

COMMUNITY HOUSING A LEGAL GUIDE

*PREPARED BY PARRY FIELD LAWYERS FOR THOSE ATTENDING
THE COMMUNITY HOUSING AOTEAROA CONFERENCE 2023*

ParryField
Lawyers

To the heart of what matters.





Parry Field Lawyers has been a critical partner for Oxford Terrace Baptist Church and our charitable company Kānuka Hopestill Limited over the last decade. We have navigated insurance claims, land acquisition, significant property development, loans, leases and structural changes. Of course, we could not have done any of this without good legal advice and have valued the input of Parry Field Lawyers on our housing projects and their provision of wider legal support on our structures.

**Chris Chamberlain,
Oxford Terrace Baptist Church,
Senior Minister**

**Bradley Nicolson,
Kānuka Hopestill Limited,
General Manager**

COMMUNITY HOUSING A LEGAL GUIDE

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Credit to Andrew Barrie Lab, this image shows the Social Housing Project at Oxford Terrace Baptist Church in Christchurch.



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Notice of Disclaimer: Every situation is unique. This publication is intended to provide information on topics of interest for those interested in social housing in an accurate and complete way. However, it is not intended to deal with every possible situation or option. Parry Field Lawyers exclude fully any liability arising in respect of or resulting from reliance in part or in full on the contents of this book for any purpose (we're lawyers, so you know we had to put this in). We do recommend you consult with a lawyer before making key legal structuring decisions.

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1. INTRODUCTION ABOUT PARRY FIELD LAWYERS

There are great needs here in Aotearoa New Zealand and among the most critical is housing. A house is more than just a structure made of wood, metal, nails and glass. It has the potential to become a home, a place of refuge and security for children who will have better education outcomes and stability for a family. Built well, they will be energy efficient and at the same time well heated and long lasting.

Yet in today's environment, owning a home is becoming more and more difficult. We are always encouraged to hear of purpose driven organisations coming up with new and innovative ideas on how to get people into homes. We have assisted many of them answer legal questions and get the structure right, whether that be by assisting people into owning their own home or providing an affordable home for people to live in.

Our purpose as lawyers who are very active in this area is to be catalysts for change, by helping organisations get the right legal advice so that their projects can succeed. Parry Field Lawyers have had a long history of assisting organisations with social housing and so we have condensed all of the key things we have learned down into this guide. We hope it will assist those starting their journey into social housing and provide reminders for those who have been on the path for a long time.

With four offices and 80 staff we have a real focus on this area. This is one of many free guides we produce that may help your journey, such as the Start-ups Legal Toolkit, Charities in New Zealand Handbook, Incorporated Societies Guide and our Social Enterprises in New Zealand book.

If you would like to have a conversation on legal issues then we welcome that chance.

Judith Bullin, Paul Owens, Steven Moe and Kris Morrison

Partners and Editors of this Guide

Contact Us

This document is not a substitute for legal advice and you should consult your lawyer about your specific situation. Please feel free to contact us at Parry Field Lawyers.

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2. LEGAL STRUCTURES – AN OVERVIEW

In New Zealand, social housing initiatives can be operated through several different legal structures. It's important to consider the positives and negatives of each before deciding on the right one.

Given the nature of social housing, most entities also register for charitable status with Charities Services. This provides both legitimacy for the initiative as well as various tax benefits – for example, not paying tax except GST, and being able to give receipts to donors who can then claim back 1/3 of that they gave.

However, the provision of housing for charitable purposes is carefully reviewed by Charities Services however, to ensure charities are not helping people who are not in fact poor, or are providing personal gain to individuals. The most widely known decision on this is Queenstown Lakes but it is important to note those were unique circumstances and it is possible to register as a charity. If your organisation intends to provide housing and register as a charity, we encourage you to seek legal advice and assistance with your charity application. At the very least read our free handbook: Charities in New Zealand. In the last year we have assisted around 40 new charities to be set up so have seen many variations and considered ways to structure things many times.

Some of the different legal structures include:

- Trusts incorporated under the Charitable Trusts Act 1957. A number of social housing entities are operated under a charitable trust which either owns or leases property and employs staff.
- Societies incorporated under the Incorporated Societies Act 2022 are sometimes used in the social housing context. Incorporated Societies give the protection that incorporating under the Charitable Trusts Act also gives but requires a minimum membership of 10 persons. An advantage is it has a reasonably clear set of rules for members who in turn appoint an executive – so a two-tier structure is easily created.
- Companies can also be charities provided that their rules contain certain provisions so that no private individuals have private gain.
- In certain situations more complicated structures can be considered such as setting up a limited partnership, or having hybrid structures with Trusts that own development Companies.

Which Structure is Most Ideal?

Every situation is unique so there is of course no single answer to this question. It will likely depend on the size, characteristics and objectives of the initiative. Being clear on your mission and purpose is the first thing that should be focused on as sometimes that helps to guide the decision.

