crabtree et al. 2012b), then looked at the relevance of housing models based on CLT principles for Indigenous housing in NSW and Queensland (Crabtree et al. 2012a).

CLTs are private, not-for-profit entities that steward property for the dual purposes of perpetually affordable housing and community benefit. That broad definition positions these as forms of community housing providers, and allows for flexibility and adaptability in CLT programs and activities such that CLTs can (and do) provide a range of housing options from affordable rental housing through to cooperative housing and resale-restricted home ownership. Most CLTs provide a mixture of tenure options in response to the identification of gaps in the local housing market. CLTs often also combine their affordable housing operations with other community and commercial activities to diversify their revenue streams and provide an avenue for integrated community planning and development.

Crabtree et al. (2012a) discuss three models for delivering CLT-type options in Australia: the 'classic' model in which title to buildings is separated from land title; long-term leasehold; and a modified shared equity product. The first-mentioned model is currently not readily implementable under Australian law. Both of the latter models are legally possible, although this varies across jurisdictions and for some Indigenous contexts may require examination and possible termination or removal of existing leases or title caveats. Both long-term leasehold and modified shared equity models can be tailored to the local context with regard to upfront and ongoing costs; eligibility criteria; governance; inheritability and transferability; equity treatment; allocation of responsibility for repairs and maintenance; and extent and frequency of housing inspections. Any CLT-type model or program can vary these and/or other conditions according to the needs and aspirations of its members. This flexibility is a core feature of the CLT sectors in the USA and UK and is crucial in embodying, respecting and articulating Indigenous housing aspirations. Both models raise legal, financial and policy issues to be addressed in implementing CLT models.

Work in Australia undertaken in parallel to *Community Land Trusts and Indigenous housing options* has led to the development of *The Australian Community Land Trust Manual* (CLT Manual) (Crabtree et al. 2013). While not constituting legal advice, the CLT Manual contains samples of legal documents as templates for leasehold and shared equity variants of CLTs. It also provides discussion of the core legal issues raised by CLT activities in the Australian context, preliminary financial modelling and a review of core operational principles. This current report makes use of material developed in that work.

As discussed in the CLT Manual, long-term leases—such as those under consideration for CLT programs—need to be exempt from residential tenancies legislation as that legislation in most instances prevents an organisation from being able to pass on repairs and maintenance to residents or from being able to charge a purchase price for a lease where this is desired (Crabtree et al. 2013). A modified shared equity product requires both that the property be held as freehold title and that an entity be present to oversee the conditions of the shared equity contract. Both leasehold and shared equity models can be developed by existing housing providers as well as newly-emerging entities, and both existing and new organisations are now establishing CLT programs in Australia.

Key finance issues relate to the ability of households to secure finance on the terms of their tenure: that is, for mortgage providers to be comfortable lending into a situation in which title will not be seized as security in the case of default. CLTs in the USA have worked with banks to build familiarity and develop appropriate financial products. Further financial issues emerge

in conjunction with this step—for example, the need for organisations to have the capacity to buy the mortgage provider out in the case of householder default, in effect acting as guarantor.

In the Indigenous sector, these initial considerations are amplified by extant land tenure complexities, lower average household incomes and an overall smaller and restricted market. The models have resonance with Indigenous housing aspirations, particularly with regard to diversifying tenure options beyond social rental housing without rendering Indigenous households, communities or organisations vulnerable to unacceptable risks or involving permanent alienation of landholdings. Crabtree et al. (2012a) found a diversity of housing aspirations in the Indigenous sector; it is imperative that such diversity be accommodated within a range of appropriate tenure models. Overseas experience and evidence shows that CLT models have the capacity to provide a range of stable tenure options that can underpin household and community stability while also allowing for mobility (see Davis & Stokes 2009). This needs particular consideration and tailored programs in the Indigenous sector, rather than a one-size-fits-all policy response and imperative. This point echoes the findings and recommendations of earlier research, such as Milligan et al. (2011).

The policy implications raised by consideration of CLT models for Indigenous housing and discussed by Crabtree et al. (2012a) relate to internal and external factors that can support CLT-type programs for organisations. Readers should refer to that report for a full account of policy concerns and issues. Core policy matters relate primarily to the streamlining of CLT and other housing programs, as the policy and program landscape was felt by many research participants to be cluttered and confusing. There was also an identified need for funding and support—for example, to cover repairs and maintenance or to provide for stock transfer or the capacity for organisations to remedy household defaults. In all governmental policy and program development, it is key that Indigenous input be sought, respected and genuinely engaged with at all stages of the process.

The previous project found enough interest in models based on CLT principles in NSW to warrant further research and also to suggest that a pilot program would help articulate and address issues raised in considering CLT-type programs. Hence, this current project worked with NSW partners from the previous study on CLTs and Indigenous housing options (Crabtree et al. 2012a) who expressed interest in working towards implementing a CLT program by developing an implementable model with a local Indigenous organisation. The project has responded also to community and stakeholder interest in home ownership on Indigenous lands in the Northern Territory and scoped issues relevant to Town Camps with communities and providers in these jurisdictions.

The approach taken by this study reflects both the development of the CLT sector in international jurisdictions, whereby local objectives and conditions have shaped the ways in which CLTs have evolved, and the approach taken by Crabtree et al. (2013) in the creation of the CLT Manual. While there is no singular CLT model, the sector is united by its driving concern for the local articulation of perpetual affordability and community benefit. Consideration of these twin objectives by the researchers and project partners has identified ongoing interest in NSW and the relevance of the development of a workable option for the partner organisation. It has also flagged that Indigenous land reform is a cluttered space in Queensland. Hence, research undertaken in the previous study by Crabtree et al. in that jurisdiction was not taken further in order not to add to the burden or confusion experienced by Indigenous communities endeavouring to negotiate that space. Additionally, the project lacked a partner in Queensland ready to work on the issue.

Consideration of the CLT twin objectives in the NT highlighted interest among Town Camp communities in Alice Springs and identified the core tasks of capturing local aspirations and concerns as a vital first step, alongside legal review of the possibility of long-term leasing under community control on Town Camps and the collection of stakeholder perspectives on Town Camp housing. The methodological orientation of the project and resulting tasks are explained

in Chapter 2, with further explanation of each jurisdiction's tasks in Section 3.2 (NSW) and Section 5.2 (NT).

## 1.1 Indigenous housing in NSW and the NT

'Indigenous housing' has been defined as 'state owned and managed housing targeted at Indigenous households and houses owned or leased and managed by Indigenous community housing organisations and community councils' (Jones et al. 2007, p.7). We will also add to this, home ownership programs that are targeted towards Indigenous households.

Jones et al. (2007, p.20) have pointed to the complexity and diversity in the Indigenous housing sector, including inconsistencies across programs—for example, in eligibility and rent setting. Recent policy developments include attempts to link the complex and fragmented Indigenous housing sector more closely with mainstream social housing (Jones et al. 2007, p.2). That research, and that of Milligan et al. (2011), highlight the ongoing need for any such developments to be sensitive and responsive to context and to substantially involve Indigenous communities and individuals.

Since 2007, there have been major changes in Indigenous housing policy at the national level (see Habibis et al. 2011 for an overview of relevant policy changes). These have resulted in a reduction of funding available for new housing for Aboriginal Community Housing Providers (ACHPs), who reported through this research an inability to meet demand on their waiting lists with existing stock. This echoes Habibis et al's (2011, p.31) assertion that:

Those ICOs that are unable, unwilling or excluded from these new arrangements face an uncertain future. They must either transfer housing assets and management to the state or operate independently of state funding provision.

Chapters 3 and 5 present more detailed coverage of the current Indigenous housing context in the two jurisdictions of NSW and the NT respectively. Key issues are summarised here.

### 1.1.1 New South Wales

Indigenous housing in NSW is predominantly rental housing. However, there are limited examples of rent-to-buy and transfer from community ownership into freehold individual ownership in NSW. Indigenous households are also tenants in non-Indigenous specific social housing (Housing NSW or community housing). However, for the purposes of this report, we will focus on Indigenous-specific housing in NSW only.

The NSW sector includes a variety of housing choices for Indigenous people and a diversity of Indigenous community housing providers. Subsidised rental housing is in the main managed by government via the NSW Aboriginal Housing Office (AHO), Local Aboriginal Land Councils (LALCs), Aboriginal Corporations or by umbrella organisations made up of member organisations. Hence Indigenous people are, via Aboriginal Corporations or LALCs (collectively referred to as Aboriginal Community Housing Providers or ACHPs), able to manage their land and housing to varying degrees and make decisions on allocation, rent setting and maintenance. However, decision-making can be limited due to lack of title, which may rest with the AHO, and be regulated by legislative requirements that involve ratification of local land dealing decisions. LALCs comprise member organisations (land councils) and major decisions require a vote and a certain majority in land dealing decisions. Such decisions then require ratification by the state-wide NSW Aboriginal Land Council.

ACHPs are diverse. LALCs own assets such as land and housing freehold; however, the *Aboriginal Land Rights Act* [ALRA] 1983 (NSW) regulates any transfer of title. LALCs are able to deal in land provided that the decision-making process outlined in the Act is followed. Further, ACHPs including LALCs may hold title to land but restrictive caveats originally put on titles via the Aboriginal and Torres Strait Islander Commission (ATSIC), that at the time of writing had passed on to the federal Department of Families, Housing, Community Services

and Indigenous Affairs (FaHCSIA), or the NSW AHO may prevent free dealing. Therefore, if an ACHP wishes to dispose of or otherwise deal with a property it must seek approval from the relevant government department first. Additionally, title to properties funded by the AHO is initially retained by the government and the properties are head-leased to the organisation; if transfer of title has not occurred, then the organisation is unable to deal with the property.

Despite rising house prices, Indigenous people have increasingly moved into home ownership via accessing mainstream financial institution mortgages or via Indigenous Business Australia (IBA), which is able to offer mortgages at favourable rates over longer time periods of up to 40 years. However, as affordability has deteriorated, there is a diminishing ability for Indigenous people on lower to median incomes to access housing options other than rental housing—especially in Sydney and in towns where house prices have increased. Hence IBA lending appears to be more effective in more affordable regional centres where there is also a local employment base accessible to Indigenous people.

### 1.1.2 *The Northern Territory*

Almost three-quarters of Indigenous households in the Northern Territory are renters (71.7%). Of these, the majority (57.5%) rent from social housing providers, including public housing formerly under the management of Indigenous housing providers. A fifth of Indigenous people in the NT own or are purchasing their home (20.1%). This is less than a third of the average rate of ownership across all Australian households (67%), and less than half the ownership rate across all NT households, which stands at 46.2 per cent (ABS 2012). The NT Indigenous housing landscape can only be understood in the broader context of historical and current Indigenous affairs and policy, as many Indigenous organisations have historically performed numerous roles or managed a suite of social, cultural and economic programs including economic development, social welfare, local governance and housing provision. Two recent policy shifts have had notable impacts on community governance and housing provision. These are changes to local governance structures implemented by the NT Government in 2008 and the suite of federal government policies and specific legislative instruments known collectively as 'the Intervention'.<sup>2</sup>

In 2008, municipal and shire councils were amalgamated into 'supershires' covering very large areas via amendment of the *Local Government Act 2008* (NT). These larger shires stood in stark contrast to the many smaller-scale community councils and local government entities that were in existence prior to amalgamation, many of which were acting as Indigenous Community Housing Organisations (ICHOs). This change was criticised as undermining Indigenous participation in governance and overall community capacity (e.g. Sanders 2012; Central Australian Aboriginal Media Association 2012; Central Land Council 2010). In early 2014, changes to this system were gazetted to create regional councils and local authorities in 63 areas (Northern Territory Government 2013). Alongside these broader changes in governance, the Indigenous housing landscape in the NT is experiencing substantial shifts due to changes and reforms implemented or proposed as part of the Intervention. Both of these issues are discussed in Chapters 5 and 6.

Much Indigenous housing in the Northern Territory is run down, hard to repair, substandard and crowded. Extra housing funding was offered via the Strategic Indigenous Housing and Infrastructure Program (SIHIP) and subsequently through the National Partnership Agreement on Remote Indigenous Housing (NPARIH); however, the issue of crowding in the NT continues

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<sup>2</sup> The *Northern Territory National Emergency Response Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth); *Appropriation (Northern Territory National Emergency Response) Act (No.1) 2007–2008* (2007) (Cth); *Appropriation (Northern Territory National Emergency Response) Act (No.2) 2007–2008* (2007) (Cth); *Stronger Futures in the Northern Territory Act 2012* (Cth); *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* (Cth); and, *Social Security Legislation Amendment Act 2012* (Cth).

(Tangentyere Council 2012). There is concern that part of this has been driven by ‘urban drift’ to the larger centres such as Alice Springs, which in turn is seen by some stakeholders as a direct result of federal policy objectives to no longer fund outstations and homelands. This is discussed further in Section 5.1.2.

Land for Indigenous housing in the Northern Territory is predominantly leasehold via Special Purposes Leases and Crown Leases in perpetuity to Indigenous organisations. There are some examples of freehold Indigenous lands, which are usually gazetted and subdivided towns. There are also excised lands within pastoral leases. Chapters 5 and 6 provide material on changes to tenure in the Town Camps under the Intervention, and Chapter 7 discusses the legal considerations of long-term leases on the Town Camps in this context.

Previously, a mixture of federal and territory funding was directed to ICHOs. In 2008, the Federal Government committed funds for newly-built housing and refurbishments to the SIHIP. The Australian Government dedicated \$1.7 billion to the NT under the National Partnership Agreement on Remote Indigenous Housing (NPARIH) that subsumed the SIHIP and an additional \$230.4 million over six years (2012–13 to 2017–18) to improve existing housing in remote communities. It has also allocated \$53.1 million over four years for its ‘Healthy Homes’ program to remove materials containing asbestos from homes over 2012–16 (FaHCSIA 2013).

The management of Indigenous housing by the NT Government has drawn criticism (see Chapter 6 for a further discussion of this issue). NT Shelter (2012, p.6) has stated that:

... there have been calls that Government support existing, re-established and newly established Indigenous Community Housing Organisations ... acting alone or as consortia, to deliver housing and allied services to Aboriginal and Torres Strait Islander communities.

It has also been argued that existing land tenure arrangements can make other housing options (e.g. forms of home ownership) available for Indigenous people. CLT models have been mentioned in this regard by local stakeholders (see NT Shelter 2012; Tangentyere Council 2012). Recently there has been interest in different models of housing including home ownership within communities and at the territory and Federal Government level (see FaHCSIA 2010; Fagan 2012). The Home Ownership on Indigenous Land (HOIL) program was one attempt at increasing home ownership; however, this was a small program confined to a few (remote) locations and was criticised due to high costs and insufficient results (Australian National Audit Office 2010).

Despite the multiple layers of government control over leases and housing in the NT, current land tenure systems do allow long-term leases, and some Indigenous communities are already on other forms of tenure such as freehold. The issue of leasing on Town Camps is discussed further in Chapter 7.

### *1.1.3 Reflections on recent policy and research*

Crabtree et al. (2012a) present an overview of the policy landscape with regard to Indigenous housing and Indigenous home ownership more specifically; readers should refer to that report for full consideration of this issue. Since that report, the promotion of home ownership among Indigenous communities has continued within public agencies with a focus on the necessity of land reform in this area (e.g. Anderson 2013; COAG Select Council on Housing and Homelessness 2013). However, there exists ongoing criticism within the sector of the perception that individual titling or leases back to government is necessary to enable models of ownership or long-term leasing (see Ross 2013). This echoes Terrill’s (2009) criticism of the promotion of township leasing as a prerequisite for ownership models, and similarly this report’s finding that Indigenous community land holding systems on the Town Camps are capable of supporting long-term leases to householders (see Chapter 7).

Among NT communities, recent research has detailed community concerns regarding the changes to housing and community governance under recent federal and territory policy changes (see Christie & Campbell 2013; Centre for Appropriate Technology 2013). In addition to issues regarding housing stock and housing improvements such as poor design and/or quality, and inappropriate allocations, core householder and community concerns relate to the need for consultation mechanisms and decision-making processes to acknowledge and respect cultural authorities and community governance. The Centre for Appropriate Technology (2013, p.119) states that Town Camp residents ('Town Campers'):<sup>3</sup>

were perturbed by an alienating allocation process and baffled by who was responsible for what, who to call when there was a problem, who would owe what money and what sort of changes they could make to their houses ... The householders' relationship to their houses became dominated by their relationship with the external management regime that impinged and mediated their enjoyment of the house.

These issues are discussed further in the context of the Town Camps in Section 5.1, which discusses recent policy changes of relevance, and Chapter 6, which documents and discusses Town Campers' experiences of these changes. Previous AHURI work has also highlighted the critical need for Indigenous participation in housing policy development and housing management within urban social housing systems. Milligan et al. (2011, p.4) state:

much more could be done to systematically engage Indigenous agencies and networks in policy-making and planning processes and to build capacity across the housing service system to enable them to play a more integrated role alongside mainstream organisations. This direction would be consistent with self-determination principles and could be expected to achieve better client outcomes across the whole service system.

While Milligan et al. (2011) focused on urban social housing for Indigenous peoples, they recognised that many of the same conditions affect remote and discrete Indigenous populations. The work of the Centre for Appropriate Technology (2013) and Christie and Campbell (2013) demonstrates this to be the case and offers similar recommendations for greater and more substantial involvement of Indigenous organisations and individuals within more culturally-appropriate service systems. This report takes these findings and recommendations as core points of reference.

## 1.2 Research overview

Building on the above issues, this project undertook case study research with Indigenous organisations interested in the relevance of CLT principles for their communities. In NSW this involved working with SEARMS on the NSW south coast to develop a workable CLT model based on the purchase of new freehold homes by SEARMS to be made available to current SEARMS members' tenants on the basis of a renewable 99-year lease. As part of this work, SEARMS administered a survey to member organisation households that they felt had the capacity to service a moderate mortgage, in order to gather information regarding households' interest and their ability to do so. These activities emerged directly from SEARMS' capacity and desire to implement an affordable and appropriate home ownership option for interested households in their communities.

In the NT, the project contracted community researchers at the Tangentyere Council Research Hub to undertake a comprehensive survey of households across the Alice Springs Town Camps to capture Town Campers' housing experiences and aspirations in light of the Intervention, as well as changes to local government under the *Local Government Act 2008* (NT). Again, this emerged directly from the communities' responses to the core research questions. Alongside the survey, the research team undertook interviews with relevant Town Camp housing stakeholders to capture their views and expertise as to the core issues facing

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<sup>3</sup> The name with which Town Campers refer to themselves and by which they are known.

and framing Town Camp housing, and a legal review of the possibility of implementing long-term leases between Town Camp organisations and individual householders. The latter was in response to community interest in such leases as a potential alternate model to the option of 'mainstream' home ownership that is currently being promoted to Town Camp communities.

The report is structured as follows. Chapter 2 details the research methodology and explains why the use of the guiding principles and overarching strategies created very different methods in the two research jurisdictions. The creation of differing methods in response to community concerns and aspirations is presented as an appropriate example of engaged research with Indigenous partners in line with ethical guidelines as developed by leading research agencies in Australia. The chapter also presents reflections on the methods employed in each jurisdiction in light of the researchers' experiences.

Each of the case studies is then presented, in turn, to address the project's core research questions:

1. What does a fully developed working CLT program for Indigenous housing look like in NSW?
2. What are the issues raised by consideration of a CLT model in the NT?

Chapter 3 therefore describes the NSW case study context and process, with the NSW findings then detailed in Chapter 4, which presents core organisational characteristics and relevant data from the household survey, followed by an overview of local demographics and housing markets. These provide the operational context for the leasehold model detailed in Section 4.4. The process of developing a workable model highlighted a series of core operational issues that SEARMS had then to work through, which led to the creation of a CLT Decision-Making Tool for use by other organisations and communities wishing to diversify their housing choices in locally appropriate ways. The process of the CLT Tool's creation is provided as the conclusion to that chapter; the CLT Tool itself can be found in Appendix 4.

The NT case study is presented and discussed in Chapters 5, 6 and 7. Chapter 5 explains the NT context, introducing the Alice Springs Town Camps and Tangentyere Council, followed by an explanation of core local issues and the research process that was undertaken. Chapter 6 presents the Town Camp survey data, followed by stakeholder perspectives on the core issues facing Town Camp communities and Town Camp housing. Chapter 7 provides a discussion of the legal situation regarding the possible deployment of 99-year leases between Town Camp organisations and individual householders in response to community interest in these as a possible tenure option and current debates regarding the perception of community lands as an impediment to long-term leasing.

The five case study chapters are followed by a discussion of core program implications that emerge from the case study work in Chapter 8, which pulls the two very different case studies together to highlight common community and householder issues. The chapter outlines a potential housing tenure model that can articulate and enable diverse local housing aspirations within a comprehensive framework, and identifies a streamlined process for the development of appropriate housing options. This process underpins and is detailed in the CLT Decision-Making Tool. Chapter 8 concludes the report, presenting the policy implications of the work and reflections on home ownership policy.

The appendices provide the supplementary materials that were developed as part of the overall research project and which are included as framing information and materials for uptake by interested organisations and researchers. They include the: SEARMS survey (Appendix 1); 99-year SEARMS lease (Appendix 2); SEARMS financial modelling (Appendix 3); CLT Decision-Making Tool (Appendix 4); relevant NSW Duties exemption clauses (Appendix 5); final and pilot NT Town Camp surveys (Appendices 6 & 7); and the housing terminology brochure developed for Alice Springs Town Camp survey participants (Appendix 8).



## 2 RESEARCH METHODOLOGY

This project has been driven and shaped by an imperative to undertake research that is respectful, relevant and useful to Indigenous stakeholders and the Indigenous housing sector. This approach is informed by three primary understandings as to how to undertake research and program development that leads to appropriate options and knowledge practices. First, substantial engagement with Indigenous stakeholders is a matter of basic courtesy and respect to Australia's First Peoples. Second, such engagement will most likely lead to more substantial and relevant knowledge, history and data from the frontline of service delivery and community experience. Third, engaging in a way that incorporates and responds to such knowledge hopefully will mean that the sector has and feels a degree of ownership of and familiarity with the process and resulting models or programs such that these will better reflect and address community and sector aspirations and objectives. Ideally, this ownership and relevance will lead to sector uptake and refinement of appropriate programs and the development of appropriate policy.

In addition to being informed by previous work on the need for substantial engagement with Indigenous communities in the development of policy (e.g. Milligan et al. 2011), this third understanding is informed by overseas experience whereby resident and community knowledge of and involvement in CLTs have been pivotal to their success. Moreover, this has to continue beyond the moment of sale or lease for members to continue to feel part of the organisation and for policies and development to keep articulating local aspirations (Davis, pers. comm. 2009, 2010; see also Thaden & Lowe 2014 on CLT engagement strategies). Previous work on shared equity highlighted consumer reticence about models perceived or portrayed as 'different' (Pinnegar et al. 2009). Pinnegar et al. (2009) also flagged that concerns of existing customers of government-run shared equity programs all related to a lack of clarity about future events, such as equity treatment at termination or possible demands from government that the customer buy more equity. Overseas experience suggests that both concerns would be offset by upfront and ongoing communication and participation among the partners. Such knowledge provided an additional basis for deploying a methodology focused on seeking and responding to community concerns regarding appropriate tenure.

The research team is acutely aware and supportive of the principles of Indigenous research methodology<sup>4</sup> and Indigenous researchers were involved at all stages of the project. However, given that the majority of the University of Western Sydney (UWS) research team were not Indigenous, it is not claimed that this research project is an example of this methodology. It is more accurate to say, as this section details, that this research was conducted in line with guidelines for ethical conduct and research in Indigenous studies such as those published by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the National Health and Medical Research Council (NHMRC). An overview of the full process undertaken to answer each overarching research question is provided in Section 2.3 below, while the tasks undertaken within each jurisdiction in light of the overall methodological approach are discussed in full in Sections 3.2 (NSW) and 6.2 (NT) respectively.

### 2.1 Principles

The primary approach of the research team and project was to seek, articulate and respond to Indigenous housing aspirations and concerns and to undertake research in a manner that was transparent and respectful. Consequently, the team sought to develop appropriate engagement and research strategies and protocols guided by the AIATSIS (2010) *Guidelines for ethical research in Indigenous studies* and drawing also on *Values and ethics: guidelines for ethical conduct in Aboriginal and Torres Strait Islander health research* (NHMRC 2003). The

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<sup>4</sup> For a comprehensive introduction to Indigenous research methodologies see Smith (1999). Further examples include Sherwood (2010) and Rigney (1999).

remainder of this chapter describes the strategies which were used to ensure the research upheld the following values (see NHMRC 2003, p.8). Some were common or particular to each research jurisdiction:

- spirit and Integrity
- reciprocity
- respect
- equality
- survival and protection
- responsibility.

## **2.2 Indigenous Advisory Groups**

Based on positive feedback from research participants and stakeholders, this project continued the engagement strategies of Crabtree et al. (2012a). This included the creation of one Indigenous Advisory Group (IAG) per jurisdiction and the employment of an Indigenous research assistant in the core research team. Additionally, an Indigenous research hub (the Tangentyere Council Research Hub) undertook a significant amount of the NT research. The team approached all these relationships respectfully and valued the input and knowledge of all research partners. We are deeply grateful to the individuals and organisations involved for their contributions.

Membership of the IAGs was drawn from sector leaders in Indigenous housing and related fields, and comprised Indigenous individuals or their designated representatives. Members of the IAGs attended meetings and provided input, guidance and feedback as individuals with expert knowledge rather than as representatives of their organisations to ensure the organisational independence of the IAGs. Two individual meetings of each of the IAGs were held at the inception of the project and during the fieldwork, with a final meeting held jointly towards the project's completion at the request of the IAGs to provide an opportunity to share knowledge across the two jurisdictions. The IAGs provided guidance and endorsement regarding determination of the research partners and corresponding research tasks for their respective jurisdictions, and feedback on progress and emerging research issues during the fieldwork. They reviewed and endorsed all outputs including this Final Report, its appendices and the Tangentyere Council Research Hub report.

As the project evolved and issues for key agencies emerged, separate meetings were held with relevant agencies to address these. Where IAG members were present at those meetings, it was made clear that this was in their capacity as employees or representatives of that agency. The team and IAGs were at all times mindful to maintain the integrity and position of individuals, organisations, communities, the IAGs and the project, and were pleased with the project's success in doing so.

## **2.3 Research approach**

The research approach taken created an iterative research process. After securing formal project endorsement by the relevant Indigenous governance body for each case study, research tasks were then identified and undertaken through collaboration with the partner organisation. The team was mindful that the organisations and individuals who participated had obligations to their communities and the team was careful therefore to respect the needs and interests of Indigenous people individually and collectively. The project team was mindful also of the need to move at the pace dictated by participating organisations, and endeavoured to be as flexible as possible with timelines and scheduling within project parameters. This was seen by the researchers, partners and IAGs as a suite of appropriate engagement and research strategies, tasks and protocols.

The project had two core research questions:

1. What does a fully developed working CLT program for Indigenous housing look like in NSW?
2. What are the issues raised by consideration of a CLT model in the NT?

These questions were the product of previous research and interest among communities and organisations reported in Crabtree et al. (2012a), and of growing interest in CLT models and objectives among NT Indigenous practitioners and stakeholders.

In NSW, the research built on the relationship formed between the core research team and SEARMS—one of the case study organisations involved in research reported by Crabtree et al. (2012a). The organisation wished to work further with the team to develop their ideas into a workable CLT model. The research question and methodology for NSW were designed to provide tangible benefit via the articulation of SEARMS's goals, situation, target households and organisational features into a CLT model which is workable for them and as reviewed and informed by the NSW IAG. Responding to capacity meant in some cases redesigning the intended fieldwork as it became apparent that some stakeholders were not engaging with the research. While the research process is described in Sections 2.3.1 and 3.2, it is important to note here that the organisation, in particular its senior management team, worked intensively on the project design, administration of surveys and co-presentation of research findings, including at local and international conferences.

For the NT work, the case study organisation participated fully in the project as a research sub-contractor as it had capacity in its in-house research hub. Chapter 5 describes the process and research undertaken by the Tangentyere Council Research Hub; critically, the hub was involved fully from survey design through to analysis and report writing. Anecdotal evidence from Indigenous team members suggests similar arrangements for other projects have used community researchers as little more than translators or points of (potentially inappropriate) contact and access to 'data mine' communities without valuing them as equal participants in the research. The research team is proud of its collaboration. Further, the project's non-Indigenous researchers felt strongly that they had benefited from the skills transfer and information exchange and it is their hope that the community partnerships might continue into future research endeavours.

The partnership with the Tangentyere Council Research Hub was undertaken for three main reasons. First, community researchers have a better understanding of how and when best to approach others in their communities to talk about housing issues. Second, none of the UWS team was sufficiently familiar with the circumstances, histories, local housing context or languages of the participant communities, whereas the community researchers clearly had extensive knowledge and daily experience of the environment. Third, the UWS team was greatly in favour of building a collaborative working relationship and mutual knowledge exchange with an extant Indigenous research hub. The project additionally sought to provide an opportunity for organisations and communities to further their own knowledge and practice through engagement with the project, and to generate materials and opportunities for local discussion and decision-making. The NT research process and role of the research hub are detailed in Section 5.2 and Chapter 6.

The consent processes for participation in the research were designed with project values in mind. In both NSW and the NT, formal approval from relevant organisations' executive bodies was sought and secured prior to undertaking the research. This included meeting with relevant executive bodies (usually Boards) to talk about the project, its approach and its objectives, and then waiting on voted or agreed approval to undertake research with organisations and/or communities. In addition to providing an avenue for formal endorsement and permission to undertake research, these meetings provided unique and substantial opportunities to discuss and refine research objectives and activities, and to participate in or listen to executive

discussion of matters of relevance. Such insight substantially informed and sharpened the research, and additionally helped to develop the research team's understanding of community research processes and protocols.

While the core team remained primarily comprised of non-Indigenous researchers, it was hoped that the employment of an Indigenous housing researcher on the team, and the engaged approach taken, enabled greater awareness and incorporation of Indigenous expertise and concerns into the project's aims, activities, processes and outputs. Moreover, the team sought to ensure that communities got something of worth from participating in the research. For the participant communities and the sector at large, it is hoped that the resultant CLT Tool, models and housing terminology brochure will be of use in various contexts and communities across Australia.

### *2.3.1 Research process: NSW*

#### **Q1: What does a fully developed working CLT program for Indigenous housing look like in NSW?**

It was initially envisaged that working with an umbrella organisation would enable two options to be explored—one in which the umbrella organisation itself developed a CLT program; and one in which a member organisation under that umbrella develops a CLT program. Consequently, member organisations were approached to ascertain interest and capacity to explore the development of a CLT program at the level of the individual organisation. Formal executive endorsement was sought and secured at the level of the umbrella organisation and the relevant member organisation.

It was also envisaged that the local organisations would include a LALC, as one of the LALCs had expressed interest in the previous study (i.e. Crabtree et al. 2012a) and had capacity to work in this area. However, the relevant LALC was unable to participate in this project, so an Aboriginal Corporation was approached instead. However, over the course of the project the Corporation faced immense pressure to sign sub-leases to the government via the NSW AHO. As such, CLT models were no longer a readily achievable option or immediate concern for the organisation as they were faced with more pressing matters. To address the necessary considerations of a LALC, issues of relevance to LALCs were discussed subsequently at the level of the umbrella organisation as the majority of its member organisations were LALCs. While perhaps not as direct an engagement as a close partnership with a single LALC, this enabled the perspectives and experiences of multiple LALCs to be considered while being mindful to respect organisations' wishes and capacities.

To develop a fully workable CLT program, the research team worked intensively through core organisational objectives and opportunities with SEARMS staff. The CLT Tool was used as a live framework to simultaneously try to ensure that all issues of relevance were addressed in the consideration of a CLT model and to develop a user-friendly tool to enable other communities and providers to navigate the steps involved in considering a CLT program. Organisational and household data was sourced and provided by SEARMS and combined with current relevant local housing market and construction data to inform the financial modelling. Where extant tools, processes or data sources were available, these were referred to within or incorporated into the CLT Tool to streamline where possible organisations' data gathering and decision-making processes. Guidance on how best to streamline the tool was provided by SEARMS and IAGs. The collaborative development of implementable models, working documents and the CLT Decision-Making Tool was driven and informed by participant requests and intended to foster the Indigenous housing sector's capacity to discuss, develop and steward appropriate housing models.

As issues emerged through data gathering and decision-making processes, agencies identified as relevant to addressing these issues and enabling CLTs were approached and engaged within the research process. This was undertaken both to assess the terrain of emerging

issues as part of the research question (who is responsible for what decisions, how barriers might be removed or support provided, etc.) and to raise awareness and steer knowledge and policy towards support and implementation as part of the overall project objective that outcomes of relevance are delivered for the research partners. Consequently, the data gathered concerning the parameters of a fully implementable model, refer not only to organisational objectives, characteristics and activities, but also to engagement with the policy landscape and processes of the broader Indigenous housing sector. These all contribute to the picture of what a fully implementable model looks like.

The research activities included: preliminary meetings with the partner organisations and their Boards; workshops with the organisations' staff and/or Boards; development of financial models based on current household and market data sourced via a survey conducted by SEARMS and SEARMS' planned housing activities for those households; revision of the extant CLT lease template by subcontracted lawyers to incorporate organisational objectives; refinement and review of material by the NSW IAG; and meetings with FaHCSIA staff to discuss the activities required of FaHCSIA by the sector to enable CLT programs. This latter, ongoing discussion covers both NSW and the NT.

### *2.3.2 Research process: NT*

#### **Q2: What are the issues raised by consideration of a CLT model in the NT?**

When working in the NT, the project team was particularly mindful to be sensitive and respectful and to give something back where possible, given the fraught nature of Indigenous housing and land tenure issues in that jurisdiction. As in NSW, research was undertaken in response to expressed community interest and the team was careful to work only where and as invited. The team also focused on fostering local organisational capacity as much as logistically possible within the project constraints.

The NT research process involved: meetings with Indigenous housing providers, Land Councils and other community governance bodies; refinement of research questions and potential case studies with the NT IAG; development of the survey tool and other materials with the Tangentyere Council Research Hub; in-depth interviews with key stakeholders; a pilot survey and full survey undertaken by the Research Hub; incorporation of the survey findings and Research Hub experiences into the project findings; and examination of the legal issues and considerations raised by exploring alternative tenure options for the partner Town Camps.

The research questions and methods were developed in collaboration with Tangentyere Council via initial meetings with staff and the Executive, followed by workshops, phone meetings and email exchanges with the Tangentyere Council Research Hub to develop the project information and consent form, the draft and final versions of the survey tool and the housing tenure brochure. The housing terminology brochure was developed and distributed by community researchers to Town Camp survey participants after their interview to enable households to read about and discuss various tenure terms and models. The diagrams of Town Camp tenure before and after the Intervention (see Chapter 5) were also made available to help build understanding and foster discussion. The Tangentyere Council Research Hub's report was also intended to be available as a resource via the Tangentyere Council's website.

Alongside the Town Camp survey undertaken by the Research Hub, the UWS team conducted structured in-depth interviews with core representatives from community, government and other agencies in the Northern Territory. Interviews were recorded, transcribed and coded, with coded quotes then themed into topics. The resultant document formed the basis for the discussion in Section 6.2.

## 2.4 Research reflections

### 2.4.1 Process

The process of substantial engagement in its two jurisdictions was seen as imperative to ensure that the questions were addressed appropriately and that case study organisations or communities could participate in ways they felt were appropriate and effective. This approach was taken as it had the potential to yield substantial data; respect and use Indigenous capacity and knowledge; and to be of use to organisations and communities. Core aspects of the process included:

- Respect for the need for formal endorsement of the project.
- Accommodation of community obligations, discussions and processes.
- Inclusion and/or employment of researchers from communities and organisations.
- Creation of outputs of use to the sector.
- Incorporation of partner organisation and IAG reviews of the findings.

This generated a different series of tasks for each jurisdiction, reflecting the different research objectives as decided by the project team and community partners in response to issues identified for and specific to different case study sites. The core approach was to replicate the approach that CLTs take in establishing their programs: to identify how best to address community benefit and perpetual affordability in specific contexts. This was seen as especially pertinent in the Indigenous context in light of a history of marginalisation and of over-consultation often without community benefit.

The process yielded invaluable insights into local circumstances and aspirations and enabled a comprehensive interrogation of programmatic concerns in considering CLT housing. That is, the partner communities' knowledge and the data gathered through the various engagement activities generated insights into core issues regarding the fundamental concerns underlying housing provision. Moreover, the differences in these between the case studies highlighted the need for, and utility of, developing an overarching framework and methodology for communities and organisations to think through their options in light of their particular concerns, aspirations and circumstances. Working through the core issues in two different contexts therefore mandated and enabled the creation of a broadly applicable decision-making tool, as well as the articulation of a housing spectrum that could encapsulate and respond to the diversity of existing communities' and organisations' requirements (see Chapter 8).

### 2.4.2 Language

The second reflective theme concerns the role of language in establishing tenure forms that articulate and reinforce past and current relationships between households and their communities. The project team encountered resistance to the name 'Community Land Trust' throughout the project and in earlier research and the parallel work that created the CLT Manual. The team and their various partners across the projects have grappled with this nomenclature as it is the name that the sector and the various models and organisations operating within it use and are known by. Consequently, it is also the term people tend to search for online when exploring tenure options, which is why the name was initially adhered to. Throughout this body of work, the project team and partners have all struggled to find an alternative name, as the individual words in the term 'Community Land Trust' have connotations that vary among stakeholders, but which almost always trigger associations of little use or relevance to the issues under consideration.

For example, the word 'trust' often triggers assumptions that some form of property trust or investment vehicle is involved, and that the organisation will be bound by Trust Law, neither of which is intended to be the case. Or the word 'community' might trigger assumptions that the

organisation is an intentional community; again, this is rarely the case. In the Indigenous context, 'land trust' has associations with extant Aboriginal Land Trusts, which again are very different and specific legal and socio-cultural entities. As a result, the team tended to avoid using the full name and instead use the acronym 'CLT', which is now familiar, while also asking partners to help develop a name that would work in the Australian context. This has proven to be quite difficult as the core principles of community benefit and perpetually affordable housing have been difficult to articulate in a broadly acceptable name. Given that many future CLT-type activities will be performed by existing organisations, the need for a model-specific name also might appear redundant; that said, the research team, AHURI research partners and partners to the development of the CLT Manual all feel that there needs to be an umbrella term referring to organisations and/or programs providing stable and affordable long-term tenure options incorporating a greater degree of resident autonomy and community control than current forms of affordable rental housing, but without requiring full market purchase.

More substantially, issues have emerged regarding the terms used in describing the relationships, roles and functions involved in the models under discussion. This was also the case with the development of the CLT Manual. The CLT Manual asserted 'resident' as the occupant of the home, whether in a leasehold or co-ownership situation, as 'lessee' or 'tenant', in particular, were felt by the manual's authorial team and partners not to convey the sense of stability and ownership that was desired. Similarly, 'administration fee' was deployed to replace 'rent', as the latter term implied a standard residential tenancy situation and was not felt to accurately capture the relationship between the resident and the organisation.

In extending the work to the NT, the issue of nomenclature has become vitally important. Tangentyere Council felt that discussions about tenure, which were occurring as part of the changes under the Intervention, did not recognise, understand or consider residents' knowledge of tenure. This issue was keenly illustrated in residents' responses to questions of ownership in the Town Camps (see Chapter 6). This was a core imperative for the creation of the housing terminology brochure—itsself a challenging process. Attempting to explain the key terms involved in the documents and discussions emerging from FaHCSIA's interest in home ownership on Indigenous lands and the CLT models under discussion, initially created a 6-page document attempting to explain some 16 housing terms and legal tenure forms. Perhaps not surprisingly, this was widely felt by the research team, including the Research Hub, to be of little use or comprehension to Town Camp households, many of whom expressed confusion about federal legal definitions of owning and renting and already felt a strong historical sense of ownership. The brochure was reduced to a single page explaining Western legal interpretations of home owning and renting in straightforward terms so that households could take the brochure away from the survey interview and talk about tenure with their family and community (see Appendix 8). While the brochure was only available in English, it was explained in language by researchers where necessary.

It was felt by Tangentyere Council and the Research Hub that residents first needed to understand the models of renting and owning being presented by a variety of external agencies before any alternatives could be discussed; otherwise, households and communities were in no position to make informed decisions. It was strongly felt that capturing residents' understandings and aspirations was the mandatory starting point for any subsequent discussion or development of tenure reform. However, the process of presenting a binary of 'owning' and 'renting', and even of using those terms, will act to shape residents' perceptions of their tenure situation and bring them into line with current dominant interpretations of tenure, while potentially losing some of the nuance of Town Camp residents' prior understandings and practices of tenure. It may be that future discussion among the Town Camps will generate a more appropriate term for the tenure forms they seek that could inform broader tenure reform in the housing sector in line with growing concerns regarding perpetual affordability and stewardship.

## **3 NEW SOUTH WALES CASE STUDY: CONTEXT AND PROCESS**

This chapter provides an overview of the case study and research process undertaken in NSW and the context for the research findings presented in Chapter 4. For a more detailed discussion of demographic, housing policy and tenure issues for NSW Indigenous communities see *Community Land Trusts and Indigenous housing outcomes* (Crabtree et al. 2012a).

### **3.1 Research context**

#### *3.1.1 South Eastern Aboriginal Regional Management Services*

South Eastern Aboriginal Regional Management Services (SEARMS) is a company (originally incorporated as a member cooperative) located on the South Coast of NSW. SEARMS includes six LALCs and an Aboriginal Corporation. All members are ACHPs. SEARMS manages properties on behalf of its members or 'partners', as well as other non-partner ACHPs and the NSW AHO. Its total portfolio in 2011 was 320 dwellings (SEARMS 2011) located across the south-eastern region of the state including the South Coast as far north as Nowra, the Southern Highlands and the Southern Tablelands, including Queanbeyan, Yass and Young. The organisation is accredited against the National Community Housing Standards and also an approved provider under the NSW AHO's Provider Assessment and Registration System (PARS) (see Section 3.1.4).

