
COMMUNITY
HOUSING
A LEGAL GUIDE

PARRY FIELD LAWYERS



ParryField
Lawyers



To the heart of what matters.



One of the most important investments a community housing provider can make is getting the right legal advice from the very beginning.

At Kāinga Maha, we've seen first-hand how early, expert guidance shapes the trajectory of a project – from how partnerships are structured and de-risked, to how financing is secured, and ultimately, whether a development proceeds at all. The legal foundations you lay at the outset determine what's achievable down the line. For any CHP serious about advancing development, growing its partnership capability, and unlocking more affordable and social housing, this guide is essential reading, and Parry Field are exactly the right advisors to have alongside you.

Annie Wilson, CEO, Kāinga Maha



COMMUNITY HOUSING A LEGAL GUIDE

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About Parry Field Lawyers

We are a New Zealand owned company that has been serving our clients since 1948. Our aim is not only to provide sound legal advice, but to also find solutions which deliver the best practical outcome for those we represent.

We have a particular expertise in Community Housing and have many free resources, available from the Information Hub on our [website](#).

Our History

In 2023 we celebrated 75 years in practice and today we have grown to 11 partners, around 100 staff, and operate from five locations.

To The Heart Of What Matters

We see our clients in a rounded way and wanted to help them with 'what really matters', for legal services and beyond, where appropriate. With our growing team, we are excited by what the future holds and look forward to continuing to provide exceptional legal services to our valued clients.

Find out more at parryfield.com

Compiled by Parry Field Lawyers

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Cover Image: Te Pākau Maru in New Brighton, Ōtautahi Christchurch, developed by the Home Foundation Group. Read more about this development in the Case Study on page 18. Photography by Izaac Reed, theCreator.

PARRY FIELD LAWYERS

COMMUNITY HOUSING A LEGAL GUIDE

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 community housing. 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 community housing and provide reminders for those who have been on the path for a long time.

With five offices and around 100 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, we would be happy to support you.

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OVERVIEW: WHAT IS COMMUNITY HOUSING?

The provision of non-government community and social housing has played a part of Aotearoa New Zealand's housing landscape for a long time. However, the important role of what are now formally known as "Community Housing Providers" ("CHPs") is a relatively recent development – one that can be traced back to government policy changes in 2013.

Reforms introduced by legislation enacted by Parliament following those 2013 policy changes have opened up opportunities for organisations formally registered as CHPs to access government funding not previously available. This has promoted greater competition in the community housing sector and thereby improved housing choice for the people of Aotearoa.

If community housing is such a valuable part of the lives of many New Zealanders, what exactly is community housing and where does it sit within the fabric of New Zealand's wider housing system? Additionally, who regulates community housing and what does being a CHP involve?

Community Housing Aotearoa (CHA) have identified the following broad categories which we think is a helpful way of understanding the different housing-types we have here in Aotearoa:

- **Emergency housing:** a very short-term option designed to address immediate housing need, generally for up to five days, for people who have nowhere else to go.
- **Transitional housing:** a more stable supported temporary housing option designed to provide housing for up to 12 weeks (in reality, it can be for much longer than this).
- **Public/state housing and social housing:** a long-term government-supported option, public/state housing provided by Kāinga Ora and social housing provided by CHPs provide accommodation to people who cannot access or sustain adequate housing in the private housing market.
- **Assisted rental or ownership:** an arrangement whereby the cost of renting or owning a house is reduced or made possible by government or community support.

- **Private rental or ownership:** a rental or ownership arrangement derived in the private market.

Community housing captures the first four of these five different housing types – namely, emergency housing, transitional housing, public/state housing and social housing, and assisted rental or ownership. It is common for CHPs to be operating in up to four of these spheres at any given time.