The rest of this section will focus on those groups where there is some flexibility as to future structuring - whether at a start-up stage, or with a restructuring of an existing entity. Here are some key principles that every social housing entity should aim for in building a structure:

- (i) Ownership of assets:** Having a single coherent legal entity for the ownership of property that is preferably incorporated (i.e. made into corporate entity such as a charitable trust incorporated under the Charitable Trusts Act, Incorporated Society or even a Company).
- (ii) Simplicity of identity:** Having a single identifiable entity for the purpose of entering into employment contracts and other contracts for goods and services. Again, limiting liability (incorporating) is advisable. This may be the same entity as in (a), but not necessarily.
- (iii) Good founding documents:** Clear rules around key issues, such as a procedure for appointing key persons e.g. trustees, so that the entity or entities are not captured by single or dominant personalities.

Choosing Your Structure

For those finding themselves in the position of thinking about forming a new social housing entity, one of the first questions that needs to be asked is what legal structure it will have. This is a particularly important decision. As with any organisation, it is much more difficult to change a structure after it has been established.

- (1) Ownership of assets and entering into contracts.
Whose name will be on the lease or land title? Who will the legal employer be? What will the Bank require when opening an account? Who is liable if something goes wrong?
- (2) Costs and benefits. What does it cost to set up and maintain a proper legal structure? Are there different financial (e.g. tax relief or donation rebate benefits) associated with different structures?

As we mentioned in the Overview there are various structures available. There is no one right or wrong option. Each structure has similarities and differences, meaning one might fit more closely with the plan and vision you have for your charity. Let's consider some of these options.

CHARITABLE TRUSTS

In New Zealand, a charitable trust is a commonly used structure in New Zealand. It is created by execution of a deed of trust. This means the trustees named in the deed hold a fund on trust to accomplish specified charitable purposes. The process should be taken a step further by having the trust incorporated under the Charitable Trusts Act 1957. Incorporating the trust as a board will mean that the corporate entity is able to own assets, enter into contracts etc. in its own name, not in the name of the trustees.

A charitable trust is often used where there is no private gain intended for any individual from the activities of the trust.

A charitable trust (whether incorporated or not) may (and most often does) choose to officially register as a charity. The main regulator of charitable trusts is Charities Services, which registers charities for certain taxation benefits if they meet legal criteria under the Charities Act 2005). The other, less active, regulator is the Registrar of Incorporated Societies (which facilitates the incorporation of trust boards as mentioned above. So if the trust is not incorporated this regulator won't be relevant).

Key Features

1. Separate Legal Entity

A charitable trust board, which has been incorporated, is a separate legal entity which can contract with others. This is a significant benefit and in most cases it would be wise to consider incorporation. A charity may deal with many people and agencies. The process of entering into contracts, employing people, opening bank accounts etc. is much more straightforward if there is a single entity involved.

2. Limited Liability

The liability of trustees is limited to the assets of the trust if the trust board has been incorporated. It is also common for a trust to provide indemnities for its trustees and officers and to take out trustees insurance. Note, however, that trustees may still be personally liable under some laws (e.g. for failure by the trust to pay GST, PAYE or ACC) or if the trustees' own conduct is sufficiently bad and is considered to be a breach of trustees' duties.

3. Registration

When a charitable trust has been registered by Charities Services, quite a bit of detail about the trust is available for public searching on its website. Also, once registered, section 58 of the Charitable Trusts Act 1957 gives the Attorney General the power to inquire into and examine the operation and condition of any charity in New Zealand. While the requirements for registration with the Charities Service may seem onerous at times, the advantage is that registration and the accompanying transparency does give greater credibility to the registered trust.

4. Purposes are Restrictive

A charity in New Zealand must act to further its purposes which are set out in its trust deed. To be accepted as a registered charity those purposes must be charitable as defined under New Zealand law. The charity cannot distribute funds or assets for the private gain of any trustees or associated persons.

5. Powers of Trustees

Trustees cannot act outside the powers granted under its trust deed. Most trust deeds contain a wide range of powers. They can include matters such as use of funds, purchasing property, accepting money and carrying on a business.

6. Tax Exemption

If a charitable trust is registered with Charities Services, it will be exempt from income tax on some or all of its income, as well as other tax benefits. It may also be eligible for donee organisation status, which allows donors to claim a tax credit when they donate to the charity.

7. Establishment Costs

Establishing a charity as a charitable trust has some set up costs involved. A lawyer will likely be involved to make sure that the purposes are charitable according to New Zealand law. They can also provide ongoing advice on the trust's ongoing regulatory and filing requirements. From our side, the average legal costs for formation and incorporation range from \$2,000 to \$3,000 plus GST, depending on the situation. While most parts of the documentation can be standard in nature, much time is often spent around drafting purposes, trustee appointment, removal rules and meeting protocols, where particular care is needed. Another time-influencing factor is the number of prospective trustees involved in the process.