SEARMS was originally established in 2003 as a community-led initiative supported by the NSW AHO in response to concerns about the viability of the Aboriginal community housing sector. Several existing ACHPs with a variety of stock levels and conditions and existing governance capacities formed an umbrella organisation to provide housing management services at a scale that would provide more viability and also attract recurrent funding support under a pilot program being offered by the AHO. This pilot funding has since ceased. Over the last decade, the organisation has grown significantly in terms of its housing portfolio and its organisational focus.

The SEARMS Board has for some years been looking at alternatives to the housing options they are currently able to provide (SEARMS 2011). Since its inception, the organisation has aimed to increase home ownership opportunities for its community. Combined with a desire to target its existing rental stock more appropriately, this has led to an interest in the CLT model. The organisation participated in the Phase 2 study of the project *Community Land Trusts and Indigenous housing outcomes* reported in Crabtree et al. (2012a), and expressed a strong desire to work further with the research team to develop an implementable CLT model.

#### *3.1.2 Housing demand and supply*

Most Indigenous households in NSW are renters (56.3%). Of these, two-fifths (39.8%) rent from private landlords and approximately a third (33.8%) from state or territory housing authorities. A smaller proportion (7.0%) is in cooperative, community or church group housing.

In NSW, rental housing is managed in the main by government (Housing NSW via the NSW AHO) or by LALCs, Aboriginal Corporations or other Aboriginal organisations, including some umbrella member organisations. Indigenous households are also tenants in non-Indigenous specific social housing (Housing NSW, cooperative or community housing); however, for the purposes of this report, the focus is on Indigenous-specific housing.

While many Indigenous people rent from state housing authorities (Housing NSW or NSW AHO), there are 206 ACHPs in NSW managing 4736 properties at an average of 23 properties each (NSW AHO 2012). There are a small number of larger providers and many providers managing fewer than 10 properties (NSW AHO 2010, p.7). Of the ACHPs, 112 are LALCs. Organisations are typically small and localised, with 137 organisations managing less than 25



properties each and 28 of these managing less than five. The largest organisations in the sector are the Regional Aboriginal Housing Management Services, each of which manages in excess of 200 properties on behalf of local organisations (Eastgate & Moore 2011, pp.1–2).

Subsidised rental housing is available; however, there is a shortage, and some Indigenous housing providers report that they cannot house Indigenous people on waiting lists in existing stock. Management requirements vary according to funding source with a range of arrangements that may include eligibility restrictions via means testing and income-related rents. This can create a 'bottleneck' in higher-cost housing markets where there are fewer affordable housing options available.

Jones et al. (2007, p.20) pointed to the complexity and diversity in the Indigenous housing sector, including inconsistencies across programs—for example, in eligibility and rent setting. This was also an issue highlighted by participants in previous work on CLTs in Indigenous housing (Crabtree et al. 2012a). Recent policy developments include attempts to link the complex and fragmented Indigenous housing sector more closely with mainstream social housing (Jones et al. 2007, p.2; Milligan et al. 2011).

### *3.1.3 Home ownership*

Home ownership rates among Indigenous people in NSW are on the rise, but are still lower than the rate among all Australians. Rates of home ownership (including those paying off a dwelling) are over a third but less than a half of NSW Indigenous households (39.3%)—significantly lower than the ownership rate among all NSW households (66.5%) (ABS 2012). Of the NSW Indigenous households that own their homes, the majority (66.1%) own their home with a mortgage. While Indigenous housing in NSW is predominantly rental housing, there are limited examples of rent-to-buy and transfer from community ownership into freehold individual ownership in NSW.

Another important pathway to home ownership for Indigenous people is IBA, which offers mortgages at favourable interest rates and over longer time periods (IBA 2013). The average loan term is 32 years with a maximum of 45 years. A \$3000 minimum or 5 per cent deposit is required. The majority of customers (61% in 2012–13) received loans at a starting interest rate of 4.5 per cent which is held at this rate for at least 12 months. After that time, the rate increases by 0.5% on 1 January each year until it reaches the standard IBA rate which is set to be comparable to other market loan rates. At 30 June 2013 the IBA home loan interest rate was 6 per cent. According to IBA (2013, p.49): 'The typical housing loan customer is a couple with dependants, on an annual income of \$76 460. They will purchase their first home for \$350 200 in a non-metropolitan area'.

Geographically, the take-up of IBA loans in NSW has been concentrated in areas with higher Indigenous populations and in areas where house prices are not prohibitive for the income groups targeted. In NSW in the 2012–13 financial year, IBA lent strongly in non-metropolitan areas (78% of all loans) while mainstream lenders do the opposite (only 29% of all loans were in non-metropolitan areas). In NSW, IBA is at its most effective in Australian Indigenous Geographic Classification regions such as Coffs Harbour, Central Coast, Wagga, Tamworth and Dubbo (see Table 1 below). New loan approvals in 2012–13 for Sydney were at a lower rate (22%) than for Coffs Harbour (23%), though greater than other regions.

**Table 1: IBA loan approvals by Geographic Area, 2012–13**

<b>Approvals by Geographic Area, 2011–12</b>		
<b>State</b>	<b>Geographical Area</b>	<b>Number of loans approved</b>
NSW	Sydney	49
	Central Coast	43
	Queanbeyan	13
	Wagga Wagga	29
	Bourke	9
	Dubbo	21
	Tamworth	9
	Coffs Harbour	52
Total number of loans approved		225

Source: IBA (2013)

As affordability has deteriorated, the IBA figures may indicate that there is a diminishing ability for Indigenous people on lower to median incomes to access housing options other than rental housing, especially in Sydney and in towns where house prices have substantially increased. However, more detailed analysis of the IBA data compared with Indigenous populations in each geographical area would need to be done to be able to make any definitive conclusions on the effectiveness or otherwise of the IBA home loans scheme.

#### 3.1.4 Policy context

The *Build and Grow Strategy* announced by the NSW AHO in 2010 requires organisations to comply with a set of new standards modelled on mainstream community housing regulations. Organisations that are unable to comply (or choose not to) but wish to receive financial support are required to head-lease their housing to NSW AHO, who will then lease on to approved providers. The main incentive in this policy is an amount up to a maximum of \$50 000 per property for backlog maintenance, and an amount of \$2500 per property per annum as operational subsidy, reducing as organisations bring rents up to a point where they maximise Commonwealth Rent Assistance (Eastgate & Moore 2011, p.11).

At the time the research was undertaken, this process was all-or-nothing. That is, organisations could either opt in and then either enter into PARS and gain registered status or head-lease stock to NSW AHO; or continue on outside of this regime, losing access to backlog maintenance funds. This had resulted in housing providers making trade-offs between organisational control and access to funding (Eastgate & Moore 2011, p.20).

#### 3.1.5 Tenure

ACHPs either own their land and housing assets as freehold (whether or not subject to the *Aboriginal Land Rights Act [ALRA] 1983 (NSW)*), or hold head-leases from the NSW AHO with the view to eventual title transfer. ALRA landholdings are generally alienable subject to the requirements of the ALRA being met.

For the 112 LALCs, key changes to the ALRA in 2010 require LALCs to have all existing and new social housing schemes approved by the NSW Aboriginal Land Council (NSW ALC) and to seek NSW ALC approval for a wider range of land dealings including granting of long-term leases (Eastgate & Moore 2011). LALCs are able to deal in land provided that the decision-making process outlined in the ALRA is followed. In general, the ALRA requires that for any dealing, 80 per cent of the membership of the LALC must agree to the dealing (via vote). After this approval is obtained, the NSW ALC must be notified and also approve the dealing (s.42G,

ALRA 1983). About 60 per cent of Aboriginal community housing organisations in NSW are covered by this legislation (Eastgate & Moore 2011, p.4).

Aboriginal Corporations and other incorporation forms may hold title to land but restrictive caveats originally put on titles via ATSIC (which at the time of undertaking the research had been passed on to FaHCSIA) or the NSW AHO prevent free dealing. Therefore, if an Aboriginal Corporation wishes to dispose of or otherwise deal with a property, it must seek approval from the relevant government department first. This would include identifying the department responsible for caveats that previously rested with FaHCSIA; most have passed to the Department of Prime Minister and Cabinet. Additionally, title to properties funded by the NSW AHO is initially retained by the NSW Government and head-leased to the organisation; if transfer of title has not occurred then the organisation is unable to deal with the property.

For a more comprehensive overview of legal and tenure issues in NSW, refer to Crabtree et al. (2012a).

### *3.1.6 Conclusion*

Given the reasonably high level of control over land by Indigenous housing providers in NSW (provided that the necessary community approval, peak body or federal government approval is obtained), there are few impediments to offering some other tenure forms on Aboriginal land (or on any other type of land). Where land is appropriately zoned and subdivided and a reasonable level of subsidy and/or debt financing is available, new housing and tenure forms can be offered. The preconditions are: property holdings; strong governance and accountability; sound financial planning; sound asset management; and a pool of potential occupants. Organisations that have registered under the PARS scheme are able to attract extra funding.

There are two key mechanisms available that offer an alternative to ordinary rental housing: a 99-year lease option, and a modified shared equity option (Crabtree et al. 2013). No legal changes are required in NSW to facilitate these. However, the shared equity model can only be used where an organisation holds freehold title to the property.

Many LALCs have landholdings that could be used for building new housing stock; existing housing could also be incorporated into new schemes. However, any social rental housing converted to ownership models would need to be replaced to maintain a pool of affordable rental housing. Medium density housing may also add to housing stock in regional centres subject to zoning.

Indigenous community housing sell-offs can result in leakage of community assets into non-Indigenous private hands, with only a few individuals temporarily personally benefiting (Crabtree et. al. 2012a). CLT models may provide alternatives to these previous ad hoc sell offs and maintain community assets.

## **3.2 Research process**

After project commencement in 2012 the NSW IAG was convened and at its first meeting agreed to the research activities proposed for NSW. It was agreed that SEARMS would be an appropriate case study should they be interested in participating, as this would build on the relationship developed in Crabtree et al. (2012a) and ongoing interest and capacity within the organisation. However, it was noted that a detailed implementation model would only be applicable to the case study organisation itself and that results would not necessarily be replicable in other areas of NSW. It was therefore agreed to document the decision-making process itself in addition to the actual decisions made by SEARMS, and to develop this into a resource toolkit (the CLT Decision-Making Tool) which could be used by other interested Indigenous organisations.

Agreement to participate in the research was secured after a meeting between SEARMS senior management, board representatives and the research team. At this meeting it was also agreed that SEARMS would carry out a survey of households among residents and members of SEARMS's partner organisations to determine the level of interest in home ownership and to ascertain indicative levels of household income and debt to be used in financial modelling. This survey is presented in Appendix 1 and the results discussed in Chapter 4. SEARMS administered the survey themselves and chose to target households that were determined to be most able and likely to participate in a CLT scheme. These were primarily households that were known to have secure employment. The survey was therefore not intended as a representative analysis of all SEARMS member households, but of a subset comprising those households which were felt to have the interest and capacity to meet the requirements of home ownership, including entering into a small mortgage.

The survey was developed in consultation with SEARMS and aimed to determine the level of interest in home ownership, household financial and demographic profiles, and current housing situation (see Appendix 1). The survey contained 15 questions structured to gather household composition, employment, housing stock and income data, and to test attitudes and aspirations towards home ownership. It was mailed to 65 households out of a total of 314 member households. The sample was drawn from SEARMS member organisations' tenants and broader membership, corresponding to a service area covering coastal and inland regions of south-eastern NSW (previously described). Gift vouchers were offered as an incentive for informants to complete the survey.

As SEARMS is an umbrella organisation comprising member Aboriginal Corporations and LALCs, the research team also offered to engage with those individual organisations. Initial contact was made through the organisations' delegates to the SEARMS Board; a letter was sent also via SEARMS to members and tenants of SEARMS organisations inviting participation in the case study and offering an information session about the research. Four organisations expressed initial interest, and the research team arranged to visit those organisations.

Following these initial meetings, there was a varied range of interest in the project. Some organisations were interested in the concept, but chose not to participate in the current research, preferring to wait for the results prior to making a determination on the suitability of CLT principles for their own housing needs. Others appeared interested, but ultimately did not make arrangements to meet with the research team. It is understood that governance changes within some organisations may have impacted on their willingness to participate. One partner organisation initially consented to participate as a case study; however, their engagement was inconsistent and ultimately the research team chose to focus on SEARMS as a single case study in its own right, without inclusion of member organisations as separate entities.

The research team worked closely with SEARMS, predominantly at the staff level but also with Board members as available throughout the research. Workshops were held and Board meetings attended by the team's Indigenous researcher to keep the organisation informed of progress. SEARMS was also involved in all research presentations, including a presentation to the United States National CLT Network Conference in Vermont in 2012 and various conferences and meetings in NSW.

As the scoping for SEARMS revealed policy and programmatic implications for both state and federal government agencies and statutory authorities, the research team also intended to meet with agency representatives to discuss the research as these issues emerged. While several key agencies (e.g. NSW ALC, NSW AHO and FaHCSIA) had staff and/or Board members represented on the project IAG, it is an important distinction to note that it was intended that these people participate as individuals rather than representatives of their respective organisations—it would therefore have been inappropriate for their opinions and comments to be seen as representative of those organisations. Unfortunately, however, due to issues including organisational staff turnover the team was unable to conduct these meetings

with relevant stakeholders. Therefore it was not possible to interrogate the policy implications noted in Chapter 9 with the relevant agencies prior to writing this report.

## 4 NEW SOUTH WALES CASE STUDY: FINDINGS

### 4.1 Organisational characteristics

South Eastern Aboriginal Regional Management Services (SEARMS) is a Corporation that services and provides housing to Aboriginal communities in south-eastern NSW.<sup>5</sup> It consists of six member ACHPs.

SEARMS obtained a Certificate of Registration via the PARS in 2010. It has recently gone through the *Build and Grow* assessment process, entailing a review of reporting and financial management processes (SEARMS 2011, p.9). This enables it to receive sub-leases of properties head-leased to the AHO by other ACHPs (see Chapter 2). SEARMS has a high standard of management and continues to receive clear unqualified audits (SEARMS 2011, p.9). In 2010, SEARMS achieved National Accreditation. This process is voluntary and recognises that the level of service delivery that SEARMS provides is meeting industry standards (SEARMS n.d., p.6). At the time of writing, SEARMS had seven staff (three full-time) and accumulated profits of \$884 802 (SEARMS 2012, p.4).

#### 4.1.1 Assets

SEARMS commenced operations in 2004 with 117 properties under management. This has grown to 323 properties—a 176 per cent increase since operations commenced (SEARMS 2011, pp.5, 6). Of housing stock at 2011, 56 per cent is owned by LALCs, while SEARMS directly owns or head-leases 36 dwellings. This represents a growth of 75 per cent on the previous financial year (SEARMS 2012, p.6).

In 2011–12, SEARMS had assets of \$2 985 172 (consisting mainly of cash) and an operating surplus of \$215 539, up from \$150 254 the previous financial year (SEARMS 2012, audit 6, p.2). It received the bulk of income from the NSW AHO (\$672 880), some rental income from SEARMS' own rental properties (\$19 180), management fees from member organisations (\$264 406) and interest (\$56 632) (SEARMS 2012, audit 11).

A dedicated Asset Manager position was created in 2008. The Asset Manager trains and supports the member organisation Housing Officers (SEARMS n.d., p.6). SEARMS has specialist software for reporting and tracking assets. The software has allowed for a comprehensive draft Asset Management Plan for each housing provider under SEARMS' management that extends for a 40-year period; these were rolled out in 2012 (SEARMS 2012, pp.5, 8). SEARMS reviews assets to make recommendations for disposals and acquisitions. To date no disposals have occurred although recommendations for disposal have been provided to some member organisations. Avenues for acquisitions have been investigated by SEARMS, including CLT housing options.

In 2012, SEARMS adopted a new rental management system: RPDADA. Rental income from SEARMS-managed properties does not cover 100 per cent of direct costs such as rates, insurances and essential repairs or indirect costs (SEARMS 2012). SEARMS has taken measures to reduce costs such as insurance premiums via active valuations, and has established a high interest bearing account with interest being returned to member housing providers to assist overcoming some limitations in paying for/addressing the backlog of repairs and maintenance. SEARMS also holds over 5 per cent of collections in trust to go back to providers to help with indirect costs such as those associated with annual reporting requirements (SEARMS n.d., p.6).

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<sup>5</sup> Including: Jerringa, Ulladulla, Batemans Bay, Moruya, Mogo, Bodalla, Narooma, Wallaga Lake, Eden, Yass, Queanbeyan, Young, Bowral, Mittagong, and Wingecarribee.

The organisation struggles with funding uncertainty. Six-monthly funding subsidies received from the NSW AHO dropped 41.5 per cent in 2011–12; however, operating costs reduced over 2011 by 28 per cent (SEARMS 2012, p.9).

#### 4.1.2 Governance

SEARMS is member-driven, overseen by an eight-member Board of Directors elected from constituent member organisations. At the time of writing there were two vacant positions on the Board. Two member organisations were expelled from SEARMS during 2011–12, Cobowra LALC and Bodalla LALC, due to ‘local land council politics’ and a ‘failure to commit to SEARMS’ (SEARMS 2012, p.5). However, the remainder of the Board was unchanged.

One of SEARMS’ goals in its 2010–15 Strategic Plan is that the Board will work towards mastering the fundamentals of good governance not only at board level but all levels in the organisation including management and middle management (SEARMS n.d.). The strategic plan emphasises a focus on accountability of performance, compliance with relevant laws and regulations, and the practice of up-skilling, inductions and efficiency of practice (SEARMS n.d., p.10).

## 4.2 Survey results

Of the 65 surveys distributed, a total of 13 were returned (a response rate of 20%). Broader research highlights that postal survey response rates are generally low (e.g. Dunn 2002). Given the resultant small sample size, the results are not presented as indicative of Aboriginal communities at large. However, on the basis of their knowledge of the 65 targeted households, SEARMS believe the results to be representative of the households’ circumstances despite the small sample size. As such, the data does present some indicative findings regarding the potential capacity of households identified by SEARMS to enter into an appropriate model of home ownership.

While SEARMS has a level of insight into household size, composition, housing situation and income of its member organisations’ households, the same cannot be said for the aspirations of households regarding home ownership. If interest in home ownership was a driving factor in households’ inclination to respond to the survey, then responses to questions on home ownership cannot be taken as representative of the 65 households and may in fact reflect overrepresentation of this interest.

At the time of survey, the majority of households that responded were renting from an Indigenous housing provider (10 of 13). Two were renting privately and one was buying their own home. This does not reflect the average for Indigenous households in NSW, as the fact that the survey was targeted at SEARMS member organisation tenants and members meant that a significant number of existing tenants of Indigenous housing providers were represented in the sample.

At the time of survey, all respondents lived in a house and no respondent lived in a unit. This is consistent with the housing stock managed being primarily detached housing in a regional area of NSW. Nine households lived in a three-bedroom house and four households lived in a four-bedroom house. Older houses were in the minority with only 15 per cent being built 20–40 years ago. Most houses were built between 10–20 years ago (62%), with 15 per cent less than 10 years old. No household lived in a house more than 40 years old.

At the time of survey, 84 per cent of households that responded indicated full-time work was their main source of income. Eight per cent received Centrelink payments only, while a further 8 per cent combined Centrelink income and income from paid work. No respondent identified the main source of income as solely from part-time or casual work. The results are not reflective of the total group of SEARMS member households: the high rate of households in paid work results from the survey being targeted at 65 households on higher incomes or deemed to have potential for, or interest in, tenures other than renting.

Respondents were asked if they had thought about buying their own home and 92 per cent answered in the affirmative. Nil respondents said no. One household was in the process of purchasing a home at the time of survey. Most respondents indicated that they could contribute no more than \$400 per week to a mortgage. The majority of households (N=6) indicated they could afford \$200 a week, while four households indicated they could afford \$300 a week.

Six out of 13 households (nearly 50%) indicated they had no savings at the time of survey. A further four households had savings of less than \$500. One had savings of \$500–\$1000 and another had savings of \$1000–\$3000. Only one household had savings in the higher range (more than \$20 000).

The majority of households were carrying debt. Six households (about 50%) had significant debts of more than \$10 000 and a further six households had smaller levels of debt (between \$500–\$5000). One household was debt-free. Personal loans were the most common source of debt, followed by credit cards and car loans, 'other' (which could include family and friends lending money as well as leased items, e.g. cars) and payday lenders.

The majority of households indicated that they wished to buy their own house if it was affordable to do so, and if the mortgage term was 25–30 years. Three indicated that they would like to keep renting their current house. No respondent indicated a preference for the private rental market as a tenure form.

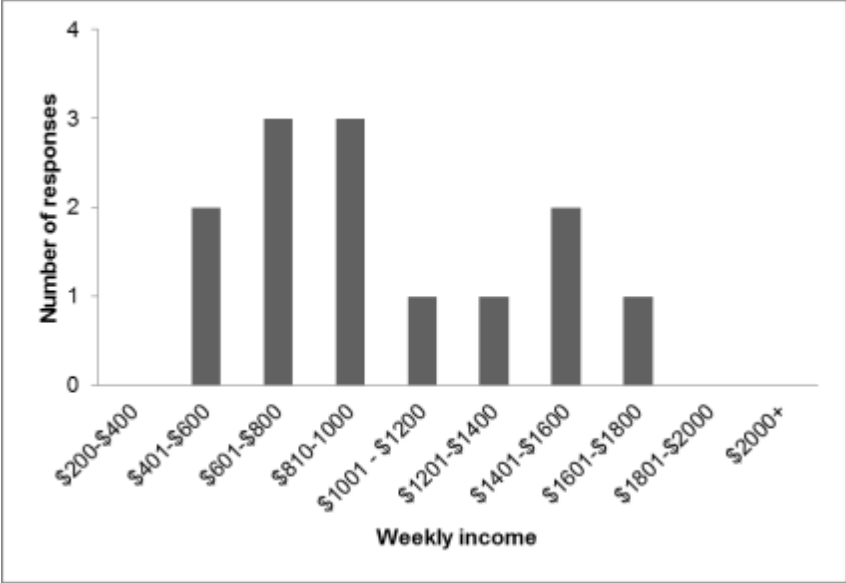
Most respondents (around 50%) were aged 35–44 years. Few were aged 45 years or over; the survey was targeted towards wage-earning households who had a substantial period of working life potentially ahead of them. No respondent was 65 years or older. Over half of the households (54%) were couples with children. A third (31%) were single-parent households. Couples without children were a minority (7%). There were no lone-person households and no group households among the respondents.

Households were asked two questions about income. Eight households were clustered around weekly incomes of between \$401–\$1000 per week, with three on higher weekly incomes of between \$1401–\$1800 per week (Figure 2). No household exceeded \$1801 per week.

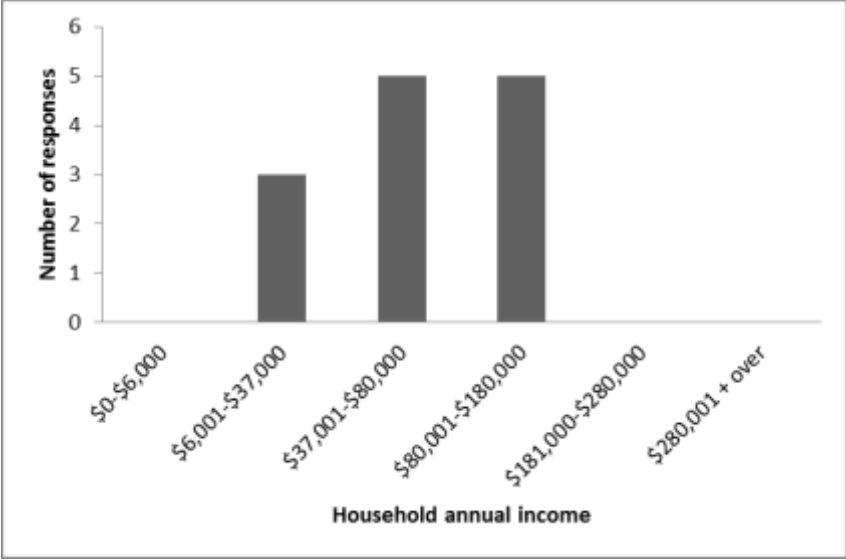
Yearly incomes showed a slightly different but similar pattern (Figure 3). Due to broader income bands, the 'dip' in the middle (see Figure 2) does not appear. Five households were on gross annual household incomes of between \$37 001 and \$80 000 and five were on gross annual household incomes of between \$80 000 and \$180 000. Using the data from Figure 2, which shows a maximum weekly income of \$1800, while those respondents indicated a gross household annual income range of \$80 000–\$180 000, the potential maximum annual income is \$1800/wk x 52 weeks, or \$93 600.



**Figure 2: Gross household weekly income**



**Figure 3: Gross household annual income**



As outlined in Section 3.2, the survey sample is not intended to be representative of the total membership of SEARMS' member organisations, but rather is a subset of households identified by SEARMS as having the capacity to enter into home ownership. Although the resulting sample size is small (N=13) some patterns can be discerned.

The overwhelming majority of respondents were interested in home ownership. This may have been a driving factor in households' interest in responding to the survey, and might not be representative of the 65 households. However, it could be that a greater response would be seen if an actual home was known to be available for affordable purchase. While the majority of survey respondents expressed interest in home ownership, this represents an identified potential market of just 10 households, which echoes previous work highlighting markets for home ownership on Indigenous lands may be small. Those on lower incomes tended to have lower debts and those on higher and middle incomes tended to have higher debts (debts of more than \$10 000). One-parent families were not concentrated in any income range.

Unsurprisingly, there was a correlation between full-time work and higher incomes; however, some households working full-time indicated gross annual incomes of less than \$37 000. There was little correlation between higher incomes and savings levels. There was also little correlation between household type and savings and debt levels, with some higher savers being on lower incomes, and some higher incomes carrying higher levels of debt. However, the sample size was too small to provide any significant patterns.

All household incomes were within a range to be able to support a modest mortgage. Using the rule that mortgage repayments should not exceed 30 per cent of income<sup>6</sup> and the weekly income levels reported by respondents, a household with two children and gross weekly earnings of \$400–\$1000 per week could borrow \$70 000–\$232 000 and support mortgage repayments of \$446–\$1478 per month at current standard variable interest rates.<sup>7</sup> However, interest rates are currently low—if interest rates were to increase from current levels, this could significantly increase the mortgage burden on relatively low-income households. For those on higher weekly incomes of \$1201–\$1800, and using the 30 per cent rule, these households potentially could purchase houses priced between \$307 000–\$525 000 with mortgage repayments of \$1955–\$3344 a month.

Hence, entering into a mortgage of \$144 000 or above would be possible for households with incomes of \$39 800 or more per annum. This could be through buying either at a discounted rate (e.g. CLT housing) or possibly at the very lower end of the private market,<sup>8</sup> which did offer some affordable houses at current prices for those households on higher incomes. However, the level of savings was very low with six respondents (about 50%) indicating they had no savings and a further four having savings of less than \$500. Additionally, households were carrying significant debt, with five households owing more than \$10 000 (one of these had an existing mortgage).

Even assuming an affordable mortgage was available, lack of savings for a deposit was prevalent: 11 of 13 respondents did not have sufficient savings for a deposit greater than \$3000. One household had savings of more than \$20 000 and would be in a position to enter into a mortgage immediately. Another household had no savings but had purchased a house via a mortgage previously.

It can be seen that existing debt and lack of savings would be a major barrier for such households seeking to access and service a mortgage.

### **4.3 Local income and purchase thresholds**

To further clarify the potential parameters and role of a CLT program in a given area, it was important to identify and define the program's potential scope. As such, it was necessary first to identify an operational region within the SEARMS service area and then to determine the housing market dynamics and Indigenous income profiles within that region. This would determine the potential pool of eligible households in that region over and above the potential market (drawn from the SEARMS survey), and gauge potential housing market performance to determine an appropriate resale formula. The Eurobodalla Local Government Area (LGA) was identified as an appropriate operational region as the LGA had some local Indigenous employment. Property prices in the area were, however, under pressure from holiday home purchases.

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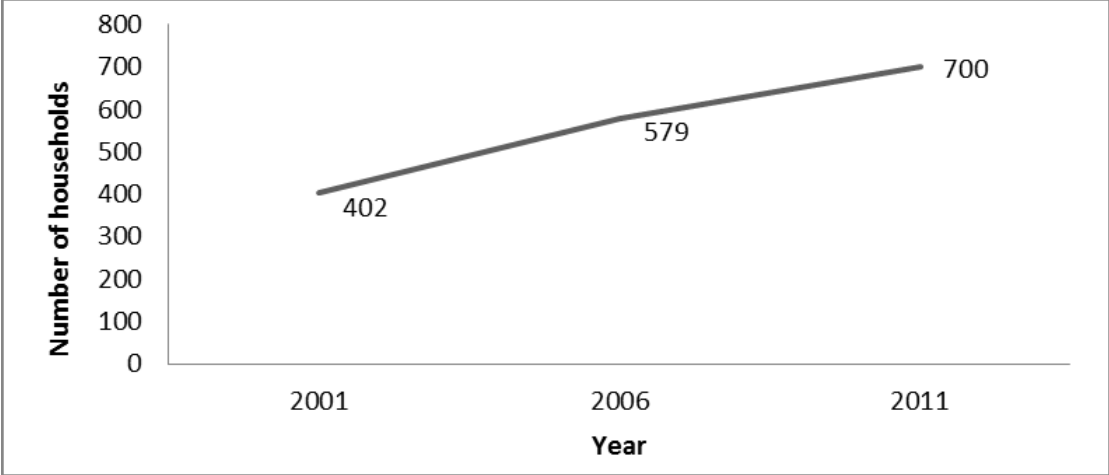
<sup>6</sup> While an historical rule, SEARMS favour this to not unduly expose their households to risk.

<sup>7</sup> ANZ 'How Much Can I Borrow?' calculator as of 28 August 2013. Assumes a 25-year term, two dependants, \$800 per month current housing expenses, no debts/other loan payments.

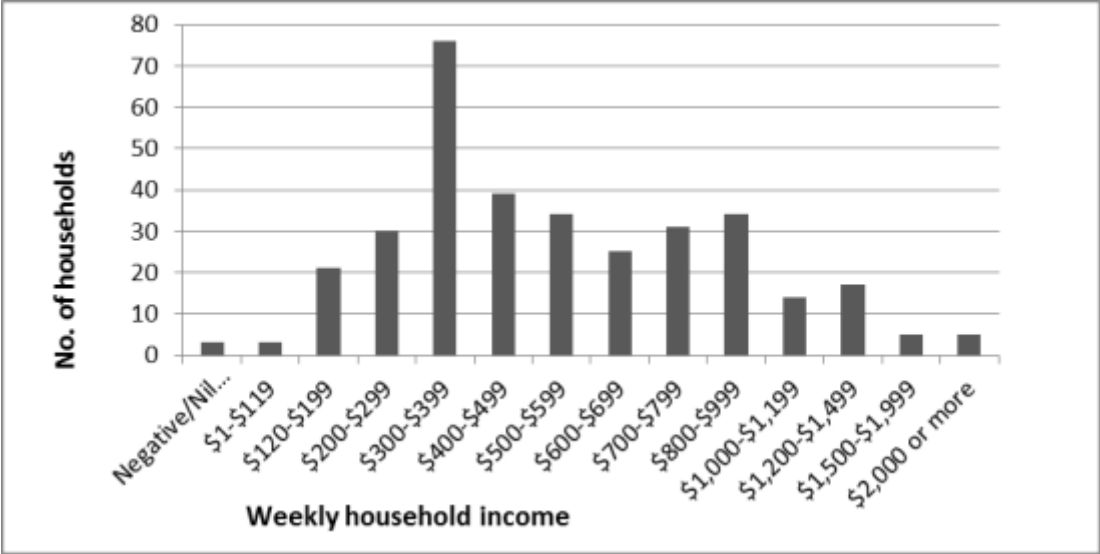
<sup>8</sup> Median house prices as at March 2013 in three major towns where respondents were currently housed: town 1, \$377 148; town 2, \$309 568; and town 3: \$295 611. Source: Suburb profile—median house prices over 12 months by suburb, [www.realestate.com.au](http://www.realestate.com.au) See Figure 19 for Housing NSW data on overall regional prices.

Analysis of ABS data shows a steadily increasing number of households in the Eurobodalla LGA identifying as Indigenous in 2001–11 (Figure 4). Income bands are shown in Figures 5, 6 and 7; analysis of the trend across those figures shows there was a relative increase in the proportion of Indigenous households in higher income bands in the period 2001–11. Closer analysis shows that the highest three income bands (indicative of SEARMS target household incomes) have shown growth over 2001–11; income bands are indexed by the ABS.

**Figure 4: Number of Indigenous households, Eurobodalla LGA, 2001–11**

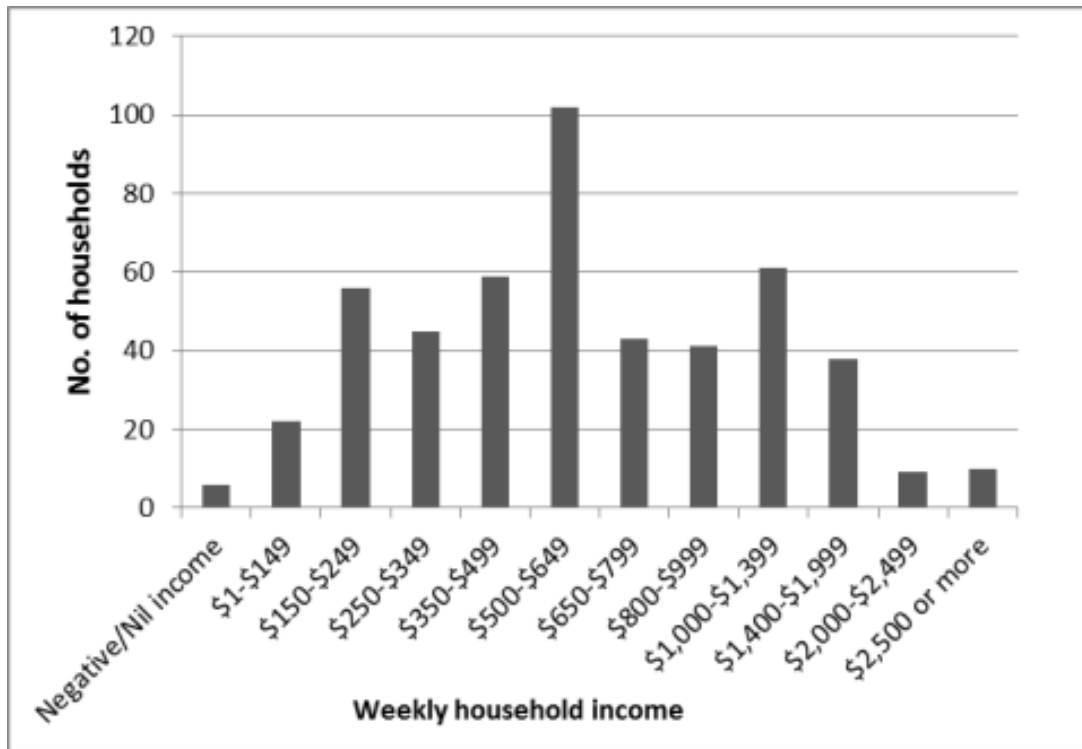


**Figure 5: Indigenous household income profile, Eurobodalla LGA, 2001**



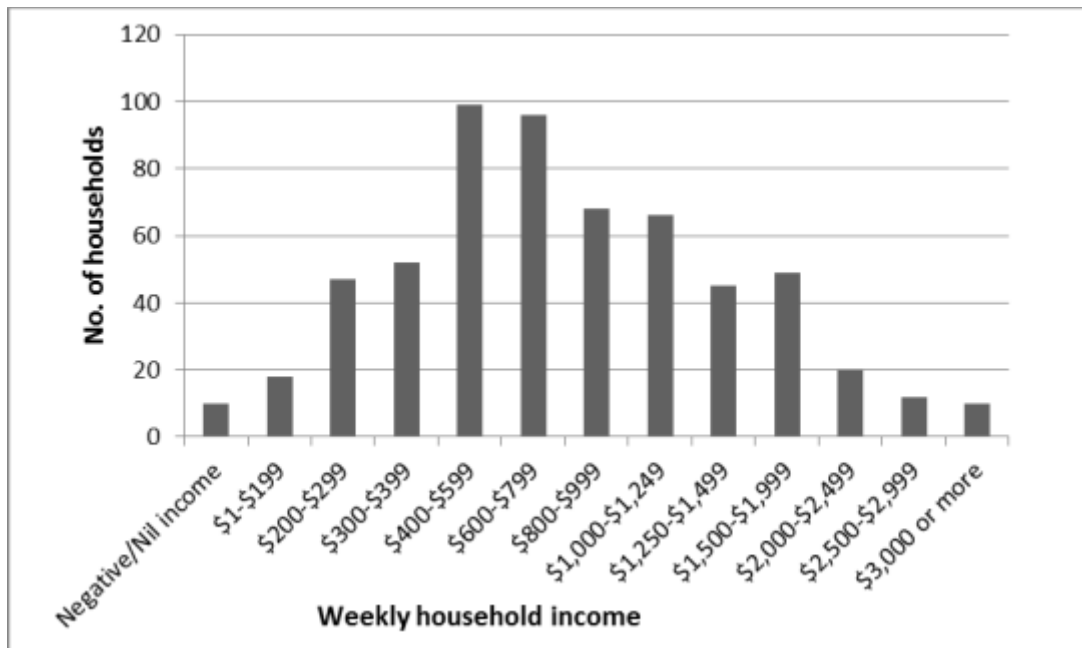
Source: ABS 2002

**Figure 6: Indigenous household income profile, Eurobodalla LGA, 2006**



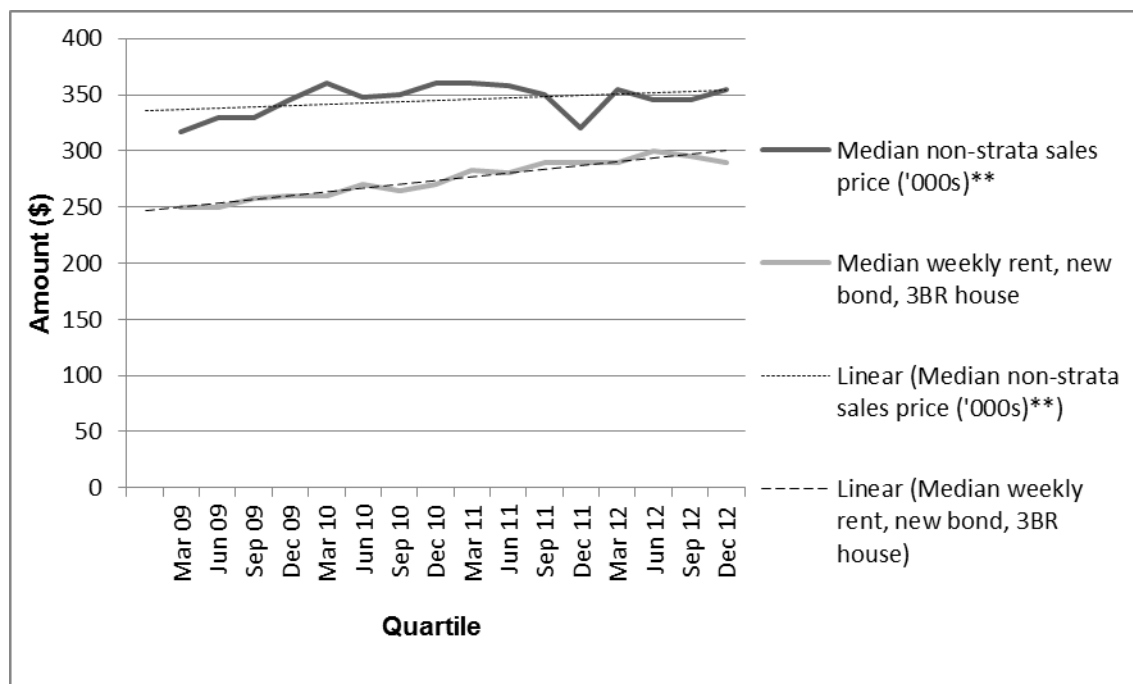
Source: ABS 2008

**Figure 7: Indigenous household income profile, Eurobodalla LGA, 2011**



Source: ABS 2013

**Figure 8: Average non-strata sales prices and rents, 2009–12**



Source: Rent and Sales Reports, Housing NSW (2009a–d, 2010a–d, 2011a–d, 2012a–d). Geography: Lower South Coast and South Coast areas.<sup>9</sup> Sales: non strata dwellings—mean sales price. Rents: median rents—3-bedroom separate dwellings, new bonds lodged.

Data from Housing NSW from March 2009 to December 2012 show that the cost of renting a three-bedroom house (homes with new bonds lodged) or buying a non-strata home (reported sales) in the Lower South Coast area increased, although rent increases appeared to be steeper than sale price increases (Figure 8). The median purchase price for non-strata homes hovered at around \$350 000 and gradually climbed overall, although not smoothly. As SEARMS intended to provide newly-built stock, the median price was taken as indicative of comparative housing on the open market; online searches for available properties in the area confirmed this price point. Using the 1:3 income ratio for mortgage stress, this purchase price would require a gross household income of roughly \$117 000 per annum, which is higher than the highest equivalent gross weekly income reported by survey respondents. Using Figure 2 as a guide, no respondent household had a gross annual income above \$93 600 (assuming maximum income of \$1800 per week). Annual reported incomes showed a slightly different pattern due to broader income bands (noted previously). Five households earned gross annual incomes of between \$37 001 and \$80 000, and five incomes of between \$80 000 and 180 000.