For community housing provided by non-government organisations, different government funding is available depending on the type of community housing provided. For example, as at the date of this Guide:

- emergency housing is funded by Work and Income, which forms part of the Ministry of Social Development ("MSD"), through "Emergency Housing Special Needs Grants" pursuant to agreements with approved suppliers;
- transitional housing is funded by the Ministry of Housing and Urban Development ("HUD") pursuant to agreements with approved suppliers. Under these arrangements, residents pay rent of up to 25%* of their income and HUD pays the balance to the transitional housing supplier;
- social housing is funded through HUD's Income Related Rent Subsidy ("IRRS") scheme pursuant to agreements that are in place with CHPs. Under these arrangements, HUD pays to the CHP the difference between the market rent for a property and the income related rent the tenant pays, which is typically set by MSD at 25%* of the tenant's net income; and
- other community housing models can be funded by any combination of traditional lending, grants from Councils for example, and private investment.

**Note also that, as at the date of this Guide, the Government has announced its intention to change this contribution to 30% rather than the 25% noted above, with the increase scheduled to take effect from 1 April 2027.*

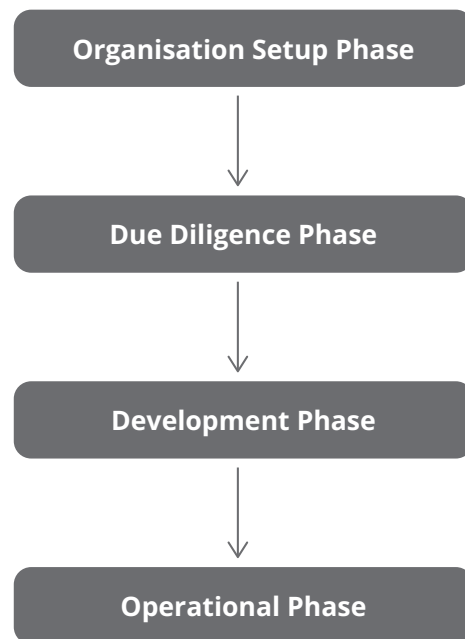
While government funding is an important part in the provision of community housing, not all community housing is reliant on government funding, with some community housing being funded from non-government sources.

The increased availability of government funding under the IRRS scheme has been a significant driver in the increase in supply of community housing, specifically social housing, since 2013. In order to be eligible for funding under the IRRS scheme, a non-government organisation must be registered as a CHP. The framework for registration as a CHP is set out in the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act 2013, enacted as part of the 2013 reforms. This Act led to the establishment of the Community Housing Regulatory Authority (“CHRA”), an agency located within HUD, that is responsible for registering and regulating CHPs to ensure they are well-governed, financially viable, and provide safe, high-quality, long-term social and affordable rental housing to people on the Housing Register. We discuss CHP registration in more detail in the next section of this Guide entitled “Organisation Setup Phase”.

In addition to CHRA’s registration criteria and ongoing reporting requirements to the CHRA, CHPs operate at the intersection of a number of pieces of legislation, as do other providers of community housing, which they are each required to comply with. Key pieces of legislation include:

- Public and Community Housing Management Act 1992.
- Public and Community Housing Management (Community Housing Provider) Regulations 2014.
- Residential Tenancies Act 1986.
- Building Act 2004.
- Building Regulations 1992.
- Housing Improvement Regulations 1947.
- Housing Restructuring and Tenancy Matters (Community Housing Providers) Regulations 2014.
- Privacy Act 2020.
- Health and Safety at Work Act 2015.
- Family Violence Act 2018.
- Oranga Tamariki Act 1989.

The remaining sections of this Guide trace the typical lifecycle of a community housing project and unpack what is involved at each stage. An overview of the flow of the sections is set out in the diagram below:



We encourage you to read the material in this Guide carefully as it highlights key considerations that should be worked through in the provision of community housing here in our beloved Aotearoa. Should you have any questions, feel free to contact us.



ORGANISATION SETUP PHASE

The first phase in the lifecycle of a community housing project is the organisation setup phase. In New Zealand, there are several different legal structures that community housing initiatives can be operated through. It is important to consider the advantages and disadvantages of each before deciding on the appropriate legal structure under your circumstances. Given the nature of community housing, some organisations also register for charitable status with Charities Services and/or register as a CHP.