8. Disclosure and Reporting Requirements

A registered charity will have reporting requirements which can vary depending on its size (there are currently four tiers). There are financial reporting and auditing obligations on registered charities. These reporting requirements are covered later in this manual.

INCORPORATED SOCIETIES

While a charitable trust is a commonly used structure, it is not the only option. A charity can be established as an incorporated society. An incorporated society must have at least 10 members and may be associated for any lawful purpose, so long as it is not for monetary gain. The society can be incorporated under the Incorporated Societies Act 2022.

Key Features

1. Two-tier structure

A society is a group of people (not less than 10) who agree to be members and adhere to a set of rules (sometimes called a constitution) that govern the purposes and workings of the organisation. A key feature (and a big difference from trusts) is that the group generally appoints some of its members to operate as an executive council or committee. The council effectively has the power to run the society (within its rules) and report to the wider membership – usually at an AGM.

2. Separate Legal Entity and Limited Liability

Once incorporated, a society is, as with an incorporated charitable trust, a separate legal person from its leadership and members. This brings the same limited liability advantages noted with charitable trusts above.

3. Voting Input

As mentioned above, another advantage of using an incorporated society structure is that it allows all the members of the society to have direct voting input into matters affecting the society.

4. Registration with Charities Services

As with a charitable trust, an incorporated society may be entitled to income tax exemptions if it is a registered charity and with this comes the same reporting requirements as any other registered charity.

5. Reporting to Registrar of Incorporated Societies

An incorporated society will also be required by the Registrar to fulfil various reporting requirements, including annual financial statements.

6. Costs

The establishment costs of a society are similar to those of a trust as outlined above.

7. Suitability for a Charity?

An incorporated society can be as useful as a charitable trust. In fact it is arguable that it offers better accountability with its two-tier structure. Although the law of incorporated societies in New Zealand is being updated, there will be a number of situations where it may still be the best structure for a new charity. We recommend getting our Incorporated Societies guide if of interest.

COMPANIES

A company can be a charity, so long as it is not for monetary gain. It will be governed by the Companies Act 1993 and the usual rules that apply to a company would also apply to a charitable company. It can be an option to consider, particularly where the mission is to be achieved through trading of some kind. We suggest if you are considering this that you also have a look at our free handbook "Social Enterprises in New Zealand" as it will likely also be relevant.

Key Features

1. Separate Legal Entity and Limited Liability

A company is a separate legal person. This brings the same limited liability advantages noted with charitable trusts above.

2. Voting Input

The Directors of a Company will make most decisions about direction but some will need to be made by the Shareholders instead.

3. Registration with Charities Services

As with a charitable trust, a Company may be entitled to income tax exemptions if it is a registered charity and with this comes the same reporting requirements as any other registered charity.

4. Costs

The establishment costs of a company are similar to those of a trust as outlined above – the key requirements are a shareholder and a director (one director needs to be NZ resident).

5. Suitability for a Charity?

This can be a good structure for a new charity – we sometimes see a charitable trust set up which then owns 100% of the charitable company. This is usually to ring fence liability so if the company fails, the trust continues. However it can also be useful when it comes to financing as banks and other corporate investors may better understand how a company operates compared to a charitable trust.



3. REGISTERING AS A CHARITY

In the past year we have helped register around 40 charities. Registering as a charity with Charities Services can provide a number of advantages. For example:

- **Reputation:** Funders and donors tend to gain comfort if the entity is a charity (rather than a private business or individual).
- **Tax status:** There can be tax advantages.
- **Donation Status:** Donors may qualify for rebates.

The application process will go through Charities Services (formerly the Charities Commission). The website at www.charities.govt.nz has a number of helpful resources.

HOW TO REGISTER

We have helped many register as charities and have produced a full free guide on it. Among other information, you will need to provide contact details for the charity and trustees/officers, purpose or mission of the charity, activities of the charity, whether the charity receives donations, and an estimated percentage of how much of your charity's funds will go towards carrying out charitable purposes overseas.

The applicant will receive an email from Charities Services acknowledging the application. The applicant may be contacted further if more information is needed.

CONSEQUENCES OF REGISTRATION

There are various obligations that come with being a registered charity. These include:

- Operating in accordance with the Charities Act 2005.
- Only carrying out activities which advance at least one of the charitable purposes as laid out in the Charities Act 2005; These purposes are:
 - The relief of poverty (often social housing fits in this category);
 - The advancement of education;
 - The advancement of religion; and
 - Other purposes beneficial to the community.

- Operating in accordance with your trust deed or society's rules.
- If any funds are collected for a charity, the charity's registration number must be provided upon request.
- Reporting annually to Charities Services. This involves including an Annual Return and providing financial and non-financial information through a performance report/financial statements that comply with reporting standards. You can find these standards on the Charities Services website. You may have to pay a fee when filing your annual return.
- Keeping Charities Services updated with any changes to your charity, such as any change in rules, officers or address details.
- Providing any information about your charity when requested by Charities Services.