#### 4.4 A workable CLT model on freehold land

Many of the respondent households were carrying moderate to high levels of personal debt (e.g. car loan and/or credit card debt). This debt would compromise their borrowing capacity and potentially their capacity to repay a mortgage. Similarly, the majority of households did not have savings at a level that would provide a deposit. Further, the maximum recorded income of \$93 600 (based on gross weekly earnings), was below the income required to access a median-priced home in the Eurobodalla region.

At the time of research, SEARMS intended to move ahead on implementation once local lenders, including IBA, had been consulted about lending on a 99-year lease. Given the

<sup>9</sup> Rent and sales reports classifications changed during this period. As per Housing NSW (2012d, p.15), 'Rent and sales statistics in "Rest of NSW" are now reported by Statistical Area Level 3 (SA3) of the ASGS (2011) rather than by Statistical Subdivisions of the ASGC (2006)'.

relatively small pool of eligible households among their members, and fast rate of rental increases, SEARMS was also considering whether there was greater need for equity products or affordable rental housing in the region. Further, considering these issues in the context of the region's broader housing and employment markets, SEARMS was considering whether there was value in creating an equity product, as equity returns might be low and subsequent buyers potentially hard to find. This is a crucial point for many Indigenous communities.

In response to SEARMS' issues and concerns, a hypothetical CLT model was tabled. It should be noted that at the time of writing SEARMS had not discussed the hypothetical model at the Board level, so this is not a ratified SEARMS program. Rather, it has been drafted as a viable option based on SEARMS' interest, capacity and concerns, should the organisation decide to pursue the development of an equity product. As such, it serves to illustrate the operational parameters of such a model based on current organisational, household and market data.

The proposed model is based on SEARMS' objective for title to remain with the organisation (as an Aboriginal community organisation) and on the data regarding current household levels of debt and absence of savings. As such, the model amends the 99-year lease provided in the *Australian Community Land Trust Manual* (Crabtree et al. 2013) to enable a two-year pre-purchase period (the 'Initial Period'), which SEARMS could implement if and when desired. The amendments to the 99-year lease and the Additional Conditions were drafted by specialist lawyers in working sessions with researchers and SEARMS staff and are provided in Appendix 2. During the Initial Period, the household would save for a future deposit via a forced savings mechanism and clear their existing debt. The Initial Period is intended as a 'testing of the waters' for both the household and SEARMS. It is intended to test the household's capacity to meet their future housing costs; to clear household debt; and to enable households to become familiar with their responsibilities under the 99-year lease.

If the conditions of the Initial Period are met, at the two-year mark the resident then pays the lease Premium by entering into a mortgage with a lender, with the return on the Premium in the event of lease termination (i.e. sale or bequest) specified in a reversion formula. SEARMS indicated that their indicative household would be a couple with children on a gross annual household income of \$85 000 per annum currently living in a three or four-bedroom house with the lease premium set at \$160 000. SEARMS decided they wished to purchase recently-built homes to ensure the housing was in good condition at the start of the program and to increase the overall provision of local affordable housing stock. The UWS team performed financial modelling on the basis of the parameters discussed. Core features of the model are as follows:

1. SEARMS would purchase a well-located, recently-built four-bedroom house with a modest degree of energy and water-saving inclusions for \$500 000 using their current capital surplus.
2. Title would be freehold and held by SEARMS.
3. The household would sign the modified 99-year lease to enter a two-year pre-purchase period and move into the house.
4. Household costs for the first two years (the 'Initial Period') would be set at \$210 rent per week, plus \$200 per week as savings to be held in a dedicated joint account in the names of SEARMS and the resident. This would create a balance of \$20 800 plus interest at the end of the two years and was set to mimic the household's ongoing liability (\$410/week) once they assumed ownership via paying the lease Premium. These costs are specified in Appendix 3.
5. The household must identify as Indigenous to be eligible for the scheme, be a member of one of SEARMS' member organisations and not currently own residential property. They must also qualify for a personal loan for the Premium amount and commit to clearing their existing debt over the two-year period.

6. The ranking preference for eligible applicants is then:
  - Current residents of SEARMS member housing stock; followed by
  - Current residents of private rental housing in housing stress; then,
  - Current residents of other social housing.
7. Should the lease be terminated during the two-year per-purchase period, the savings held on the resident's behalf would be returned to the resident unless SEARMS needed to cover damage caused by the resident.
8. The lease has clear dispute resolution procedures.
9. At the two-year mark, the resident's savings are used as a deposit of at least \$16 000 towards the agreed lease Premium of \$160 000. The resident takes out a loan for the balance of \$144 000.
10. The model assumes that stamp duty is payable on existing properties; however, at the time of writing new builds attract a \$5000 grant under the NSW New Home Grant scheme, which we have not allowed for in the modelling.
11. Legal costs are covered by the household from their savings fund.
12. SEARMS covers the maintenance, rates and insurance for the dwelling in the Initial Period. After the household pays the full lease Premium they assume responsibility for these costs.
13. SEARMS needs an ongoing reserve of about \$180 000 per dwelling to buy the resident out if needed: for example, at a resale if no suitable applicants are available or if the household is unable to meet its loan payments. The household would receive their original purchase price plus some allowance for capital gains (if applicable) (see 14, next).
14. The resale formula stipulates that the household will receive their original investment plus 25 per cent of the increase on the original investment as calculated in line with changes in the average weekly earnings (AWE) index for the region. This was felt by SEARMS to represent the best balance between equity gain and the retention of affordability. Indexation is calculated from the date of payment of the Premium; that is, at the end of the two-year Initial Period.

This is expressed as:

$$V_Y = V_0 + 0.25[IV_Y - MV_0]$$

$V_Y$  = resident share value at Year Y

$$V_0 = \text{resident share value at Year 0}$$

$$IV_Y = \text{indexed value of property at Year Y}$$

$$MV_0 = \text{market value of property at Year 0}$$

Assuming 2 per cent per annum AWE increase and  $V_0 = 160\,000$ , the reversion price at seven years would be:

$$\begin{aligned} V_7 &= 160\,000 + 0.25[500\,000(1.02)^7 - 500\,000] \\ &= 160\,000 + 0.25(574\,343 - 500\,000) \\ &= 160\,000 + (0.25 \times 74\,343) \\ &= 160\,000 + 18\,586 \\ &= 178\,586 \end{aligned}$$

15. It is assumed that it costs SEARMS \$1000 per annum per dwelling to manage the scheme. This is covered by the ongoing administration fee.

Some financial modelling was undertaken to explore the impacts of this structure on households and SEARMS. The assumptions of the financial model are shown in Table 2

below. The modelling for this scenario, which is summarised in Table 3, demonstrates a number of important findings. It describes two hypothetical households which purchase a 99-year lease and then sell out over a 12-year period. Table 3 models the first nine years; Appendix 3 shows the full 12 years.

**Table 2: Assumptions of the SEARMS model**

Item	Cost
Land and dwelling cost	500,000
Lease premium	32%
Deposit percentage of premium	10.0%
Deposit amount	16,000
Interest rate—deposit fund	3.50%
Interest rate	6.50%
Loan term	30 years
Monthly payments	910.18
Rates and insurance per annum	2,200
Repairs and maintenance per annum	5,000
Number of years to be eligible	2
Administration fee per week, Years 1 and 2	210
Administration fee per week, Year 3 onwards	25
Instalment premium per week, Years 1 and 2	200
Annual increase in rents and house prices	2%
Share of capital appreciation to household	25%
Management cost per dwelling per annum	1,000
Increase in average weekly earnings (AWE)	2%
Increase in household costs per annum	2%

The core findings from this modelling are as follows:

1. SEARMS receives a modest return on their original investment of \$500 000 of about 2 per cent.
2. However, for this modest investment return, SEARMS helps households gain experience with a home ownership product and frees up an existing rental property. If and when they sell, households leave the housing with potentially substantial deposits for a market-based home ownership product. For example, the first household that enters the scheme has a cash balance of about \$38 000 when they leave the scheme after year 7, plus potentially some cash from their maintenance sinking fund and a demonstrated history of meeting their mortgage payments (see Table 3 below).
3. Because both entry and exit payments for the scheme are tied to average weekly earnings (AWE), house price movements have no impact on the individual households, although substantial house price inflation would make it more difficult for the departing households to access a market-based home ownership product and hence reduce the likely number of households assisted.
4. The scheme is reasonably expensive because it involves SEARMS purchasing 68 per cent equity in a coastal property. However, if SEARMS can slowly build up a portfolio this will



take some pressure off their existing rental stock. It is also likely that over the longer term, residential property in the area will increase in value.

5. There may be an argument to amend the NSW Duties Act to waive stamp duty for tenants of Indigenous community housing providers. Currently this is waived for purchases by NSW AHO tenants (see Appendix 5).

**Table 3: SEARMS' cash flow up to year 7**

	Y0	IP1 <sup>10</sup>	IP2	Y1	Y2	Y3	Y4	Y5	Y6	Y7
Rates and insurance		-2,200	-2,200						-2,200	-2,200
Repairs and maintenance		-2,500	-2,500						-2,500	-2,500
Management		-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000
Administration fee		10,920	10,920	1,300	1,300	1,300	1,300	1,300	12,544	12,795
House purchase	-500,000									
Stamp duty		-4,090		4,090						
Capital gains to seller								-13,010		
Payment from purchaser			160,000					-160,000		183,790
Net cash flow	-500,000	1,130	165,220	4,390	300	300	300	-172,710	8,144	192,184
Internal rate of return	2.2%									
Equity payment for new entrant			160,000	163,200	166,464	169,793	173,189	176,653	180,186	183,790
Potential capital gain payment on exit				2,500	5,050	7,651	10,304	13,010	15,770	18,586
Potential rents (i.e. admin. fee for new households)		10,920	11,138	11,361	11,588	11,820	12,057	12,298	12,544	12,795

<sup>10</sup> Initial Period 1: first year of two-year Initial Period.

## 4.5 The CLT Decision-Making Tool: process and feedback

The CLT Decision-Making Tool (see Appendix 4) emerged from fieldwork and discussions among the UWS team and SEARMS which identified core issues that housing organisations would need to address when developing or considering relevant housing options for their community. The CLT Tool is intended to be used by a range of providers, including LALCs and Corporations. The Tool was developed in close synergy with *The Australian Community Land Trust Manual* (Crabtree et al. 2013) and provides cross-references to relevant sections in the manual where appropriate. It also cross-references decisions that impact on each other within the tool itself. The overall aim was to streamline information provision as much as possible. This was a key request from the research partners and the IAGs.

The CLT Tool is designed to help organisations work through a range of decisions that need to be made in a logical sequence ('steps'). The Tool is not designed as a substitute for legal or financial advice, or to provide a definitive assessment of an organisation's demand or capacity for a CLT model. Rather, it is designed to provide space for organisations to engage in discussion through a range of prompts, questions, scenarios and examples from the NSW case study and to record their own decisions. The CLT Tool was workshopped and endorsed by SEARMS and both IAGs (NSW and NT). Initially it was intended to be NSW specific and it retains that orientation (e.g. its reference to the NSW case study). However, it was shared with the NT IAG at their request and endorsed as of value to inform community discussion and decisions regarding housing options in the Northern Territory.

## 5 NT CASE STUDY: CONTEXT AND PROCESS

This chapter provides an overview of the current Indigenous housing context in the Northern Territory and the case study site, and details the research process undertaken with Alice Springs Town Camp communities and stakeholders. For a detailed discussion of the rationale for the selection of the Alice Springs Town Camps as the single NT case study site, please refer to Chapter 1.

### 5.1 Context

#### 5.1.1 Alice Springs Town Camps and Tangentyere Council

Town Camp residents are a demographically distinct subsection of the Indigenous population of Alice Springs. Most Camps are governed by a housing association or Aboriginal Corporation that holds title to the Camp via a perpetual lease from the Crown—see Table 4 below for details. Alice Springs has 18 Town Camps, some located on its outskirts and some nearer to its centre. This includes 16 Town Camps which are members of Tangentyere Council, Ilpeye Ilpeye (which resigned its membership in December 2009<sup>11</sup>) and Irklancha Atwatcha. Anhelke Aboriginal Corporation, which still exists as a body corporate; however, Anhelke/Namatjira Camp has been closed (Foster et al. 2013).

While the majority of Town Camps have Arrernte residents, the Traditional Owners of Alice Springs, the majority include residents from other Central Australian language groups. There are strong links between the Camps and their traditional lands, and substantial population mobility both between and within the Camps and between the Camps and remote communities (Tangentyere Council, n.d.).

Of the 18 Town Camps in Alice Springs: 13 are on Special Purposes Leases in Perpetuity; two are on Crown Leases in Perpetuity; one holds a certificate of title; and one has no security of tenure (Foster et al. 2013) (see Table 4 below). Each Town Camp is its own distinct community, based largely on language and kinship groups. The Camps existed before the township of Alice Springs was gazetted (Coughlan 1991) but became formally organised through the 1970s with each Town Camp establishing an incorporated housing association or Aboriginal corporation. Each of these organisations was then represented as a member of the Tangentyere Council, an incorporated body established by the Town Camps to provide the majority of services to Town Camp residents as well as to act in a representative capacity.

Prior to December 2009, Tangentyere Council managed 199 houses across the Camps (Foster et al. 2013). Historically the Tangentyere Council housing office provided executive support for the housing associations and Aboriginal corporations, coordinating approximately 90 meetings per year including 18 AGMs and quarterly Housing Association/Aboriginal Corporation Management Committee Meetings. According to Foster et al. (2013 p.5):

... this service aimed to empower Housing Association members and residents to maintain control of their own future, and to adopt strong principles of self determination and community development in carrying out its tasks. These meetings enabled:

minimal internal disputes and increased community capacity

compliance with the *Associations Act and the CATSI Act*

compliance with conditions of grants

accountability to governments and the broader community

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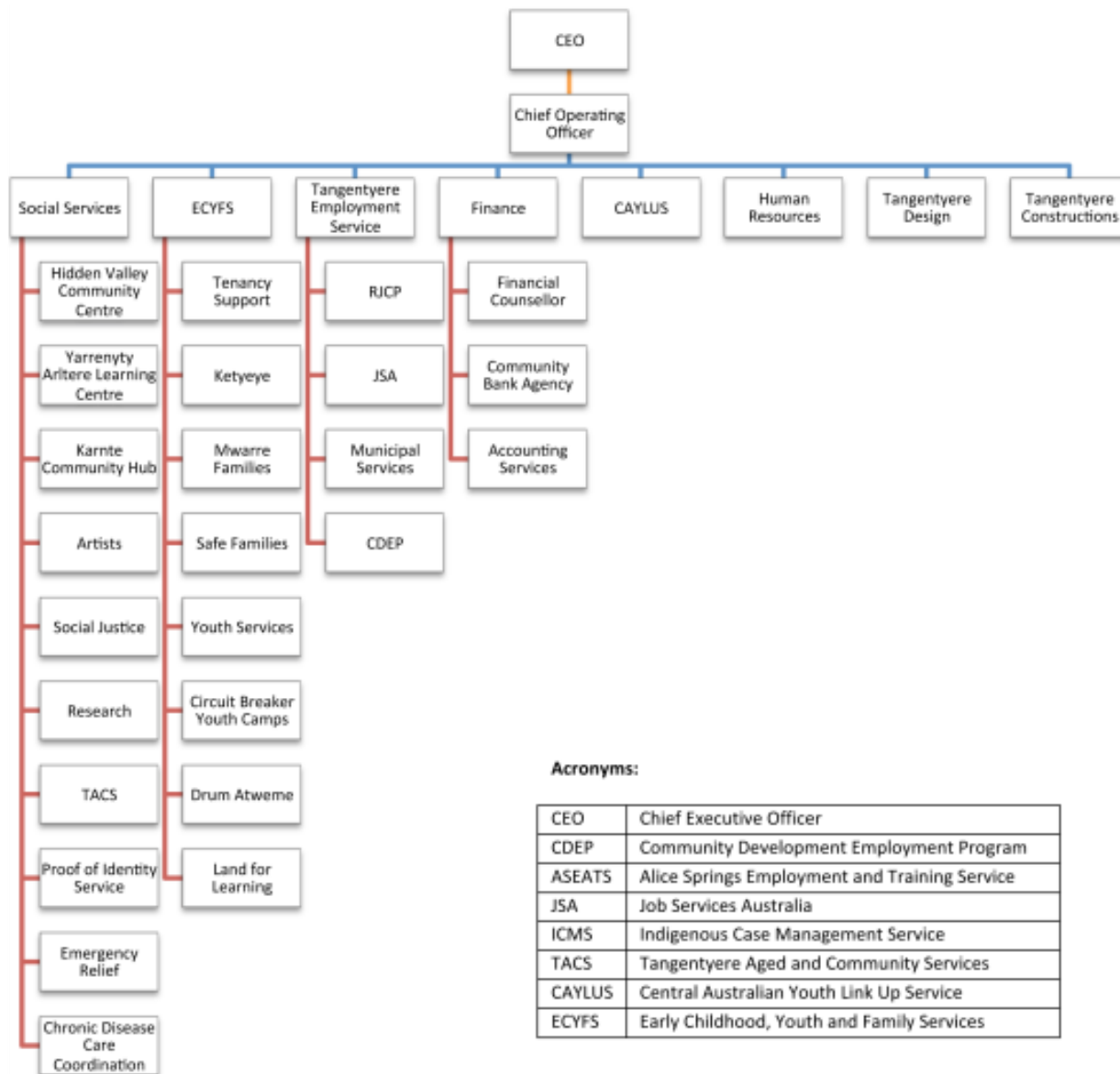
<sup>11</sup> Ilpeye Ilpeye opted for their land to be compulsorily acquired by the Federal Government rather than to sign a 40-year sublease. Their land has since been converted to freehold and there are ongoing negotiations under way as to the final tenure options for Ilpeye Ilpeye residents.

community control, responsibility and self-management  
 support of governance and leadership  
 on-going education regarding government policy directions.

... This service was also responsible for organising Special Purpose/Crown Lease 'Trespass Notices' to be issued and served, and for all other general administration, correspondence, member requests relating to Housing Association business.

The range of services provided by Tangentyere Council to the Town Camps is indicated in Figure 9 below.

**Figure 9: Tangentyere Council organisational diagram**



**Table 4: Governance, tenure and land area of the Alice Springs Town Camps**

	Locality	Alias	Legislation	Incorp. Date	Lease				
					Tenure	Parcel	Area (ha)	Application	Granted
1	Ilperle Tyathe Assoc.	Warlpiri	Associations Act	17/11/1978	SPL-450	1	8.72	1977	30/01/1979
2	Aper-Alwerrkngge Assoc.	Palmer's Camp	Associations Act	17/04/1977	SPL-459	1	0.917	1977	25/07/1979
3	Mount Nancy Assoc.	Mount Nancy	Associations Act	16/07/1974	SPL-409	1	4.25	1977	16/07/1976
	Itwiyethwenge <sup>12</sup>	Basso's Farm	(as above)	(as above)	SPL-554	1	0.734	(as above)	(as above)
4	Anthelk-Ewlpaye Assoc.	Charles Creek	Associations Act	16/07/1974	SPL-426	3	13.45	1977	12/08/1977
5	Nyewente Assoc.	Trucking Yards	Associations Act	06/02/1975	SPL-449	1	6.9	1977	28/12/1978
6	Akngwertnarre Assoc.	Morris Soak	Associations Act	14/11/1974	SPL-438	1	2.76	1977	22/12/1977
7	Ewyenper-Atwatye Assoc.	Hidden Valley	Associations Act	11/08/1977	SPL-473	1	28.55	1977	30/01/1980
8	Yarrenyty Arltere Assoc.	Larapinta Valley	Associations Act	17/11/1978	SPL-536	1	90.61	1977	23/06/1981
9	Anthepe Housing Assoc.	Drive In	Associations Act	08/03/1974	SPL-412	1	14.41	1973	08/11/1976
10	Inarlenge Assoc.	Little Sisters	Associations Act	28/02/1978	Crown Lease-1112	1	8.9	1973	11/06/1973
11	Ilyperenye Assoc.	Old Timers	Associations Act	22/08/1977	SPL-550	1	2.65	1977	14/09/1981
12	Ilparpa Aboriginal Corp.	Ilparpa	CATSI <sup>13</sup>	25/10/1979	SPL-493	1	3.57	1979	02/07/1980
13	Mpwetyerre Abor. Corp.	Abbotts Camp	CATSI	25/10/1979	SPL-543	1	1.54	1979	04/07/1980
14	Ilpeye Ilpeye Abor. Corp.	Ilpeye Ilpeye	CATSI	12/07/1979	Acquired <sup>14</sup>	1	11.69	1979	17/06/1986
15	Karnte Aboriginal Corp.	Karnte	CATSI	11/07/1983	Crown Lease-1111	1	7.51	1981	01/02/1988
16	Lhenpe Artnwe Abor. Corp.	Hoppy's Camp	CATSI	06/08/1986	(SPL-426) <sup>15</sup>	n/a	n/a	n/a	n/a
17	Anhelke Abor. Corp.	Namatjira (closed)	CATSI	15/04/1987	n/a	n/a	n/a	n/a	n/a
18	Irrkerlantye Abor. Corp.	White Gate	CATSI	28/10/1992	n/a	n/a	n/a	n/a	n/a
19	Irklancha Atwacha Assoc.	Irklancha Atwacha	Associations Act	unknown	Cert. of Title <sup>16</sup>	1	unknown	unknown	unknown

<sup>12</sup> The Itwiyethwenge (Bassos Farm) Special Purposes Lease is held by Mt Nancy Association

<sup>13</sup> *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

<sup>14</sup> Formerly Crown Lease-00578

<sup>15</sup> See Charles Creek (i.e. Lhenpe Artnwe is part of SPL-426)

<sup>16</sup> Certificate of Title Volume 203 Folio 009

### *5.1.2 Demographic context and housing need*

The NT Indigenous population was counted at 56 779 in the 2011 Census (ABS 2012). This represents 27 per cent of the total NT population, which is by far the highest proportion of all the states and territories, with the national average being 2.5 per cent (ABS 2012).

SSPR (2009) documented that in the years prior to that publication, there was a strong increase in the percentage of Indigenous people living in the larger urban centres in the Northern Territory, such as Greater Darwin and Alice Springs, and in towns of 1000–2000 people. There was a corresponding decrease in the proportion of Indigenous people living in locations of less than 200 people (from 30% in 1976 to 23% in 2006) (SSPR 2009, p.6). This ‘urban drift’ may have particular relevance to the Alice Springs Town Camps. Biddle (2012, p.17) states Alice Springs experienced a 6.5 per cent inflow to its Indigenous population over 2006–11. Anecdotal evidence suggests town camp and urban centres are witnessing ongoing urban drift due to the government policies associated with the Intervention, which favour concentration of funding and service delivery to priority towns (e.g. Shaw 2012). However, there is a lack of recent research showing clear causation between policy changes and urban drift, reflecting a broader lack of substantial research into patterns of Indigenous mobility (Taylor 2012). Foster et al. (2005) document the most recent town camp mobility study, which was too early to capture data regarding the Intervention.

Almost three-quarters of NT Indigenous households are renters (71.7%) and the vast majority of these live in public housing. A fifth of Indigenous individuals in the NT own or are purchasing their home (20.1%)—this is less than a third of the national average (ABS 2012).

ABS Census data has long been recognised as potentially inaccurate in respect to the enumeration of Indigenous individuals. The Tangentyere Council Research Hub (TCRH) conducted a survey of Town Camp residents in 2005 and found significant undercounting (Foster et al. 2005). According to that report, the estimated base population was 1955—more than double ABS estimates at that time. Taking into account mobility between Town Camps and other Central Australian communities, Foster et al. (2005, p.43) calculated the resident population of the Town Camps to be between 1765 and 2065, with a service population of between 2560 and 3300.

The 2011 ABS Census puts the Indigenous population of the Alice Springs LGA at 4689, or 18.6 per cent of the LGA population. However, as 2086 individuals did not disclose their Indigenous status, the Indigenous population of the LGA could well be larger. The 2011 Census also registered 908 individuals as Town Camp residents, which equates to 19.4 per cent of the Alice Springs LGA Indigenous population. Foster, Davis and McCormack (2013) estimate the current Town Camp population to be 2765 residents with a service population of 4676. In their 2005 survey of the Town Camps, Foster et al. (2005, p.44) found an occupancy rate of between 10.8 and 16.1 people per house. This population density has not decreased (Foster et al. 2013). The additional 85 houses more recently constructed under the SIHIP (discussed later in this chapter) appear to be insufficient to counter the crowding caused by urban drift.

### *5.1.3 Housing stock*

Prior to the suite of policy changes which accompanied the NTER and SIHIP, all targeted funding was channelled into ICHOs such as Tangentyere Council. At 6000 dwellings, the sector’s portfolio was larger than that of Territory Housing and housed 63 per cent of the NT’s Indigenous population (Porter 2009, p.1). At the commencement of this project, Tangentyere Council managed 198 houses on the Town Camps (Tangentyere Council, n.d.). The additional 67 or so tin sheds identified by Foster et al. (2005) have now largely been removed with the implementation of the SIHIP, with the exception of those on Irrkerlantye/White Gate. Just as Sanders (2004) found a greater similarity between Town Camp residents and remote community members, so the issues with housing on the Town Camps can be seen as more

analogous to those found in Indigenous community housing in remote communities. As Porter (2009, p.11) summarises, difficulties include poorly designed and constructed housing, overcrowding and the inherent inability for social housing to be financially viable, culminating in stock deterioration (see also Horne et al. 2013).

The governmental response to these challenges has been to move from a community housing model to a public housing model whereby tenancy and property management is under the control of Territory Housing. It is perhaps implicit in that response that the 'blame' for the situation rests with the ICHOs, rather than recognising the more complex reality of managing poor stock in remote locations and housing people with the inability to pay sufficient rent to meet costs. Elvin et al. (2010, p.1) refer to a 'significant mismatch between supply side activities and demand side realities' in the context of remote Indigenous housing in the NT, which 'means there will be continuing discordance between government program implementation and residents of remote Aboriginal settlements'.

In the Town Camp context, the suggestion that organisational governance or capacity is a causative factor in poor housing outcomes has been refuted by Tangentyere Council. In 2009, Tangentyere Council challenged comments made by the incumbent federal Minister regarding their housing management, citing rental collection, tenancy agreements and housing management policies designed to improve their viability (Tangentyere Council 2009). It was with that aim that Tangentyere had established the Central Australian Affordable Housing Company (CAAHC) in 2008 as an independent company established to provide viable and culturally appropriate housing management.

#### *5.1.4 The Intervention and local government amalgamation*

Undoubtedly the most significant policy shift in Indigenous affairs in recent years has been the suite of measures implemented under the NTER—commonly referred to as 'the Intervention' (see footnote 1 for full list of Acts and Bills). The Intervention responded to the issues documented by the Northern Territory Government (2007) and primarily targeted poor school attendance, substance abuse, family violence and related social issues, via the imposition of 'prescribed areas' to enforce uniform responses to alcohol use, land reform and income management. The Intervention was conceived in a climate of 'emergency response' but has become entrenched in the NT as an Indigenous-specific layer of social control implemented by government. It is therefore criticised in some quarters as discriminatory and unable to respond appropriately or effectively to Indigenous peoples' disadvantage and social problems (see, e.g. Bielefeld 2011). Tangentyere Council (2012, p.19) refers to the Intervention as 'a blanket system of compulsory income management'. Previous work by the Central Land Council (2008) found varied, but predominantly negative, perceptions and experiences of the Intervention among Aboriginal communities.

In recent years substantial changes have occurred alongside income management which impact on Indigenous governance mechanisms that have historically underpinned or informed multiple programs and issues, including housing. Where Indigenous housing prior to the Intervention was funded by the NT Government but managed by local Indigenous organisations (e.g. community councils, housing associations or Aboriginal corporations), now management of social housing including Indigenous housing is in the hands of the NT Department of Housing (otherwise known as Territory Housing). More recently, Remote Housing NT was established to manage public housing in remote areas. This is a suite of leasing, funding, construction and management arrangements that includes bringing remote (including Town Camp) housing tenure into line with Residential Tenancies legislation, the establishment of Housing Reference Groups (HRGs) and the transfer of responsibility for repairs and maintenance to NT Housing. In some instances the management of Indigenous housing by government in recent years has been more a formal than practical reality as it has



fallen to local housing managers to implement on the ground.<sup>17</sup> However, these local housing managers can no longer directly organise repairs and maintenance. Recent research, including this project, highlights current areas of community satisfaction and dissatisfaction with these changes (see Christie & Campbell 2013; Centre for Appropriate Technology 2013).

Prior to the Intervention, Aboriginal Community Councils provided housing, municipal services and social programs as the local ICHOs. These were staffed by community members, frequently under the federal Community Development Employment Projects (CDEP) program. Following the dismantlement of ATSIC and devolution of identified funding to mainstream federal departments, these functions have been taken from community hands and placed with government. Evidence suggests that many of these functions—particularly CDEP—have not been taken up since (see Central Land Council 2008). Subsequently, where ICHOs once had direct control of and input into community housing, their input is now limited to the HRGs that can provide advice only to government in matters concerning their communities.

There are other areas of recent change which have also impacted significantly on Indigenous governance and ICHOs, including the restructure of local government (Elvin et al. 2010; Porter 2009). In 2008, the NT Government 'rationalised' local government by amalgamating almost 60 Aboriginal Community Councils into eight supershores (Porter 2009, p.iii). This raised substantial issues regarding the level of disenfranchisement and declining participation in local affairs (Sanders 2011, 2012). The conflation of these issues with the Intervention and subsequent impacts on ICHOs was captured by the Central Land Council (2013, p.10):

Community government councils were abolished by the making of 'restructuring orders' by Minister McAdam on 16 October 2007 pursuant to the newly amended *Local Government Act*. Most of these councils were also Indigenous Community Housing Organisations (ICHOs). Due to not being separately incorporated these ICHOs were also abolished by that law. The Shire reforms took full effect from 1 July 2008 and the changes were widely perceived across the CLC region as inextricably linked with the Intervention even though they were, in fact, separate processes.

The Central Land Council report also outlined the level of dissatisfaction and concerns among Aboriginal communities with regard to poor representation and engagement in the context of the shires. In 2012, Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda spoke out against the amalgamation, claiming it was severely impacting communities (Central Australian Aboriginal Media Association 2012; Horn 2012). In response to community opposition, after a change in government, the Northern Territory Government announced changes to replace the eight supershores with nine regional councils and establish local subsidiary authorities in 63 areas to advise the councils (Northern Territory Government 2013; ABC 2014). While the proposal is attracting political criticism as little more than a re-branding exercise, there is yet to be any assessment or feedback regarding its impacts.

It is beyond the scope and not the intention of this research to analyse the Intervention or changes to local or regional government. However, the cumulative negative impact of these reforms on community organisations, leadership and wellbeing in the Town Camp context has been documented by Tangentyere Council (2008, p.25) who note 'significant negative impacts, both materially and socially ... people reported feeling powerless, discriminated against, and embarrassed and ashamed on a regular basis'. Similarly strong feelings of anger and criticism of a lack of community engagement have been noted not only in the context of the Intervention but also the local government reforms (Central Land Council 2010).

### 5.1.5 *The current housing landscape*

In December 2008 the Council of Australian Governments (COAG) established the National Partnership Agreement on Remote Indigenous Housing (NPARIH). The NPARIH subsumed

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<sup>17</sup> For example, Yilli Rreung Indigenous Housing Corporation; Aputula Housing Aboriginal Corporation.

the functions of SIHIP, established earlier in 2008 as a major capital works program designed to address housing, training and employment deficits in targeted communities and Town Camps in the Northern Territory. Under the NPARIH, the Australian Government has dedicated \$1.7 billion to the Northern Territory and an additional \$230.4 million over six years (from 2012–13 to 2017–18) to improve existing housing provision in remote communities. As part of the Stronger Futures funding, it has also allocated \$53.1 million over 2012–15 for a ‘Healthy Homes’ program to remove materials containing asbestos from homes. This includes homes scheduled for demolition in order that new housing can be built (FaHCSIA 2013).

In 2009 the NT Government reported a further initiative, the ‘Working Future’ program, which sought to consolidate populations in ‘growth towns’. Twenty identified communities were to be developed into regional economic hubs with a wide range of government services such as housing, schools and clinics. Critics of this plan pointed to the 580 smaller communities that would be deprived of many government services. Since the plan’s inception there has been debate about its validity. Some have argued that outstations and homelands were healthier environments (Northern Land Council 2012) and that social problems were greater in the larger towns (Scrymgour in Rawlinson 2012). The policy has been modified due to such criticisms and, in March 2012, \$220 million in funding for services and infrastructure for outstations and homelands was announced by the Australian Government. The concentration of housing investment into priority communities, however, is viewed as a significant factor in urban drift compounding housing issues in the Town Camps of Alice Springs (see Porter 2009; Tangentyere Council 2012).

#### 5.1.6 Stakeholders

Figure 10 below shows the housing management landscape on the Alice Springs Town Camps before and after the Intervention, showing the complication by the existence of numerous stakeholders in the Indigenous housing space. It is important to note that this landscape includes organisations that did not formerly have a role (e.g. Territory Housing) and new organisations created as a result of the reforms (e.g. the Office of Township Leasing). The implications of this will be discussed further in Chapter 6. An overview is provided here.

Prior to the Intervention, Town Camps were secured through perpetual leases from government which were held by an organisation formed at the level of individual Town Camps—whether a housing association or Aboriginal corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). Those entities decided policies regarding allocations and dealing with visitors. The head tenant of each household held a housing agreement with their Town Camp entity. An elected representative of each organisation comprises the Executive of Tangentyere Council, in addition to representatives from the 4 Corners committee and the Women’s committee. Historically, Tangentyere coordinated and provided a range of wrap-around services to the Town Camps including housing repairs and maintenance, dog management, Night Patrol, CDEP schemes and others.

Tangentyere Council is the Founding Member of the Central Australian Affordable Housing Company (CAAHC). CAAHC was established in response to the changes in land tenure and housing management on the Alice Springs Town Camps since the signing of 40-year subleases between the Town Camp housing associations or Aboriginal corporations and the Executive Director Township Leasing (on behalf of the Australian Government) and CEO of Housing (on behalf of the NT Government). The Company has been operational since January 2011 when the NT Government and Tangentyere Council agreed to novate the service level agreement for the delivery of property and tenancy management services on the Alice Springs Town Camps. CAAHC is a not-for-profit Company Limited by Guarantee. CAAHC has four member organisations: Tangentyere Council (Founding Member); Healthabitat; MLCS Corporation; and Central Land Council.

Under the Intervention, Town Camps have entered into 40-year subleases to the Australian Government via the Executive Director Township Leasing in return for housing upgrades and construction, with the NT Government and NT Chief Executive Officer of Housing also parties to the sublease. Under each sublease, the Executive Director Township Leasing has entered into a three-year housing agreement with the NT Government. The NT Government has then entered into two contracts for service delivery: one for tenancy management via CAAHC; and another for asset management via Ingkerreke Outstations Resource Services. Town Camp residents can take part in Housing Reference Groups (HRGs) established by the NT Government as a consultative mechanism under the new arrangement; however, the HRGs are only consultative and do not have control over governance or policy.

### 5.1.7 Tenure

This section provides a brief overview of the tenure forms that relate to Indigenous land in the Northern Territory.

#### **Aboriginal Freehold Land**

This is land claimed by Traditional Owners under the *Aboriginal Land Rights (Northern Territory) Act 1976*, granted under inalienable freehold and which cannot be bought, sold or mortgaged. Title is vested in Aboriginal Land Trusts.

#### **Community Living Areas**

This is land excised from pastoral leases and granted to Indigenous organisations, recognising the fact that generally only Crown land is claimable under the Aboriginal Land Rights Act.

#### **Freehold**

This is usually land in gazetted towns, for example Apatula (Finke), Kalkaringi, Elliot. This land is owned by Indigenous organisations.

#### **Special Purposes Leases and Crown Leases**

These are perpetual leases from the NT Government to Indigenous organisations which were secured as a result of the struggle for tenure by Tangentyere through the 1970s and early 1980s. These underpin the majority of the Alice Springs Town Camps. A more detailed discussion, including legal and other implications for a CLT model, can be found in Chapter 7.

### 5.1.8 Subleases to government

The brief description below of the subleases to the Commonwealth of Australia as sourced from Tangentyere Council is relevant only to the Town Camps of Alice Springs and cannot be generalised to other locations in the NT. Other communities have negotiated or had imposed a range of sublease measures, a description of which is beyond the scope of this research.

In December 2009, 14 of the 15 Housing Associations that held perpetual head leases over their Town Camps signed 40 year subleases of their land to the Commonwealth Government in return for a commitment of \$100 million over five years to upgrade housing and essential infrastructure. Tangentyere Council negotiated with the government over a period of two years to get to this position, after initially being offered \$50 million in return for signing unconditional subleases for 99 years. Tangentyere Council remains of the opinion that essential housing and services should not have come at the price of leasehold. Weighing up the extreme level of need of Town Camp residents, with the threat by the Commonwealth Government to compulsorily acquire the camps if they did not sign, the Housing Associations negotiated the best option available at the time, and agreed to sign the subleases. (Tangentyere Council, n.d.)

### 5.1.9 Home ownership

Home ownership is relatively low among Indigenous people in the Northern Territory, at 20.1 per cent of the NT population in 2011 (ABS 2012). One of the Federal Government's aims is to increase home ownership levels among Australia's first peoples (FaHCSIA 2010). To this end, various programs (e.g. the Home Ownership on Indigenous Lands scheme) and changes to law have been implemented. Previous research by Wensing and Taylor (2011) suggests that government and community motivations and aspirations regarding home ownership diverge—a point explored further in our findings. There is also contention over the degree to which communal title is an impediment to home ownership. Currently land administration reform in the Northern Territory focuses on subdividing Indigenous land and enabling individual titling to lots, potentially via the transition of Special Purposes Leases through Crown Leases to freehold.

Wensing and Taylor (2011, p.5) state that:

Within this framework [i.e. Western, neoliberal] in which land is viewed purely as an economic asset, Indigenous lands are, above all else, a factor of production for which the most appropriate form of land tenure (if economic development is to be achieved) is some form of freehold, individualised title, with the intended long-term effect of integrating Indigenous people into the mainstream economy.

The rationale for focusing on tenure reform has been questioned, as ownership via long-term leasing can be granted without the excision of lots from Special Purposes Leases. This point is recognised in the academy (Sanders 2008) and encapsulated in an opinion piece by the Central Land Council Director David Ross (2013), who contends that barriers to home ownership are not an issue of communal versus individualised land, but rather 'the cost of houses and the ability of people to pay for them'. Both this current study and earlier research reported in Crabtree et al. (2012a) found this also to be an issue beyond the Northern Territory. Ross (2013) also makes the point that land administration reform is occurring with the involvement of Land Councils, but noted that the:

focus on the formalisation of tenure and improved land administration alone will be inadequate to improve economic outcomes and at times has distracted attention from other ongoing issues of concern.

It is within this context that the UWS team engaged with Tangentyere Council to explore the capacity and relevance for CLT-type housing on the Alice Springs Town Camps as an alternative to the excision, transfer to freehold and subsequent market-rate mortgaging of individual housing lots.

## 5.2 Research process

The NT component of this project was undertaken in response to previously expressed interest in CLTs among key Indigenous organisations in the NT. Building on prior contacts, the UWS team contacted all three Land Councils and met with local Indigenous organisations alongside the first NT IAG meeting, to explain the project and explore organisational interest in participation. Northern Land Council and Yilli Rreung Housing Corporation expressed in-principle support; however, Tangentyere Council was the only organisation with the capacity and willingness to engage in research at the time of fieldwork commencement. Central Land Council participated via an interview at the executive level and through support of an early meeting with a remote community looking into their future tenure options. It was decided that the community had immediate tenure concerns to focus on and that any CLT considerations would be subsequent to those; as such, that community did not participate.

After an initial meeting with core staff and executive members of Tangentyere Council, a meeting with the full Executive was scheduled to ascertain and secure full Executive endorsement of the project and Tangentyere's participation in it. Endorsement was secured

and the Executive determined that the most appropriate activity was a survey of all Town Camps to capture residents' perceptions of, and aspirations for, their camps and their tenure choices. It was felt that communities' voices were not being heard in ongoing debates, proposals and reforms impacting Town Camp land tenure. The UWS team agreed to work in partnership with Tangentyere Council via its Research Hub to survey Town Camp residents, as this would provide an opportunity for community voices to be heard.

Accessing substantial primary data on resident objectives resonates with one of the core operational parameters of CLTs: namely, to articulate appropriate tenure forms on the basis of existing need and community objectives. It is also a basic tenet of sound policy development, particularly in communities and situations involving 'wicked problems' and where a history of over-consultation exists alongside limited development of policy based on community experience or expertise (see Nicholson et al. 2012). Consequently, a resident survey across all Town Camps was seen as an appropriate research tool to capture primary data to inform policy and programmatic responses applicable to Town Camp communities and households, as well as yielding insights into household experiences of, and aspirations for, their Town Camps.

The Executive felt that a survey of 150 households across all Camps would be of a sufficient scale to be representative. At the commencement of the survey, this represented 75 per cent of households. The researchers surveyed households' head tenants or 'house bosses', as these individuals have responsibility and authority for their household, so are the most appropriate individuals to consult with regard to household and Camp governance, capacity, and aspiration. These are also the individuals who are most directly impacted by recent changes to household tenancies, and who would be in a position to make decisions regarding potential purchase of their home were this to become an option. This focus on seeking appropriate community knowledge is especially important in the context of potential urban drift to the Camps that might be undermining community cohesion, and destabilising the governance capacity of the Camps.