Points to Consider

There is no “one size fits all” when it comes to legal structures for community housing – every situation is unique! We can advise on your legal structure options based on your circumstances, but some key points to consider are:

- **The size, characteristics and objectives of your initiative:** a larger development or an organisation looking to complete multiple developments might call for a more complex structure to apportion risk. An initiative that is clearly charitable might favour a structure which is more easily understood in that sector.
- **Accounting input:** it is important to seek both accounting and legal advice on your initiative before setting up a legal structure, as there may be advantages or issues with different legal structures that you would not have otherwise been aware of.
- **The nature of your funding:** there are a number of organisations offering different types of funding for community housing initiatives – from the various funding options offered by HUD, Councils, lenders that are familiar with the community housing space to private investors. The nature of your funding could influence your legal structure, as some funders may have preferences or requirements around your legal structure and/or governing documents. Key investors might also have expectations around what they want your legal structure to look like, depending on their desired return on investment and the level of involvement they would like to have in the initiative.

- **Costs and benefits:** there might be different costs involved in setting up and maintaining your legal structure depending on your circumstances, the complexity of your legal structure, and ongoing reporting requirements to say Charities Services or the CHRA.
- **Managing liability:** an incorporated legal structure limits the liability of those involved, whereas an unincorporated organisation means those involved would be personally liable. A trustee’s duties are also different to the duties of a director, so it is important to have a handle on potential liability before setting up your legal structure.
- **Existing organisations:** something challenging worth considering is whether there is already an organisation out there doing the work that you would like to do. It might be that there is an existing community housing provider or charity advancing the same work in the region you would like to work in. Rather than setting up an entirely new initiative, you might want to consider at least approaching the existing organisation to see how you could collaborate with them or support in increasing their impact. There also might be an area they are lacking in expertise or people-power, which could be a gap you look to fill rather than starting something entirely new. There are a lot of wonderful organisations in New Zealand doing good in our communities, so even having a conversation to learn from them would be worthwhile!

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

- **Ownership of assets:** having a single coherent legal entity for the ownership of property that is preferably incorporated (i.e. establishment of a corporate entity such as a company, charitable trust incorporated under the Charitable Trusts Act 1957, or limited partnership).
- **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 (through incorporation) is advisable. This may be the same entity as above, but not necessarily.

- **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

If you have found yourself in the position of thinking about forming a new community housing organisation or restructuring an existing one, this section is for you. Deciding on the appropriate legal structure is a particularly important decision, as it is much more onerous to change a structure after it has been established, especially where land and lending is involved. As mentioned, there are several organisational structures available and the best structure for you will depend on your circumstances. The below is an overview of various organisational structure options, but we encourage you to get in touch so that we can discuss and advise on your unique set of circumstances.

Note also that we have talked about limiting liability in places – even when an organisation is incorporated, those involved in governance could be liable if their conduct is in breach of any duties imposed on them by law. They may also be personally liable under some laws; for example, health and safety, failure of the organisation to pay GST, PAYE or ACC. Therefore, it is important to be aware of your legal obligations and duties to avoid personal liability.

Charitable Trusts

A charitable trust is a commonly used legal structure for doing good in New Zealand. This legal structure is created by a charitable trust deed, which lays out the purposes the charitable trust exists to advance. It is governed by trustees who are appointed and removed in the manner set out in the trust deed. Some key points to note on this structure include:

- A charitable trust cannot exist for the private gain of individuals – it cannot be owned or distribute funds or assets for private gain. Instead, it must exist to advance its charitable purposes.
- A charitable trust cannot be owned as a company can – instead it is the trustees who act in furtherance of

the charitable trust's purposes. This does provide the trustees with a level of autonomy.

- A charitable trust is a fairly flexible legal structure, where the method of appointing and removing trustees, terms of trustees, method of holding meetings and so forth can all be set out in the trust deed. The deed could also be adapted to suit your unique needs – for example if there is a particular person who started the trust, their role within the trust could be safeguarded in the trust deed.
- A charitable trust can incorporate with the Companies Office so that the trustees' liability is limited and the charitable trust is able to own assets and contract in its own name.
- A charitable trust can register with Charities Services, which offers tax benefits and could lead to different funding options. To be accepted it will need to have purposes that fit within one of New Zealand's categories of charitable purposes.
- Trustees have certain mandatory and default duties imposed by the Trusts Act 2019. The default duties can be modified by the trust deed, which is another reason it is important to get good legal advice on this fundamental document. It is imperative that trustees understand their duties and the potential liability involved if they fail to uphold them.