CHARITABLE PURPOSES: WHAT ARE THEY?

The definition of charitable purposes in New Zealand charity law derives from English common law. The foundations for the legal definition of charitable purposes and charity law owe their inception to the Preamble of the Statute of Charitable Uses Act 1601, commonly known as the Statute of Elizabeth. It is remarkable to think that a document written more than 400 years ago would have had such influence on the development of this area of law.

After various legal changes and evolutions, charitable purposes in New Zealand are now included in section 5(1) of the Charities Act 2005. They still retain the four 'heads' of charity described earlier.

Of importance is the fact that the Charities Act 2005 and case law require that a charitable purpose must have a public benefit to qualify as being charitable. The New Zealand courts have exercised a presumption when they look at the first three heads of charity that a public benefit exists (unless a contrary intention is shown). The presumption is not a conclusive determination and the question for the court as to whether a purpose operates for the public benefit will depend very much on the full range of evidence presented to the court.

“

*Parry Field
helped us
navigate the
complexity
of setting up
something
entirely new
in community
housing finance:
quality advice
with heart.*

**Shamubeel
Eaqub**

”

By way of contrast, a presumption of public benefit does not exist in relation to the fourth head of charity i.e. “any other purposes beneficial to the community”. For a purpose to be deemed charitable under this arm, a public benefit must be specifically shown. To be deemed charitable under this arm, showing a particular need to be alleviated can qualify.

In New Zealand, charitable purposes are assessed by Charities Services as to whether or not an organisation’s purposes are indeed charitable and therefore worthy of being tax exempt. One of the key criteria will be to examine the statement of purposes of the charity. For example, a Trust would include those in its founding document, the Trust Deed. A company might include the purposes in its constitution. To aid practitioners and those seeking to set up a charitable trust, Charities Services include on their website examples of how these charitable purposes clauses can be worded in a founding document.

The reason this is important is that you may have a “good idea” which you think will help others but it actually needs to qualify as a charitable purpose as defined in law. So it needs to fit within one of the four categories set out above. Sometimes people get confused about this and try to describe the good that they are going to do but don’t relate it to the strict legal categories of charitable purpose. They are therefore unlikely to get across the line and qualify as a charity.

4. DIFFERENT TYPES OF HOUSING

The idea of community or social housing can often be thrown around, but it may not always be clear on the difference between them. In the article below, we provide a summary of the different types of housing that may apply to your situation.

1. COMMUNITY HOUSING PROVIDERS

Community Housing Providers (CHPs) provide long-term community rental housing. A CHP may own the properties or sublease the properties to its tenants. Rent is often subsidised, either by the CHP itself, or a government subsidy.

A registered CHP must register with the Community Housing Regulatory Authority and meet the required standards. As at the date this guide was published, there are 72 registered CHPs with 16,200 properties.

2. STATE HOUSING

Accommodation provided by Kāinga Ora via reduced rent or shared ownership schemes. As with a registered CHP, rent is based on the tenant's income. The Ministry of Housing and Urban Development pays the income-related rent subsidy to Kāinga Ora to make up the difference.

3. LOCAL COUNCIL HOUSING

This form of housing is operated by the local council, rather than Kāinga Ora. Rent is not subsidised through the 'income related rent subsidy', which means it is based on market rent, rather than income. Rent is typically provided at 80% or less of the current market rent.

4. SOCIAL HOUSING

This is a broader concept that has no official definition. It involves short or long-term housing provided by the government, regional or local councils or not-for-profit organisations. Housing is provided to people with low incomes and/or limited means.

5. COHOUSING

This form of housing is different to the others in that the main purpose is typically focused on communal living, rather than affordability (although this can still be relevant). It is usually run by the residents that intend to live in the community, rather than a government or not-for-profit entity. Due to the potential for personal profit, cohousing initiatives are not normally given registered charitable status, although it can sometimes occur – see page 14 for a story of where Parry Field Lawyers helped make this happen in Takaka.

5. REGISTERED COMMUNITY HOUSING PROVIDERS (CHP)

While many groups may provide social or community housing through the provision of rental properties at reduced rental rates, it is possible to register as a Community Housing Provider (CHP). While this requires a higher level of accountability, registration permits CHPs to provide housing to people on the Public Housing Register and benefit from the Income Related Rent Subsidy.

Tenants of CHPs will pay an income-related rent which is determined by the Ministry of Social Development. This amount is typically 25% of a tenant's take home income. Te Tūāpapa Kura Kāinga - the Ministry of Housing and Urban Development (HUD) will then provide the Income Related Rent Subsidy, which covers the difference between the amount paid by the tenant, and the market rent for the property. The HUD will work with the CHPs to determine the market rent for a property.