The survey was developed at workshops held in Alice Springs attended by UWS and Tangentyere Council Research Hub staff. A pilot survey of 12 households was conducted by the Research Hub in late 2012 to test the survey instrument. A primary researcher concern was that the survey instrument was too long and therefore very hard for researchers to administer in hot weather and around households' obligations to family activities. The Tangentyere researchers also flagged questions that needed clarifying and reworking for the subsequent survey.

A core insight emerging from discussions between Tangentyere and UWS research staff was that for the majority of households, any discussion of tenure options such as home ownership or CLTs was very much a case of 'putting the cart before the horse', as many households had limited understanding of previous or current tenure arrangements and therefore very limited capacity to consider alternatives or make informed choices. It was also apparent that recent changes implemented under the Intervention were creating confusion and stress among Town Camp residents, so the discussion between Tangentyere and UWS research staff also focused on the development of a housing terminology brochure by UWS that Tangentyere researchers could leave with households. The brochure was finalised by the UWS team on the basis of feedback from the Tangentyere researchers, who then handed brochures to participant households at the conclusion of the survey interviews.

It was strongly felt by the Tangentyere community researchers that it was more appropriate to focus the survey on capturing residents' experiences of living on Town Camps both before and after the Intervention, and their aspirations for the future. It was seen as important that these insights, experiences and objectives were captured to then shape any potential tenure reform, rather than households being subjected to further tenure reform proposals or implementation developed in isolation of their knowledge, experience or objectives. It was felt that the survey questions regarding past, current and future housing were best broken down into matters

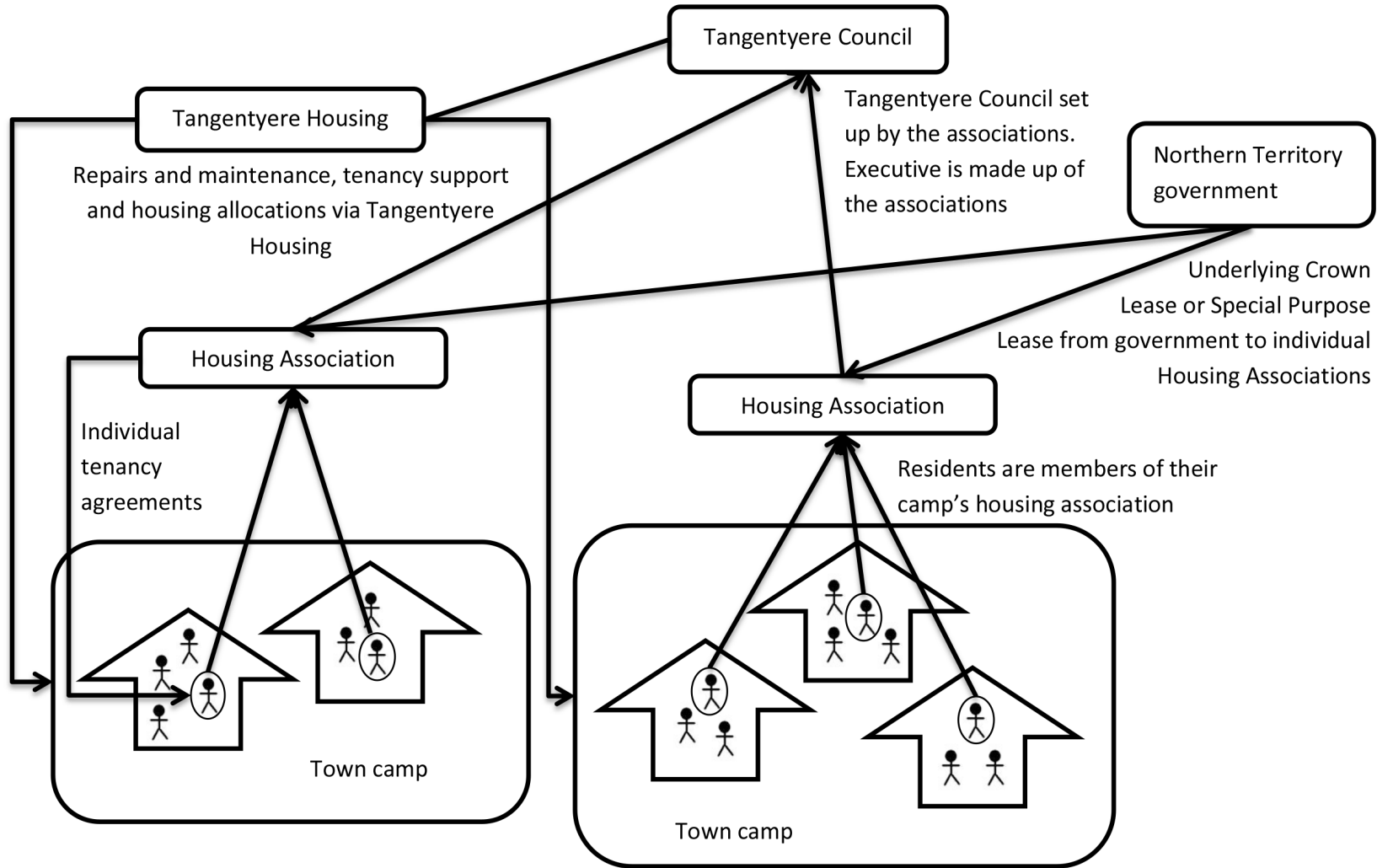
regarding governance, repairs and maintenance, and ideas about ownership. A series of questions on tenure were subsequently asked at the end of the survey, focusing on households' current understandings of renting and owning, as well as any current or future aspirations for home ownership.

The two surveys are presented in Appendix 6 (final survey) and Appendix 7 (pilot survey), with the findings discussed in Chapter 6. The housing terminology brochure is presented in Appendix 8. The mud maps presented in Figure 10 below were initially developed by the UWS team to clarify the team's understanding of the landscape and changes under the Intervention. Circulation of the images to Tangentyere to check for accuracy revealed these would be of great use for Tangentyere and for Town Camp communities. Consequently that document was also circulated through Tangentyere and the Town Camp communities, although independently of the survey process.

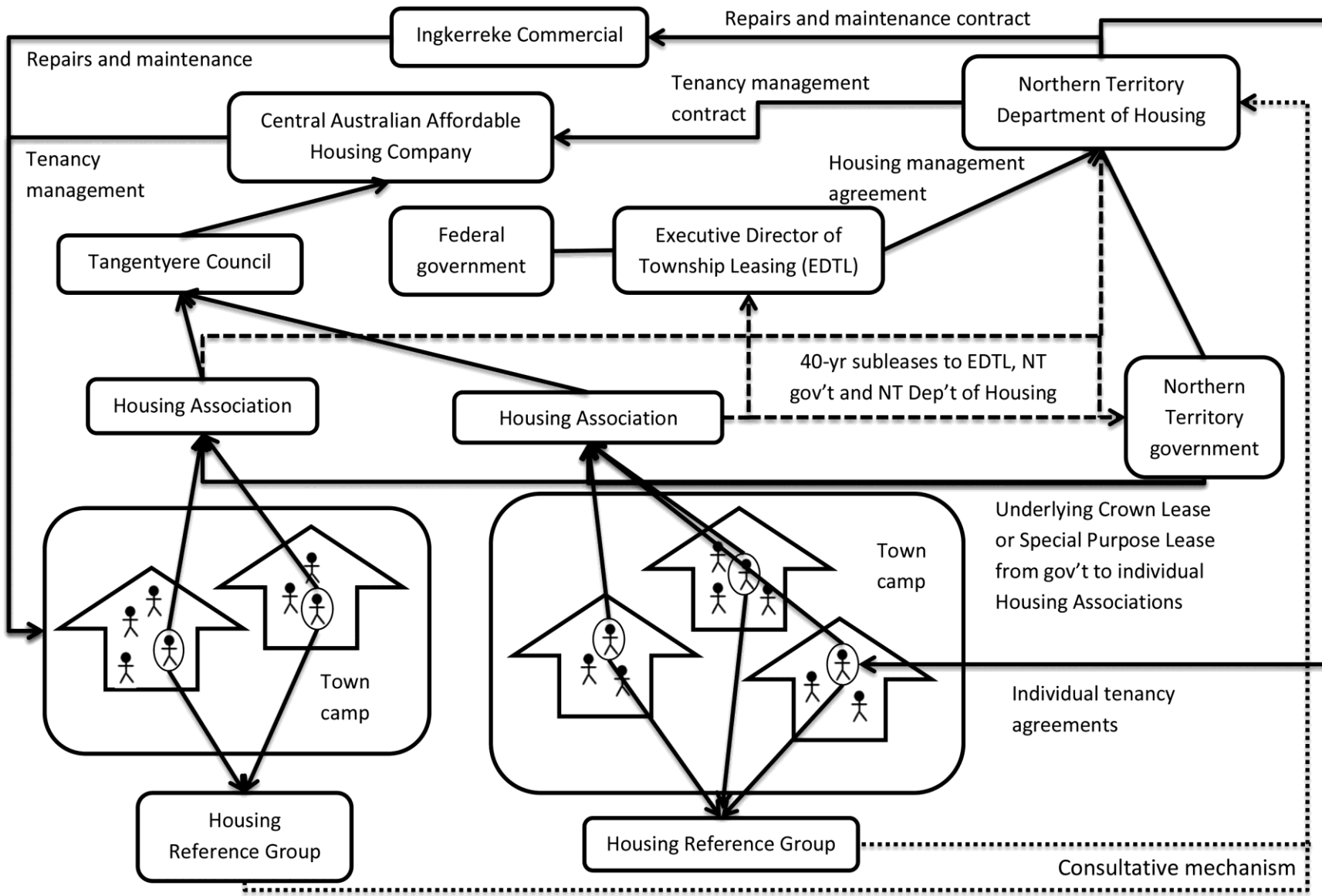
The full survey results were analysed and written up by the Tangentyere researchers and presented to UWS in a report. Its findings are incorporated into Chapter 6, primarily in Section 6.1. It was intended that two core Tangentyere Council Research Hub researchers would attend the final joint IAG meeting to present their results, discuss matters of concern to Town Camp residents, and hear insights gained from the NSW case study. However, they were unable to do so due to cultural obligations. As outlined in Section 2.3.1, alongside the Tangentyere Council Research Hub survey, the UWS team undertook semi-structured in-depth interviews with core stakeholders with experience or involvement with the Town Camps, including public and community sector agencies. Interviews were loosely structured to allow participants to table the issues which they perceived as most pressing or persistent through their experience with the Town Camps, as well as to scope the issues raised by consideration of tenure diversification. These interviews were recorded, transcribed and coded by the UWS team and form the basis of the discussion in Section 6.2.

**Figure 10: Town Camp housing management before and after the intervention**

**Before the intervention**



After the intervention





## 6 ALICE SPRINGS TOWN CAMPS: HOUSING ASPIRATIONS AND EXPERIENCES

This chapter presents the findings of the household survey conducted by the Tangentyere Council Research Hub, followed by a discussion of key issues arising from the in-depth interviews with key Town Camp housing stakeholders.

### 6.1 Housing experiences and aspirations

As outlined in Section 5.2, it was strongly felt by the Tangentyere Executive that the most appropriate task in considering CLT principles in the Town Camp context was the capture of community experiences of housing governance and repairs before and since the Intervention, as well as their aspirations for the future. This was felt by the Executive to be the best way to demonstrate and build on Campers' knowledge and capacity, which is very much in line with the core CLT principle of articulating and responding to local aspirations. Community researchers based at the Tangentyere Council Research Hub were subsequently contracted by UWS to conduct a pilot survey of 12 households (Appendix 7) and full survey of 150 households (Appendix 6) across the Alice Springs Town Camps. Questions focused on residents' experiences of housing governance and repairs before and since the Intervention, and their knowledge and aspirations regarding housing tenure.

#### 6.1.1 *Decision-making on the Town Camps*

Town Camp residents reported that they felt that much control had been taken away from households and communities since the Intervention. Figure 11 below illustrates Town Camp residents' responses to the question: 'Who makes decisions on your Camp?'. Campers were asked to reflect on the situation before and after the NTER (pre-2009). The figure shows a reduction in the number of residents who felt that decisions were made by their community following the Intervention, and an increase in those who felt that decisions were made by Territory Housing. Further, more residents were unclear about arrangements under the NTER than about prior arrangements. According to Foster et al. (2013 p.17), prior to these changes:

Rent was based upon income. Rules and laws were made according to each housing association. Community resolved issues in the open with the involvement of all community members. House bosses (head tenants) had control of their own house and had responsibility for maintaining their house.

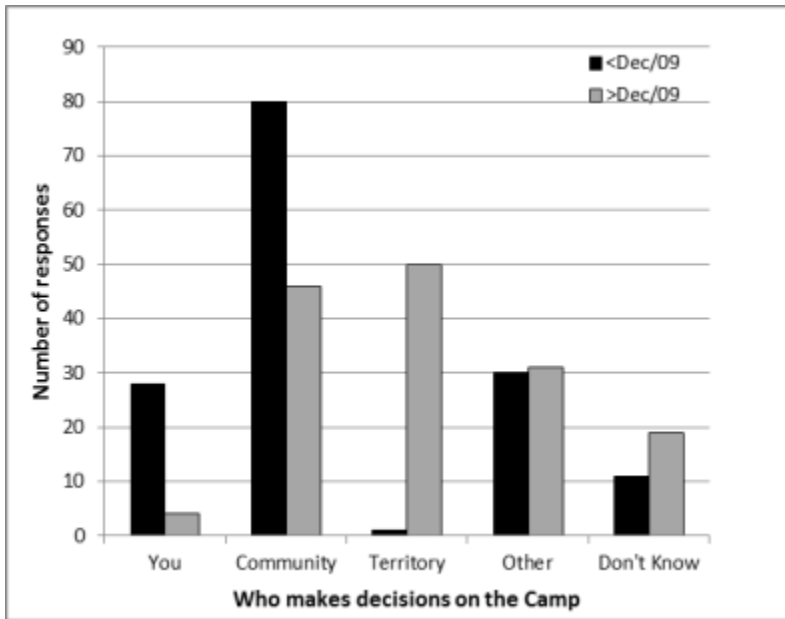
Town Camp residents were also asked about household responsibility and control before and since the Intervention. As Figure 12 below demonstrates, there is a notable shift away from a perception of household or community agency towards Territory Housing control, and an increased level of confusion. This is consistent with responses in Figure 11.

Residents were then asked who they felt made the rules in their home (Figure 13 below). As with previous responses, there was a notable shift away from feeling that households or communities made the rules, to feeling that the NT Government now made the rules. Relative to responses to the first two questions, this appears to be an issue about which more residents are clear. Reflecting on changes since the Intervention, Foster, Davis and McCormack (2013 p.19) stated:

Since the NTER (2007) and the signing of the sublease (December 2009) there has been a big shift with the control of housing on Town Camps. Territory Housing has the responsibility of maintaining all Town Camp houses. With this come new rules and laws. Territory Housing has control of housing allocations and household composition according to the number of bedrooms. Allocations are based upon waiting lists and rules are based upon policies, procedures, the Residential Tenancies Act and the Housing Act ... Adjusting to the new Territory Housing rules and laws meant a lot of

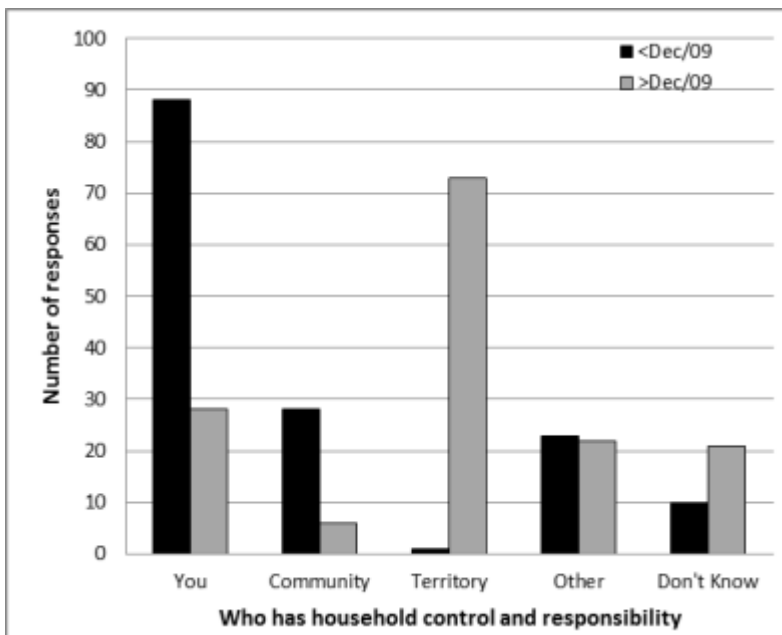
changes in a short period of time for residents of Town Camps. There has been frustration between residents, families and Territory Housing.

**Figure 11: Town Campers' views of who makes decisions: pre- and post December 2009**



Source: Foster et al. 2013, p.16

**Figure 12: Town Campers' perceptions of household control and responsibility: pre- and post December 2009**



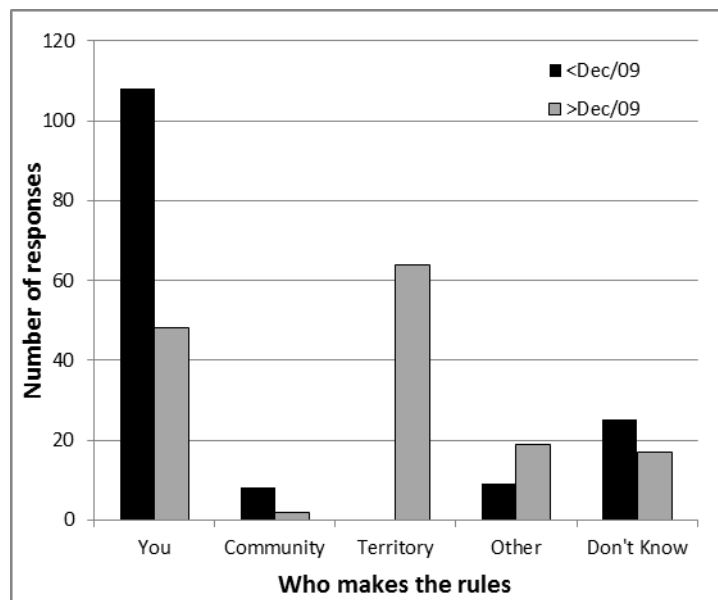
Source: Foster et al. 2013, p.17

The Tangentyere community researchers asked Town Camp residents whether they were aware of how housing rules had changed under the subleases. Fifty-four per cent responded positively to the question. The changes most frequently referred to by residents included three-month house inspections; visitor restrictions; rent increases; bonds; evictions ('three strikes' policy); and rules and permission before managing the house (hanging up photos, curtain rods,

beautification, etc.) (Foster et al. 2013). Sixteen per cent were aware of the changes and challenged the new rules. According to Foster et al. (2013, p.20), this group:

aspire to regain control of their housing and the Town Camp Special Purpose Lease/Crown Leases in Perpetuity. This control would allow people to manage their own affairs in a culturally appropriate manner. This group strongly articulated that they feel that their rights and voice have been taken away.

**Figure 13: Town campers’ perceptions of who makes the rules: pre- and post December 2009**



Source: Foster et al. 2013, p.17

A further 16 per cent didn't understand the new rules and didn't know how they had changed; 13 per cent felt there was no difference. In both instances, Tangentyere researchers stated that this was due to:

a number of issues such as low levels of literacy and numeracy, comprehension of English due to English being a second, third or fourth language, poor consultation by the Department of Housing and in some cases apathy (they are not really bothered and they just want to have a roof over their heads).<sup>18</sup> (Foster, Davis & McCormack 2013, p.20)

Town Camp residents were asked if they felt there had been an improvement under the new arrangements. One responded:

We are not comfortable with the new rules, but it seems that they are a must for the Government who seems to think that we can't cater for our children, families and our own health and wellbeing. The only consolation for us in keeping our houses is the fact that the 40-year subleases will end and that control will be returned to us in the future. (cited in Foster, Davis & McCormack 2013, p.20)

Residents acknowledged that there had been improvements in terms of new roads, drainage and street lights; refurbishment of old houses; new houses built; and house security (screen, doors windows, yards). The Tangentyere community researchers reflected on the difficulty

<sup>18</sup> Tangentyere Council has developed this understanding through the facilitation of Town Camp Housing Association Meetings, Housing Association Committee Meetings, Tangentyere Executive Committee Meetings, Community Capacity Building Workshops, through feedback from services such as the Indigenous Case Management Service and the Tenancy Sustainability Program.

residents had in unpacking the impacts of housing policy from the broader impacts of changes associated with the NTER:

It seems that it is difficult for people to determine how the rules and laws are impacting upon residents and visitors. This difficulty comes from the number of concurrent issues that people are faced with on a daily basis and the number of detrimental government policy initiatives that have coincided with the Northern Territory Emergency Response, Stronger Futures, Local Government Reform, Income Management, Alcohol Protected Areas and other major initiatives. Town Campers feel like the most heavily controlled and most disadvantaged people in Australia. (Foster et al. 2013, p.21)

Foster et al. (2013) found that Town Camp residents referred to two primary issues regarding the housing changes under the new arrangements: first, that there was now more antisocial behaviour from visitors, with resultant evictions; and second, that people from a broader waiting list were included in Town Camp housing allocations, which included non-Town Camp residents. When asked about ongoing governance arrangements, the majority of residents surveyed said they would prefer for rules and decisions to be made by Tangentyere Council.

#### *6.1.2 Repairs and maintenance on the Town Camps*

Town Camp residents were asked how long repairs and maintenance had taken before and after the Intervention. Responses to this question indicate an overall increase in repair and maintenance times (Figure 14 below). Town Camp residents reported that in some instances this period now exceeded 12 months. The majority of Town Camp residents surveyed reported that they would prefer that Tangentyere did the repairs and maintenance.

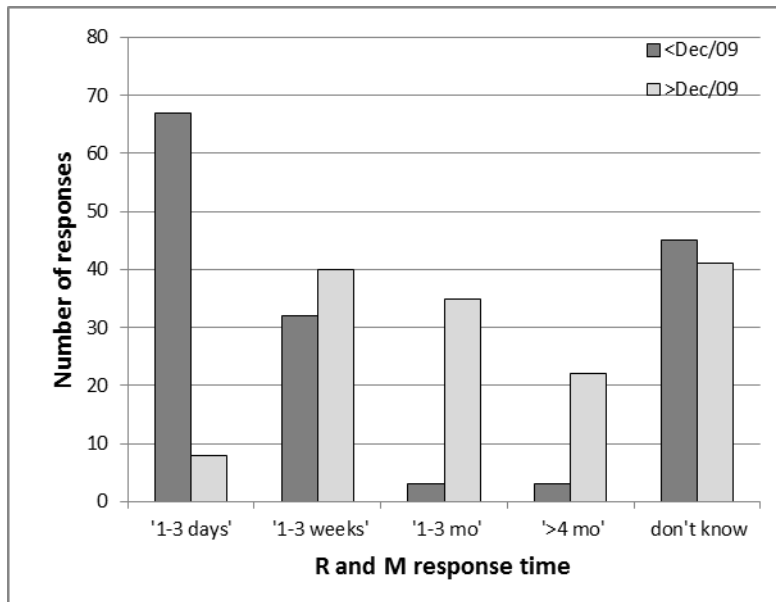
Respondents reported that prior to December 2009 a large proportion of R & M was carried out within one to three days (with the majority of the balance being carried out within one to three weeks). In contrast, respondents reported that since December 2009 the waiting period has markedly increased. Residents complain that the process and duration of R & M has markedly increased in complexity and time. (Foster, Davis & McCormack 2013, p.24)

#### *6.1.3 Control of housing and Special Purposes/Crown Leases in Perpetuity*

Town Camp residents sought control over decisions that impacted on their lives to which housing was central:

... we definitely would like to have a say about our homes and Town Camps. It is Town Campers who are going to deal with the real issues on a daily basis. We are there to manage our family members fighting, we are confronted by visitor problems, our residents are in the firing line when it comes to payback and it is Town Campers who comfort those that are suffering with grief and loss, depression, trauma, alcohol and drugs, racism and the other issues faced by Aboriginal people in Alice Springs. (Foster, Davis & McCormack 2013, p.24)

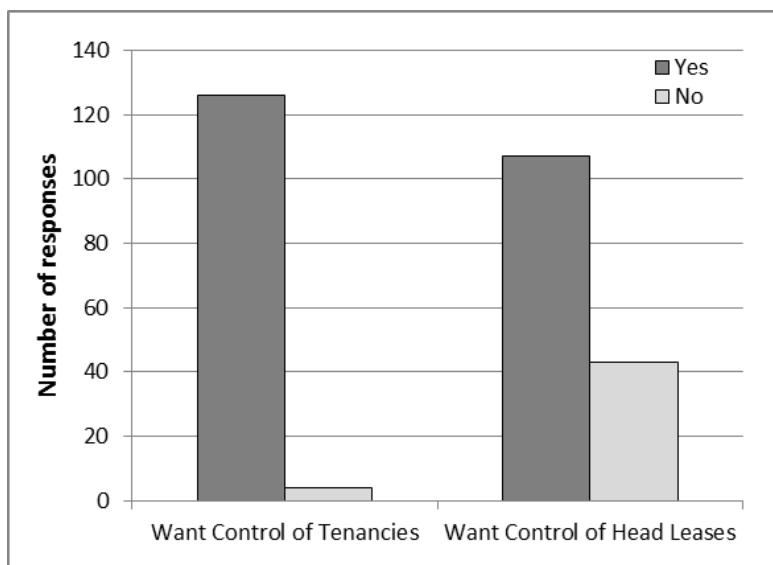
**Figure 14: Repair and maintenance response times: pre- and post-December 2009**



Source: Foster et al. 2013, p.22

This desire for community control is reflected in responses to questions about ongoing control of household tenancies and the Town Camp underlying Special Purposes Leases and Crown Leases (Figure 15).

**Figure 15: Preference for control of Town Camp tenancies and head leases**



Source: Foster et al. 2013, p.22

Foster, Davis and McCormack (2013, p.24) highlight particular issues raised by residents in relation to control (or lack of control) on the Town Camps:

- Inappropriate housing allocations.
- Increased bureaucracy around transfers.
- Increased repair and maintenance waiting times.
- Decreased cultural awareness of staff.
- Increased likelihood of evictions.

- Increased rent.
- Changed status from owners to tenants.
- Reduced security of tenure.
- The threat of land reform.
- Poor consultation processes in relation to Town Camp land.

It is worth noting that Town Camp residents raised the issue of a perceived change from being owners to renters under policy changes that followed the Intervention. This should be kept in mind in considering residents' responses to questions relating to home ownership. Foster et al. (2013, p.25) documented residents' comments on the issue of control of their communities:

White man's rules and laws have made living on Town Camps frightening. We have basic rights, but we can't make our own decisions with white people always looking over us.

Tell the government to give our life back.

I want the right to control my people in a dignified way that does not cause an argument between my families.

We don't know what to do, it's like we don't have any control of our camp anymore or have any say. We have a housing reference group, but we're just there as an advisory group, but still Territory Housing have the last say. That is why we have mixed tribe living here in this camp.

We don't have much control of who can move into an empty house. Territory Housing puts anybody in the house even though we know they are troublemakers.

Territory Housing or Government should not talk on our behalf. We should be the one talking because at the end of the day we are the ones who will be dealing with the issues.

We have always been strong about our house, but now we have Territory Housing Government running the show and telling us about new rules and laws and how to live.

#### 6.1.4 Home ownership on Town Camps

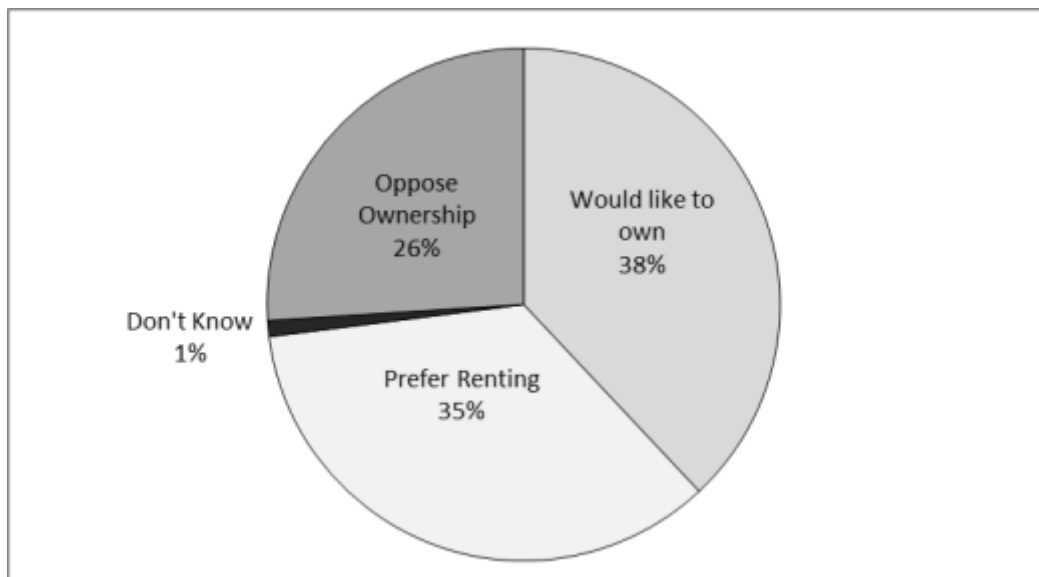
The issue of home ownership is perhaps indicative of the core underlying issue at stake for Town Camp residents: whether residents desire a sense of ownership, and what that means. Figure 16 below shows residents' responses when asked if they would prefer to own or rent their current home—38 per cent stated they wished to own their home, 35 per cent preferred renting and 26 per cent opposed ownership.

Foster, Davis and McCormack (2013) explain the broader context for these responses. They note that Town Camp residents previously felt they owned their housing as a community via existing Special Purposes Leases or Crown Leases in perpetuity, and felt the individual housing agreements between households and their Town Camp's housing association or Aboriginal corporation were also agreements in perpetuity. This arrangement provided residents with a strong sense of community ownership of land and housing, and of individual security of tenure at the household level. Importantly, both forms of tenure were understood to be in perpetuity. Hence responses to this question were influenced by three things: first, communities' sense of ownership having been lost or compromised; second, the sense of community legacy bound up in prior arrangements; and third, concerns about potential eviction due to the rules involved in the current arrangements. On these issues, Foster, Davis and McCormack (2013, pp.25–26) observe:

The majority of the 38 per cent of respondents saying they would like to own their houses suggested that this was to address their anxiety about being evicted and/or

being forced to live under Territory Housing tenancies and laws ... Those who prefer renting do so as this is both the most affordable option and the circumstance that is most familiar. Many individuals hope that control of tenancy/property management will be returned to Tangentyere Council. Those most opposed to home ownership believe that community land should not be subdivided nor its purpose changed. This group believes that any move to subdivide land will result in the loss of Town Camp land with the risk that future generations won't have access to housing or services.

**Figure 16: Residents' desire for ownership of their current dwelling**



Source: Foster et al. 2013, p.23

Town Campers described their feelings towards home ownership thus:

Owning means control over rules and laws in my house.

Long-time residents should be offered a deal to buy our houses.

Don't have to worry about the rules of Territory Housing.

Need more information about home ownership, but no-one to show me.

It's not that easy as it sounds [like we] need to think about mortgage, water, power, rates that all comes with the package.

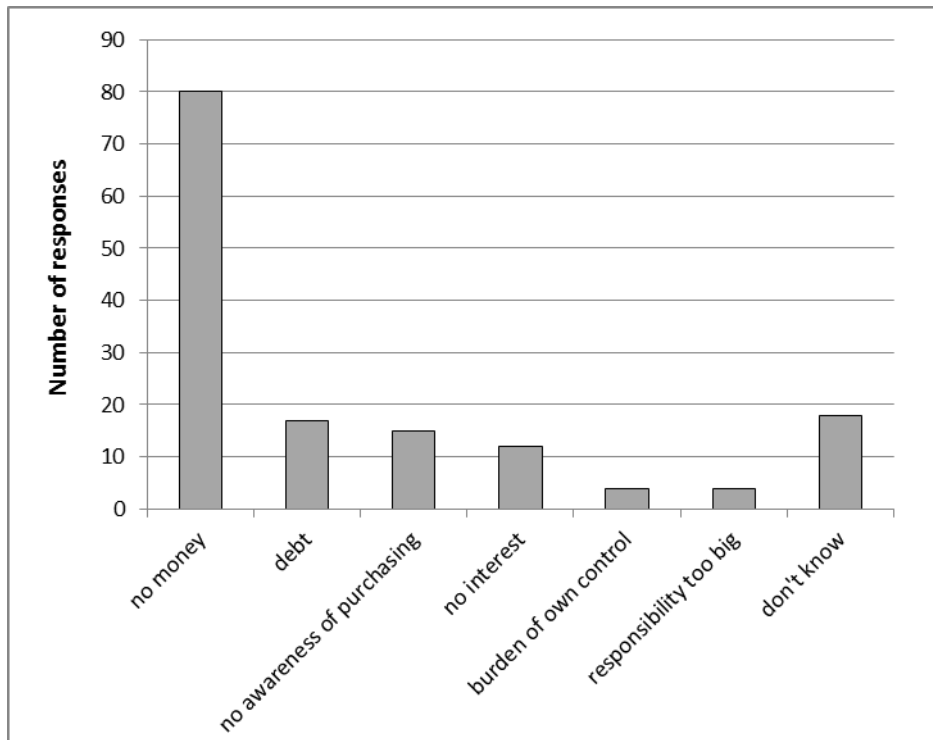
I would like to buy the whole camp then that way we have our own control of rent, repairs, own rule and laws.

(Foster, Davis & McCormack 2013, p.26)

Town Camp residents were asked why they had not purchased a house previously. The majority cited financial reasons: 80 respondents said they did not have enough money, while another 17 cited current household debt (Figure 17). Foster et al. (2013, p.27) note important additional issues not captured by their graph:

What this graph doesn't demonstrate is the level of concern among Town Campers that home ownership equates to the division of community land and the exit of Housing Association members who will no longer participate in community decision-making. One prominent Town Camper suggested that 'they don't want to be part of the community ... they are deciding for themselves' (with regard to those wanting to convert Special Purposes Leases into freehold land for the purpose of subdivision); he went on to say that 'my father told me that we should never give up this land'.

**Figure 17: Reasons for not buying a house**



Source: Foster et al. 2013, p.24

The influence of financial barriers on aspirations for home ownership and the development of appropriate tenure models is important as most Town Campers rely primarily on statutory payments. As Figure 18 below shows, only 8 per cent of respondents reported current employment with most (49%) in receipt of Newstart (unemployment benefits) followed by the Age Pension (20%) and other entitlements or benefits.

Town Camp residents were asked if they understood the concepts of home ownership (Figure 19 below) and renting (Figure 20 below). Almost all respondents understood 'renting', while less than half understood what 'owning' meant or entailed. In answering the latter question, most respondents replied with variants of 'I don't know', rather than 'no'. Foster, Davis and McCormack (2013, p.25) noted that:

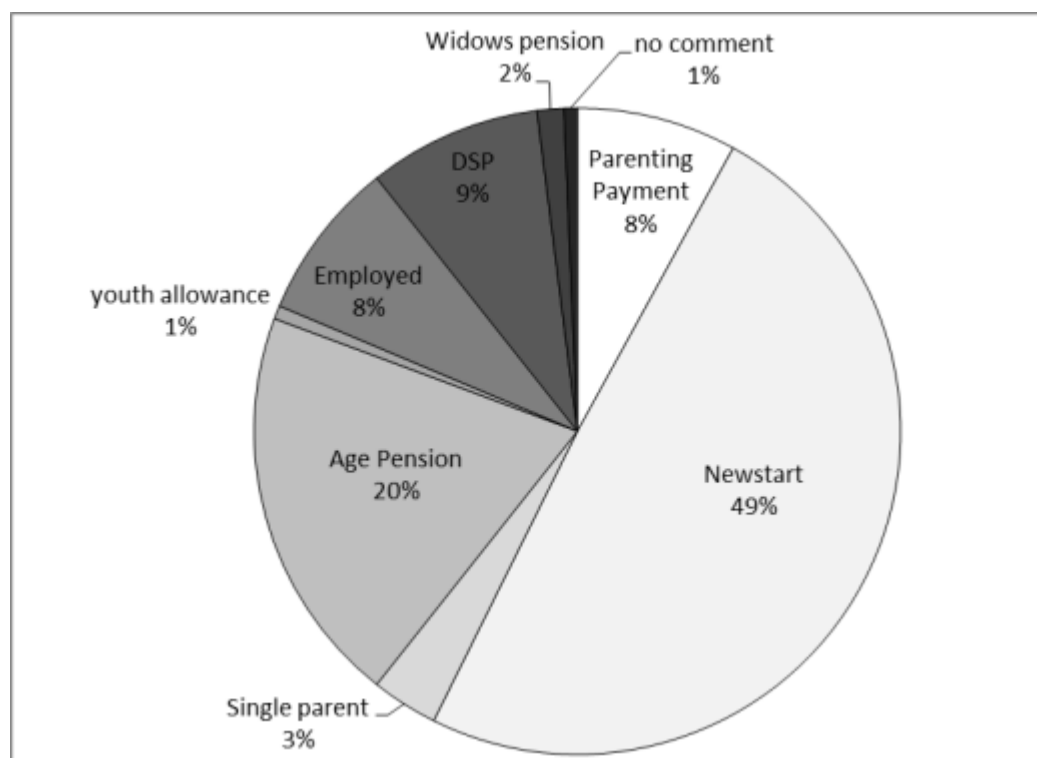
The majority of Town Campers identified that they didn't have much knowledge of private home ownership. Those that identified knowledge of home ownership had a limited understanding and experience. Town Campers consider that they already own the Special Purpose Leases and Crown Leases in Perpetuity and have not seriously considered home ownership as an option.

Working residents are more likely to comment and [to] want to buy a home as they understand the responsibility that comes with it. The majority of residents

(Figure 19) are familiar and comfortable with renting. Respondents indicated a preference for the former housing model where Tangentyere acted as an Indigenous Community Housing Organisation rather than the current model.



**Figure 18: Income sources for Town Camp residents**



Source: Foster et al. 2013, p.14

## 6.2 Stakeholder perspectives on Town Camp housing

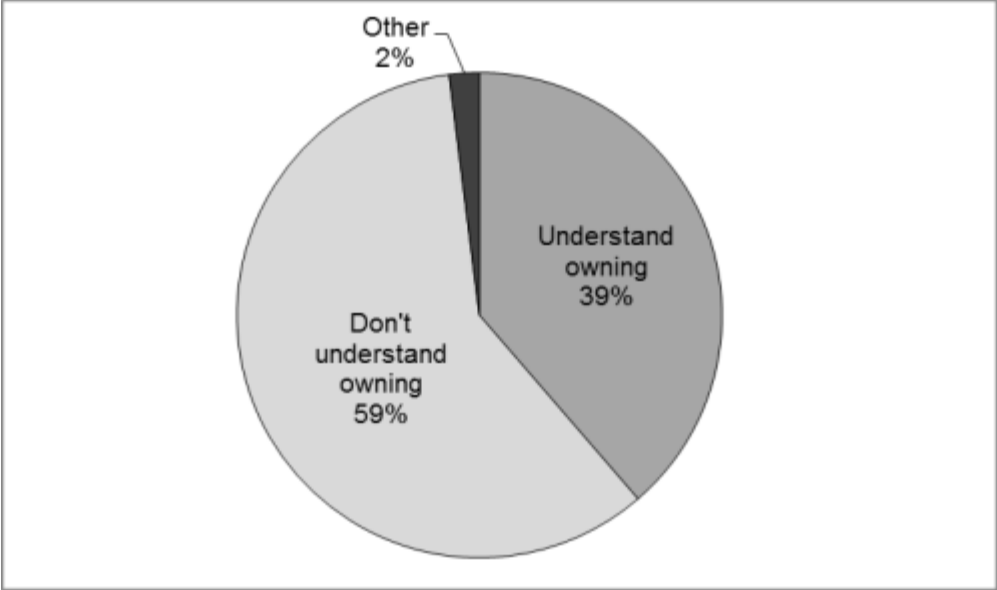
In addition to the TCRH survey of Town Camp residents, primary stakeholders with an interest and/or role in Town Camp housing were interviewed by the UWS team. The following major common themes emerged across the interviews: changes to property and tenancy management under the NTER/Stronger Futures; governance and participation; support services; and tenure choices and models.