Companies

A company is created by registration with the Companies Office. It is governed by the Companies Act 1993 and may also have a constitution which modifies some of the rules set out in this Act. Where multiple shareholders are involved, a company might have a shareholders agreement. Some key points to note on this structure include:

- A company can exist for the private gain of individuals and be owned. It can also adopt a constitution that notes the mission of the company and can, for example, reserve a percentage of profits for charitable purposes. This can help to make it clear the company exists for more than just profit, while also allowing private individuals to profit from the company in a way that cannot be done in the charity context.
- As a company can be owned, the shareholders have a say in the direction of the company. This can be helpful to attract investment and can also make a company structure appealing for an existing initiative, as it can help to manage risk associated with each new development.

- A company can have multiple directors and shareholders, with the manner of appointing directors, issuing shares and so forth being set out in the company's constitution and shareholders agreement. This can open up new avenues for funding, as people can, for example, invest in the initiative, receive shares and then see a financial return on their investment.
- Companies naturally need to incorporate with the Companies Office, which limits the liability of the directors. The company can also own assets and contract in its own name.
- A company can also register with Charities Services, which offers tax benefits and can lead to different funding options. To be accepted it will need to have purposes that fit within one of New Zealand's categories of charitable purposes and will need to have a constitution prohibiting individuals from profiting from the company's work. If you choose to register your company with Charities Services there is no going back – once company funds are held for charitable purposes, this cannot be changed at a later date so funds can flow back to individuals for private gain.
- Company directors have duties imposed by the Companies Act 1993 – it is important that directors understand these duties and the potential liability involved if they fail to uphold them.

Limited Partnerships

A limited partnership is a legal structure commonly used overseas and becoming better known in New Zealand. A limited partnership involves:

- A general partner, which is usually a company and manages the day-to-day operation of the limited partnership. The general partner is jointly and severally liable with the limited partnership for the debts and liabilities of the limited partnership.
- Limited partners, who invest in the limited partnership. Limited partners can be compared to shareholders in the sense that they can make key decisions in relation to the limited partnership, for example deciding who the general partner is. There are multiple types of limited partners, for example individuals, charities and companies. Limited partners cannot be involved in the day-to-day management of the limited partnership, otherwise their limited liability status will be at risk.

A limited partnership is governed by the Limited Partnership Act 2008 and a limited partnership agreement.

Some key points to note on this structure include:

- The tax position of a limited partnership flows through to the limited partners. This means that if for example an individual is a limited partner, then they will be taxed in relation to the limited partnership at their tax rate. Similarly if a charity is a limited partner, they will be taxed in relation to the limited partnership at their tax rate. This is a key benefit of a limited partnership as it allows different types of organisations to invest and be involved in the initiative.
- A limited partnership naturally needs to incorporate with the Companies Office, which limits the liability of the general partner and allows the limited partnership to own assets and contract in its own name.

We have prepared a detailed guide on Limited Partnerships which is available on our [website](#).

Incorporated Societies

An incorporated society is created by a constitution and involves two tiers of governance - a committee of at least three which act like a board, then a membership of at least ten who meet every year and have the powers set out in the society's constitution (usually the ability to appoint and remove the committee, as well as to vote on certain matters such as amendments to the constitution). Some key points to note on this structure include:

- An incorporated society is governed by a constitution and similar to a charitable trust, it cannot exist for the financial gain of its members. Instead, its constitution must contain lawful purposes that it exists to advance.
- An incorporated society cannot be owned as a company can – however, usually the committee is beholden to the membership in the sense that the members generally appoint and remove the committee.
- The Incorporated Societies Act 2022 sets out a number of matters that need to be dealt with in a society's constitution, including provisions around its purposes, membership, committee, meetings and wind up. It is important that all of the necessary matters are dealt with in the society's constitution, which is why good legal advice is needed on this fundamental document.
- An incorporated society needs to incorporate with the Companies Office, which limits the liability of its committee and allows the society to own assets and contract in its own name.