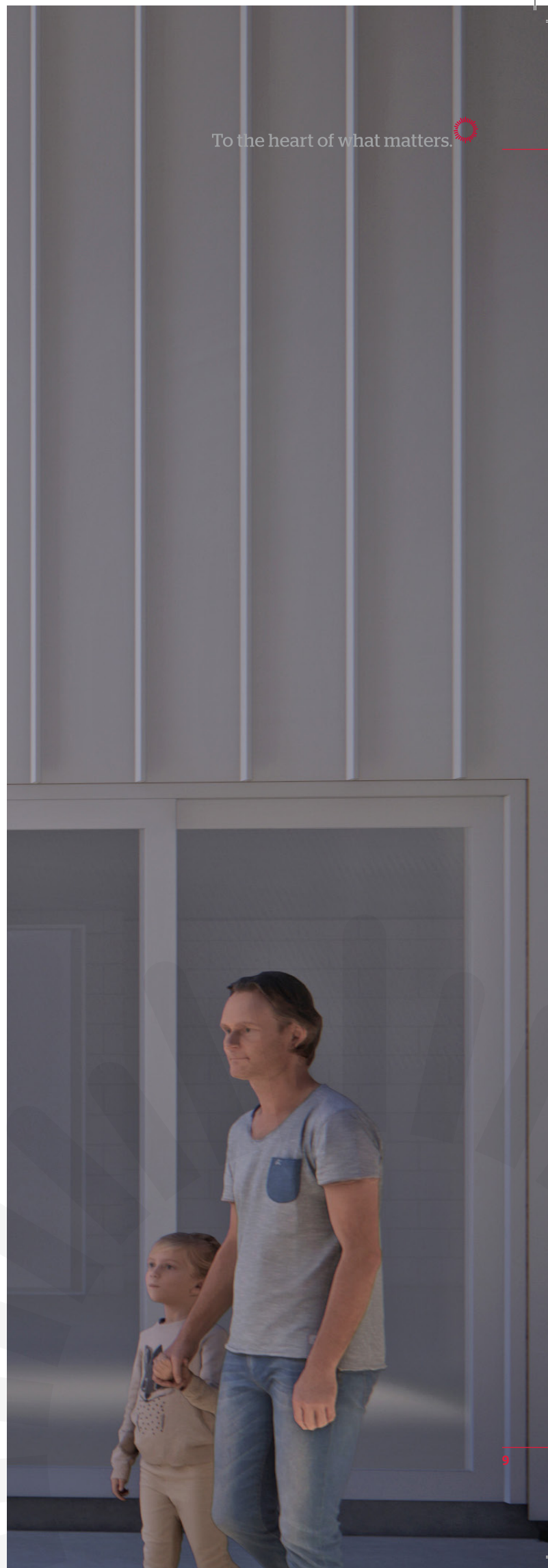
To be eligible to register as a CHP, your organisation must meet the following criteria:

1. It must provide housing with the objective of providing community housing and/or affordable rental housing or have detailed plans to establish such a provider;
2. Your governing body must, after reviewing the Performance Standards, support the application for registration; and
3. The Community Housing Regulatory Authority must be satisfied that your organization has the capacity to meet the Performance Standards.

The Performance Standards can be found on the Community Housing Regulatory Authority's website, and focuses on the following components:

- Governance
- Management
- Financial Viability
- Tenancy Management
- Property and Asset Management

Once registered, a CHP is subject to annual monitoring by the Community Housing Regulatory Authority and must comply with the reporting requirements.



6. SHARED EQUITY SCHEMES/PROGRESSIVE HOME OWNERSHIP

It is becoming quite common for organisations to offer Shared Equity Schemes or Progressive Home Ownership Schemes to help people into home ownership. This article briefly sets out some questions to think about if you are wanting to offer one of these schemes:

LENGTH OF TERM

- How long should the individual have to complete the full purchase of the home?
- What happens if they can't complete in time? Do they get the chance for an extension? Do they have to pay more? Does the agreement end and the property is sold?

HOW ARE PAYMENTS TO BE MADE?

- Can the individual make payments along the way or are there set milestones they need to make payments at?

HOW WILL THE OWNERSHIP BE RECORDED?

- Will the individual be listed as a part owner on the Record of Title?
- Will the ownership be regularly updated?

HOW WILL THE INDIVIDUAL FINANCE THEIR INITIAL PORTION OF THE PURCHASE?

- If by bank lending, the bank will need to be involved in approving the documentation/the scheme.

ARE THERE ANY OTHER PAYMENTS THE INDIVIDUAL NEEDS TO MAKE?

- A regular fee for being part of this service?
- A ground rent charge?

ARE THERE ANY OTHER OBLIGATIONS ON THE INDIVIDUAL FOR BEING PART OF THIS SCHEME?

- Financial literacy courses?