### 6.2.1 Property and tenancy management

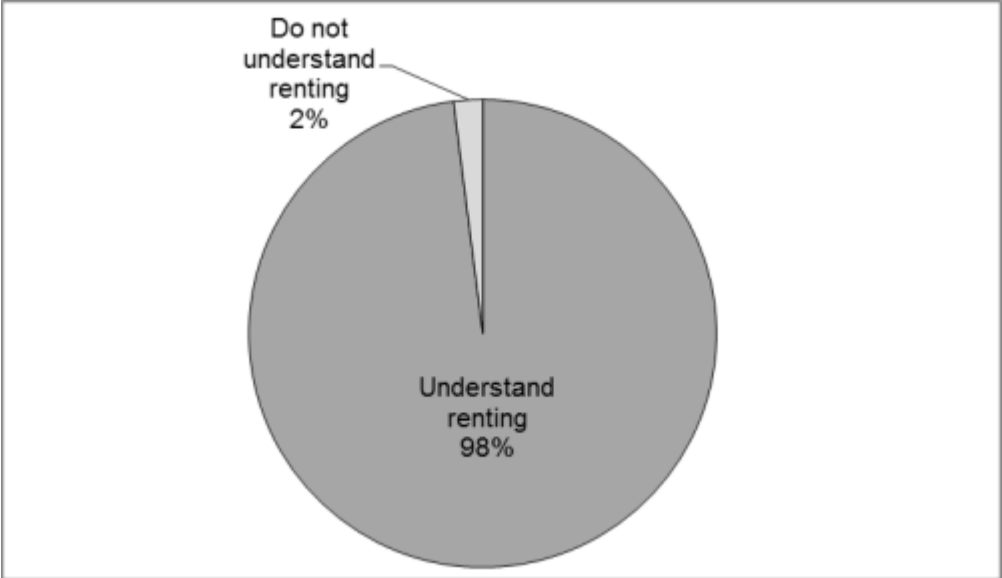
Respondents' reflections on the current state of housing and tenancy management reveal two main positions. Both Tangentyere Council and the Central Australian Affordable Housing Company (CAAHC) (also 'the Company') reported households' frustration with increased delays for repairs and maintenance since the Intervention, which were attributed in part to CAAHC's loss of responsibility for these tasks. This concern correlated with the Town Campers' reports of responses to repair and maintenance requests lodged with Tangentyere Council, which ranged from 'as soon as possible' through to one or two weeks with one outlier of two-to-three months, compared to responses by Territory Housing of one week to three months, with an outlier of over a year. One interviewee described the current situation thus:

there are households that are going without ovens and air conditioning ... it's taken three to four months for that to be fixed ... So more or less you've got one person who works within Territory Housing that issues work orders throughout the whole of the Northern Territory, including the Town Camps, remote communities and urban ...

**Figure 19: Residents' understanding of 'owning'**



**Figure 20: Residents' understanding of renting**



Tied to this was a reported growing perception among Town Camp residents of CAAHC as an agent of government rather than an independent organisation that had been established by Tangentyere Council and other agencies, as captured by one interviewee:

[the] Company with respect to the Town Camps is fundamentally just an agent of the government fulfilling the public housing policies ...

CAAHC also reported frustration with their position and noted that many residents still believed the Company is responsible for repairs and maintenance and is subsequently responsible for any delays and issues with the quality of work. CAAHC was frustrated by a perceived lack of clarity between their responsibilities and those of the current repairs and maintenance contractor, which was creating additional work for the company. This was largely attributed to teething problems with regard to the tenders produced by Territory Housing for the two functions of repairs and maintenance, and tenancy management. While CAAHC believed that these functions were best performed by the same entity as a wrap-around service, they noted that Territory Housing currently held the opposite position. One interviewee stated:

the co-location and all of that stuff working together is so crucial to getting a streamlined service. Here I think it's just early learnings to be honest ... I just don't think at this point in time there is a full appreciation of how integrally they are linked and how important it is for them to be basically operating out of the same action centre, if not being done by the same people.

By contrast, Territory Housing's position was that when these functions were co-located:

all sort of processes were getting lost sort of in the mist with it because it was either tenancy or property and because they were the one organisation ... your left hand couldn't blame your right hand for doing the wrong thing.

It appears, however, that the separation of functions was not a formal policy position or strategic direction. The above informant reported that the generation of two contracts was an external process:

we didn't push the envelope of, we want two separate contracts altogether. We've put it out as either for one or for two and we sent it off to individual assessors and it came back as separate, which I think in hindsight is a good thing ...

The post hoc justification of the separation suggests that perhaps upfront consideration was not given to either a rationale for, or the implications of, separating these functions in the Town Camp context. Several respondents with many years' experience in either dealing regularly with Town Camp residents or delivering affordable housing in other jurisdictions, proclaimed a need for wrap-around services to help residents to sustain their tenancies and to navigate a complex bureaucratic landscape. Some also saw this complexity as having intensified under the new arrangements with the Territory Housing.

Interviewees at Tangentyere and CAAHC all perceived the changes as having impacted negatively on the capacity of Town Camp communities to respond to issues unanimously or appropriately. The two most frequently mentioned issues were visitor management and housing allocations, especially after Sorry Business, which often had community-specific cultural protocols regarding who was or was not allowed to remain in a house following a death. Such requirements were appearing frequently to be at odds with NT Government housing allocation policies and, in one reported instance, this disconnect rendered an elderly resident homeless.

There was a similar disconnect regarding visitor management in terms of the mandated length of time visitors could stay and how problematic visitors could be dealt with:

visitors can stay for six weeks, but people are saying we don't want visitors to stay for six weeks; but it's very hard for families to tell people to go. We don't want that, we want to reduce it to two weeks and generally speaking the response from Territory Housing is ... not that they're unsympathetic, a lot of people that work for Territory Housing are quite sympathetic and probably would like to see some of these things happen, but it's a bureaucratic process and it's difficult to get these to happen ...

In the past, if a household needed to remove a problematic visitor the housing association would issue a Trespass Order that applied to the whole camp, which removed the burden or shame from the individual household. Under current arrangements, Orders have to be secured from all houses individually, which can be problematic for community members:

In the old days they'd just get a Trespass Order for the whole piece of land, that's easy, but now they're saying, no, you've got to get Trespass Orders from each house and it doesn't allow people to act as a community ... It might be very difficult for an individual to stand up and say I'm going to get a Trespass Order, I don't want you coming to my house, if you come to my house I'll call the police, and there might be very good reasons for that. Whereas if it's the whole of community response, well, it's the Association, it takes a bit of responsibility away from people ... in a positive way like it

provides some sort of cohesion. I think that's a big issue and people still want to make these decisions as a community.

This issue relates directly to another major theme raised by interviewees: that of governance and participation.

### 6.2.2 *Governance and participation*

Governance and participation emerged as issues in all interviews. Interviewees at Tangentyere Council and CAAHC all cited negative impacts resulting from the reduction of the role of the housing associations and Tangentyere on the Town Camps. They described campers' experiences with the HRGs established by Territory Housing as consultative mechanisms under the new leasing arrangements as mixed at best. This resonates with Christie and Campbell's (2013) work on community experiences with HRGs in Arnhemland and the broader NT Indigenous population:

There was a general recognition on the part of both government and community, of the 'disempowerment' of community authorities in recent years and community members believe that the HRGs are not giving them the voice they were promised, or solving the problems they experience. HRG members were very clear that they and other community members had insights into the local community histories and politics that were crucial to good governance, and good housing outcomes, which were often not recognised or ignored by [the Department of Housing]. (Christie & Campbell 2013, p.4)

These issues appeared to be felt quite keenly on the Town Camps, as the associations previously had responsibility for housing and other decisions at the community level, whereas their role now was advisory at best. One respondent explained:

Housing Reference Groups were a consultative mechanism set up by Minister Macklin to consult with the Town Camps, not necessarily the Housing Association. So the make-up of the Housing Reference Group, it can be different throughout the whole of the Town Camps. One Town Camp may choose to have the Housing Association committee become the Housing Reference Group, whereas Territory Housing would prefer that individual houses become the Housing Reference Group. So what happens for the Housing Reference Group is that the Housing Reference Group representatives feed advice to Territory Housing public officers or liaison workers. Any advice that is taken from the Housing Reference Group is basically advice, the decision lies with Territory Housing in terms of tenancy policy, waitlist and housing allocation.

Another summarised their perception of the situation by saying:

a simple solution would be that ... Territory Housing takes the recommendation from the Housing Association and that they allow them to have some power and control ... but they won't allow that. They don't recognise the Housing Association to have any ability ....

The same interviewee saw the approach taken by Territory Housing to the HRGs as deeply problematic:

whilst they have a Housing Reference Group, they put barriers up for people to attend, so they have it in the office, they have it as a very formal process, people don't come. They drop it on them very quickly so they might go out and give them notices the day before and say it's nine o'clock tomorrow morning. You know people don't have much choice in you know when that meeting is held and where, so they get limited people there and then they just make the decision themselves anyway.

Similarly, another saw the new administrative arrangements as inherently, if unintentionally, prone to reducing participation and increasing residents' likelihood of non-compliance with government housing requirements:

in a lot of cases people haven't got good literacy and numeracy and they don't have their birth certificate and all their documentation, so it just feels like the level of red tape prevents things from happening. So the department doesn't even have to give a response, they don't have to say yes or no, they just have to say, yep, yep, fill out these forms, go through this process, knowing that it's likely that either the process is going to take a really long time or ... they're just going to fall off on the way.

The informant reflected on the impact the new arrangements were subsequently having on communities' and households' capacity for self-determination:

We had control before, we made decisions before and I think that's important too because the Housing Associations were formed for the purpose of getting land and getting housing and for a long time ... up until late 2009 they were collecting rent and across the board there was income ... up to approximately 1 million a year and ... that gave them some ability to make decisions about housing allocations, about R & M work and every now and then there'd be funding that would come through to build new houses, they'd make decisions about that and ... everyone talks about good governance and self-determination but you actually need things to govern, you need to be able to make decisions about stuff ... this is one of the biggest losses I think in terms of the whole subleasing is that you take that income away, you take those responsibilities away, then you reduce the meaning that those bodies have and you damage governance and you damage people's participation, you turn people into once again recipients rather than having some sort of control.

Some interviewees stated that the increasing population pressure on the camps due to urban drift caused by federal policies, combined with the reduced authority of the associations, is creating more significant problems on the camps than were previously in evidence. Notwithstanding recognition of the existence of a range of governance issues which existed prior to the Intervention and needed to be addressed, it appears that the overall shifts in policy are serving to make the situation worse. Specifically, it appears that changes implemented ostensibly to address governance issues have themselves badly eroded the capacity for community governance, with tangible impacts on residents' ability to deal effectively and appropriately with housing and other community matters. One interviewee highlighted a growing desire among communities to reassert community governance mechanisms in response to frustration felt about the current situation:

While there is a certain level of good faith from the Housing Association and the Town Campers to enter into negotiations around alternative options, one thing that needs to happen is the political goodwill from government to actually come back and negotiate with people. People are sick of the consultations, they really want negotiation ... I guess with everything that has been thrown at the Housing Associations and the Town Campers, we're starting to see a theme where they're trying to regain their own self determination and their own decisions ... they want to enforce their authority as the Housing Association.

The public servants interviewed generally believed that communities lacked the capacity to govern; however, none referred to evidence to support this view. When pressed to identify improvements that had occurred under the new arrangements, these respondents universally referred to the maintenance or condition of housing stock, rather than to community governance outcomes. This aligns with Porter's (2009) summary that issues of housing stock maintenance were frequently and erroneously assumed to be examples of failures of community governance. The focus by government on asset management is mentioned by other interviewees. One states:

we're worried about the people in the housing, not just the asset and Territory Housing's focus is the asset. Is the asset getting destroyed but not necessarily do they want to repair it, but is the asset being destroyed ...

Another echoed and expanded on this point:

with this whole arrangement the Northern Territory Government, the Territory Housing systems and management is there to protect the asset which is the hardware and the house. Attached to that is the asset of the families and, you know, a swag load of people. No one ... no authority has taken ownership of the social factors or the social circumstances ...

There appear to be two basic positions in response to these issues: that any lack of capacity on the camps (whether real or not) requires an intervention by government; or that any lack of capacity is best addressed by building up community capacity through supporting and strengthening pre-existing community governance structures. One interviewee perceived the situation thus:

if you really want to ... build capability, governments have to be prepared to invest in that for a period of time. My sneaking suspicion of what the agenda is, is that it's fundamentally a Commonwealth driven agenda that has said Aboriginal housing has failed, it's failed because we've left it in the hands of these tiny little remote-based ... ICHOs who essentially are run by a few power-brokers who may have manipulated things to their own advantage or their family's advantage or whatever, whatever the story is, so that there is an absolute drive from the Commonwealth to extract control and power from the ICHOs. The Territory Government in a sense has interpreted that fundamentally to mean that it's away from the community sector *per se*.

Many interviews referred to the need to build capacity, and referred to public sector capacity building and procurement principles that seemingly failed to translate into binding targets or programs for Indigenous involvement, capacity building, training or employment. Where Indigenous involvement is mandated, resulting input is not binding on government; that is, while bodies such as the HRGs might be mandated, there is no requirement that government incorporate their input.

### 6.2.3 Support services

Many non-government interviewees spoke of a need for integrated services on the Town Camps. This was in direct contrast to the current separation of housing from other services, and of housing tenancy and maintenance services from each other. Again, this was tied to the issue of decreased authority of the associations, which traditionally addressed housing as a component of broader Town Camp and community issues. Regarding the now cluttered landscape of discrete service providers, one interviewee reflected:

Aboriginal service provision and service delivery has basically been turned into its own franchise. A lot of the lives of Aboriginal people living on the Town Camps have been impacted on with these arrangements because they don't actually know who basically plays that advocacy role and the rights of protection, where historically it has always been Tangentyere ... we've identified that there's 70 extra agencies that are accessing Town Camps from Monday to Friday, so more or less without the Housing Associations retaining any of those functions, residents are basically watching a passing parade from Monday to Friday.

One example of this 'franchising' of Aboriginal service delivery was provided by unprompted discussion of the advent of Public Housing Safety Officers (government employees who patrol the Town Camps), which was occurring in the context of the pre-existing and ongoing operation of a local Night Patrol through Tangentyere Council. Regarding the Safety Officers, a government sector interviewee stated:

oh, well, some people call them the guardians of the Town Camps but they're a team that try and deal with the anti social behaviour and the alcohol problems in the camps. They've gone through some pretty intensive training, they're not the police, but they sort of do a similar role. They've got a couple of purpose made vehicles that they go around in and they sort of work through the night, they're on shifts and they provide support to the tenants, if there's an issue the tenant can ring a number and these guys will be there ...

Researcher: Is there a cross-over with the Night Patrol?

Probably is a bit of a cross-over with them.

A non-government interviewee had a different perspective of these officers:

that's part of this business with having the Public Housing Safety Officers go through and try to move people on, but they won't get out of the car, they don't engage in a way with people on the ground and so people just ignore them.

In light of this duplication and fragmentation of Town Camp services, several interviewees discussed the need for the provision of a shop-front or wrap-around support service. One interviewee stated:

no one's funded to do this work, I mean Tangentyere's got an Indigenous Case Management Service and they can do some of this work, but they're a small program, the Affordable Housing Company's not funded to do that work, Territory Housing doesn't see it as their responsibility...

Another similarly perceived a need for an accessible, one-stop service:

all good housing processes usually work on the fact of early intervention, referral, getting people into the right agencies ... They have no interest in referring people to other agencies; they talk it, but they don't actually provide you with the opportunity or information to engage people to do that ... because there's a real lack of integrated delivery and case management, and also in trying to deliver, maybe restructure the way in which people ... and agencies see their role.

In assessing the situation, another interviewee stated simply that:

managing these Town Camps according to public housing policies is not going to work.

A further interviewee fleshed this issue out further, explaining that the expertise and experience regarding how to respond appropriately in the Town Camp context was very hard to achieve without intimate knowledge of daily Town Camp life:

there's layers of layers of issues and ... to dissect them all, it's just a complex sort of discussion to have unless you've been here for two or three years and you start understanding the landscape—the life that the Town Camp residents have to contend with on a day-to-day basis.

All non-government interviewees believed the associations and their umbrella organisation, Tangentyere Council, were the only entities that had the knowledge, capacity and community buy-in to address Town Camp issues effectively. There was some acknowledgement that there may have been prior governance issues regarding transparency, but all believed the way to redress this was to nurture the associations as significant community structures, rather than to undermine them. Given the tension between Territory Housing and Town Camp protocols, the cluttering of the service landscape, slower response times for repairs and maintenance, increasing frustration of Town Camp residents, and the undermining of their right to self-determination, it would appear that there is merit in that argument.

#### 6.2.4 Tenure choices and models

All interviewees highlighted issues regarding tenure diversification and whether a desire for home ownership existed among households. Interviewees spoke to this issue from their experience with a range of jurisdictions, namely: the Alice Springs Town Camps; remote Central Australian communities; the Tiwi Islands; and NT households currently living on a range of Indigenous landholdings.

One interviewee reflected that in their decades of attending and speaking at meetings in remote Central Australian communities, no resident had ever expressed a desire for home ownership. Their experience was that communities wanted support to move back to outstations and away from the targeted regional growth 'hubs' and other large centres. The informant highlighted a perception which they saw as perpetuated by the media and conservative politicians that 'tenure is the barrier and home ownership is the aspiration', despite there not being any ready evidence for this aspiration among remote communities. One government interviewee also discussed what they viewed as an erroneous assertion about tenure barriers:

key officials of both the Northern Land Council and the Central Land Council were keen to disavow people of that view that they were necessarily opposed to tenure that could support mortgages and moreover, I think they were also keen to demonstrate that Section 19 leases from the ... under the *Aboriginal Land Rights Act* could support mortgages for any purpose ...

Two interviewees were directly involved with the development and deployment of long-term leasehold mechanisms in NT Indigenous communities. Each noted that wealth creation was neither a stated objective in the few households that had expressed interest, nor a realistic expectation. Regarding residents' reasons for considering home ownership, one informant stated:

a big one was independence from the public housing system ... usually the very last one and for some people not at all, is increasing personal and family wealth.

Researcher: ... How many people actually mentioned the wealth creation side of it?

Interviewee: Unprompted? ... None.

The same informant reflected that when households had expressed interest in wealth creation through property, he had suggested they buy an investment property somewhere else in the NT:

essentially what I would say to people, if you want to make money from property then I can refer you and even help you with the process of IBA giving you a loan for something in Darwin or Katherine or Alice Springs ... that was generally the discussion that I would have.

Another government employee reflected on the Tiwi Island home purchase situation:

I think the reasons were actually not primarily economic ... but more to do with having an asset that is theirs that will remain in their families and that they can pass on to their children to get out of the public housing administration to have a greater sense essentially of control over their lives ...

Both of these interviewees felt that the Alice Springs Town Camp situation was not currently conducive to home ownership options due to the complexity of the current leasing situation and the relatively marginal economic position of most households. Regarding these issues, one observed:

the difference really with Alice Springs Town Camps is one, the number of parties involved, and then secondly, the restrictions that attach to Special Purpose Leases in respect of subdivision. However, I should say that a lot is made of that, but ... it could



be resolved at the stroke of a pen either by the NT Government or by the Commonwealth Government.

The legal issue of enabling CLTs on the Town Camps are discussed in more depth in Chapter 7; however, the principle requirement would be that the current subleases to government would need to be terminated. In speaking specifically about the Town Camp context for CLTs, interviewees focused on the desire to see a model established that worked for communities. One stated:

if there is an alternative model to allow for home ownership without compromising the Special Purpose Leases and the entirety of the lease itself, that is an option that people would be comfortable with ... the concern is that people aren't being given alternatives other than what's been put on the table ... by all levels of government.

The same respondent confirmed that there was a nominal amount of interest in home ownership, again driven largely by a desire to be able to leave the home to kin. However, there was much concern about the community impacts of the establishment of models that were not developed on the basis of community aspirations and requirements. Hence, one interviewee questioned the relationship between a household that opts for ownership and the rest of their Town Camp, if ownership was articulated through the excision of singular lots to freehold, as was currently being discussed and promoted by some government representatives:

once the house and land package is basically excised, do these people have any right to be part of the Housing Association or decisions over common areas or discussions with policing issues and visitor management?

In a similar vein, another interviewee reflects:

the fear is if you open up private home ownership that people will sell off their housing and some people will benefit, some people living on Town Camps who are employed, for example, will benefit from buying houses and selling houses, but there will also be a large number of people who will never be in a position to buy and sell houses and if the housing stock's lost, they will end up in a position where they're worse off than they were beforehand ... the big part is that those Town Campers, particularly from families that have been around since the Town Camp movement started, there's a sense that that's their land, they already own it, why should we want to ... go for private home ownership when we already own it?

There is also a potential issue regarding Native Title in this context. Currently Native Title has been suspended over the Town Camps by agreement between the Traditional Owners and the Housing Associations. Any excision of individual lots to freehold raises the question of whether the household has the right to capital gains on Native Title land—especially if the subdivision and conversion is undertaken in order that, or on the assumption that, an individual household will build wealth.

### **6.3 Reflections—implications for CLT options**

It seems clear from both the resident survey and the stakeholder interviews that governance and capacity are key issues for the Town Camps. Town Camp residents and their affiliated stakeholders felt it was vital that prior and ongoing community governance mechanisms and capacity be reinstated and supported. They noted that they held much knowledge regarding the interwoven nature of issues on the Camps, and had the capacity to underpin effective programs if supported to do so. Public sector interviewees generally concurred with this view, with most highlighting effective programs or outcomes as those which had been based on substantial negotiation, engagement and respect for community knowledge and objectives, such as the processes in Ilpeye Ilpeye or the Tiwi Islands.

Overall, based on the interviews with stakeholders with experience across the Territory and the Town Camp data, it appears that there is minimal interest in home ownership amongst Indigenous communities in the Northern Territory and amongst Alice Springs Town Camp residents. Where interest in home ownership was expressed, it did not appear to be based primarily in a desire for, or expectation of, capital gain. These findings echo previous research with Indigenous communities in several jurisdictions (e.g. Memmott et al. 2009). In this research, and again echoing previous work, the most frequently cited reasons for interest in home ownership were a desire for autonomy, stability and inheritability—all of which can be delivered without individual freehold or the requirement that the resident take on a mortgage. In the Town Camp context this desire was intertwined with a desire for the retreat of direct government involvement, reinstatement of community control over decision-making and the retention of the Special Purposes Leases and Crown Leases as a legacy issue. It was also entwined with numerous simultaneous impacts of the Intervention and other policies, including the move away from CDEP programs that previously underpinned local employment and community development.

Sanders (2000, pp.244–45) states that:

housing is of 'questionable worth' if those being housed are treated as 'passive recipients', while control resides elsewhere. Indigenous occupants must be partners and owners in housing solutions ... Housing, then, is very much a multi-faceted ongoing process of marshalling resources in order to sustain and develop living environments over time. It is not a 'thing' or a one-time event.

Given the existence of local governance mechanisms—that is, housing associations, Aboriginal corporations and Tangentyere Council—which have knowledge and experience of past successes and failures in responding to the complex environment of the Town Camps, this issue of control is paramount for two reasons. First, these entities represent sources of substantial, valuable knowledge that can underpin effective multifaceted policies and programs. Second, undermining these entities rather than building their capacity, perhaps not surprisingly, generates ill feeling among residents and affiliated stakeholders and greatly impacts the ability of Town Camps to manage their affairs effectively or build capacity. In other words, it potentially undermines the ability of Town Camps to address ongoing issues, retain culturally appropriate policies, or build the capacity required to 'sustain and develop living environments' (Sanders 2000, p.245).

The (albeit minimal) interest in home ownership on Town Camps and the very strong desire to see community control retained, suggests that the broadening of tenure choices into a community-controlled home ownership model based on CLT principles may be warranted, if and as desired by communities. This could allow autonomy, stability and inheritability without the requirement for mortgage lending and concomitant unacceptable risks. Such a model could be implemented through a renewable 99-year sublease to the head tenant of a household such as that provided in Crabtree et al. (2013) and would not require the termination of underlying Special Purposes Leases or Crown Leases. This research would suggest that unless communities request otherwise, it is imperative that these legacy leases remain intact both to embody the Town Camps' historical and ongoing objectives and to protect housing and land as community assets. It is possible to enable equity input from households in such a model where desired and appropriate; however, it is not imperative. In light of this, the following chapter turns to the legal issue of implementing 99-year leases on the underlying perpetual leases.

## 7 ALICE SPRINGS TOWN CAMPS: TENURE AND OPPORTUNITIES FOR A 99-YEAR LEASEHOLD CLT MODEL

### 7.1 Background

#### 7.1.1 *Special purpose leases and Crown leases before the NTER*<sup>19</sup>

Special Purpose Leases were granted to Alice Springs Town Camp housing associations under the *Special Purposes Leases Act 1953* (NT) with two Crown leases granted to housing associations under the *Crown Lands Act 1992* (NT).<sup>20</sup> All but one special purposes lease<sup>21</sup> is in perpetuity. The details of these leases are set out in Table 4 in Chapter 5. Under both Acts as they currently stand, the housing associations are permitted to ‘transfer the whole or a part of the lease, or sub-let the whole or a part of the land comprised in the lease’, subject to consent of the Minister.<sup>22</sup> Under these provisions, subleases were granted to householders in Town Camps. These subleases were periodic tenancies rather than permanent leases despite not being expressed to be for a fixed period of time.<sup>23</sup> As periodic tenancies, these subleases could be terminated without cause on 42 days’ notice as required by the *Residential Tenancies Act 1999* (NT) s.89.

#### 7.1.2 *Special purposes leases and CLT proposals*

If a model based on Community Land Trust principles is being considered in relation to Town Camps, one of the issues is the application of the *Residential Tenancies Act*. This is only relevant if the current 40-year subleases by housing associations to the Commonwealth of Australia are surrendered or terminated (see Section 7.5 below). Although the housing associations have a reversionary interest in the leases on the expiry of the subleases, this would not support the development of CLTs in relation to Town Camps. There is also the proposal to excise portions of Town Camps to create standard fee simple ownership of excised portions under the *Stronger Futures in the NT Act 2012* (Cth) (see Section 7.4.2).

Effectively, there is no scope for CLTs to operate if housing associations (or through their umbrella organisation, Tangentyere Council) no longer have the power to issue, administer and manage residential premises within Town Camps.<sup>24</sup> This chapter examines the position if the subleases have been surrendered or terminated so that the housing associations resume the power to sublease Town Camps under special purposes leases or Crown leaseholds and the effect of Residential Tenancies legislation on CLT proposals.

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<sup>19</sup> The definition of ‘special purpose’ in the *Special Purposes Leases Act 1953* (NT) s.4 has been read as not applying to Town Camps on the assumption that only those leases granted under the *Crown Lands Act 1992* (NT) for towns or town sites are excluded.

<sup>20</sup> These were to the Inarlengge Assoc. Inc. (the Little Sisters camp) and Karnte Aboriginal Corporation (Karnte Town Camp), see Schedule 1. Note the Crown Lease relating to the Inarlengge Assoc. Inc. Little Sisters camp has not been made available, Crown Lease 1112, vol.333 Folio 116.

<sup>21</sup> The exception is Itwiyethwenge (Bassos Farm), the special purpose lease being held by the Mt Nancy Association Ltd. The term of that lease expires on 24 July 2024.

<sup>22</sup> *Special Purposes Leases Act* s.6(1); *Crown Lands Act 1992* (NT) s.46.

<sup>23</sup> Despite the sublease being named ‘Tenancy Agreement Permanent’ as was the case with a Mt Nancy resident and approximately 200 other lease agreements relating to the Alice Springs Town Camps, see *Shaw v Minister for Families, Housing, Community Services and Indigenous Affairs (Shaw)* [2009] FCA 1397 at [218], [222], [226].

<sup>24</sup> In *Shaw*, Mansfield J thought that the only role the Housing Associations had in relation to the leases they held was a consultative role, see [272], [335].

## 7.2 Special Purposes and Crown Leases: the effect of the Residential Tenancies Act 1999 (NT)

### 7.2.1 Head leases

The *Residential Tenancies Act* does not apply to the head leases from the Crown to the housing associations under the Special Purposes and Crown Lands legislation. This relationship is not a residential tenancy within the meaning of the *Residential Tenancies Act 1999* (NT).<sup>25</sup> This is because the Act contemplates a lease between the owner (landlord) and the person residing in the premises, not a corporation or association. The purpose of the provisions is to protect individual tenants.<sup>26</sup>

### 7.2.2 Subleases

The *Residential Tenancies Act* does, however, apply to subleases by the housing association or Aboriginal corporation to the community. Under the *Special Purposes Leases Act 1953* (NT)<sup>27</sup> and the *Crown Lands Act 1992* (NT) a lessee may, subject to the consent of the Minister, sublet the whole or a part of the land. There are no specific provisions relating to the terms and conditions of subleases under that legislation. The *Residential Tenancies Act* deals with the situation where there is a head lease which may become subject to forfeiture because of breach by the head tenant (the Aboriginal corporation or association), ss.107, 82(1)(d). It also gives the tenant a right to quiet enjoyment without interruption by the landlord or the head lessee (ss.65, 66). The current Act does not provide special exemption for subleases under a special purposes lease or Crown lease. There is provision for the Minister to exempt special categories of leases, s.7. Despite terms and conditions in the head lease (special purposes<sup>28</sup> or Crown lease) that could be exercised by the Crown inconsistently with the *Residential Tenancies Act*,<sup>29</sup> this does not prevent the Act applying to subleases entered into by an Aboriginal corporation or association.

### 7.2.3 Subleases, CLT proposals and the effect of the Residential Tenancies Act 1999 (NT)

If a CLT was proposed for Town Camps it would require exemption from the *Residential Tenancies Act 1999* (NT) because of the following statutory provisions, which are not consistent with a CLT.

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<sup>25</sup> Note the definitions in s.4: The definition section, s.4, defines the following terms: 'residential premises' means premises intended for occupation as a place of residence and includes a caravan intended for occupation as a place of residence and a houseboat intended for occupation as a place of residence; 'security deposit' means an amount of money a tenant has paid, or is required to pay, under a bond; 'tenancy' means the right to occupy premises under a tenancy agreement; 'tenancy agreement' means an agreement under which a person grants to another person for valuable consideration a right (which may be, but need not be, an exclusive right) to occupy premises for the purpose of residency.

<sup>26</sup> So that if a housing complex were let to a large corporation, the corporation would not be entitled to the protections under the legislation.

<sup>27</sup> The Minister must not consent unless the Aboriginal Land Council has considered the proposed sublease and given advice to the Minister who has considered the report (s.6).

<sup>28</sup> Table 4 in Chapter 5. Consistently with the statute, the common form of lease includes terms requiring compliance with the Act and regulations, rights of re-entry, surrender, use, payment of rent, improvements and forfeiture (see special purposes leases no 438, vol.622, Folio 176; SPL 426, vol.622, folio 183; SPL 473, vol.622, folio 177; SPL 412, vol.622, Folio 178; SPL 493, vol.622, Folio 259; SPL 459, vol.622, Folio 260; SPL 450, vol.623, Folio 349 [note vol.623, Folio 349 not provided]; SPL 409, vol. 622, Folio 358.)

<sup>29</sup> Rights of the Crown to re-enter, provisions relating to forfeiture may be inconsistent with rights of re-entry, forfeiture under a residential tenancies lease, see *Crown Lands Act 1992* (NT) ss.38, 87, *Crown Lands Act Regulations*, reg. 9 (head lease terminable on 14 days' notice). *Special Purposes Leases Regulations*, reg. 5.. This is dealt with by the *Residential Tenancies Act 1999* (NT) with specific provisions relating to forfeiture and quiet enjoyment, ss.65, 66, 82(1)(d), 107.

*Rates and Taxes.* s.24: landlord cannot impose extra charges or liabilities. This would prevent the CLT scheme from requiring the subtenant to pay rates and taxes, if the decision was made to do so.

*Payment of premium.* s.25: the landlord cannot require a bond or security deposit exceeding four weeks rent, the bond to be paid into a special account and recoverable by the tenant at the end of the tenancy. This prevents upfront payments for the grant of the sublease.

*Payment in advance.* s.39: only one rental payment payable in advance.

*Repairs.* ss.57, 61: landlord's obligation to repair and tenant's right to recoup costs of repairs. This is inconsistent with the CLT which imposes duties on the sublessee to repair.

*Entry onto premises.* ss.70, 71, 76: inspection of premises, entry for purposes of maintenance—CLT arrangements for inspection may be inconsistent with RTA provision.

*Assignment, sublease.* ss.78, 79: assignment or subleasing permitted with consent. The CLT requirements are inconsistent with permitting assignment or subleasing.

*Failure to pay rent, breach, termination.* ss.82, 96A (failure to pay rent), 96B (other breach), 97 (court termination). Termination provisions are inconsistent with CLT model.

### **7.3 Planning legislation**

In relation to special purposes leases, the *Special Purposes Leases Act 1953* (NT), s.9A provides that a lessee 'shall not subdivide, or make an application under Part 5 of the *Planning Act 1999* (NT) for consent to subdivide, the lands comprised in a lease'. Under the *Planning Act*, subdivision in s.5(1) is defined as:

the division of land into parts available for separate occupation or use, by means of: (a) sale, transfer or partition; or (b) lease, agreement, dealing or instrument purporting to render different parts of the land available for separate disposition or separate occupation.

It further provides in s.5(3) that the land will not be taken to be subdivided if the lease or licence or right to use or occupy part of the land is for a term not exceeding 12 years.<sup>30</sup> So, in relation to CLT schemes, if the mechanism employed is a 99-year sublease, under the existing legislation a plan of subdivision would be required. Alternatively some amendment would be required to the *Special Purposes Leases Act 1953* (NT), s.9A and the *Planning Act 1999* (NT). In relation to the two Crown Leases, the *Crown Lands Act 1992* (NT), s.42 permits subdivision of land included in Crown Leases with the consent of the Minister. Leases exceeding 12 years require formal subdivision. Subdivisions in contravention of the *Planning Act 1999* (NT) are void.<sup>31</sup>

### **7.4 Effect of NTER on land tenure of housing associations and impact of Stronger Futures in the NT Act 2012 (Cth)**

#### **7.4.1 Northern Territory Emergency Response**

As a condition for SIHIP funding, and under threat of compulsory acquisition under the *Northern Territory National Emergency Response Act 2007* (Cth), the Alice Springs Town Camp housing associations granted 40-year subleases to the Commonwealth of Australia.<sup>32</sup> The rights of residents of the Town Camps who held residential subleases from the housing

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<sup>30</sup> Options to renew or provision for re-grant are added in to determine whether the period exceeds 12 years, see s.5(4).

<sup>31</sup> *Planning Act* (NT) s.63(2).

<sup>32</sup> The mechanism is the *Aboriginal Land Act 1978* (NT), s.20CA.

associations under periodic leases<sup>33</sup> were preserved under the 40-year sublease.<sup>34</sup> Under the subleases, the Executive Director Township Leasing granted underleases to a Housing Authority<sup>35</sup> to provide and manage community housing, services and related infrastructure.<sup>36</sup> The position following the implementation of the *Stronger Futures in the NT Act 2012* (Cth) is outlined in Figure 10 (Chapter 5). Following the grant of these subleases, tenants initially remained in occupation under their old agreements.<sup>37</sup> New residential tenancy agreements have been entered into by Town Camp residents with the Chief Executive Officer (Housing). These agreements comply with the provisions of the *Housing Act 1982* (NT) and the *Residential Tenancies Act 1999* (NT).<sup>38</sup>

The housing associations under the original special purposes leases or Crown leases retain reversionary interests as owners of the head leases subject to these subleases. Although neither the housing associations (nor their umbrella Association, Tangentyere Council) currently have a role in the grant, administration or maintenance of leases over premises in Town Camps, they still hold the leasehold title to the areas granted to them in perpetuity under the special purposes leases or Crown leases. When the 40-year subleases come to an end, full rights to administer and manage the land the subject of the special purposes lease or Crown lease can be exercised.

#### 7.4.2 *Stronger Futures in the NT Act 2012* (Cth)

The *Stronger Futures in the NT Act 2012* (Cth) repealed the NTER legislation but preserved certain key sections of the NTER.<sup>39</sup> Under the *Stronger Futures in the NT Act 2012* (Act No. 100) s.33(a), its stated purpose is: 'to facilitate the granting of individual rights or interests in relation to land in Town Camps and community living areas.'<sup>40</sup>

The Act (s.34) provides that regulations may 'modify any law of the Northern Territory' relating to the use of the land, dealings in the land, planning, infrastructure or any other matters prescribed by the regulation in relation to Town Camps.<sup>41</sup> Consequently federal regulations may modify the *Special Purposes Leases Act 1953* (NT) and the *Crown Lands Act 1992* (NT) which could remove (or modify) the reversionary rights of housing associations under the special purpose or crown leases.

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<sup>33</sup> These subleases have been found to be periodic tenancies under the *Residential Tenancies Act 1999* (NT) rather than subleases in perpetuity, see *Shaw* above note 23.

<sup>34</sup> See sublease clauses 2(2)(a), 7.2, 8(1)(b) (quiet enjoyment), 9(1)(b) (rights to improvements) and see *Shaw* above note 23 at [254]; the relevant housing authority provides services under a Housing Management Agreement, see sublease clause 10 and discussion *Shaw* [260]–[266]. 'The words "subject to the terms of this Sublease: at the conclusion of clause 7.2(a) merely reflect the substitution of the Executive Director as the 'landlord' under the existing tenancy agreements', *Shaw* at [254].

<sup>35</sup> Defined in clause 1(1) as a 'Living Area Underlease or other contract or agreement granted by the Executive Director Town Leasing to a Housing Authority to manage or provide community or public housing services and related Infrastructure (and all purposes incidental thereto)'. This does not necessarily exclude housing associations from consideration as a housing authority; see *Shaw* at [255]. These Housing Management Agreements are currently between the Executive Director Town Leasing and the Northern Territory Government.

<sup>36</sup> Sublease clause 10(3)–(5).

<sup>37</sup> The housing associations no longer have control over such matters as receipt of rent, provision of repairs and other services, and what is to happen in the case of breach by the tenant. These functions are now vested in the Executive Director and the relevant Housing Authority.

<sup>38</sup> The sample provided was a lease for a six-month period. Leases under the *Housing Act 1982* (NT) can be exempted from the *Residential Tenancies Act 1999* (NT), some provisions of the *Residential Tenancies Act 1999* (NT) do not apply to the *Housing Act 1982* (NT) tenants, see *Residential Tenancies Act 1999* (NT) s.7(5)(6).

<sup>39</sup> And interests granted under those provisions, see *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* (Cth) Schedule 1.

<sup>40</sup> A similar provision applies to community living areas, s.35.

<sup>41</sup> It refers to these Acts as originally enacted and as amended from time to time, note to s.34. A Town Camp is defined as land 'leased primarily for residential, community or cultural purposes of Aboriginal people' under the NT *Crown Lands Act 1992* (NT) or the *Special Purposes Leases Act 1953* (NT).

## 7.5 Legal changes needed for the implementation of a CLT model based on 99-year subleases

### 7.5.1 Termination of subleases to the Commonwealth

The use of a leasehold CLT model by the housing associations would require either the surrender of the subleases by the Commonwealth of Australia or termination of those subleases. There is no obvious mechanism under the sublease, but presumably the Commonwealth of Australia as sublessee can surrender the lease; an alternative would be legislative amendment terminating the 40-year subleases.

### 7.5.2 Amendment of Commonwealth legislation

CLT schemes depend upon housing associations or other organisations having rights to grant subleases, control, administer and manage the housing in the Town Camps. Under a 99-year sublease CLT model, the housing associations could grant long subleases to CLT participants. Section 34 of the *Stronger Futures in the NT Act 2012* (Cth) provides that regulations may modify NT laws relating to the use, dealings, planning and infrastructure relating to the law as it applies to a Town Camp. The continuing power of the Australian Government to amend the laws relating to Town Camps and effectively amend the *Special Purposes Leases Act 1953* (NT) and the *Crown Lands Act 1992* (NT) is a serious obstacle to CLT schemes. Even if the 40-year subleases were brought to an end, the introduction of CLT-type interests would be at risk of being undermined. While these provisions remain, there is not a sufficiently secure base upon which CLTs could operate. The development of CLT schemes over Alice Springs Town Camps would ideally involve repeal of Part 3, Divisions 1 and 2 (including section 34) of the *Stronger Futures in the NT Act 2012* (Cth).

### 7.5.3 The Residential Tenancies Act 1999 (NT)

As noted above, any proposed CLT based on the grant of subleases to CLT participants would not be consistent with the provisions of the *Residential Tenancies Act 1999* (NT). The recommended response is to provide an exception to the Act for subleases based on a CLT scheme. Although CLT participants would not be able to benefit from protections for tenants under the Act, sufficient protection is built into CLT schemes. In some other jurisdictions, residential tenancies legislation does not apply to the grant of 99-year leases (this would include subleases).<sup>42</sup> A similar provision could be included in the Northern Territory Act. Alternatively the Minister could specifically exempt CLT schemes under the *Residential Tenancies Act 1999* (NT) s.7(1).

### 7.5.4 Changes to the Special Purposes Leases Act 1953 (NT) and Crown Lands Act 1992 (NT)

Consideration might be given to whether CLT schemes are given statutory authority and special protection under the *Special Purposes Leases Act 1953* (NT) and *Crown Lands Act 1992* (NT). This would give CLT the security needed for long-term housing security. As discussed in Chapter 5, housing associations have a special attachment to Special Purposes Leases and it may be preferable to provide a single tenure mechanism under the *Special Purposes Leases Act 1953* (NT) for housing associations rather than leases under the *Crown Lands Act 1992* (NT), if affected communities sought this. This would also avoid the risk of conversion of lots to freehold title as is currently possible under the *Crown Lands Act 1992* (NT).<sup>43</sup>

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<sup>42</sup> For example, *Residential Tenancies Act 2010* (NSW), s.8(1)(j).

<sup>43</sup> See *Crown Lands Freehold (Conversion from Crown Leasehold) Act 1980* (NT).

### 7.5.5 *Role of Tangentyere Council or another Indigenous organisation*

Under the arrangements preceding the federal intervention, the umbrella organisation Tangentyere Council provided support into Town Camp leasing arrangements. If the housing associations wished to continue this arrangement, they might like to consider a number of options relating to the grant, administration and maintenance of leases in the Town Camps. The options would be the same if the Town Camps decided they wanted another Indigenous third party—such as a registered housing provider—to administer leases. In the options below, ‘Tangentyere’ also refers to any other such organisation felt by Town Campers to be appropriate. The options are:

1. To formally constitute Tangentyere Council as owner of the head leases. This could be achieved by transferring the leases to Tangentyere. In relation to Crown Leases, under the *Crown Lands Act 1992* (NT), s.46, this can only be done with the consent of the Minister. In relation to special purpose leases, Ministerial consent is required as well as a formal report from the Aboriginal Land Council (*Special Purposes Leases Act 1953* (NT) s.6).
2. To formally constitute Tangentyere Council as an authorised agent of the housing associations with authority to enter into and administer the CLT scheme on behalf of the housing associations (similar to the arrangements preceding the federal intervention).
3. To surrender the leases and request a direct re-grant of the leases to Tangentyere.