- An incorporated society can register with Charities Services, which offers tax benefits and can lead to different funding options. To be accepted it will need to have purposes that fit within one of New Zealand's categories of charitable purposes.
- Committee members and other key persons involved in the organisation have certain duties imposed by the Incorporated Societies Act 2022. It is important that committee members and other key persons understand their duties and the potential liability involved if they fail to uphold these duties.
- Often this legal structure is used in member-based groups. We don't often see them used for CHPs.

Registering as a Charity

Registering as a charity can provide both legitimacy for the initiative as well as various tax benefits. Funders and donors tend to gain a level of comfort from an organisation that is a registered charity, rather than a private business or individual. To register as a charity your organisation must be advancing at least one of the four categories of charitable purposes, namely:

- relieving poverty (often community housing fits in this category);
- advancing education;
- advancing religion; and
- other purposes beneficial to the community.

Your organisation will need to go through the process of applying for charitable status with Charities Services, then have ongoing obligations such as operating in accordance with the Charities Act 2005 and reporting annually to Charities Services.

However, not all community housing organisations will be eligible for charitable status. Charities Services is careful to review the purposes and activities of community housing organisations to ensure that applicants are in fact relieving poverty or advancing another charitable purpose. The most widely known decision in this area is Queenstown Lakes, where the Charities Registration Board found (following a High Court decision) that the Queenstown Lakes Community Housing Trust conferred private benefit on individuals who may have other housing options available to them. While it did have some charitable purposes, they were not the Trust's main focus. If your organisation intends to provide community housing and would like to explore further whether it might be eligible for charitable status,

please get in touch as we may be able to support. We also have a free handbook available on Charities in New Zealand, which you can find on the Parry Field Lawyers website [here](#).

Community Housing Providers

CHPs provide long-term community rental housing. A CHP may own the properties and contract directly with residential tenants or, alternatively, lease the properties to another CHP which then in turn subleases the properties to residential tenants. Rent is often subsidised, either by the CHP itself or a government subsidy.

A registered CHP must register with the CHRA and meet the required standards. The following eligibility criteria are listed on the CHRA website for registration as a CHP, as at the date of this Guide:

- you must be a housing provider with the object of providing community housing, affordable rental housing or both in your empowering document and have detailed plans to provide long-term housing;
- your governing body must review the Performance Standards and Guidelines and support your application for registration; and
- the CHRA must be satisfied that registration is suitable for your organisation.

The Performance Standards can be found on the CHRA's website, and focus on the following components:

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

There are also ongoing monitoring and reporting requirements for CHPs.

If you are considering registering your organisation as a CHP, regard should be given to whether the people your organisation are planning to serve are typically on the Housing Register and whether your organisation is willing to meet the heightened accountability requirements of the CHRA.

Becoming a registered CHP does open up different types of funding, but is an in-depth process. If you are interested in finding out more, the [CHRA's website](#) and [Community Housing Aotearoa's website](#) have a lot of free information available.



DUE DILIGENCE PHASE

The next phase of a typical community housing development's lifecycle involves undertaking due diligence on the land proposed to be used for the community housing development – whether it is already owned by you or proposed to be acquired. A comprehensive understanding of the land in question is important for:

- **Fitness for purpose:** discerning whether the land will properly serve the purpose for which it is intended to be put.
- **Verifying value:** confirming that any financial investment in the land together with any existing buildings and structures on the land, or proposed to be built on the land, is financially sound.
- **Identifying areas of concern:** identifying any areas of concern – whether they serve to:
 - deter investing in the land and in any existing buildings and structures or buildings and structures to be located on the land; or
 - inform as to actual value of the land and any adjustments that may need to be made to, for example, the purchase price, where the land and any buildings and structures are being acquired; or
 - highlight matters that need to be worked through as part of any acquisition transaction or post-acquisition process.

Any due diligence undertaken should be as comprehensive as possible and should be done as early as possible. Your lawyer will be able to provide guidance on what investigations should be undertaken but some examples of areas that should be considered include:

- **Nature of the interest in land:** the nature of the interest in land (fee simple or leasehold) already owned or the appropriate interest in land proposed to be acquired.
- **Ownership structure:** what entity should own the relevant interest in land or what ownership structure should be in place.
- **Title, LIM and planning documents:** a full review of any Records of Title, Land Information Memorandum and applicable zoning restrictions relating to the land.