WHAT HAPPENS IN THE EVENT OF:

- Death of the individual? Is someone else from their whanau able to step into this agreement or does the property need to be sold?
- Separation of a couple? Can one individual take on the agreement or does the property need to be sold?

MAINTENANCE

- Who pays for maintenance of the property?
- Is there a set standard for maintenance?
- How will the scheme provider check maintenance is up to date and what can they do if maintenance is not up to date?

OUTGOINGS

- Who pays the outgoings (rates, insurance etc) on the property?

ALTERATIONS TO THE HOME

- Can the individual make alterations to the home?
- If so, can these alterations count towards any payment of the balance of the purchase price?

7. CHOOSING LAND TO PURCHASE

It is important to consider the following when investigating what land to purchase for your scheme:

DUE DILIGENCE

- We advise engaging a lawyer to assist you with your due diligence on the land.
- Does the Council LIM report show any potential issues for your proposed development including where services are, any known issues with the property, any neighbouring properties obtaining consent for activities which will negatively impact on this property etc.
- Does the Record of Title have any interests registered that will impede your development?

ZONING RULES

- What are the Council zoning rules for this piece of land? Will you be able to do what you intend on the land or will you require a Resource Consent?
- If you require a Resource Consent, getting advice early from a planner is advised to ascertain the likelihood of your consent being approved.

DO YOU NEED TO SUBDIVIDE?

- If so getting early advice from a Planner, Surveyor and your Lawyer is advised.
- This will give you an indication as to the feasibility of subdividing the land as well as possible costs and timeframes.

GST

Will you be a GST registered entity? This is important to clarify as will determine the price you pay for the land and how you structure any sale of land in the future

FINANCE

How will you finance the purchase? Talking early to any lender about your plans is advised so you know what timeframes you will need to work towards and any requirements you will need to meet from the lender.



*Parry Field Lawyers
has been invaluable
in supporting the
Christchurch Methodist
Mission with its various
housing programmes.
They have a wealth of
knowledge on lease
agreements, Government
contracts and building
projects and are
professional, responsive
and supportive.*

**Jill Hawkey,
Executive Director,
Christchurch
Methodist Mission**



8. RELEVANT LEGISLATION

When operating a social housing entity, it is important to be aware of the different obligations imposed by legislation. We have summarised some of the key pieces of legislation below that you will need to be familiar with.

RESIDENTIAL TENANCIES ACT 1986

- Defines the rights and obligations of landlords and tenants of residential properties
- Establishes a tribunal to determine disputes arising between landlords and tenant
- Establishes the fund to hold tenants' bonds

BUILDING ACT 2004

Governs the building industry with the purpose of ensuring that:

- people can use buildings safely without endangering their health;
- buildings have attributes that contribute appropriately to the health, physical independence and wellbeing of the people who use them;
- people who use a building can escape from the building if it is on fire; and
- buildings are designed, constructed and able to be used in ways that promote sustainable development.

BUILDING REGULATIONS 1992

- Introduces the Building Code, which can be found in Schedule 1 of the legislation.
- The Building Code sets out the performance standards for all building work in New Zealand.

HOUSING IMPROVEMENT REGULATIONS 1947

Sets the minimum requirements for housing. Local councils are responsible for enforcing this, and will do so at the Code Compliance stage.

PRIVACY ACT 2020

Provides a framework for protecting an individual's right to privacy of personal information, including the right of an individual to access their personal information, while recognising that other rights and interests may at times also need to be taken into account.

HOUSING RESTRUCTURING AND TENANCY MATTERS (COMMUNITY HOUSING PROVIDERS) REGULATIONS 2014

Sets out the performance standards for registered Community Housing Providers.



*The ache for home
lives in all of us. The
safe place where we
can go as we are and
not be questioned.*

Maya Angelou



9. WHY PAKĀINGA HOUSING MATTERS NOW

*Nāu te rourou, nāku te rourou, ka ora ai te iwi.
With your food basket and my food basket the
people will thrive.*

Sometimes we look overseas for innovations that will drive change here in Aotearoa New Zealand. Perhaps for too long we have looked past innovations which are local and indigenous. One of those is Papakāinga which offers a different approach around community, land and the future. We are not going to reproduce material that already exists on how this works accessible here: <https://www.tpk.govt.nz/en/o-matou-mohiotanga/housing/a-guide-to-papakāinga-housing> Our intention in having this part is to ask what would a reimagining of this as a vehicle for wider transformation?

***Whānau matter. Access to a Whare matters.
The Whenua matters.***

All three are like brightly coloured rope – each one so unique and special but when woven together they create something much more as a tapestry of colour achieving greater impact. Papakāinga provides a housing approach in which the three intertwine and is rooted in the wisdom of our past which endures.

***Papakāinga is a group of Whare built on
the Whenua for Whanau.***

We need to draw on our past to build the future. The community that results from the Papakāinga approach provides support for those living there so that the multi layered impacts are far greater than just the number of houses constructed.