## 8 LESSONS FOR IMPLEMENTING CLT HOUSING

This chapter discusses the housing issues revealed by the case studies and the resultant programmatic implications. Building on that, it then presents an overview of a potential model for diverse housing options that capture household and community aspirations, including the potential for equity gain if desired and feasible. The chapter concludes by presenting a streamlined process for organisations to develop such programs. That process is the backbone of the CLT Decision-Making Tool provided in Appendix 4.

The chapter aims to encapsulate the objectives of households and communities as highlighted by this project and other previous work in a coherent suite of programmatic elements. Its central assumption based on evidence is that a singular model of a predetermined tenure is neither appropriate nor feasible for the diversification of Indigenous housing options. However, it is possible to map a series of steps that lead to a defined number of tenure options and equity arrangements which can be supported by appropriate policy and within a coherent framework. The CLT sectors in the USA and UK are similarly characterised by organisational and tenure diversity. Relevant policy issues are discussed in the next, concluding chapter.

### 8.1 Primary community and householder issues

The previous study, reported in Crabtree et al. (2012a), explored broad-scale issues regarding the feasibility or relevance of models based on CLTs for Indigenous housing in NSW and Queensland. As with the development of the United States and UK CLT sectors, the focus of that project and this follow-up project has been to identify and address local housing aspirations and objectives—here, local Indigenous housing aspirations—and outline the parameters and policy implications of models that can articulate and address these.

A core finding of this work is that interpretations or models of ‘home ownership’ based on individualised, freehold title and secured via lender financing (i.e., a mortgage), appear neither appropriate nor feasible for the majority of households in the partner communities in both NSW and the NT, despite substantial differences in those communities’ legal, financial and socio-cultural contexts. In both instances, it has been clear that any future models or programs must be based on local objectives and circumstances.

In NSW, the core issues were that:

1. Interest in home ownership exists among the partner Indigenous communities, but is minimal and potentially impacted by current household debt.
2. Current leases back to government need exit clauses.
3. Current caveats need a streamlined and expeditious removal process to be developed and supported by relevant government departments.

In the NT, three core issues emerged:

1. Interest in home ownership exists among the partner Indigenous communities, but is entwined with issues of community governance and not usually driven by expectations of capital gain.
2. The retention of community integrity under any proposed new models or programs is of concern to households and organisations—this includes issues regarding housing allocations and the treatment of visitors.
3. Current legal arrangements are complex but appear open to speedy amendment by government.

### 8.1.1 Demand for home ownership

As with previous research (e.g. Memmott et al. 2009), this study found that Indigenous households are generally more interested in autonomy, stability and inheritability than in equity gain through housing. While some households have capacity to, and interest in, putting equity into their housing, these represent a minority of households. Among households that *can* afford to buy, there is not a universal desire to actually do so. This is often due to the legacy, pride and responsibility felt in light of previous land rights struggles which secured community control over land.

Such limited capacity and interest suggests that models which allow a degree of equity input and gain may be relevant for a few households, but that these might not be universally applicable or accessible as these households appear not to represent a majority market or high demand. In this context of very low actual demand for dominant models of home ownership on Indigenous lands, it is crucial that models be developed and supported that are appropriate to community and household aspirations.

The two case study jurisdictions suggested two articulations of models based on renewable 99-year leases between local organisations and households. These can accommodate variable levels of equity input and return as required, but all uphold the core principles of community retention of assets, as well as stability and inheritability. These two very different case studies both highlight community control as a core issue of relevance in the development of any new tenure forms or in discussions regarding land reform. This is in line with work on best practice and allows diversification beyond government without defaulting to potentially risky and problematic open-market models; in essence, this highlights the relevance of intermediate tenure forms based on extant best practice.

### 8.1.2 Legal mechanisms

Crabtree et. al. (2013) identify two mechanisms that can provide stable long-term housing with the potential for resident equity input and gain: long-term leases; and modified shared equity. The partner communities in this project favour the long-term leasehold option as the entire asset then rests with an appropriate community organisation in perpetuity, with a clear, ongoing relationship articulated in the lease between the organisation and the household resident. Further, that lease can be tailored to involve as much or as little resident equity input and/or gain as desired, and can place as much or as little responsibility for repairs and maintenance on the household as desired.

This flexibility is highly regarded among both the NSW and NT research partner communities, as it is seen as a way of preventing exposure to risks such as unmanageable debt burdens or the alienation of Indigenous lands, while enabling the generally sought after aspects of ownership, such as long-term stability, autonomy and inheritability. It also retains and respects the legacy of community control of land.

In NSW, the development of the long-term leasehold models for SEARMS has not required policy change or movement on the part of government, but this is an exception generated by SEARMS having a capital surplus and the capacity and willingness to secure appropriate freehold property from the open market. For most Indigenous housing and organisations in NSW, there is a role for government to support the development of appropriate housing models through examination and adjustment of existing legal arrangements. Housing that has recently been sublet to the NSW Government will need those leases terminated if any other model is to be deployed; otherwise the term of the current subleases should be taken as an opportunity to develop models that can replace those leases as they expire. Where property title carries a caveat, the removal of this needs to be streamlined and supported by government. These two activities of planning for the termination or expiry of leases, and the centralised and streamlined removal of caveats, can be seen as components of a potential overarching policy

of supporting the development of appropriate housing tenure options for Indigenous communities.

### *8.1.3 Community integrity and legacy*

The research found that community integrity and legacy is one of the most important issues to be considered in any tenure changes on Indigenous lands. Both case study partner communities represented situations in which local member-based housing organisations had created a member-based umbrella organisation to represent their aspirations and provide a range of support services, the nature of which varied according to local requirements. In both case studies, it was felt that these existing mechanisms were the most appropriate avenues for the development of any future tenure diversification, due to the community ownership, knowledge, experience, relationships and familiarity of these extant organisations. In both instances, it was strongly felt that the only logical, workable and respectful way to address governance concerns was through building the capacity of these structures.

In the Northern Territory, surveyed Town Campers keenly felt that community governance had been eroded. There was also concern that the potential excision of individual lots would create significant issues regarding the ongoing position of any excised household within the Town Camp governance and decision-making context. Research participants felt little concern was being given to these matters—that the potential subdivision, excision and freehold of land were being portrayed and pursued as technical matters alone, rather than as social and community matters. Any future land reform needs to engage with these concerns.

## **8.2 Program implications**

Several issues emerge in light of the issues raised in Chapter 5 and Section 8.1 above. These are asset security; capacity and governance; legal issues; valuation and pricing; and funding mechanisms.

### *8.2.1 Asset security*

Communities are concerned that Indigenous land or housing could be lost to non-Indigenous parties if equity models are deployed that do not have an ultimate safeguard to prevent this; some communities have previous experience with such losses. Where households do enter into an equity arrangement, the provision of this security requires legal protection, such as the default of title to the organisation in the case of termination or default, as well as financial resources to intervene in the case of default. The latter requires that there be a reserve dedicated to this event, whether held by government, by the individual organisation, or by an umbrella or other affiliated and appropriate organisation. Lenders also need to be comfortable with this security.

### *8.2.2 Capacity and governance of title-holding entities*

Both case studies highlight the need for a capacity among title-holding entities to govern effectively and appropriately. Both case studies also highlighted the presence of existing community-based organisations that currently hold title or perform services, whether at the level of local communities (i.e. LALCs, Aboriginal corporations and housing associations) or umbrella organisations (i.e. SEARMS and Tangentyere Council). Some of the organisations in the case study areas are or have been troubled by governance issues and instability at the Executive level. However, none refer to a desire for direct government intervention or overrule of community processes to remedy this. It would appear that the investigation of appropriate mechanisms for supporting local organisations, including when their capacity is compromised, is warranted. The presence of sector-based Indigenous housing and public agencies provides an existing framework within which such roles might be determined and allocated. It may be that there is a role for umbrella or jurisdictional agencies in this, with a differential allocation of roles and responsibilities at various levels; however, it is imperative that any such development be undertaken in genuine collaboration with community.

Several authors have discussed the issue of appropriately supporting capacity development and governance in Indigenous organisations. Collaboration and two-way learning are widely documented as key to this (e.g., Milligan et al. 2011). In their discussion of previous and ongoing housing management relationships between communities and government, Christie and Campbell (2013, pp.4–5) state that:

There is a long tradition of successful agreement making in Aboriginal communities where both government and local agendas have been dealt with carefully by key representatives in good faith. Those processes should be reinvigorated. Only under rare circumstances would executive decisions need to be made by government.

### *8.2.3 Legal impediments and opportunities*

In NSW there are two primary legal issues: first, recently-signed subleases between Indigenous housing providers and government; and second, the nature and extent of existing caveats on property titles. Both need further examination and support from government to be addressed. SEARMS' member organisations' subleases back to government need exit clauses for organisations looking to develop CLT-type housing. Similarly, properties subject to caveats need examination and removal of caveats to facilitate CLT-type housing, if caveats are found to be an impediment. The development and promotion of a streamlined process for examination and removal of legal impediments is a core contribution government can make in facilitating the diversification of housing options for Indigenous communities.

A parallel suite of processes can be developed in the Northern Territory to examine and streamline the required steps to enable long-term leaseholds to households on extant special purposes leases and Crown leases. The process developed by Fagan (2012) in considering non-Town Camp Indigenous lands represents a similar process and is discussed in Section 8.3. The granting of leases of more than 12 years' duration creates a subdivision. Consequently, the current 40-year leases all contain lot maps created by ongoing survey work commissioned by government. As such, 99-year leases can be granted without disruption to the underlying perpetual leases; this appears to resonate more strongly with resident ambition than the transition of Town Camps to freehold. Where residents wish to put equity into their housing, as seen in the NSW feasibility study, this can also be done via that 99-year leasehold and in such a way so as not to render the underlying title vulnerable if and where equity-based models are deployed. Lender support is crucial. Core requirements are that the lender understands that the presence of the organisation is the security and that the organisation has the right to intervene in default. These requirements also speak to the issues of valuation, pricing and funding.

Both this project and the creation of the CLT Manual (Crabtree et al. 2013) highlight the need for affordable housing policies more broadly to engage with the potential role of CLT-type housing. As existing community housing providers are looking to move into resale-restricted home ownership, whether through 99-year leases or modified shared equity models, policy space needs to be made to support these. This includes examination and broadening of the regulation of community housing providers to allow for the provision of resale-restricted home ownership models, which also has implications for considerations and ruling by the Australian Tax Office, as per the CLT Manual.

### *8.2.4 Valuation and pricing: non-equity to market equity*

Indigenous housing presents several issues to be addressed in considering valuation and subsequent pricing. These issues can often be intensified where housing already exists and has been occupied, in some instances for generations, and has been publicly funded at construction, repair or upgrade. Fagan (2012) tables three processes for determining value:

1. Compare to sales in similar communities and apply a discount (although the rationale for or nature of the discount are not provided).

2. Determine the property's replacement value and apply a discount according to its condition.
3. Determine a value from the likely annual rental return (although it is not specified how many years' worth of rent the value should then be set at).

In the Town Camp context, it is possible that the second option might be most appropriate for existing stock to allow for the condition of existing housing—perhaps with a discount for previous rent paid also applied. The third option might be the most appropriate for new construction, especially if this rent is calculated according to affordability requirements that rent not exceed 30 per cent of gross household income.

Regarding subsequent valuation, there is substantial discussion of the mechanisms and rationales for allocating equity gain provided in the CLT Manual. Essentially, the value and its allocation at termination of the lease are contained in a reversion formula that can be tailored according to household and organisational capacity and objectives. Basic variants include appraisal-based, indexed or fixed rate formulas, all of which have pros and cons in terms of their equity returns, affordability retention and administrative burden (see Crabtree et al. 2013, Chapter 8).

The models described by Crabtree et al. (2013) have associated administration fees that the resident pays to the organisation. The differential allocation of payments to the upfront price (or Premium) and to the ongoing administration fee can make the model act as much like traditional understandings of 'renting' or 'owning' as appropriate. However, given that the underlying tenure option can remain consistent irrespective of the equity allocations, it is perhaps more appropriate to refer to the options as lying on a spectrum between non-equity and market equity, according to the amount of equity the resident pays for the housing upfront, irrespective of the underlying tenure form. This is shown in Figure 21 below. Considerations in price setting are also discussed in the CLT Decision-Making Tool. Given that the majority of the indicative market for home ownership on Indigenous lands is constrained by low to moderate incomes, the upfront price and equity return to residents will most likely be limited (as is the case in the SEARMS model), in which case they are perhaps best referred to as 'limited equity'.

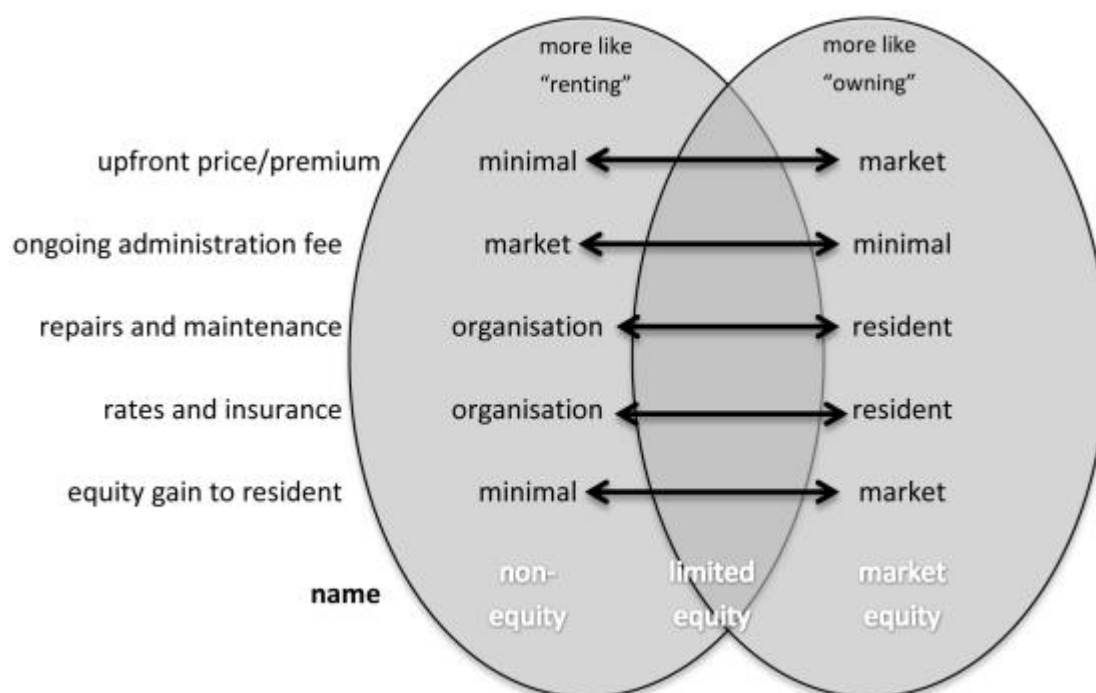
### *8.2.5 Funding*

As with Crabtree et al. (2012a), this project highlighted a need for a dedicated funding stream from government to support appropriate models of Indigenous housing. This was seen as necessary for:

- Surveying and subdivision if this has not previously been carried out.
- Training and capacity-building at the household and organisational level.
- A potential matched deposit scheme for potential buyers.
- Repairs to bring housing up to appropriate building standards.
- Replacement of stock where existing rental stock is converted to a limited equity model.
- A potential centralised capital reserve to cure defaults, although this might be devolved to the organisational level.

It is likely that a targeted loan product would also need to be developed by an appropriate lender such as IBA. This would need to be fixed-rate to ensure stable housing costs over time and would need to be based on the presence of the organisation as security.

**Figure 21: A spectrum of housing options according to key variables**



### 8.3 A potential model

This project's findings suggest a model based on the key parameters and issues identified above. Its core features are listed below and then explained:

1. Retention of an interest in the property by a relevant Indigenous organisation.
2. Determination and implementation of an appropriate legal agreement according to context and aspirations.
3. Inclusion of an upfront price/premium and ongoing administration fee set according to community aspirations, capacity and objectives.
4. Articulation of repairs and maintenance, inheritance, use, etc. in the legal agreement.
5. Articulation in the legal agreement of any equity treatment at termination of the agreement.

#### 8.3.1 Retention of Indigenous property interest

This was a stated objective of both case study organisations and resonates with historical and ongoing Land Rights agendas. The identification of the relevant organisation to hold the interest, and the nature of the subsequent legal agreement with the resident, has to occur on a community-by-community basis. The legal arrangement can be either co-ownership of freehold title (a modified shared equity scheme), or the retention of the entire title at the organisational level and its transfer to the resident via a renewable 99-year lease that restarts at sale or inheritance.

The level at which housing provision is undertaken can then be determined on that basis; that is, once title is secured at the organisational level and the legal mechanism determined, the organisation needs to decide whether it wants to coordinate housing or if it wishes to pass this to another appropriate entity such as an umbrella organisation. Given both case study contexts had umbrella organisations in place that were providing or in the past had provided centralised housing services, there is scope for the future provision of centralised support and services through the development of a housing agreement or subleasing.

### *8.3.2 Implementation of legal agreement—co-ownership or leasehold*

Two models have been developed in the CLT Manual according to what is legally feasible in Australia and that could be implemented on Indigenous lands according to context and aspirations: these are co-ownership and long-term leasehold. The co-ownership model is a modified shared equity scheme in which the organisation and resident sign a co-ownership deed, which requires that the property be held as freehold. This is inconsistent with lands subject to Land Rights legislation. The CLT Manual contains a model deed based on an existing shared equity scheme but with additional clauses regarding resale, valuation, repairs and maintenance and so forth, as explained below.

The leasehold model involves the granting of a renewable 99-year lease to the resident. The lease would terminate at 'sale' or inheritance and a new, similar lease would be entered into with the new tenant. This is designed to mimic perpetuity. The lease contained in the CLT Manual serves as a template document, while the lease contained in Appendix 2 contains amendments to incorporate a two-year Initial Period. The Initial Period was based on SEARMS' objectives. It is not presented as a mandatory feature of CLT housing but as a further option that is available for consideration by organisations, communities and government. Both require the identification of a lot to which the lease applies and can be implemented on Indigenous lands and both need to sit outside residential tenancies legislation as many of the model's objectives are inconsistent with that legislation. See Appendix 8 in Crabtree et al. (2013) for a discussion of this issue for all Australian jurisdictions.

### *8.3.3 Upfront price and ongoing administration fee*

As outlined in Section 8.2.4 below, the two costs—upfront and ongoing—represent the core variants to the model and can be tailored to make the equity arrangements mimic 'renting' or 'owning' as much as desired. That is, as Figure 21 above shows, a minimal upfront price analogous to a bond, combined with an administrative fee indexed to household income, would mimic a 'rental' situation, while a higher upfront cost analogous to a purchase price and lower administrative fee would mimic an 'ownership' situation. Organisations can provide a range of these arrangements, hence offering 'rental', 'limited equity' and/or 'market rate' housing throughout their service area, whether a Town Camp, discrete community, suburb, city or region.

Residents' rights regarding inheritance and use and so forth are consistent, irrespective of the pricing composition. Where commercial property is also included, upfront and ongoing prices can also be arranged as appropriate. As demonstrated by international sectors and Australian community housing providers, this diversifies and strengthens organisations' income streams.

### *8.3.4 Repairs and maintenance, inheritance, use, etc.*

Both the lease and deed as provided by Crabtree et al. (2013) contain clauses for allocating responsibility for repairs and maintenance between the resident and organisation as appropriate. These are contingent on stock condition, household capacity, organisational capacity and other factors, and would need to be determined by the organisation. Similarly, the legal agreements specify treatment at inheritance, acceptable use, responsibility for insurance, dispute resolution and other issues. These can be varied as appropriate.

### *8.3.5 Equity treatment at termination*

Both the lease and deed contain a Schedule to specify the equity treatment at termination of the agreement. That is, where a resident has paid an upfront price to enter the agreement, the agreement specifies the formula by which their equity return is calculated at the agreement's termination. This can be appraisal-based, indexed or fixed-rate and would be determined by the organisation—again depending on its objectives and community aspirations. Formulas can be tailored to deliver higher or lower equity returns, and the relative degree of equity gain can be modified to increase, remain constant or decrease over time. This allows organisations to

tailor their options to perform a range of functions including affordability retention, resident wealth creation, stability and mobility.

## **8.4 A streamlined process**

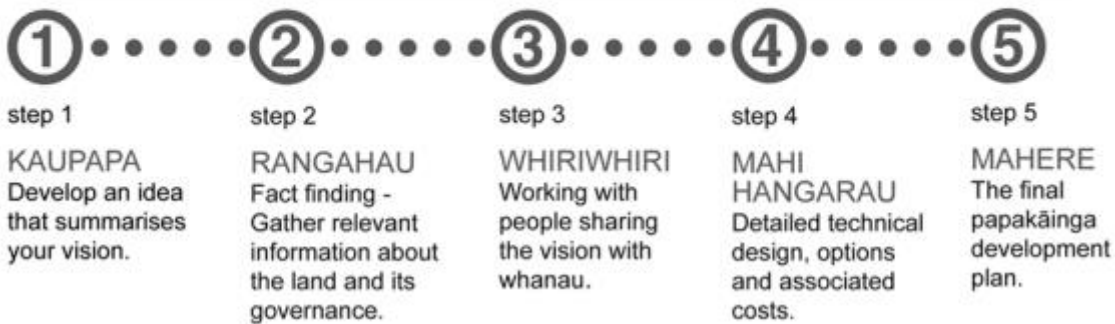
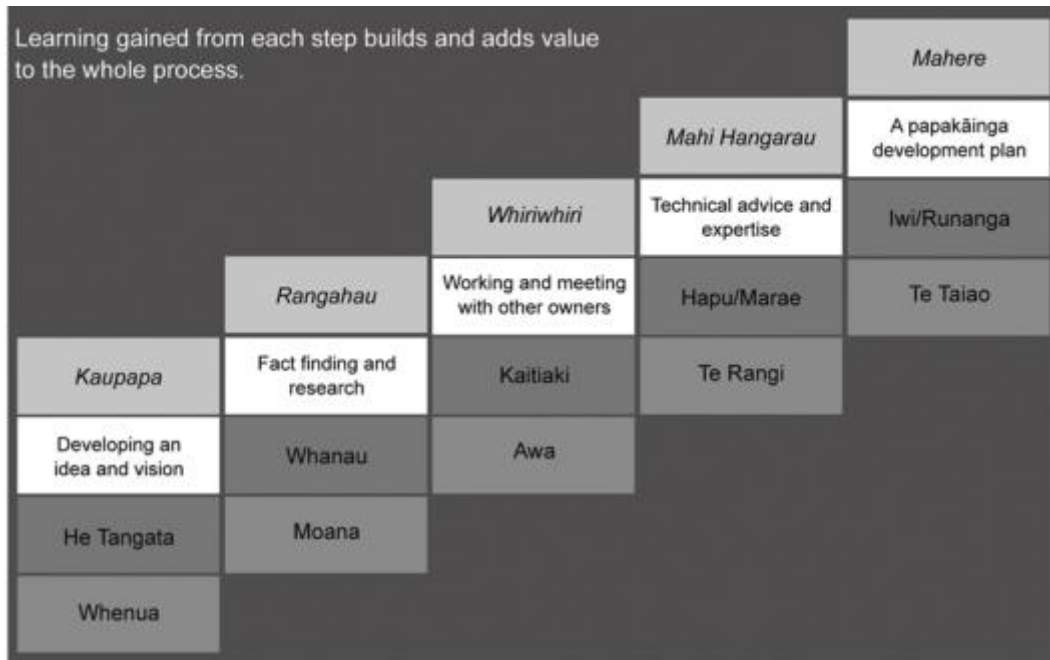
Tauranga City Council (2013) in New Zealand has developed a guide to enable development of Māori Papakāinga housing at a whole-of-community level, analogous to this project's CLT Decision-Making Tool (see Figure 22 below). The development of the model in Section 8.3 above would fall within Step 4 of the Papakāinga process. Critically, that process highlights the role of knowledge-building through the process in enhancing the efficacy of the overall process and its outcomes. The report, prepared by Fagan (2012), presents a one-page outline of an Expression of Interest process for the acquisition of private home ownership on Indigenous lands in the Northern Territory at the individual lot level (see Figure 23 below). That process would also sit with Step 4 of the Papakāinga process, as it is essentially a technical procedure regarding tenure. The work of Tauranga City Council (2013) and Fagan (2012) shows that the development of appropriate models and streamlined processes is possible and able to be supported and expedited by government.

The process for developing an appropriate program as articulated in the CLT Decision-Making Tool developed through this project is as follows:

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



Figure 22: Steps in the Tauranga Papakāinga housing toolkit



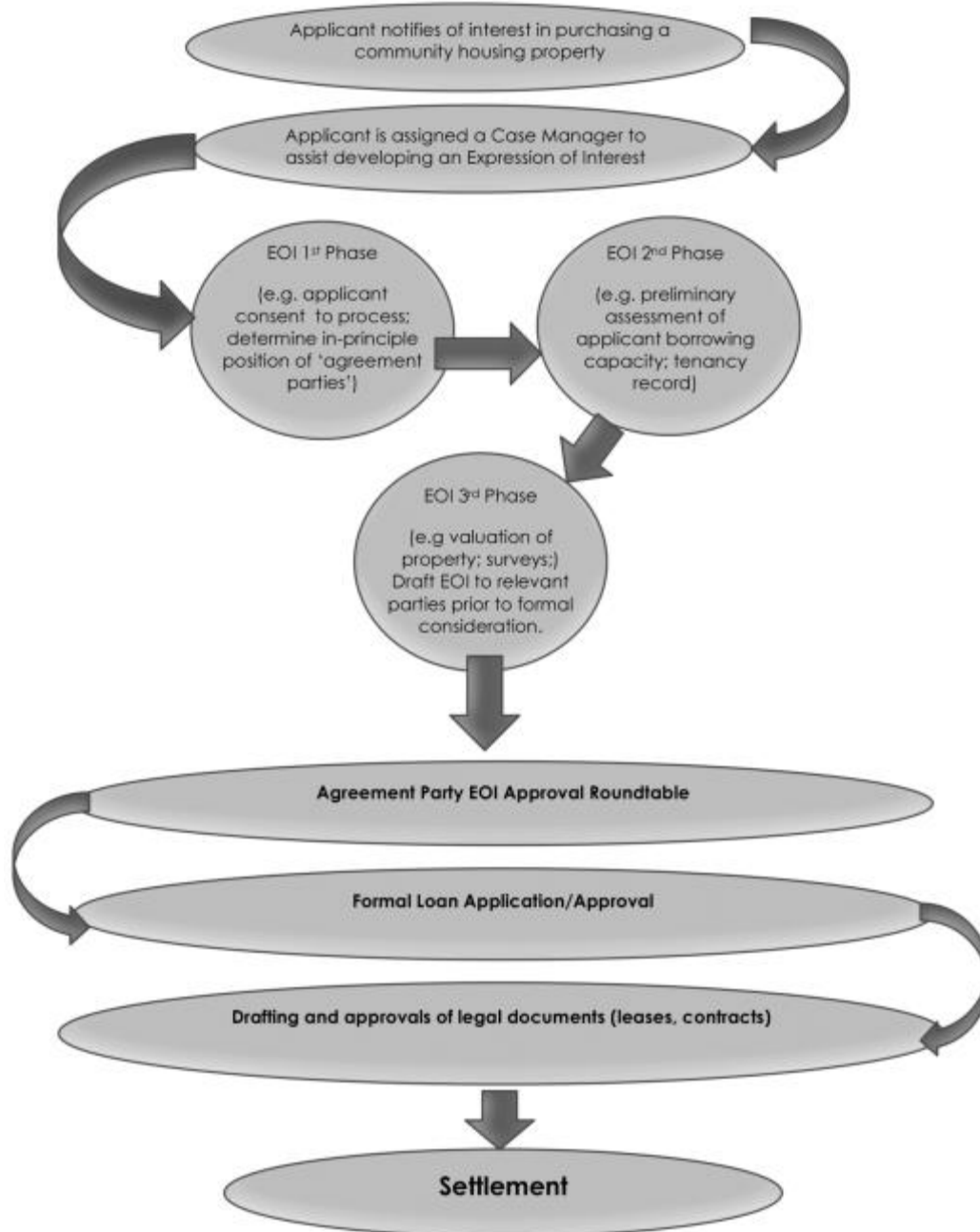
Source: Tauranga City Council 2013, pp.2, 4

The core objective in developing this series of steps is to provide a framework for a streamlined process and readily identifiable steps to underpin the development of housing options appropriate to each organisation’s community and context. This is intended to be applicable across a diversity of scales, locations, demographic profiles and legal arrangements. Hence the core program features can be summarised as a streamlined process of identifiable steps guiding the determination of relevant tenure forms and their associated equity arrangements.

## 8.5 Summary

This report builds on previous research into Indigenous housing aspirations and processes, Crabtree et al. (2012a) and this project’s findings to articulate a process and suite of options that can be encapsulated within a defined policy context. This creates a framework for supporting and enabling models that can speak directly to a diverse array of households’ and communities’ aspirations, including having the capacity to enable household equity input and gain where communities identify these as desirable and feasible. As many interviewees in this project have highlighted, legislation and policy movements can be made expediently when required; hence in providing this framework, this work aims also to suggest coherent policy objectives that might similarly be deployed expediently as requested by communities.

**Figure 23: Possible Expression of Interest process for Indigenous home ownership**



Source: Fagan 2012, p.51

In this, the core concern is that community objectives and concerns form the basis of any tenure reform, if tenure reform is desired by communities. Creating a guiding suite of operational principles and a series of steps for communities to work through represents a break with policy paradigms and processes that focus on particular tenure forms. The driving concern in the model presented here is the application of the dual CLT principles of community benefit and perpetual affordability which, as overseas models and experience show, must be developed in locally contextual ways if these principles are to respond to local circumstances. This is especially the case for communities that historically have been marginalised and policy areas that are plagued by failure. It is imperative that in developing policy and programs, the potential to develop appropriate options under genuine community oversight is not trumped by asset or maintenance imperatives of public agencies that have been criticised by some as the logic behind moves toward home ownership (Porter 2009).

## 9 POLICY IMPLICATIONS AND CONCLUSION

This concluding chapter presents an argument for reviewing current policy regarding home ownership on Indigenous lands, including the potential roles of government in that process, and final summarising comments.

### 9.1 Government roles and policy implications

The streamlined process discussed in the previous chapter suggests that for each step there are potential roles for government and areas for policy development. These are presented in Table 5 below. To summarise Table 5, core government roles here include:

- The provision of a centralised and accessible information service regarding the appropriate available models.
- Funds for Indigenous organisational capacity development, or government provision of training.
- Appropriate governance requirements.
- Removal of any caveats found to be restrictive, or termination of subleases to government.
- Other potential financial requirements, including:
  1. a matched deposit scheme
  2. funds for immediate repair prior to agreement
  3. underwriting of individual household loans and/or the broader scheme
  4. gap funding, if organisations will still be primarily providing non-equity models with a resultant organisational income shortfall.
- Development and deployment of a process analogous to the Expression of Interest process in Figure 23, or funding for Indigenous organisations to do this.

Communities have also raised the possibility of local Indigenous education, training and apprenticeship programs being incorporated into design and construction activities, and there is a potential role for government in supporting such undertakings.

Overall, partner communities are pleased to see government interest in and support for the diversification of Indigenous housing options and recognition of aspirations to ownership. There is a strong desire in this to see substantial government recognition of and engagement with Indigenous households' and communities' experience, objectives and knowledge regarding tenure.

Communities are keen to see government respond to community aspirations by respecting the desire and need for models that do not alienate their lands, make households vulnerable, place unmanageable maintenance burdens on households or communities, or remove community governance or management of landholdings. Many of these issues were also tabled by Fagan (2012).

Crabtree et al. (2012a) presented an overarching policy framework to support the development of relevant CLT-type co-ownership options on Indigenous lands. Table 6 below presents relevant issues discussed by Crabtree et al. (2012a), articulating those further in light of this project's NSW and NT findings. The core issues are expanded below.

**Table 5: Government input into a streamlined process**

<b>Step</b>	<b>Tasks for the organisation</b>	<b>Indicative role of government</b>
1. Who can decide?	Identification of appropriate Indigenous organisations that have the authority to determine program objectives.	
2. Community and household aspirations	Identification of household and community objectives regarding housing options—what do people want from their housing and for their communities?	
3. Is a new program needed?	Identification of whether new housing programs are required based on the outcomes of 2 above.	Provision of centralised and accessible information service regarding appropriate possible models.
4. Organisation health check	Examination of the organisation’s governance structures, financial position, knowledge base and capacity.	Funding and requirements for governance at the organisational level; training programs and information.
5. Current property stock—characteristics	Asset inventory, including title arrangements.	Survey and/or subdivision work if not already performed. Access to title documents and provision of explanatory materials.
6. New program elements	Determination of core aspirations of the model regarding equity arrangements, eligibility, inheritance, stock type, household type, etc.	Provision of centralised and accessible information service regarding appropriate possible models.
7. Policy, tenure and legal settings	Development of program on basis of 6 above including amendment to lease/deed.	Removal of caveats or termination of subleases to government. Other changes to title if organisation requests, e.g. transition to freehold. Funding for repairs if needed. Matched deposit scheme. Underwriting of loans where used, or of scheme. Deployment of process analogous to Fagan’s EoI to assist transition of resident into new arrangement (although this might be performed by appropriate Indigenous organisation in which case, funding for this role would be required). Provision of gap funding to cover income shortfall to organisation.
8. Design objectives and cost	If additional stock is to be brought in for a CLT model (rather than re-purposing existing stock) decisions regarding property design, location, minimum standards. If the decision is made to construct rather than spot purchase, determination of whether to link to employment outcomes.	Provision of centralised and accessible information service regarding design standards (both for purchase and construction). Linkages to employment and training opportunities in the construction industry.

**Table 6: Factors to support Indigenous co-ownership**

Issue	Project (jurisdiction)	Current legislation/policy/programs	Potential legislation/policy/programs
Effective and appropriate governance	70639	Piecemeal—some via local efforts, some via rollout of regulation	Governance and regulatory requirements to operate CLT-type models
	72010 (NSW)		Support of capacity building and governance processes at SEARMS and member organisation level based on prior knowledge and experience of those organisations
	72010 (NT)	NTER, housing agreement between NTG and EDTL, HRGs impacting community governance	Termination of current subleases to EDTL and housing agreements between EDTL and NTG
		Prior self-management through Housing Associations and Tangentyere	Support of capacity building and appropriate governance processes at HA and Tangentyere level based on prior knowledge and experience of those organisations
Asset management	70639	Piecemeal	Development of sustainable asset management frameworks by governing bodies, supported by national capacity building effort
	72010 (NSW)		As above
	72010 (NT)	Undertaken by Ingkerreke via agreement from NTG	As above; also cancellation of agreement with Ingkerreke and determination of services through CAAHC or Tangentyere in discussion with HAs and Tangentyere
Land dealing treatment	70639	NSW ALRA, Qld ALA, NSW ALC policy	Allowance for affordable HO in land disposals and guidelines to enable streamlining/clarity of NSW ALC/Trustee (Qld) approval processes
	72010 (NSW)	Recent subleases from Indigenous housing providers to AHO	Insertion of exit clauses for organisations seeking to implement CLT-type models
		Existing caveats on title	Development of streamlined, expeditious and supported process for removal of caveats for organisations seeking to implement CLT-type models; current procedures perceived as onerous and complex
	72010 (NT)	Subleases to EDTL, housing agreement between NTG and EDTL	Termination of current subleases to EDTL and housing agreements between EDTL and NTG
Existing special purposes leases and Crown leases in perpetuity		Development of 99-year sublease on basis of extant leases; current surveying work can enable this	
Interaction with <i>Residential Tenancies Act</i>		Creation of Residential Tenancies Act exemption category for renewable 99-year leases on Indigenous lands	
Land development	70639		Capital for subdivision, site infrastructure Project support role for state land development agencies
	72010 (NT)		As above

<b>Issue</b>	<b>Project (jurisdiction)</b>	<b>Current legislation/policy/programs</b>	<b>Potential legislation/policy/programs</b>
Funds/programs for overseeing resale/lease terms	70639		Mandated fee for service for lease/home ownership manager
	72010 (NSW)		As above, modelled in feasibility study
Coordinated approach	70639	Policy/programs fragmented across jurisdictions and remoteness typology of areas	National/state leadership, coordination and resources dedicated to development and dissemination of models for all locations (i.e. no locational dichotomy) National Advisory Council with membership drawn from Indigenous housing sector and government and financial institutions
	72010 (NSW and NT)		As above; focus on development of locally appropriate options and significant formalised community input in line with community aspiration
Single funding program	70639		Formula-based gap funding program linked to retention of social rental housing stock and programs—possible federal funds tied to state oversight/coordination
	72010 (NSW and NT)		As above
Local government support	70639	Existing social housing provisions	Strengthening and streamlining of development processes for affordable housing schemes including Indigenous co-ownership
	72010 (NSW)		As above

### *9.1.1 Effective and appropriate governance*

Crabtree et al. (2012a) found governance and capacity in the NSW Indigenous housing context to be piecemeal, with some capacity building through local efforts and some via the rollout of regulation. In light of that observation, they suggested a need for appropriate governance and regulatory requirements to operate CLT-type models. Building on that, this project found a specific need here for the support of capacity building and governance processes both at the level of SEARMS and SEARMS member organisations, based on the prior knowledge and experience of those organisations. In the NT, there is a need for the termination of current subleases to the Executive Director Town Leasing, and of the housing agreements between the Executive Director Town Leasing and the NT Government. The Town Camp situation also highlights the need for the support of capacity building and appropriate governance processes at the Camp and Tangentyere level, based also on the prior knowledge and experience of those organisations.

### *9.1.2 Asset management*

The previous project found asset management to be piecemeal and highlighted the need for the development of sustainable asset management frameworks by governing bodies supported by a national capacity building effort. This project found this to be the case in both jurisdictions. In the NT this would involve also cancellation of the agreement with Ingkerreke and determination of services through CAAHC or Tangentyere Council in discussion with the Town Camp associations and Tangentyere.

### *9.1.3 Land dealing treatment and development*

Crabtree et al. (2012a) stated that for NSW, there needs to be an allowance for home ownership models in Aboriginal land disposal processes, as well as guidelines to enable the streamlining and clarity of NSW ALC approval processes. This research found that for NSW organisations subleasing stock back to government, there need to be exit clauses written into leases for those organisations seeking to implement CLT-type options. Further, there is need for a streamlined process for the identification and removal of any caveats on title that might prevent CLT-type options.

To enable CLT-type options in the NT, the subleases to the Executive Director Town Leasing and housing agreements between the Executive Director Town Leasing and the NT Government must be terminated, and an exemption category within the *Residential Tenancies Act* for renewable 99-year leases created. It is possible to develop 99-year leases both on the basis of the extant perpetual leases and the surveying work currently being undertaken by the NT Government. Both the previous project and this current project highlight the need for funds for subdivision where subdivision is required, as well as for site infrastructure.

### *9.1.4 A coordinated approach and funding program*

The previous research found policy and programs in this space to be fragmented across jurisdictions and between remoteness categories. It highlighted the need for national or state leadership, coordination and resources dedicated to the development and dissemination of models for all locations, under the guidance of a National Advisory Council. This research builds on this to highlight the need for a coherent framework for locally appropriate options as per the tenure spectrum developed, involving formal community input through the suggested streamlined process. This should be tied to a formula-based gap funding program linked to the retention of social rental housing stock and programs in addition to the development of new options. This also needs to address maintenance backlogs such that households are not moved into stock which will present unmanageable maintenance burdens; as mentioned earlier, previous work has flagged moves towards home ownership in this space as a cost-cutting exercise of offloading stock in need of maintenance (Porter 2009).

## 9.2 Reflections on home ownership policy

According to a report commissioned by the Northern Territory Department of Business and Employment (Fagan 2012, p.6):

The Northern Territory Government—in partnership with the Australian Government, local government, Indigenous organisations and the private sector—is committed to working with remote Indigenous communities to facilitate economic development ... As part of this joint effort, the (then) Northern Territory Department of Business and Employment (DBE) engaged with the four major banks ... to closely examine the barriers to finance (and consequently wealth creation through property ownership and development) on Indigenous land in the Northern Territory.

That objective is consistent with the Federal Government's aim that private home ownership be developed on Indigenous lands, primarily as a trigger for wealth creation and economic development. However, Fagan's report, this project and previous work all highlight that wealth creation is not a primary objective among Indigenous households seeking ownership, and that it is probably an unrealistic expectation. Moreover, there is little evidence that tenure reform prompts wealth creation. In the context of lower-income households and communities with low employment levels, there is a real danger that the deployment of a debt-based private housing model will worsen household, and possibly community, circumstances and create ongoing, persistent poverty and disadvantage. Hence, if the primary objective is to foster Indigenous economic development, policy efforts might better be targeted towards supporting appropriate community and economic development programs.