- **Services:** a review of whether the land is served by all public utilities which pass through the land or, alternatively, the necessary rights over neighbouring owners' properties are in place in respect of any required privately-owned utilities.
- **Rates:** a check on what council and water rates are payable and whether there are other council loans in place.
- **Funding:** a review of any loan and mortgage documentation required to be put in place for funding purposes.
- **Insurance:** a check on whether the land can be appropriately insured.
- **Tax:** a review of how any acquisition of an interest in land, whether it is a fee simple interest or a leasehold interest, should be treated for tax purposes.
- **Resource consents and subdivision:** a review of what resource consents might be required for the proposed use of the land, including in relation to any subdivision of the land.
- **Natural hazards:** a review of whether the land is in a natural hazard zone and whether any damage has been sustained from a natural event or the like.
- **Existing tenancies:** comprehensive checks on any existing tenancy arrangements.
- **Existing buildings:** comprehensive checks on any existing buildings located on the land.
- **Construction:** a review of any existing or required construction contracts in relation to the land and any development.
- **Activities in the area:** a check on whether there are any proposals in relation to roads or other infrastructure in the area that may affect the land, and whether any neighbouring landowners are engaging, or proposing to engage in, activities that may negatively impact on the land.
- **Other:** checks on whether there are any pre-emptive rights, encroachments, unregistered rights which impinge on the ownership, occupation or use of the land, or whether there are any harmful substances which affect the land.
- **Disputes:** a check on whether there are any disputes, actions, claims, demands or litigation relating to the land.

Due diligence investigations ordinarily involve engaging third party professionals, other consultants and tradespeople. Please contact us if you would like our assistance with the legal aspects.

DEVELOPMENT PHASE

Following completion of the due diligence phase, the next step is development. What this looks like for you will depend on a number of factors, such as whether your organisation will be completing the development itself, whether you have tenants ready to move in once the development is complete and/or whether you need lending to finance your development. So please bear in mind this Guide is intended as only that – a guide! – to what may be needed at this phase in the lifecycle of a community housing development.

You will see from the below that some of the contracts noted can become quite complex, and if not prepared well could result in complications for your organisation in the long run. It is therefore important to get legal advice on the drafting and if you have been presented a contract, get legal advice before you sign anything to make sure it is suitable for your needs.

Construction Contracts

If another organisation is undertaking construction of the physical development for you, a construction contract will be involved. Construction contracts can vary widely in scope depending on whether, for example, the same contractor will be handling both the design and build functions. Some key points that a construction contract should cover include:

- the scope of work;
- how a price will be reached;
- when payments will be made;
- key timeframes and deadlines for milestones;
- how delays will be navigated;
- how a change in materials or increase in cost of materials will be navigated;
- how variations will be agreed;
- health and safety obligations;
- dispute resolution procedures;
- allocation of risk and insurance;

- remedies if a party is in breach of the arrangement; and
- how the arrangement could be terminated.

Construction contracts are governed by the Construction Contracts Act 2002.

Agreements to Design, Build and Lease

Some community housing organisations arrive at the development phase with a registered CHP lined up to lease the development once complete. This can be a helpful way to leverage another organisation's CHP status in the sense that it would allow you to secure a tenant and therefore rent for your development, without needing to register as a CHP. The registered CHP would then provide the community housing to individuals.

The agreement between the developer community housing organisation and the registered CHP is often referred to as an Agreement to Design, Build and Lease, with the developer being the "Lessor" and the registered CHP being the "Lessee". This agreement sets out:

- Any conditions that need to be fulfilled before the agreement is effective, for example the lessor's obligations to get the necessary consents for the development.
- Often the lessee will have entered into or be negotiating an agreement with HUD in relation to funding, and often the terms of this are pulled through into the agreement and later the deed of lease (discussed further below) so there is consistency. As part of this, the lessee will also have certain reporting requirements to HUD, so the agreement will address how often the lessor needs to report certain matters to the lessee so they can then report the same to HUD.
- The plans and specifications for the development, which will also generally allow a process for the lessee to approve these plans and specifications. CHPs usually cater for a variety of tenants (including those with specific needs), so will want to have a say in this process.