So could it work today? We think it is possible. Why not build houses for community to the most modern of standards. This represents a charting of the way forward. The future.

What might this look like?

This statement from one of our clients, the Whanau Whenua Whare charitable trust, is representative of a new approach to thinking about Papakāinga housing.

"Housing design should start with the landscape and consider Papatūānuku first and the constant tension between earth, sky, land, sea and winds. There are natural forms that have been here long before us which are adapted to this place. There are also built forms that humans create, with traditional structures being lightweight and renewable – bending with the stresses of wind and earthquakes.

By contrast in Europe buildings were made of stone – a compression culture of withstanding the elements and seeking long use. Both traditions have their place, but we must adapt them to suit the natural environment we are in. We seek to minimise heavy cutting into Papatūānuku and instead adopt forms which float above the land while being solid and enduring and constructing housing which reconnects the people to the land itself. When it comes to the design we acknowledge our past and build with those ways in mind – the results are beautiful and timeless structures which will last while also being efficient, well heated and contemporary."

10. CASE STUDY TĀKAKA COHOUSING NEIGHBOURHOOD

*Article written by Steven Moe,
originally published by The Spinoff*

"We've been told that we need to live in isolation, to have our own house away from others, to have our own land to be safe," says Simone Woodland, one of the founders and first residents of an innovative housing project in Golden Bay. "What this has done has pushed us away from each other and led people to be disconnected from the whenua."

Woodland, an Edmund Hillary Fellow originally from the UK, will soon be living in a unique space. Instead of rows of townhouses that maximise space to cram in as many people as possible, the Tākaka Cohousing Neighbourhood offers an alternative way of living, one based around community.

It started in 2020 with the purchase of land that used to house grazing cattle in Tākaka by Mohua Ventures. Several people pooled together money to purchase the land and begin creating a unique venture. This week the project broke first ground to prepare for new homes to be built.

Woodland has personally invested in the project and is leading its development. "The cohousing model is key in allowing us to have the privacy we desire but also learn how to connect and share with others and come together to be kaitiaki of a larger piece of land."

As Leonie Hayden explained in this [2019 piece for The Spinoff](#), modern cohousing has roots in Scandinavia but also many parallels with pre-colonial Māori ways of living. The Tākaka Cohousing Neighbourhood follows in the footsteps of Auckland developments like Earthsong and the more recent Cohaus, along with iwi papakāinga like Ngāti Whātua's Kainga Tuatahi.

The development is the first of three intended neighbourhoods that would share a common parkland of seven hectares, including a native forest area, intended market farm, peace gardens and walkways/cycle paths that can be enjoyed by residents and the wider Golden Bay community. The stage one development will accommodate 34 two to three bedroom units for 60-70 people, with plans for similar numbers in the subsequent stages.

The project has a very long-term vision and is now selling the final few lots before construction starts.

Community programmes amplify the vision, with seminars and tours planned for neighbours, nearby schools and visitors who come to learn about the land regeneration and sustainable building practices.

(Images: Supplied)



Venture inside and you'll instantly be able to see their organic principles on display. Instead of concreting as much as possible, there's a focus on regenerating the natural environment. Trees and bushes are planted using principles drawn from the permaculture movement, an approach to land that seeks to copy natural ecosystems, which is in contrast to western industrialised approaches.

This aspect of the project draws on the wisdom of the local people and te ao Māori, in particular the idea that we are guardians of the land rather than owners of it. Manawhenua ki Mohua have been involved in the project and in 2021 gifted a mauri stone to the community that was buried during a pre-dawn ceremony directly underneath where the proposed common house will stand.

To enshrine this purpose and ensure the project has focus, a charitable trust, Te Hapori Hauora, was created.

The name was gifted by mana whenua to honour the sustainability of the project and the focus on the wellbeing of the land. In a similar way to how the Whanganui River has been granted legal entity status, this is a form of private recognition of the value of this plot of land and it could serve as a model that is adapted elsewhere. The principle is to use the legal structures already available as tools to create private legal recognition for certain land that goes beyond human ownership by adopting a trust structure instead.

Closely tied in with this focus on nature are the type of buildings planned. The average house size will be 103m² and buildings are a duplex design.

"We've opted to use double-storey units and duplexes to reduce the amount of land that would be required for the housing, creating larger shared gardens for growing food," says Woodland. "We have compact, well-designed homes that have everything we need. We also have our larger shared home, the common house, for our shared meals and community events".



The project has a very long-term vision and is now selling the final few lots before construction starts. Simone reflects: "This is an innovative way of thinking about not just a co-housing project but also a more holistic view of embracing the surrounding land and its regeneration, building sustainable eco-friendly homes as well as promoting community for the residents. Our hope is that this project, which is able to weave together elements we increasingly know are important like nature, housing and community, is something that could be done in other parts of the country as well.

"If we were to do that, then just maybe our old conceptions about housing itself just might start to change".