Given that there exist households on community lands who do desire home ownership, even if a minority of residents, there is a role for appropriate intermediate tenure models that can encapsulate core household and community objectives in this area. This can be done without the excision of individual parcels to freehold and can support appropriate residential and commercial development under community guidance. Recent Northern Territory policy focuses on the transfer of remote Indigenous public housing to current residents via 40-year or 99-year leases in communities where township leases have been developed. These leases will be made available for between \$80 000 and \$150 000 with all responsibility for repairs and maintenance transferring to the resident. While the policy stipulates eligibility criteria, these can be waived at the discretion of Territory Housing (Northern Territory Department of Housing 2014). While potentially a step in the right direction for households with the interest and capacity to invest equity in their housing, this would appear to be a blanket policy with no avenue for community governance, input, or oversight, and which in the absence of such oversight could easily translate into a loss of assets from communities and dislocation between households.

In the particularly fraught case of the Intervention, as per Billings (2009), it is imperative that ongoing policy development in Northern Territory Indigenous affairs be evidence-based and in line with actual community need and aspiration. Numerous public servants interviewed for this project referred to tenure reform on the Town Camps as a process of 'normalisation' or 'mainstreaming'—both of which are offensive and problematic terms. This is particularly so in a situation where broader structural forces such as the policy landscape, historical dispossession and racism are playing significant roles in preventing economic development or employment access, and where 'mainstream' interpretations of tenure and economic development might not be appropriate or desirable. These forces were discussed by the NSW case study as just as much at play in their regional context. The Central Land Council's Director David Ross stated that:

the real impediments to home ownership are not communal title or the Land Councils, but factors that affect most Australians: the cost of houses and the ability of people to pay for them ... Let's clear another myth out of the way right now: it has always been



possible for individual leasehold interests to be granted on Aboriginal land to build houses. (Ross 2013)

A policy push towards mortgage-backed private home ownership on Indigenous lands appears unwise in the context of such structural factors and in light of the recent mortgage crisis, which was triggered primarily by the extension of debt financed home ownership into marginal communities in international jurisdictions. In this context, the growing investigation and development of limited- and shared-equity housing models such as CLTs as superior risk management strategies internationally and in Australia presents an opportunity to develop appropriate options for Indigenous communities. These have the capacity to underpin both a range of affordable housing options and commercial development.

The problematic and erroneous conflation of land tenure reform with economic opportunity is a core issue harshly illuminated by Indigenous communities in the Northern Territory, but is also at play in NSW and, as Crabtree et al. (2012a) found, in Queensland. The assumption of wealth creation on the basis of individualised, mortgaged property ownership fundamentally relies on access to a broader functioning cash economy, including ongoing and stable employment options, and the existence of a pool of subsequent house buyers. Focusing on land tenure reform on the assumption that this will create wealth seems a 'cart before the horse' argument: households can only sustain mortgages when they have stable incomes, and a pool of later buyers will only exist where numerous individuals have access to that broader economic system. Subdividing land to create mortgage opportunities does not by default create income.

Arguments have been made for Indigenous individuals to be able to leverage their property interest to start a business. Where this is a genuine concern, this does not need to make the property vulnerable to outside interests, but it does require the development of a more nuanced and secure mechanism than is current 'mainstream' practice. In the more common situation for the Indigenous sector, where communities experience generally low and marginal employment and income levels, the privatisation of land in the absence of substantial economic development strategies seems risky and problematic. Moreover, it seems deeply at odds with the imperatives and concerns of the majority of communities, most of whom already feel a deep sense of ownership but wish to be free of direct government interference in their daily lives.

### **9.3 Conclusion**

This project has primarily presented data from two very specific contexts. However, the study deployed an innovative and appropriate methodological approach that enabled the creation of tools and frameworks that apply to Indigenous housing sector more broadly, as well as to the housing sector at large. Moreover, the two IAGs and interviewees brought in themes, knowledge and issues from the sector at large. The growing difficulty in accessing affordable and stable housing generally, and particularly for the Indigenous housing sector, highlights the need for a range of appropriate housing options that can respond to need, aspiration and context, including socio-cultural, legal and economic circumstances and objectives.

This project therefore also contributes to broader debates and research focused on the development of various intermediate tenure forms as additional mechanisms for affordable housing. As with Crabtree et al. (2012a), the project found that housing issues were deeply entwined in numerous socio-cultural and economic systems and affected by numerous policy directives and local factors—many of which do not explicitly focus on housing, but which have substantial impacts nonetheless. Core among these is persistently lower access to employment among Indigenous peoples, which housing policy will not ameliorate. It is imperative that housing policy be considered in light of and alongside appropriate economic development policy and that this is undertaken through the substantial engagement of community knowledge.

The need for appropriate housing mechanisms that can respond to diverse contexts and conditions has underpinned the creation in this report of a diverse housing spectrum and an enabling framework which allows for diverse arrangements of equity and responsibility according to capacity and without mandating particular tenure forms. The consideration and support of a housing spectrum represents better risk allocation and management than defaulting to dominant extant housing models that can present unacceptable levels of risk, whether these be unmanageable debt burdens, socially harmful levels of rental instability, loss of community assets, erosion of community governance or income-capped options, which can unwittingly create perverse incentives and impact community development.

It is important that such a spectrum recognises and supports community governance, concerns and objectives. This has been a core component of international forms of intermediate tenure such as shared and limited equity, whereby it is intended that people feel they are part of the entity with which they are sharing their housing rights and responsibilities, understand the rationale for doing so and have a say in the direction and activities of the organisation. Such community-based governance is underpinned by training and capacity building programs, as also suggested in this report. This focus on community governance and transparency would help avoid the consumer ambivalence towards 'community equity' models as discussed by Pinnegar et al. (2009), which could be read as a result of that work's failure to consider or discuss the community-based nature and community governance focus of CLTs and other similar limited equity housing options, which as highlighted in Chapter 2 have been pivotal to their success. Therefore, this project has lessons for the broader affordable housing sector as it contains policy and programmatic principles that can frame the development of a diverse housing sector at large by enabling diversity within a suite of clearly-defined core parameters and enabled through a clear series of sequential steps with relevant government support.

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# APPENDICES

## Appendix 1: SEARMS survey

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ph 02 9772 6748



Monday 2 July 2012

### NSW South Coast Aboriginal Tenants survey

The University of Western Sydney is working with SEARMS and your housing provider on a research project called "Community land trusts and Indigenous communities – from strategies to outcomes". We are looking at ways to provide tenants with greater housing options – including options other than rental such as affordable home ownership in partnership with a housing organisation.

We are asking you for some information about your household. All information will remain confidential and no information will be given to any other agency (such as Centrelink). Your housing provider and SEARMS will not know which household has given which responses.

Please note this is a research project only – there is no funding or other moves at this stage to set up a home ownership program, we are just looking at whether there is interest in this sort of program and what sort of housing costs people would be able to pay. We will be using the information you give us to help with the financial modelling.

This survey will take about 10 minutes to complete. Please place it into the addressed envelope and post it after you have filled it out, or drop it in to SEARMS or your Land Council office.

The research team has submitted an ethics application for approval by the University of Western Sydney for the research. This has been approved and the reference number is H9531. If you have any complaints or reservations about the ethical conduct of this research, you can contact the Ethics Committee through the Office of Research Services, quoting reference number H9531, on:

Tel 02 4736 0229  
Fax 02 4736 0013  
email [humanethics@uws.edu.au](mailto:humanethics@uws.edu.au)

ONE PERSON who is a tenant over 18 years of age from each household should fill out the survey.

## COMMUNITY LAND TRUSTS AND INDIGENOUS HOUSING OPTIONS HOUSEHOLD SURVEY

### Q1. Your housing tenure

Please circle the option that best describes your housing

- a. I rent from an Aboriginal Land Council/Aboriginal Corporation/SEARMS
- b. I rent from Housing NSW
- c. I rent privately from a landlord or real estate agent
- d. I am buying my home and have a mortgage
- e. I own my home outright
- f. I am staying with friends/family
- g. I live in a caravan/manufactured home
- h. I am in a refuge/temporary or emergency accommodation

### Q2. Your house type

Please circle the option that best describes your house:

- a. 2 bedroom house
- b. 3 bedroom house
- c. 4+ bedroom house
- d. 1 bedroom unit
- e. 2 bedroom unit
- f. 3 bedroom unit
- g. Other sort of house (please describe) \_\_\_\_\_

### Q3. What is your main source of income?

- a. Centrelink
- b. Centrelink and income from part time or casual work
- c. Part time work
- d. Casual work
- e. Full time work

### Q4. Have you ever thought about buying your own house?

- a. Yes
- b. No
- c. I already have bought my own home

Q5. If you (or you and your partner) could buy a house, how much could you (or you and your partner or other person) be able to afford to pay every week to buy that house?

- a. Nothing – I never want to buy a house
- b. \$100
- c. \$200
- d. \$300
- e. \$400
- f. \$500
- g. \$600
- h. I have already bought my home and I am paying it off. I am paying \$\_\_\_\_ a week.

Q6. How would you describe the state of your current house?

- a. In a good state of repair. Doesn't need any work
- b. Pretty good, just needs some minor repairs and maintenance
- c. Needs major repairs and maintenance

Q7. How old do you think your house is?

- a. New – built in last ten years
- b. Built between 10-20 years ago
- c. Built 20-40 years ago
- d. Built more than 40 years ago
- e. Don't know

Q8. Do you have any savings?

- a. I don't have any savings
- b. Yes – less than \$500
- c. Yes – between \$500- \$1000
- d. Yes – between \$1000 - \$3000
- e. Yes – between \$3000 - \$5000
- f. Yes – between \$5000 - \$7000
- g. Yes – between \$7000 - \$10,000
- h. Yes – more than \$10,000
- i. Yes – more than \$20,000

Q9. Do you have any debt? Circle the option that is closest to your current debt (this includes all loans and credit card debt):

- a. No, no debt
- b. I owe less than \$500
- c. I owe between \$500-\$1000
- d. I owe between \$1000 - \$3000
- e. I owe between \$3000-\$5000
- f. I owe between \$5000 - \$7000
- g. I owe between \$7000 - \$10,000
- h. I owe more than \$10,000

Q10. If you do owe money, circle the places you owe money to:

- a. Credit card
- b. Personal loan
- c. Car loan
- d. Payday lender
- e. Other \_\_\_\_\_

Q11. What is your preference for your housing?

- a. To keep renting my current house
- b. To rent privately
- c. To buy a house over 25-30 years (if the repayments were affordable)
- d. To keep paying off my mortgage for the house that I am buying

Q12. What is your age range?

- a. 18-24
- b. 25-34
- c. 35-44
- d. 45-54
- e. 55-64
- f. 65+

Q13. What is your household type?

- a. Lone person
- b. Couple only
- c. Couple with children living at home
- d. Extended family
- e. Sharing with friend/Group household
- f. One parent family
- g. Other.....

Q14. Income – please circle the total WEEKLY household income of the adults in the house (the people who currently pay the housing costs such as rent or mortgage):

- a. \$200-\$400
- b. \$401-\$600
- c. \$601-\$800
- d. \$810-1000
- e. \$1001 - \$1200
- f. \$1201-\$1400
- g. \$1401-\$1600
- h. \$1601-\$1800
- i. \$1801-\$2000
- j. \$2000+

Q15. What is the combined yearly income of the people from your household who would buy a house together if it was possible (if you are not buying a house already?)

- a. \$0 -\$6,000
- b. \$6,001-\$37,000
- c. \$37,001-\$80,000
- d. \$80,001-\$180,000
- e. \$181,000-\$280,000
- f. \$280,001+ over

THANK YOU FOR FILLING OUT THIS SURVEY – ALL INFORMATION WILL REMAIN STRICTLY CONFIDENTIAL.

## Appendix 2: 99-year lease and additional conditions

Date     /     /

### Lease

## Insert address of the Premises]

South Eastern Aboriginal Regional Management Service

ACN ##

and

##

Resident

This is an example document that is solely intended to provide a general understanding of the contractual arrangement that may take place between a CLT and the individuals that occupy CLT property.

This document is not and should not be regarded as legal advice. Parties should obtain their own legal advice prior to using this Lease. Legislation continues to change and the law relevant at the time this Lease was produced may have since been amended, replaced or no longer be enforceable. The authors do not guarantee or warrant the accuracy, completeness or currency of this document.

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## Parties

South Eastern Regional Management Service ACN [##] of 41 Queen Street, Moruya, NSW 2537

and

The Person or Persons named and described in Item 2 of the Particulars (Resident)

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## Recital

1. The CLT is the registered proprietor of the Premises.
2. The CLT has agreed to grant the Resident a lease of the Premises on the terms of this Lease.
3. The Lease is for a term of 99 years.
4. The parties have recorded their rights and obligations in respect of their contractual relationship in this Lease.

## Lease Particulars

Item 1.	CLT: (Clause 1)	South Eastern Aboriginal Regional Management Service, ACN [##]
Item 2.	Resident: (Clause 1)	[##] of [##], [##]
Item 3.	Land: (Clause 1)	The land contained in [## NSW only – Folio Identifier] known as [##insert address]
Item 4.	Premises (Clause 1)	The Land (as shown on the plans attached as set out in Schedule 6) together with the Building and any other improvements.
Item 5.	Commencement Date: (Clause 1)	[##]
Item 6.	Term: (Clauses 1 & 2.1)	99 years
Item 7.	Premium: (Clauses 1, 3 and Schedule 1)	\$160,000 (exclusive of GST) calculated in accordance with Schedule 1
Item 8.	Administration Fee: (Clause 4)	\$25 per week as adjusted in accordance with Clause 4 of this Lease
Item 9.	Permitted Use: (Clauses 1 & 13.1)	As the Resident's principal place of residence  [##CLT to incorporate any further restrictions on use to ensure consistency with the CLT's charitable objectives.]
Item 10.	Insurable Amount: (Clause 11.2)	[##CLT to specify the amount of insurance coverage the Resident must take out in respect of the Building. Where the CLT procures the insurance itself, the proportionate cost of insurance that benefits the Resident / Premises will be deemed to be a Property Expense.]

## Definitions

In this Lease unless expressed or implied to the contrary:

**Administration Fee** means the amount specified in Item 8.

**Administration Fee Review Notice** means a notice in the form set out in Schedule 5 from the CLT to the Resident notifying the Resident of an adjustment to the Administration Fee.

**Affordable Housing Provider** means an organisation that offers accommodation that is deemed to be affordable to those with a very low, low or moderate household income and prices so that such households are able to meet other basic needs on a sustainable basis.

**Approved Mortgage Lender** means:

- (a) a body registered by the Australian Prudential Regulation Authority with a Standard and Poors Australia rating of at least 'A-'; or
- (b) any other entity approved in writing by the CLT.

**Authorisation** means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Building** means all buildings and other improvements on the Land from time to time.

**CLT** means the CLT specified in Item 1 and includes the CLT's successors and assigns and where it is consistent with the context includes the CLT's employees and agents.

**Commencement Date** means the date specified in Item 5.

**Contamination** means the presence in, on, under or above any land of a substance at a concentration above the concentration at which the substance is normally present in, on, under or above land in the same locality being a presence which presents a risk of harm to human health or any other aspect of the environment.

**CPI** means the Consumer Price Index – All Groups [## Sydney] or if this index is not available or is discontinued or suspended, such other index that represents the rise in cost of living in [## Sydney] as the CLT reasonably determines.

**Essential Terms** means those Clauses within this Lease identified in Clause 21.7.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person, including a statutory corporation; or

- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Insurable Amount** means the amount specified in Item 10.

**Item** means an item in the Lease Particulars.

**Land** means the land specified in Item 3.

**Lease Particulars** means the schedule of items specified on the page at the front of this Lease.

**New CLT** has the meaning given to it in Clause 21.6.

**Owners Corporation** means owners corporation

**Owners Corporation Agreement** means the agreement(s) and/or licence(s) between the CLT and the Owners Corporation in respect of the Building.

**Owners Corporation Rules** means the rules of the Owners Corporation, as may be amended from time to time.

**Permitted Use** means the use specified in Item 9.

**Personal Information** means personal information, as defined in the *Privacy Act 1988* (Cth) about a party to this Lease who is an individual.

**Premises** means the premises specified in Item 4

**Premium** means the amount calculated in accordance with Schedule 1.

**Property Expenses** means all amounts payable in respect of the Premises (plus GST on those amounts) including the following:

- (a) Rates and Taxes;
- (b) Owners Corporation charges and levies;
- (c) all premiums (excluding the Premium) and other amounts payable in respect of insurances effected from time to time relating to the Resident's Property, the Premises and the use and occupancy of the Building;
- (d) the cost of all maintenance, repair, servicing, redecoration and renovation of the Building;
- (e) the cost of cleaning and disposal of refuse; and
- (f) the cost of supplying, maintaining and repairing any services supplied to the Premises.

**Rates and Taxes** means:

- (a) local government rates and charges;
- (b) water rates and charges, including water usage charges;
- (c) sewerage and drainage rates and charges;
- (d) land tax, on the basis assessed to the CLT; and

- (e) all other rates, taxes, charges and levies assessed in connection with the Premises.

**Resident** means the Resident specified in Item 2 and includes the Resident's executors, administrators, successors and where it is consistent with the context includes the Resident's employees, contractors, agents, invitees and persons the Resident allows in the Premises.

**Resident's Property** means all property of the Resident in the Premises including all fixtures and fittings owned or leased by the Resident and the Building, and any other improvements constructed on the Land by the Resident.

**Reversion Price** means the amount calculated in accordance with Schedule 2.

**Term** means the term specified in Item 6.

**Termination Notice** means:

- (a) from the CLT, the notice in the form set out in Schedule 3 completed with the relevant information and in accordance with Clause 18.1; and
- (b) from the Resident, a notice in the form of the notice in Schedule 4, completed with the relevant information and in accordance with Clause 18.2.

**Valuer** means a member (of at least 5 years standing) of the [## New South Wales] Division of the Australian Property Institute Inc. who:

- (a) is licensed to practise as a valuer of the same type of property as the Premises;
- (b) has at least 5 years' experience in valuing that type of property; and
- (c) is active in the market for valuation of that type of property.

**Works** means the construction of buildings, structures or other improvements, on the Land.

---

## 2. Duration of the Lease

### 2.1 Grant of Lease

The CLT leases the Premises to the Resident for the Term, starting on the Commencement Date.

### 2.2 Resident to take as Owner

Unless stated otherwise in this Lease and to the extent permitted by law, the Resident will take and be subject to the same responsibility in regard to persons and property and otherwise to which the Resident would be subject as if during the Term the Resident was the owner of the freehold of the Premises.

---

## 3. Premium

In consideration of the grant of this Lease, the Resident must pay the Premium to the CLT on or before the Commencement Date.

---

## **4. Change of circumstances**

### **4.1 Notification**

If the Resident owns, purchases or acquires or is likely to own, purchase or acquire, any right or interest in any real property (other than the Premises), (each a Change in Circumstance), the Resident must notify the CLT in writing within 14 days of the Change in Circumstance or any likely Change in Circumstance.

### **4.2 Termination due to a Change in Circumstances**

Unless agreed otherwise by the CLT, the Resident's written notice of a Change in Circumstance will have the same effect as a Termination Notice issued by the Resident pursuant to Clause 18.2 and this Lease will terminate upon the expiration of 14 days from the CLT's receipt of such notice.

---

## **5. Administration Fee**

### **5.1 Administration Fee**

The Resident must pay the CLT the Administration Fee to the CLT on the [##] day of each calendar month during the Term.

### **5.2 Administration Fee Review**

On each anniversary of the Commencement Date during the Term, the CLT may adjust the Administration Fee by issuing to the Resident an Administration Fee Review Notice.

### **5.3 Calculation**

The adjustment to the Administration Fee must:

- 5.3.1 not exceed the Administration Fee applicable for the preceding 12 month period by an amount greater than 10%; and
- 5.3.2 take effect on the date stated in the Administration Fee Review Notice which must be no earlier than 60 days after the date of the Resident's receipt of the Administration Fee Review Notice.

---

## **6. Property Expenses**

### **6.1 Payment of Property Expenses by Resident**

During the Term, the Resident must pay all Property Expenses and must:

- 6.1.1 wherever possible and appropriate, become the person rated or assessed for Property Expenses; and
- 6.1.2 produce to the CLT if requested in writing by the CLT, documentary evidence of payment of all or any Property Expenses.

### **6.2 Payment of Property Expenses by CLT**

Without prejudice to Clause 6.1, if the CLT pays any Property Expenses:

6.2.1 the CLT must notify the Resident in writing of the amount of Property Expenses and any related GST for which the Resident is liable; and

6.2.2 the Resident must reimburse the CLT the amount of each item of Property Expenses within 14 days of a request by the CLT.

---

## **7. Other expenses**

The Resident must pay to the CLT within 14 days of demand:

7.1.1 any stamp duty and registration fees payable on this Lease (including penalties and fees);

7.1.2 the CLT's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether the CLT actually gives such consent or approval);

7.1.3 any costs incurred by the CLT in connection with any sublease, mortgage or other encumbrance referred to in this Lease; and

7.1.4 the CLT's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Lease by the Resident.

---

## **8. Payment requirements**

### **8.1 No deduction or right of set-off**

The Resident must pay all amounts due under this Lease to the CLT without deduction or right of set-off.

### **8.2 Interest on late payments**

The Resident must pay to the CLT on demand interest on any money payable by the Resident under this Lease and remaining unpaid after the due date at the rate per annum equal to the sum of the 90 day bank bill swap reference rate published in the Australian Financial Review on, or as near as possible to, the due date plus 4% (or if no such rate has been published another rate determined by the CLT acting in good faith). Interest will be computed from the date on which such payment became due.

### **8.3 Method of payment**

The Resident must make all payments under this Lease in such manner as the CLT reasonably requires, which may include by direct debit.

---

## **9. Works**

### **9.1 CLT consent to Works**

The Resident may carry out Works with the CLT's prior written consent.

### **9.2 Requirements for Works**

If the Resident carries out any Works on the Premises it must:



- 9.2.1 first obtain all relevant Authorisations in respect of the Works;
- 9.2.2 carry out the Works only in accordance with such Authorisations; and
- 9.2.3 not impede public access over or use of any adjoining or neighbouring property.

### **9.3 Indemnity**

The Resident indemnifies the CLT against any liability, cost, loss, expense or damage in connection with or arising out of:

- 9.3.1 the Resident's undertaking of the Works; and
- 9.3.2 any breach by the Resident of Clauses 9.1 or 9.2.

---

## **10. Repair and maintenance**

The Resident must:

- 10.1.1 keep the Premises and the Resident's Property clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;
- 10.1.2 keep the Premises in good repair and condition;
- 10.1.3 maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Premises;
- 10.1.4 maintain any gardens or landscaped areas in the Premises in good condition, well watered and free of weeds;
- 10.1.5 make good any damage caused to any adjacent property by the Resident;
- 10.1.6 take all reasonable measures to ensure that any fair wear and tear to the Premises does not cause any loss or damage to the Premises, the Building, or any person; and
- 10.1.7 give the CLT prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises, or any person in the Premises or any neighbouring premises.

---

## **11. Insurance**

### **11.1 Public liability**

- 11.1.1 The Resident must take out public liability insurance:
  - (a) for an amount no less than \$20 million concerning 1 single event (or such greater sum as reasonably required by the CLT); and
  - (b) in the joint names of the CLT and the Resident.

### **11.2 Building Insurances**

- 11.2.1 The Resident must take out building insurance in respect of the Building and any other improvements from time to time on the Land:

- (a) against such risks as a prudent owner of the Building and other improvements would reasonably insure against;
- (b) for at least the Insurable Amount; and
- (c) which notes the interest of the CLT as an insured party.

11.2.2 At any time during the Term the Insurable Amount may be varied as agreed by the CLT and the Resident and, in default of agreement, will be the amount certified by a Valuer at the request of either the CLT or the Resident, as the full replacement cost of the Building and other improvements on the Land.

### **11.3 Payment and production of policies**

The Resident must pay all insurance premiums on or before the due date for payment and produce to the CLT before the Commencement Date and where required in writing by the CLT copies of the certificate of currency.

### **11.4 Not invalidate policies**

The Resident must:

- 11.4.1 not do anything without the CLT's consent which may make any insurance effected by the CLT or the Resident invalid, capable of being cancelled or rendered ineffective, or which may increase any insurance premium effected by the CLT; and
- 11.4.2 despite Clause 11.4.1 if the Resident does something that has the effect of increasing the insurance premium (including undertaking Works under Clause 9) without limiting the rights of the CLT, the Resident must pay any increase in the insurance premium caused by the Resident's act, default or use of the Premises.

### **11.5 Proceeds of insurance**

If any loss occurs which is covered by any insurance provided for in this Lease and if the Resident is entitled to proceeds of such insurance, the Resident must:

- 11.5.1 apply for the insurance proceeds immediately; and
- 11.5.2 subject to Clause 22.2, use the proceeds to restore, replace, repair or reinstate the loss and must supplement the proceeds with the Resident's own money to the extent that the proceeds are insufficient.

### **11.6 Cross-liability clause and condition in policies**

The Resident must ensure that the policies effected under Clause 11:

- 11.6.1 are taken out with an insurance company approved by the CLT;
- 11.6.2 contain a cross-liability clause extending the policy so that the words 'the insured' are considered as applying to each party comprising the insured, as though a separate policy has been issued to each of the parties, in the same manner as if that party were the only party named as the insured; and
- 11.6.3 contain a condition that the insurer will notify the CLT at least 14 days before the policies lapse.

---

## **12. Release, indemnity and no compensation**

### **12.1 Risk**

The Resident occupies the Premises at its own risk. Anything which the Resident is obliged to do under this Lease is to be done by the Resident at its own cost and risk.

### **12.2 Release**

The Resident releases the CLT from all claims resulting from any damage, loss, death or injury in connection with the Premises except to the extent that such claims arise out of the CLT's negligence.

### **12.3 Indemnity**

The Resident must indemnify and hold harmless the CLT against all claims, losses, liabilities, costs or expenses incurred in connection with or resulting from:

- 12.3.1 any damage, loss, death or injury in connection with the Premises and the use and occupation of the Premises by the Resident except to the extent that such claims arise out of the CLT's negligence;
- 12.3.2 the use or occupation of the Premises by the Resident; and
- 12.3.3 any default by the Resident under this Lease.

---

## **13. Permitted Use**

### **13.1 Permitted Use**

The Resident must use the Premises for the Permitted Use and not use the Premises for any other purpose.

### **13.2 No warranty**

The Resident:

- 13.2.1 acknowledges that the CLT does not represent that the Premises are suitable for the Permitted Use; and
- 13.2.2 must make its own enquiries as to the suitability of the Premises for the Permitted Use.

### **13.3 Illegal purpose**

The Resident must not use the Premises for any illegal purpose or carry on any noxious or offensive activity on the Premises.

---

## **14. Other obligations concerning the Premises**

### **14.1 Compliance with laws**

The Resident must, at its own cost, comply with all laws and any requirements of any Government Agency in connection with the Premises and the Resident's use and occupation of the Premises.

#### **14.2 Nuisance**

The Resident must not do anything in connection with the Premises which may:

- 14.2.1 cause a nuisance or interfere with any other person; or
- 14.2.2 be dangerous or offensive in the CLT's reasonable opinion.

#### **14.3 Security**

The Resident must keep the Premises secure at all times and comply with any security requirements under the insurances procured by the Resident under this Lease.

#### **14.4 Endanger Premises**

The Resident must not do or permit anything to be done in connection with the Premises which in the opinion of the CLT may endanger the Premises or be a risk to any person or property.

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### **15. Resident's environmental obligations**

The Resident must not spill or deposit, or carry out any activities on the Premises which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Premises, drainage or surrounding environment.

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### **16. Dealing with Interest in the Premises**

#### **16.1 No assignment**

The Resident must not assign this Lease.

#### **16.2 Subletting**

The Resident must not sub-lease the Premises without the CLT's consent.

The CLT will not unreasonably withhold its consent to a sub-lease if the Resident:

- 16.2.1 requests the CLT in writing to consent to the sub-lease;
- 16.2.2 has remedied any breach of this Lease for which the Resident has received written notice from the CLT;
- 16.2.3 provides to the CLT the name and address of the sub-lessee, the rent to be charged to the sub-lessee and proves to the CLT's reasonable satisfaction that the sub-lessee:
  - (a) is solvent;
  - (b) is able to comply with its obligations under this Lease or the sub-lease; and
  - (c) falls within a class of persons which the CLT is established to benefit;
- 16.2.4 executes, and procures the sub-lessee to execute a sub-lease in a form reasonably approved by the CLT; and

- 16.2.5 pays the CLT's reasonable costs in connection with approving the sub-lessee and the costs of the preparation, negotiation and stamping of any document required under this Clause.

---

## **17. Mortgage or charge**

### **17.1 Mortgage or charge**

Subject to this Clause 17, the Resident may:

17.1.1 procure a mortgage with an Approved Mortgage Lender; or

17.1.2 charge,

its interest in the Premises under this Lease.

### **17.2 Preconditions to mortgage or charge**

Prior to the mortgage or charge taking effect:

17.2.1 the Resident must notify the CLT of its intention to mortgage or charge its interest and provide the details of the mortgage or charge which must include:

- (a) identifying the relevant Approved Mortgage Lender providing the mortgage or the party of which the charge is in favour; and
- (b) the terms upon which the mortgage or charge is to be granted;

17.2.2 the Approved Mortgage Lender or the chargee must enter into a binding written agreement with and in a form acceptable to the CLT under which:

- (a) the CLT agrees to notify the Approved Mortgage Lender or chargee of any circumstances that may give rise to a termination of the Lease;
- (b) the Approved Mortgage Lender or chargee agrees to:
  - (i) notify the CLT of any breach of or default under the mortgage or charge;
  - (ii) notify the CLT if it appoints a receiver, or receiver and manager, to any of the assets of the Resident, or otherwise enters into possession of any assets secured by the mortgage or charge; and
  - (iii) be liable for the performance of the Resident's covenants under this Lease for any period during which the Approved Mortgage Lender or chargee is in possession of the Premises; and
  - (iv) any other provision reasonably required by the CLT.

---

## **18. Termination of lease**

### **18.1 CLT's right to terminate**

The CLT may terminate the Lease if:

- 18.1.1 any moneys owing by the Resident to the CLT are in arrears for 28 days after the CLT has demanded payment in writing;
  - 18.1.2 the Resident is in breach of an Essential Term and does not remedy the breach within 28 days of receipt of written notice from the CLT;
  - 18.1.3 the CLT receives notification from the Resident's mortgagee or chargee that the Resident is in breach of or default under the relevant mortgage or charge;
  - 18.1.4 the Premises are deemed unfit for human habitation or have been destroyed totally or to such an extent as to be rendered unsafe;
  - 18.1.5 subject to Clause 18.3, the CLT becomes aware of the Resident's death;
  - 18.1.6 the CLT receives a notice from a Government Authority for the compulsory acquisition of the Premises; or
  - 18.1.7 the Resident repudiates its obligations under this Lease,
- by giving a Termination Notice to the Resident.

**18.2 Resident's right to terminate**

The Resident may terminate the Lease:

- 18.2.1 for no reason upon 60 days' notice;
- 18.2.2 if the CLT is in breach of an essential term and does not remedy the breach, within 28 days of receipt of written notice from the Resident;
- 18.2.3 if the Premises have been destroyed or damaged to such an extent as to be rendered unsafe or uninhabitable; or
- 18.2.4 if the Resident has received an offer of social housing or a place in an aged care facility, upon 14 days' notice,

by giving a Termination Notice to the CLT.

**18.3 Death of Resident**

If the Resident dies, the Resident's executor or administrator may terminate this Lease with immediate effect by providing notice in writing to the CLT.

**18.4 Transfer to devisee under Resident's Will**

18.4.1 Subject to Clause 18.4.2 upon receipt of a written notice from:

- (a) the Resident at any time; or
- (b) the Resident's executor or administrator within 30 days of the date of the Resident's death,

identifying the devisee to the Resident's interest in this Lease, the CLT must, unless it has good cause not to, grant a new lease on substantially the same terms as this Lease to such person or persons.

18.4.2 The CLT is not obliged to grant a new lease to any devisee who is not eligible to be housed by the CLT and is not:

(a) a spouse of the Resident; or

(b) a child of the Resident.

18.4.3 If the CLT does not grant the devisee a lease of the Premises, the devisee will be entitled to reside at the Premises for a period of 12 months commencing on the date of the Resident's death provided the devisee and the CLT enter into a tenancy agreement for the relevant period of the devisee's occupation.

18.4.4 In consideration of the CLT granting the devisee a new lease under Clause 18.4.1, the devisee must pay the Premium calculated as at the date of the Resident's death less any payments made by the Resident.

#### **18.5 Payment of Reversion Price on termination**

18.5.1 Within 30 days of termination pursuant to Clause 18.1, 18.2 or 18.3 the CLT must pay to the Resident or the Resident's executor or administrator (as applicable) the Reversion Price.

18.5.2 The CLT may offset any moneys owing by the Resident to the CLT under this Lease against the Reversion Price payable under this Clause 18.4.

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### **19. Resident's obligations at the end of this lease**

#### **19.1 Resident's obligations**

At the end of this Lease, the Resident must:

19.1.1 vacate and return the Premises to the CLT in a condition consistent with the Resident having complied with its obligations under this Lease;

19.1.2 remove the Resident's furnishings and all rubbish and make good any damage caused by the removal of the Resident's furnishings; and

19.1.3 give to the CLT all keys and other security devices for the purposes of obtaining access to the Premises.

#### **19.2 Resident's furnishings left in Premises**

Any furnishings left in the Premises 7 days after the end of this Lease will be deemed to be abandoned by the Resident and will become the property of the CLT and may be removed by the CLT at the Resident's cost and at the Resident's risk.

#### **19.3 Ownership of Improvements**

The Resident expressly acknowledges that at the end of this Lease, any improvements, fixtures and fittings constructed on the Premises become the property of the CLT and the Resident will not be entitled to any compensation in respect of such improvements, fixtures and fittings other than any compensation that forms part of the Reversion Price or as otherwise determined by the CLT in its absolute discretion.

---

## **20. Owners Corporation Rules**

### **20.1 Resident must obey Owners Corporation Rules**

The Resident must observe and comply with the Owners Corporation Rules. A breach of the Owners Corporation Rules is a breach of this Lease.

### **20.2 Lease prevails over Owners Corporation Rules**

If any of the Owners Corporation Rules are inconsistent with the terms of this Lease, the terms of this Lease prevails to the extent of the inconsistency.

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## **21. CLT's rights and obligations**

### **21.1 Quiet enjoyment**

As long as the Resident does not breach this Lease, the CLT must not interfere with the Resident's use and occupation of the Premises except as provided by this Lease.

### **21.2 Dealing with the Premises**

The CLT may:

21.2.1 grant easements or other rights over the Land or the Premises required to facilitate the proper and efficient administration, trust and management of the CLT's operations as a community organisation, except where it will result in a detrimental effect on the value of the Premises; and

21.2.2 require the Resident to do everything reasonably necessary, including signing and producing documents and providing consents, to enable the CLT to exercise those rights.

### **21.3 Entry by CLT**

The Resident acknowledges that the CLT may enter the Premises at any reasonable time after giving the Resident no less than 7 days' notice, to:

21.3.1 no more than twice in any 12 month period, inspect the condition of the Premises;

21.3.2 show the Premises to intending tenants after the Resident has issued a Termination Notice under Clause 18.2;

21.3.3 undertake a valuation of the Premises after the Resident has issued a Termination Notice under Clause 18.2;

21.3.4 rectify any default by the Resident under this Lease;

21.3.5 carry out any inspection, repairs, maintenance, works or alterations to any adjacent property of the CLT; or

21.3.6 do anything which the CLT must or may do under this Lease.

### **21.4 Emergency**

Notwithstanding any other provision of this Lease, if the CLT decides that there is an emergency the CLT may, without giving notice to the Resident:



- 21.4.1 enter the Premises at any time;
- 21.4.2 temporarily stop the Resident from entering the Building; or
- 21.4.3 undertake any emergency repairs the CLT deems to be reasonably necessary, the cost of which will be a debt due and payable by the Resident to the CLT.

**21.5 CLT's consent**

Unless otherwise provided for in this Lease, where the CLT is required to give its consent under this Lease, the CLT must not unreasonably refuse its consent.

**21.6 Change in CLT**

If a person other than the CLT becomes entitled to the reversion of this Lease whether by operation of law or otherwise (**New CLT**) then:

- 21.6.1 the CLT is released from all further obligations under this Lease arising after the New CLT becomes entitled to the reversion of this Lease; and
- 21.6.2 the Resident must at the cost of the CLT enter into a deed required by the CLT (acting reasonably) under which the Resident covenants that the New CLT will have the benefit of all of the Resident's obligations under this Lease.

**21.7 Essential terms**

The following terms of this Lease are essential terms:

- 21.7.1 Clause 3 (Payment of Premium);
- 21.7.2 Clause 10 (Repair and Maintenance);
- 21.7.3 Clause 11 (Insurance);
- 21.7.4 Clause 13.1 (Permitted Use);
- 21.7.5 Clause 16 (Dealing with Interest in the Premises);
- 21.7.6 Clause 17 (Mortgage or Charge); and
- 21.7.7 Clause 23 (Personal Property Securities Act).

Any other obligation of the Resident under this Lease may also be an essential term.

The breach of an essential term is a repudiation of this Lease.

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**22. Destruction or Damage of Premises**

**22.1 Damage or Destruction**

If the Building or any improvements on the Land are damaged or destroyed, the Resident must:

- 22.1.1 make the Premises safe and secure;
- 22.1.2 give the CLT a report from a structural engineer as to the structural stability of the Premises; and

22.1.3 clear all debris from the Premises.

## **22.2 Rebuild to original design**

Provided the Resident has obtained the CLT's prior written consent in the event of damage or destruction of the Premises, the Resident may:

22.2.1 reinstate the Building and all other improvements on the Land substantially in accordance with its original design; or

22.2.2 rebuild to a different design.

The Resident must comply with Clause 9 with respect of the reinstatement or rebuilding under this Clause 22.

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## **23. Personal Property Securities Act**

### **23.1 Definitions**

In this Clause 23:

**CLT PPS Property** means any item of property:

- (a) in which the CLT has an interest; and
- (b) which is situated on the Premises at any time during the term of this Lease;

**Permitted Security Interest** means any of the following:

- (a) a Security Interest in favour of the CLT;
- (b) a Security Interest granted with CLT's prior written consent, which consent may be granted or withheld in the CLT's absolute discretion and on any conditions that the CLT considers necessary or desirable at its absolute discretion;
- (c) a Security Interest granted to a supplier in respect of goods supplied to the Resident by the supplier in the supplier's ordinary course of business; or
- (d) a Security Interest that does not rank ahead of any of the CLT's Security Interests;

**PPS Act** means the Personal Property Securities Act 2009 (Cth);

**Resident PPS Property** means any item of property:

- (a) in which the Resident has rights;
- (b) which is situated on the Premises at any time during the term of this Lease; and
- (c) of which, whether before or after the end of the term of this Lease:
  - (i) the CLT may require the Resident to transfer ownership to the CLT;
  - (ii) the Resident is obliged to transfer ownership to the CLT,

~~but~~ does not include any CLT PPS Property.

## **23.2 Interpretation**

Words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

## **23.3 Creation of a Security Interest**

The Resident:

- 23.3.1 charges its right title and interest in all Resident PPS Property in favour of the CLT, as security for the performance of the Resident's obligations under this Lease, including but not limited to the Resident's obligations to transfer ownership in the whole or any part of the Resident PPS Property to the CLT at the expiry or termination of the Lease;
- 23.3.2 acknowledges and agrees that the charge granted by the Resident under Clause 23.3.1 constitutes the grant of a Security Interest which the CLT is entitled to register under the PPS Act;
- 23.3.3 acknowledges and agrees that the grant of this Lease also constitutes the grant of a Security Interest in the CLT PPS Property in favour of the CLT, which interest the CLT is entitled to register under the PPS Act as a Purchase Money Security Interest; and
- 23.3.4 must do all things required by the CLT from time to time (including, without limitation, signing any documents required by the CLT) to enable the CLT to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Resident PPS Property and the CLT PPS Property so that the CLT's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Resident PPS Property and the CLT PPS Property.

## **23.4 Warranties**

The Resident:

- 23.4.1 warrants that it has not granted a Security Interest in respect of any CLT PPS Property on or prior to execution of this Lease that has not been previously disclosed to the CLT in writing; and
- 23.4.2 agrees that it will not grant in respect of any CLT PPS Property or Resident PPS Property any Security Interest other than a Permitted Security Interest.

The Resident must indemnify and hold harmless the CLT against all claims, damages or loss incurred by the CLT as a consequence of any breach by the Resident of this Clause.

## **23.5 Resident's acknowledgements**

The Resident acknowledges and agrees that:

- 23.5.1 it waives its right under the PPS Act to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPS Act); and
- 23.5.2 on the expiration or earlier termination of this Lease, the Resident must sign (and procure any holder of a registered Security Interest to sign) any document that the CLT considers necessary or desirable under or as a result of the PPS Act to release any registered Security Interests under the PPS Act in relation to the Resident PPS Property and the CLT PPS Property.

## **23.6 Termination**

If this Lease is terminated by the CLT as a consequence of a default by the Resident under this Lease, without limitation to any other rights of the CLT, the CLT may take possession of the Resident PPS Property by way of set off for any loss or damage the CLT is entitled to recover in connection with the Resident's breach of the Lease.

## **23.7 Essential Term**

This Clause 23 is an essential term of this Lease.

## **23.8 Inconsistency**

In the event of any inconsistency between this Clause and any other provision of this Lease, the provisions of this Clause will prevail and that other provision will be read down and interpreted accordingly.

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## **24. GST**

### **24.1 GST Act**

In this Clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.

### **24.2 Exclusive of GST**

Except as otherwise provided by this Clause, all consideration payable under this Deed in relation to any supply is exclusive of GST.

### **24.3 Recipient must pay**

If GST is payable in respect of any supply made by a supplier under this Deed, subject to Clause 24.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Deed.

### **24.4 Tax Invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under Clause 24.3.

---

## **25. Disputes**

### **25.1 Disputes**

In the event of a dispute connected with this Lease, the Resident and a senior officer of the CLT (who must have authority to negotiate and settle disputes) must meet and negotiate in good faith to attempt to resolve the dispute.

### **25.2 Mediation**

If the dispute is not resolved within 28 days of the meeting under Clause 25.1, the parties agree to submit the dispute to mediation administered by The Institute of Arbitrators and Mediators Australia. The mediator must be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the President of The Institute of Arbitrators and Mediators Australia at the request of either party. Any mediation meetings

and proceedings will be held in the capital city of the State or Territory in which the Premises are located. The costs of the mediation will be borne equally by the parties.

### **25.3 Referral to Litigation**

If, within 28 days (or any other period agreed to in writing between the parties) after the appointment of a mediator the dispute is not resolved either party may refer the dispute to litigation.

### **25.4 Continued Performance**

The parties must continue to comply with their obligations under the Lease despite any dispute between the parties.

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## **26. Notices**

### **26.1 Notices**

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

- 26.1.1 the Resident at its address set out in this Lease, the Resident's registered office address, the Premises, or the last known address of the Resident; and
- 26.1.2 the CLT at its address set out in this Lease or any other address notified in writing to the Resident by the CLT.

### **26.2 Time of service**

A notice or other communication is deemed served:

- 26.2.1 if served personally or left at the person's address, upon service;
- 26.2.2 if posted, 2 business days after posted;
- 26.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and
- 26.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

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## **27. General**

### **27.1 Entire understanding**

This Lease contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

### **27.2 Waiver**

If the CLT accepts the Premium or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of the CLT's rights under

this Lease, it will not be a waiver of the breach of this Lease by the Resident or of the CLT's rights under this Lease.

### **27.3 Governing law and jurisdiction**

This Lease is governed by and is to be construed in accordance with the laws of **## New South Wales**. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of **## New South Wales** and waives any right to object to proceedings being brought in those courts.

### **27.4 Joint and several**

If a party consists of more than one person, this Lease binds them jointly and each of them severally.

### **27.5 Exclusion of statutory provisions**

To the full extent permitted by law, any legislation that adversely affects an obligation of the Resident, or the exercise of a right or remedy by the CLT, under this Lease is excluded from this Lease.

### **27.6 Operation of indemnities**

Each indemnity of the Resident in this Lease is a continuing obligation, independent of the Resident's other obligations and continues after this Lease expires or is terminated. It is not necessary for the CLT to incur an expense or make a payment before enforcing a right of indemnity under this Lease.

### **27.7 Personal Information**

Each party who is an individual:

27.7.1 acknowledges that the CLT has collected or may collect Personal Information about that party in connection with entering into this Lease; and

27.7.2 consents to that Personal Information being disclosed by the CLT in connection with its business, including without limitation being disclosed to any proposed purchaser or mortgagee of the Premises or to a related entity or advisor of the CLT.

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## **28. Interpretation**

### **28.1 Persons**

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

### **28.2 Legislation**

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

### **28.3 Clauses and headings**

In this Lease:

28.3.1 a reference to a Clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Lease; and

28.3.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

**28.4 Severance**

In this Lease:

28.4.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

28.4.2 if it is not possible to read down a provision as required in this Clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

**28.5 Number and gender**

In this Lease, a reference to:

28.5.1 the singular includes the plural and vice versa; and

28.5.2 a gender includes the other genders.

**28.6 Construction**

No rule of construction applies to the disadvantage of the CLT because the CLT was responsible for the preparation of this Lease.

## Execution

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EXECUTED as a deed

**[##Insert execution clause for the CLT]**

**[##Insert execution clause for the Resident]**



## Schedule 1 Premium

- (a) The Lease can only commence after the Premium is paid in full.
- (b) The Resident has paid to the CLT the Premium for the grant of this Lease and that payment is acknowledged. Method of payment of Lease Purchase Price

Amount of Premium: \_\_\_\_\_

The method by which the Premium must be paid:

(a) to \_\_\_\_\_ at \_\_\_\_\_ by cash or cheque, or

(b) into the following account, or any other account nominated by the Lessor:

BSB number: \_\_\_\_\_ account number: \_\_\_\_\_

account name: \_\_\_\_\_

payment reference: \_\_\_\_\_, or

(c) as follows: \_\_\_\_\_

On or before //

Premium formula

The Premium amount is calculated as follows:

(cross out where not applicable)

Option 1 Open market value method

~~[[#]]% of the market value of the Premises, as per the valuation conducted on //~~

Option 2 Nominated Price Method:

~~\$160,000,~~

Option 3 Other:

~~[[#Other formula as adopted by the CLT]]~~

## Schedule 2 Reversion Price

### Reversion Price on termination of lease

The Reversion Price is calculated as follows:

(cross out whatever is not applicable)

#### Option 1 Appraisal based method

Premium + 25% of any appreciation of value of home at end of lease = reversion price

**[[[The Premium and valuation would need to be benchmarked against open market value. Any value of approved capital improvements will show up in the value at end of lease.]**

Variation 1: Resident must have been in the lease for no less than 8 years to receive 25% of appreciation in value

Variation 2: time specific: Up to 10 years, seller gets 25%; 10-15 get 35%; 15+ years get 40%

**[[[Variation 2 is not recommended for high housing cost growth areas]**

#### Option 2 Indexed method

Premium + compounded annually by CPI [of NSW/Australia] from the time of purchase + Value of approved capital improvements = Reversion Price

**[[[This option is better for high house price growth areas]**

#### Option 3 Other:

The Reversion Price is calculated as the Premium, plus 25 per cent of the increase on the Premium as calculated in line with changes in average weekly earnings (AWE) index for the region.

This is expressed as:

$$V_Y = V_0 + 0.25[MV_Y - MV_0]$$

Where  $V_Y$  = resident share value at Year Y

$V_0$  = resident share value at Year 0

$MV_Y$  = indexed value of property at Year Y

$MV_0$  = market value of property at Year 0

And  $MV_Y = MV_0 \times [1 + \Delta AWE]^Y$

And  $\Delta AWE$  = average annual change in Average Weekly Earnings as a decimal – i.e., 2% annual rate of change = 0.02

And Y = the number of years since the Premium was paid.

## Schedule 3 CLT Termination Notice

Please complete this form using a black pen in BLOCK LETTERS

To:

.....  
(name of Resident/s)

I give you notice to deliver up vacant possession of the premises at:

**##Address of premises**

.....Postcode.....

On: \_\_\_/\_\_\_/\_\_\_ (insert date on which Resident is required to vacate premises)

**This notice is being given on the following grounds:**

*(tick appropriate box to indicate the grounds/reason and complete details as required)*

- Moneys are owing by the Resident to the CLT and have been in arrears for 28 days following the CLT's demand for payment in writing dated on **##insert date** (Clause 18.1.1)
- The Resident has breached an essential term and has not remedied the breach within 28 days of receipt of written notice from the CLT dated on **##insert date** (Clause 18.1.2)
- The CLT has received notification from the mortgagee or chargee that the Resident has or is in breach of or default under the mortgage or charge instrument (Clause 18.1.3)
- The Premises are deemed unfit for human habitation (Clause 18.1.4)
- The Premises have been destroyed totally or to such an extent as to be rendered unsafe (Clause 18.1.4)
- The CLT has become aware of the Resident's death (Clause 18.1.5)
- The CLT has received a notice from an Authority for the compulsory acquisition of the Premises (Clause 18.1.6)
- The Resident has repudiated its obligations under the Lease (Clause 18.1.7)

In accordance with Clause 26.2 this notice is deemed served:

- (a) if served personally or left at the person's address, upon service;
- (b) if posted, 2 business days after posted;
- (c) if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and
- (d) if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

.....  
(signature of CLT or CLT's agent)

...../...../.....  
(date delivered/posted)

Name of CLT.....

Contact phone number of CLT.....

## Schedule 4 Resident Termination Notice

Please complete this form using a black pen in BLOCK LETTERS

To:

of

*(insert name and address of CLT)*

I give notice of termination of a Lease between me as Resident and you as CLT in respect of the premises at:

*(insert address of leased premises)*

I will deliver up possession of the premises to you on: ...../...../.....  
*(insert hand-over date)*

This notice is being given on the following grounds:

*(tick appropriate box to indicate the grounds/reason and complete details as required)*

- For no reason **##Resident to note that 60 days' notice is required** (Clause 18.2.1)
- The CLT has breached an essential term and has not remedied the breach within 28 days of receipt of written notice from the Resident dated **##Insert date** (Clause 18.2.2)
- The Premises have been destroyed totally or to such an extent as to be rendered unsafe (Clause 18.2.3)
- I have received an offer of social housing or a place in an aged care facility (14 days' notice required) (Clause 18.2.4)

In accordance with Clause 26.2 this notice is deemed served:

- (e) if served personally or left at the person's address, upon service;
- (f) if posted, 2 business days after posted;
- (g) if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and
- (h) if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

...../...../.....  
*(signature of Resident or Resident's agent)* *(date delivered/posted)*

Name of Resident.....

Contact phone number of Resident.....

## Schedule 5 Administration Fee Review Notice

Please complete this form using a black pen in BLOCK LETTERS

To:

.....  
(name of Resident/s)

I give notice of an adjustment to your Administration Fee:

- (a) with effect from: **###Insert date that adjusted Administration Fee is to take effect which shall be not less than 60 days' notice from the date of this notice**
- (b) for the amount of: **###Insert amount of adjusted Administration Fee**

.....  
(signature of CLT or CLT's agent)

...../...../.....  
(date delivered/posted)

Name of CLT.....

Contact phone number of CLT.....

In accordance with Clause 26.2 this notice is deemed served:

- (i) if served personally or left at the person's address, upon service;
- (j) if posted, 2 business days after posted;
- (k) if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and
- (l) if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

---

**Schedule 6      Plans**

# Additional Lease Conditions

Initial Period

---

## 1 Additional Lease Particulars

Item 11	Initial Period Payment Cycle (Additional Condition 2)	## Each week ## Each fortnight ## Each month
Item 12	Premium Instalment (Additional Condition 2)	\$ ## (exclusive of GST) per Initial Period Payment Cycle
Item 13	Administration Fee during Initial Period (Additional Condition 4.1)	\$ ## (exclusive of GST) per Initial Period Payment Cycle
Item 14	Administrative Fee payment day (Additional Condition 4.2)	The ##first day of each Initial Period Payment Cycle.

## 2 Additional definitions

In this schedule:

**Additional Condition** or **Additional Conditions** refers to conditions 1 to 12 (inclusive) set out in this schedule;

**Additional Lease Particulars** means the lease particulars set out in Additional Condition 1;

**Bank** means a bank nominated by the CLT from time to time that is lawfully carrying on business in Australia under the *Banking Act 1959* (Cth);

**Delegates** means:

- (a) the CLT;
- (b) each authorised signatory of the CLT; and
- (c) the attorneys of any of those parties;

**Initial Period** means the period of 2 years commencing on and including the Commencement Date and ending on (and including) the Initial Period Expiry Date;

**Initial Period Expiry Date** means the day immediately before the second anniversary of the Commencement Date;

**Initial Period Payment Cycle** means each successive period, as specified in Item 11, during the Initial Period, with the first such period commencing on the Commencement Date;

**Interest** means all interest earned on the monies held in the Joint Account;

**Joint Account** means the bank account in the joint names of the CLT and the Resident opened and maintained under clause 6.1;

**Premium Instalment** means the amount specified in Item 12;

**Surrender Date** has the meaning given to that term in Additional Condition 10.2; and

**Surrender Notice** has the meaning given to that term in Additional Condition 10.1.

### **3 Additional Lease Particulars**

The Additional Lease Particulars are deemed to be Lease Particulars for the purpose of this Lease.

### **4 Administration Fee during the Initial Period**

#### **4.1 Amount of Administration Fee**

Notwithstanding any other term of this Lease, the Administration Fee payable under clause 5.1 of this Lease for each Initial Period Payment Cycle during the Initial Period is the amount specified in Item 13.

#### **4.2 Payment of Administration Fee**

Notwithstanding any other term of this Lease, the Resident must pay the Administrative Fee payable under Additional Condition 4.1 to the CLT on the day of each Initial Period Payment cycle specified in Item 14.

#### **4.3 Administration Fee Review**

Notwithstanding clause 5.2 of this Lease, but subject to Additional Condition 5, the CLT may not adjust the Administration Fee during the Initial Period.

### **5 Administration Fee after the Initial Period**

**[## Option A:** The amount of the Administration Fee payable after the expiry of the Initial Period under clause 5.1 of this Lease is the amount set out in Item 8 of this Lease.]

OR

**[## Option B:** No less than 6 months before the Initial Period Expiry Date, the CLT must give the Resident an Administration Fee Review Notice under clause 5.2 of this Lease specifying the amount of the Administration Fee payable after the Initial Period Expiry Date.]

**[## The CLT must determine whether the amount of the Administration Fee payable after the expiry of the Initial Period can be determined at the commencement of the Lease.]**

**[## If the amount of the Administration Fee can be determined, then Item 8 of the Lease should be completed with the relevant amount and Option A above used. If the amount cannot be determined, then Item 8 of the Lease should be completed with the words 'The amount determined in accordance with Additional Condition 5 and Option B above used.]**

**[## Note that clause 5.1 of the Lease contemplates that the Administration Fee payable after the expiry of the Initial Period is paid monthly, so the CLT must ensure that the amount stated in either Item 8 of the Lease (if Option A is adopted) or in the Fee Notice (if Option B is adopted) is a monthly amount, exclusive of GST.]**



## **6 Joint Account**

### **6.1 Opening the Joint Account**

As soon as practicable after the Commencement Date, the CLT must open and maintain with the Bank an interest bearing account:

- (a) in the joint names of the CLT and the Resident; and
- (b) ~~that~~ only permits withdrawals of funds on presentation of original hard copy withdrawal requests executed by the account holders.

### **6.2 Resident to assist**

The Resident must do all things reasonably necessary to assist the CLT to open the Joint Account including, but not limited to, signing all documentation required by the Bank and providing the Bank with the Resident's tax file number.

**[## To avoid delays in opening the Joint Account after the Commencement Date, the CLT should require the Resident provide the tax file numbers of all parties comprising the Resident at the time lease documents are prepared.]**

### **6.3 Signatories**

In opening the Joint Account, the CLT must designate the CLT and the Resident as joint signatories to the Joint Account such that all withdrawals from the Joint Account require the signature of both the CLT signatories and the Resident.

### **6.4 Closing the Joint Account**

As soon as practicable after the CLT effects payment of all funds from the Joint Account under Additional Condition 8.1, 8.2, 8.3 or 8.4, the CLT and the Resident must take reasonable steps to close the Joint Account.

### **6.5 Grant of power of attorney**

In consideration of the CLT granting this Lease to the Resident, the Resident:

- (a) irrevocably appoints the Delegates as the Resident's attorneys to sign all documentation required to be signed by the Resident, as joint account-holder, to effect the payments from the Joint Account referred to in Additional Conditions 8.1, 8.2, 8.3 or 8.4; and
- (b) ~~irrevocably~~ appoints the Delegates as the Resident's attorneys to sign all documentation required to be signed by the Resident, as joint account-holder, to close the Joint Account in accordance with Additional Conditions 6.4.

### **6.6 Power of attorney documentation**

If requested by the CLT, the Resident must promptly sign all documentation required by the Bank in connection with the powers of attorney granted under Additional Condition 6.5.

**[## The CLT should enquire with the Bank at the time the Joint Account is opened as to what documents, if any, the Resident must sign in order for the Bank to accept the CLT's exercise of the powers of attorney granted under this clause.]**

### **6.7 Power of attorney as security**

The parties agree that the power of attorney granted:

- (a) under Additional Condition 6.5(a) is granted by the Resident to secure performance of the obligation owed to the CLT by the Resident under Additional Conditions 8.1, 8.2, 8.3 or 8.4; and
- (b) ~~under~~ Additional Condition 6.5(b) is granted by the Resident to secure performance of the obligation owed to the CLT by the Resident under Additional Condition 6.4.

## **7 Delayed payment of Premium**

### **7.1 Clause 3 of Lease**

Subject to Additional Condition 7.2, clause 3 of this Lease does not apply.

### **7.2 Payment of Premium**

The Resident must pay the Premium to the CLT on or before the Initial Period Expiry Date in accordance with the terms of this Additional Condition 7.

### **7.3 Premium Instalment**

In consideration of the grant of this Lease, during the Initial Period, the Resident must pay the Premium Instalment to the CLT at the same time and in the same manner as the Resident pays the Administration Fee in each Initial Period Payment Cycle.

### **7.4 CLT to deposit into Joint Account**

Promptly after receiving each payment of the Premium Instalment under Additional Condition 7.3, the CLT must promptly deposit each Premium Instalment payment into the Joint Account.

## **8 End of Lease and Distribution of Joint Account funds**

### **8.1 End of Initial Period**

On the Initial Period Expiry Date, the CLT and the Resident must immediately pay the CLT, from the funds held in the Joint Account an amount equal to:

- (a) all overdue yet unpaid payments of the Administration Fee as at the Initial Period Expiry Date; plus
- (b) **[## Option A:** all funds remaining in the Joint Account after the payment referred in Additional Condition 8.1(a) has been made, in partial satisfaction of the Resident's obligations under Additional Condition 7.2.]

### **8.2 OR**

- 8.3 **[## Option B:** the amount equal to **[##10%]** of the Premium, in partial satisfaction of the Resident's obligations under Additional Condition 7.2. After the payments to the CLT referred in Additional Conditions 8.1(a) and 8.1(b) have been made, the CLT and the Resident must pay the Resident all funds remaining in the Joint Account, if any.]

**[##The CLT may wish to vary how the Joint Account funds are allocated. Two examples of how the CLT may wish to deal with the Joint Account funds are provided above. The CLT may choose either Option A or Option B above or adopt the CLT's own preferred method.]**

**## The CLT should consider the ongoing options available to it at the end of the Initial Period and in particular, whether the terms of the Lease require amendment for the remainder of the Lease term.]**

#### 8.4 Termination during Initial Period – no default by CLT

If this Lease is validly terminated during the Initial Period for any reason other than default of the CLT, then within a reasonable time after that termination the CLT and the Resident must pay, from the funds held in the Joint Account:

- (a) to the CLT, an amount equal to:
  - (i) all amounts owing to the CLT under this Lease as at the date of termination; plus
  - (ii) the reasonable costs incurred by the CLT to rectify all outstanding breaches of this Lease by the Resident as at the date this Lease is terminated; plus
  - (iii) the reasonable costs incurred by the CLT in terminating this Lease, including but not limited to, the cost of registering at the relevant land registry all documents required to remove the notation of this Lease from the title to the Land; plus
  - (iv) all Interest; and
- (b) to the Resident, the funds remaining in the Joint Account, if any, after the payment referred in Additional Condition 8.2(a) has been made.

**## The CLT should consider the CLT's preferences as to the distribution of the joint monies]**

#### 8.5 Termination during Initial Period – default by CLT

If this Lease is validly terminated during the Initial Period for default by the CLT, then within a reasonable time after that termination the CLT and the Resident must pay to the Resident, all funds held in the Joint Account less all overdue yet unpaid payments of the Administration Fee as at the date this Lease is terminated.

**## The CLT should consider the CLT's preferences as to the distribution of the joint monies]**

#### 8.6 Early surrender under Additional Condition 10

If this Lease is surrendered before the Initial Period Expiry Date under Additional Condition 10, then within a reasonable time after the Surrender Date, the CLT and the Resident must pay, from the funds held in the Joint Account:

- (a) to the CLT, an amount equal to:
  - (i) all amounts owing to the CLT under this Lease as at the Surrender Date; plus
  - (ii) the reasonable costs incurred by the CLT to rectify all outstanding breaches of this Lease by the Resident as at the Surrender Date; plus
  - (iii) the reasonable costs incurred by the CLT in surrendering this Lease, including but not limited to, the cost of registering at the relevant land registry all documents required to remove the notation of this Lease from the title to the Land; plus

- (iv) all Interest; and
- (b) to the Resident, the funds remaining in the Joint Account, if any, after the payment referred in Additional Condition 8.4(a) has been made.

**[## The CLT should consider the CLT's preferences as to the distribution of the joint monies]**

## **9 Additional Essential Terms**

Clause 21.7 of the Lease is amended to insert the following subclauses immediately after subclause 21.7.7:

- '21.7.8 Additional Condition 4.2 (Payment of Administration Fee);<sup>1</sup>; and
- '21.7.9 Additional Condition 6.2 (Joint Account);<sup>1</sup>; and
- '21.7.10 Additional Condition 7.3 (Premium Instalment Payment);<sup>1</sup>.

**[## The CLT may wish to consider various alternatives if the Resident is not able or willing to comply with the terms of the Lease during the initial Period. Examples of acceptable alternatives may include suspending the obligation to pay the Premium Instalment for a limited period and extending the length of the Initial Period by the same period. All alternative arrangements should be documented by way of amendment of lease.]**

## **10 Resident's right to early surrender**

### **10.1 Surrender Notice**

Subject to clause 10.2, at any time before the date that is one month before the Initial Period Expiry Date, the Resident may give a notice to the CLT stating:

- (a) that the Resident requires an early surrender of this Lease; and
- (b) the date the proposed surrender is to take effect,

(Surrender Notice).

### **10.2 Surrender Date**

For the purpose of Additional Condition 10.1(b), the date the proposed surrender is to take effect must be:

- (a) at least one month after the date the CLT receives the Surrender Notice; and
- (b) before the Initial Period Expiry Date.

### **10.3 Effective date of surrender**

Provided that the Resident complies with all of its obligations under this Lease up to the Surrender Date, the parties agree that this Lease is surrendered on and from the Surrender Date.

### **10.4 End of right to early surrender**

For the avoidance of doubt, if the Resident does not deliver to the CLT a notice under Additional Condition 10.1 on or before the date one month before the Initial Period Expiry Date, this time being of the essence, then this Additional Condition 10 no longer applies.

## **11 Power of Attorney**

If the Resident gives the CLT a Surrender Notice, is in default under the terms of this Lease or this Lease is terminated for any reason other than default of the CLT, then in consideration of the CLT granting this Lease to the Resident, the Resident irrevocably appoints the Delegates jointly and each of them severally to sign on the Resident's behalf any of the following:

- (a) a surrender of this Lease to facilitate cancellation of this Lease on the indefeasible title for the Land; and
- (b) any statutory declaration required to enable stamping of any documents signed by the attorney.

## **12 Death of Resident**

### **12.1 Clause 18.4 of Lease (Transfer to devisee under Resident's Will)**

In consideration of the CLT granting this Lease to the Resident, during the Initial Period, clause 18.4 of this Lease does not apply.

### **12.2 Clause 18.5 of Lease (Payment of Reversion Price on Termination)**

If, during the Initial Period, this Lease is terminated pursuant clause 18.3 of this Lease, then:

- (a) Clause 18.5 of this Lease does not apply; and
- (b) Additional Condition 8 applies.

### **12.3 New lease to devisee**

Notwithstanding clause 18.4.1 of this Lease, after the Initial Period Expiry Date, any new lease granted by the CLT to a devisee under clause 18.4 of this Lease must:

- (a) not include the Additional Conditions; and
- (b) state that the amount of the Administration Fee and the amount of the Premium payable on the commencement of the new lease are the same amounts as were payable under this Lease as at the date of the Resident's death.

**[## The CLT should ensure that its own policies require that the Resident's spouse and children have priority for any new lease to be granted after the Resident's death, subject to the spouse and children meeting the CLT's eligibility criteria.]**

**Resident's execution**

SIGNED by the Resident(s) named in the Lease )  
Particulars in the presence of: )

\_\_\_\_\_  
Signature of Resident

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of Resident

### **Appendix 3: SEARMS financial modelling**

The tables on the following pages show the detailed modelling for the SEARMS feasibility study.

**Table A1: SEARMS model costs to resident**

	<b>P1</b>	<b>P2</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
Premium instalment	200	200										
Rates and insurance			42	43	44	45	46	47	48	49	50	51
Repairs and maintenance			58	59	60	61	62	64	65	66	68	69
CLT admin. fee	210	210	25	25	25	25	25	25	25	25	25	25
Mortgage payment			210	210	210	210	210	210	210	210	210	210
<i>Total weekly payments</i>	<i>410</i>	<i>410</i>	<i>336</i>	<i>339</i>	<i>342</i>	<i>345</i>	<i>348</i>	<i>351</i>	<i>355</i>	<i>358</i>	<i>361</i>	<i>365</i>
Potential exit payment (including deposit)			20,110	24,377	28,810	33,418	38,210	43,196	48,386	53,792	59,424	65,297

**Transaction costs**

Legals	1,500
Stamp duty	4,090
Potential share of first home owners grant if new property	

**End of P1      End of P2**

Accumulated deposit	10,764	21,905
---------------------	--------	--------



**Table A2: SEARMS model costs to SEARMS**

Time	1	2	3	4	5	6	7	8	9	10	11	12	
	P0	P1	P1	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
Rates and insurance		-2,200	-2,200						-2,200	-2,200		0	
Repairs and maintenance		-2,500	-2,500						-2,500	-2,500		0	
Management		-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000
Stamp duty		-4,090		4,090									
Administration fee		10,920	10,920	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300
									12,544	12,795		-	
House purchase	-500,000											0	
Capital gains to seller								-13,010				0	-8,789
Payment from purchaser			160,000					-160,000		183,790		0	-183,790
Reversion													609,497
Net cash flow	-500,000	1,130	165,220	4,390	300	300	300	-172,710	8,144	192,184	300	300	417,219
Internal rate of return	2.26%												
Equity payment for new entrant			160,000	163,200	166,464	169,793	173,189	176,653	180,186	183,790	187,466	191,215	195,039
Potential capital gain payment on exit				2,500	5,050	7,651	10,304	13,010	15,770	18,586	21,457	24,387	27,374
Potential rents		10,920	11,138	11,361	11,588	11,820	12,057	12,298	12,544	12,795	13,050	13,311	13,578

## **Appendix 4: CLT Decision-Making Tool**

The CLT Decision-Making Tool is appended from the following page onwards. It is based on the NSW context, so communities and organisations in other jurisdictions might have to think about some of the questions and issues a bit differently.

## **CLT Decision Making Toolkit**

### **For Aboriginal Community Housing Providers in NSW**

**September 2013**

Authored by Louise Crabtree, Nicole Moore and Hazel Blunden from the University of Western Sydney as part of the Australian Housing and Urban Research Institute funded research project 'Community Land Trusts and Indigenous Communities: From Strategies to Outcomes'

## Acknowledgements

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The project was overseen by two Indigenous Advisory Groups. For their expertise and advice on this Toolkit, the researchers would like to especially thank the NSW Indigenous Advisory Group, particularly Michelle Craig, [Adell Hyslop](#), Ross Pearson, Michael [Ramali](#), Bernadette Riley, and Julia [Strano](#).

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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.

<b>Agreement</b>	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.
<b>Premium</b>	This refers to the upfront price that the Resident pays to secure their occupancy of the home.
<b>Resident</b>	This is the occupant of the home who enters into an Agreement with the organisation.
<b>Reversion Price</b>	This is the price calculated when the Resident decides to sell their interest in the home.







## 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*

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#### YOUR ORGANISATION'S NOTES

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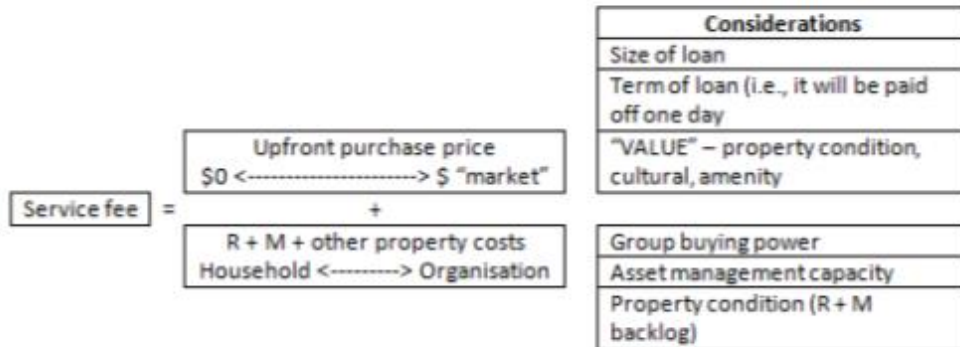






## 6.4 Price setting

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

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## 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>

## **Appendix 5: Relevant NSW Duties exemption clauses**

*Duties Act 1997 no. 123*

Current version for 1 July 2013 to date (accessed 2 September 2013 at 15:40)

### **278 Department of Housing and Aboriginal Housing Office tenants**

- (1) Duty under this Act is not chargeable on an agreement for the sale or transfer, or a transfer, of land, or a mortgage executed to finance or assist the purchase of that land (but only to the extent to which the amount secured by the mortgage is to finance or assist that purchase), or a mortgage in support of that mortgage, if the purchaser or borrower, or at least one of the purchasers or borrowers:
  - a) is, at the date of the transaction or the date of the first execution of the instrument, an eligible tenant, and
  - b) will obtain not less than 25% of the beneficial ownership of the land, and
  - c) intends to occupy the land as his or her principal place of residence.
- (2) For the purposes of this section, a person is an eligible tenant if the person:
  - a) is a tenant of the Department of Housing, or
  - b) is a tenant under the Community Tenancy Scheme administered within the Department of Family and Community Services, or
  - c) is a tenant of the Aboriginal Housing Office.
- (3) This section applies in respect of an agreement for sale or transfer, or a transfer, of land in respect of which an eligible tenant obtains less than 100% of the beneficial ownership of the land only if:
  - a) the other purchasers are natural persons, and
  - b) the Chief Commissioner is satisfied that each of those other purchasers is a member of the eligible tenant's family or a person who is genuinely assisting the eligible tenant to acquire the land as his or her principal place of residence.
- (4) For the purpose of subsection (3), the New South Wales Land and Housing Corporation is not considered to be a purchaser.
- (5) The exemption conferred by this section is conditional on the eligible tenant occupying the land concerned as his or her principal place of residence for a continuous period of at least 6 months, with that occupation starting within 12 months (or such longer period as the Chief Commissioner may approve) after completion of the agreement for sale or transfer, or transfer, of the land. This requirement is referred to as the residence requirement.
- (6) The Chief Commissioner may, if satisfied that there are good reasons to do so in a particular case:
  - a) modify the residence requirement by approving a shorter period of occupation by an eligible tenant, or
  - b) exempt an eligible tenant from compliance with the residence requirement.
- (7) If an eligible tenant fails to comply with the residence requirement, the eligible tenant must, within 14 days after the end of the period for compliance:
  - a) give written notice of that fact to the Chief Commissioner, and

- b) pay to the Chief Commissioner the duty that would have been payable on the transactions or instruments concerned if they had not been exempt from duty under this section.
- (8) A person who fails to comply with subsection (7) is guilty of an offence Maximum penalty: 50 penalty units.
- (9) For the purposes of this section, a person is a member of an eligible tenant's family if:
  - a) one is the spouse or de facto partner of the other, or
  - b) the relationship between them is that of parent and child, brothers, sisters, or brother and sister.
- (10) This section does not prevent section 221B from applying in respect of a mortgage.

**Note.** Section 221B extends a general mortgage duty exemption to all mortgages associated with owner occupied housing, and takes effect on and from 1 September 2007.

### **280 Aboriginal land councils**

Duty under this Act is not chargeable, in the case of an organisation that is the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council, or a Local Aboriginal Land Council, within the meaning of the *Aboriginal Land Rights Act 1983*, on the following:

- (a) a dutiable transaction in respect of dutiable property if the organisation is the person described in this Act as the person liable to pay the duty
- (b) an instrument executed by or on behalf of the organisation if the organisation is the person described in this Act as the person liable to pay the duty
- (c) an application by the organisation to register a motor vehicle
- (d) any insurance taken out by or on behalf of the organization.

## Appendix 6: Alice Springs Town Camp survey final version

### Tangentvere Council and University of Western Sydney Housing Study

#### INFORMATION SHEET

Government is interested in Aboriginal people owning homes on Aboriginal lands.

This project is interested in what Aboriginal people think about their housing and what Aboriginal people need from their housing, and if home ownership fits with that.

We worry that Government doesn't seem to know what Aboriginal people's lives or Aboriginal housing is like. We want to find out if Aboriginal people want to have more say about the rules and laws affecting their housing on their town camp.

This interview will take about 30 minutes.

**Do you have any questions about what we are doing?**

**Do you have any worries about what we are doing?**

This information from the survey will be PRIVATE. It will be kept locked away and no information that you give will be used by anyone but the research team. We will not use your name but might use some of the things you say, with your permission.

It is your choice to be part of this study. You will not be penalised if you choose not to take part.

**Are you happy to take part in this study?**      Yes       No

**You can stop taking part at any time.**

#### Consent

*To be signed by the researcher on behalf of the participant*

Signature of consent \_\_\_\_\_ (researcher) Date: \_\_\_/\_\_\_/\_\_\_

Witness: \_\_\_\_\_ (CLT researcher) Date: \_\_\_/\_\_\_/\_\_\_

If you have any problems please call Social Service Manager on 8951 4244.

You can also call the Central Australian Human Research Ethics Committee on 8951 4700.

**Resident and housing information**

Camp: _____	Name: _____
House No: _____	Age: _____
No. of Bedrooms: _____	No sleep outs: _____
No of Residents: Adults: _____	Children: _____ Visitors: _____
Language _____	Type of Income: _____

1. Do you like living in your new/old home?

Comment:

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These next questions are about the importance of being a town camper:



	Important	Very important	Not important	Don't Know
1. How important is it to you to be recognized as a town camper?				
2. How important is it to you to live on a town camp?				
3. How important is it to you to own your own home?				
4. How important is your language & Culture				

2. Do you identify yourself as a town camper?

Yes		No	
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Why?

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**These next questions are about how much control / say you have about your housing**

**A – You      B – Community/HA      C – TH      D – Other**

	<b>Before Intervention Y/N</b>	<b>Now Intervention Y/N</b>	<b>Same</b>	<b>Don't Know</b>
1. Who says who lives in your home				
2. Who makes the rules in your home				
3. Who makes decisions on your camp?				

**Housing Management**



	<b>Before Intervention <u>Tangentyere</u> Housing Association</b>	<b>Now Intervention Territory Housing</b>	<b>Don't know</b>
1. How much rent did you pay			
2. Who did the repairs & maintenance			
3. Who paid for the repairs & maintenance			
4. How long did it take to repair			

## Rules

1. Have the rules or laws for your town camp changed since the intervention?

Yes		No	
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2. How are they different?

Comment:

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3. How have things improved?

Comment:

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4. How are things worse?

Comment:

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5. Do you want to have more say over what happens in your house?

Yes		No	
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Comment:

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6. Do you want to have more say over what happens in your town camp?

Yes		No	
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Comment:

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## Home Ownership

1. Do you know what home ownership means?

Yes		No	
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Comment:

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2. Do you know what renting means?

Yes		No	
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Comment:

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3. Would you like to buy or rent your home on a town camp?

Yes		No	
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Why:

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4. Why haven't you bought a house?

Comment:

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5. Who would you like to have take care of all repair and maintenance in your house?

Comment:

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6. What kind of rules and laws would you like to have for your housing?

Comment:

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## Appendix 7: Alice Springs Town Camp survey pilot version

### Tangentyere Council and University of Western Sydney Housing study

#### Information sheet

Government is interested in Aboriginal people owning homes on Aboriginal lands.

This project is interested in what Aboriginal people think about their housing and what Aboriginal people need from their housing, and if home ownership fits with that.

We worry that Government doesn't seem to know what Aboriginal people's lives or Aboriginal housing is like and that they want to have more say about the rules and laws affecting their housing on their town camp.

There is a model of housing that might be a way for Aboriginal people to buy their own house in partnership with Tangentyere or their housing association.

Community land trusts can give people stable housing options while Aboriginal land stays in Aboriginal control.

This interview will take about 30 minutes.

**Do you have any questions about what we are doing?**

**Do you have any worries about what we are doing?**

This information from the survey will be PRIVATE. It will be kept locked away and no information that you give will be used by anyone but the research team. We will not use your name but might use some of the things you say, with your permission.

It is your choice to be part of this study. You will not be penalized if you choose not to take part.  
**Are you happy to take part in this study?**

**You can stop taking part at any time.**

If you have any problems please call Sian Owen-Jones on 8951 4244.

You can also call the Central Australian Human Research Ethics Committee on 8951 4700.

**Resident and housing information**

Camp: \_\_\_\_\_

House #: \_\_\_\_\_

No of Bedrooms: \_\_\_\_\_

No of Residents: \_\_\_\_\_

Name: \_\_\_\_\_

Language: \_\_\_\_\_

Age: \_\_\_\_\_

Type of Income: \_\_\_\_\_

New house: (1990 - )      How old? \_\_\_\_\_      No. of Years: \_\_\_\_\_

Old House: (1970 - )      How old? \_\_\_\_\_      No. of Years: \_\_\_\_\_

Previous place: \_\_\_\_\_      How Long: \_\_\_\_\_

What condition is the house in?

Excellent     Very good     Good     Fair     Poor     Bad

Comment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do you owe any money (on Centrelink, Radio Rentals, etc?)

Centrelink     Radio Rentals     Car payments     others

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Your rights**

Who says who lives here?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Who makes the rules?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**These next questions are about how much control you have on your current housing**

	Before Intervention Y/N	Now Intervention Y/N	Same	Don't Know
1. I have control over my housing				
2. I have control over decisions in the camp				
3. I feel community has control over my housing				
4. I feel community has control over decisions in the camp				
5. I feel I'm part of the decisions that affect my house				
6. I feel community ownership of this land is respected				
7. I feel housing policies and decisions respect my culture				
8. Culture obligation (language, ceremonial, Sorry business)				

**These next questions are about the importance of being recognized as a town camper:**

Do you identify yourself as a town camper?

Yes  No

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(If yes – how important are the following?)

	Important	Very important	Not important	Don't Know
1. Being a town camper				
2. Living on a town camp				
3. Owning your own home				

**Housing management before the Intervention**

**(Tangentyere Housing Association)**

1. How much rent did you pay?


2. Who paid for the repairs and maintenance?

<input type="checkbox"/> Tangentyere Housing	<input type="checkbox"/> Territory Housing	<input type="checkbox"/> Other
--	--	--------------------------------


3. Who did the repairs and maintenance?

<input type="checkbox"/>

4. How long did it take to repair?


5. When there was sorry business (Culture) in your house what was the process then?


6. How did you feel under the Tangentyere Council Housing Association rules & laws?


**Housing management after the Intervention  
(Territory Housing Association)**

7. How much rent do you pay now?


8. Who pays for the repairs and maintenance?

<input type="checkbox"/> Tangentyere Housing	<input type="checkbox"/> Territory Housing	<input type="checkbox"/> Other
--	--	--------------------------------


9. Who does the repairs and maintenance?


10. How long does it take to repair?




11. When there is sorry business (Culture) in your house what is the process now?


12. How do you feel under the Territory Housing Association rules & laws?


**Housing futures**

There is a model that might be a way for Aboriginal people to buy their own house in partnership with Tangentyere or their housing association.

1. How much rent would you be willing to pay if this model exists?

+


2. How often would you like to pay rent?

Weekly  Fortnightly  Monthly  others


Under the new model who would you like to see do repair and maintenance in your house


3. What type of rules and laws do you want to see for housing on your town camps?


### Home Ownership

1. What does home ownership mean to you?




2. What does renting mean to you?


3. Would like to buy and own your own home on a town camp?

Yes  No

If yes, why?



## Appendix 8: Housing brochure

The housing brochure provided to Alice Springs Town Camp survey participants.

### Housing choices

#### Buying


- You have to pay:
  - a deposit when you move in
  - a loan (every week, fortnight, or month)
  - rates
  - insurance
  - repairs and maintenance
- Once the loan is paid off you own the house outright
  - this could take 30 years or more
- You decide
  - how many people can stay in the house
  - what you want to do to the house
  - how long you live there for
- You decide who to leave the house to if something happens to you



This sort of home ownership is only possible on "freehold" land, so generally not on town camps or any other community owned land.

#### Renting

- You have to pay:
  - a bond when you move in
  - rent (every week, fortnight, or month)
- The landlord pays for:
  - rates
  - insurance
  - repairs and maintenance
- You never own the house; you always pay rent and this can go up over time
- The lease says:
  - how many people can stay in the house
  - what you are allowed to do to the house
  - how long you can live there for
- The landlord can evict you and also decide who gets the house if something happens to you




On town camps the landlord used to be the Housing Association. Now it is Territory Housing who sets the rules.

### Home ownership on Aboriginal land


The government is interested in home ownership on Aboriginal lands. Some communities and households want this too. This research project is looking at two ways to do this and keep Aboriginal control of Aboriginal land and houses if communities and households want this.

#### 1. Long-term leasehold



The community organisation owns the house and land and rents it to the resident who lives in the house. This is like renting, but for longer and with different rules to renting that make it a bit more like owning.

#### 2. Co-ownership



The community organisation and the resident own the house and land together. This is called co-ownership.

For more information contact:  
 Dr Louise Crabtree, University of Western Sydney  
[l.crabtree@uws.edu.au](mailto:l.crabtree@uws.edu.au)  
 02 9772 6748

## **AHURI Research Centres**

AHURI Research Centre—Curtin University

AHURI Research Centre—RMIT University

AHURI Research Centre—Swinburne University of Technology

AHURI Research Centre—The University of Adelaide

AHURI Research Centre—The University of New South Wales

AHURI Research Centre—The University of Sydney

AHURI Research Centre—The University of Tasmania

AHURI Research Centre—The University of Western Australia

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