Parry Field was key in supporting Mohua Ventures to come up with a legal model that supported our land generation and community principles and they have been great to work with through the many complexities that we have faced.

**Simone Woodland,
Takaka Cohousing
Neighbourhood**



11.CASE STUDY WAIMAHIA INLET

*Written by Paul Gilbert,
Chief Executive, Community Housing Aotearoa*

Waimahia Inlet - a partnership approach and a model that works.

This is a story about a thriving, diverse, and inclusive community in Weymouth, Auckland. It is the story of a great little place to live and raise children, which is embraced by the upper reaches of the mighty Manukau harbour. It is also the story of a project that very nearly never got off the ground. Nearly 10 years ago NIMBYism was not quite such a big thing as it is now, but in 2014 there was local resistance to change, and fear about the new people that might come and live in this new housing development and neighbourhood.

That has all changed now, but it took a whole lot of community meetings and getting to know each other first! This is also a story about an elegant legal structure for the delivery of new affordable housing supply, an example that has already been repeated at another 300 home development in Manukau, called Puhinui Park. We share this story and ask readers to consider why we don't have 100 Waimahia's across Aotearoa.

In 2014 the Housing Foundation with Ngā Mana Whenua o Tāmaki Makaurau (a legally recognised collective of 14 Iwi and Hapu whose rohe covers Auckland), Te Tumu Kāinga, managed by the Māori Trustee and CORT agreed to create a limited partnership to deliver 295 affordable homes on land purchased by the Collective as part of the Crown's economic and cultural redress to Tamaki Iwi. The land was owned by the Ministry of Education and was resting, as unused pasture and home to a few horses.

This was the first major housing development entirely owned and managed by a partnership between Iwi and the community housing sector. Te Tumu Kāinga, Housing Foundation and CORT established the Waimahia Inlet Neighbourhood Limited Partnership (WINLP) with the purpose of developing the land for affordable housing with the three limited partners agreeing to purchase the majority of the homes on completion.

The Crown made a contribution which was retained and recycled into another subsequent project thus benefitting twice from one investment of capital (a very good investment worth repeating).

The role of the Housing Foundation was to manage all aspects of the development and it contracted to Tamaki Makaurau Community Housing Limited to provide these services. The overarching goal was to create opportunities for families with pre-existing connections in this area, to move into new, high performing homes with a strong focus on supporting those who wished to transition from renting and into independent home ownership.

The housing aspect of the development was completed in Quarter 3, 2018. The Limited Partners also recognised the critical importance of including social infrastructure, so they agreed to fund the construction and ownership of an Early Childhood Education Centre and Community Facility Centre within one building. The master plan also provided pocket parks, and green spaces, and arranged internal designs to support passive security and lines of sight from living rooms and kitchens onto the streets and green spaces. Fencing covenants and other streetscaping measure were also put in place to slow down road traffic and to support interactions between residents when they were in front of their homes.

On completion 35% of the houses were sold to private owner occupier buyers. The other 65% of the houses were used for community and social rental, and home ownership programmes of shared ownership and rent to own (HomeSaver).

Approximately 80% of all households are in some form of ownership tenure with Housing Foundation's home ownership programme.

Another key aspect and outcome achieved has been the demographic profile, with over half of households identifying as Māori households and 20% of households identifying as Pacific Island households.



We have appreciated the support of Parry Field in helping us navigate the challenging legal requirements of starting an innovative affordable housing project. From our Trust Deed through to contracts their guidance has been invaluable.

**Christopher R Bennett
Executive Officer,
Golden Bay / Mohua
Affordable Housing
Project**



Housing Foundation was recognised by the Australasian Housing institute in recognising Housing Foundation in its Professional Excellence Awards by awarding Housing Foundation with its top NZ award for Leading Housing Development Project Award in 2017 for Waimahia.

The Residents' Association was seeded and supported in partnership by Housing Foundation. The result has been a very engaged and connected community. The role Housing Foundation played in the growth of the Community Residents' Association was recognised by the Neighbour Support Organisation in awarding Housing Foundation with a Gold Award for its partnership approach to supporting households and communities by partnering with the community and its support for the Residents' Associations.

Projects such as these are gifts that keep giving. They are transformational in terms of intergenerational wealth for the whanau who are able to transition from rental into ownership tenure. The past few decades have seen a catastrophic decline in Māori and Pacific family home ownership. We must use our collective resources to stop and reverse this decline, we must invest in a better future for all New Zealanders and not stop until all our people are well housed. These project delivery structures are elegant, they are effective, and they represent an outstanding social return on investment. As active citizens we must do more of these projects more often in more places. Our country wins, our community wins, our whanau have more choices and if in doubt – go visit and ask them for yourself.

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KEY LEGAL TOPICS THAT YOU NEED TO KNOW
ABOUT IN REGARDS TO COMMUNITY HOUSING.**

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