- The lessor's obligations in relation to the development, for example getting the relevant consents and providing copies of the same to the lessee.
- Many of the points covered in a construction contract, for example variations to the plans, timeframes and so forth.
- The details of the lease that will be entered into once the development is completed to a certain standard (for example, once code of compliance and Records of Title have issued or practical completion has been achieved). This includes matters such as the term of the lease, rights of renewal, and the rent that will be payable. Allocating risk, maintenance and costs over the lease term are other important matters that need to be considered. Once the development is completed to the standard set in the agreement, a deed of lease will then be entered into between the parties.

Clear communication between the lessor and lessee during the development stage is important. Generally everyone is coming to the process with the same goal in mind – creating more community housing options for the people of Aotearoa. Discussing, for example, necessary changes to the design or any updates to timeframes is much easier to do ahead of time and before they turn into a bigger issue.

Finance Documentation

If you have opted for traditional funding (e.g. finance from a bank or lender), you will need to sign loan documentation. Generally organisations opting for traditional finance will borrow money to settle on the land, then borrow additional funds to complete the physical development on the land.

Lenders will generally send the finance documentation to your lawyer to advise you on their contents and arrange for you to sign. Lenders will also generally want to secure their finance against, for example, the land.

When borrowing funds from a lender it is important that you are aware of and understand key terms of the finance documentation, including for example:

- whether there are ongoing covenants, warranties and/or undertakings you are required to agree to; and
- the nature and extent of securities the lender is taking, particularly if multiple parties are required to guarantee the loan.

Often there are a number of approval conditions that need to be satisfied before a lender will advance finance to you, so it is important to be familiar with these and to allow sufficient time to satisfy the lender's requirements before funding is required.

Subdivision

Once land for the development has been secured, some community housing providers then choose to subdivide it. Subdividing land means that each property can be comprised in a separate Record of Title and owned separately. This is especially important if your organisation is looking to sell some of the properties, enter into progressive home ownership schemes or have multiple different ownership models within the same development.

There are a couple of different types of subdivision that can be appropriate in the community housing setting:

- A fee simple subdivision, which allows for each property to be comprised in its own fee simple title. This is a common form of land ownership in New Zealand and might be appropriate in circumstances where there are little to no common facilities (e.g. a shared driveway or carpark). In circumstances where there are common facilities, Councils will often want to see how these will be managed and might impose various requirements as part of their resource consent, for example easements setting out the use and maintenance of a shared driveway, or a residents association to manage a shared carpark and facilities. If a residents association is incorporated, it will come under the Incorporated Societies Act 2022.
- A unit title subdivision, which allows for each property to be comprised in an individual unit and the common property to be owned collectively by a body corporate on behalf of all unit owners. Unit title subdivisions are often appropriate where the development involves multiple stories or common facilities like a shared carpark with landscaping or community garden. Unit titles come under the Unit Titles Act 2010, which includes requirements around the body corporate and the disclosures that need to be made to potential purchasers.

Some community housing organisations choose not to subdivide the land, instead having multiple buildings in the same Record of Title. This might be appropriate where the organisation intends to manage or lease the whole development.



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*



OPERATIONAL PHASE

The final phase in a typical community housing development's lifecycle can be the most exciting, as it is during this phase that your vision for the development connects with the people in the community you are hoping to serve in practical ways. What this phase will involve will depend on a number of factors, including, by way of example:

- How the legal property aspects of the community housing development have been designed and set up. For instance, whether:
 - any land in the development will be disposed of by way of sale on the open market, including for example to a targeted group such as first home buyers or the elderly; or
 - any land in the development acquired or already owned will be retained – whether it be by way of a fee simple interest, a leasehold interest, or as Māori land; or
 - a combination of the above two – for example, as part of a shared equity scheme¹ or progressive ownership scheme².
- Where any interest in the land relating to the community housing development will be retained, how the ongoing operational aspects of the community housing development will operate. For instance:
 - who will occupy the houses in the community housing development and how any tenancies are intended to be managed;
 - whether the development will contain cohousing³ such as pāpakainga housing; and
 - whether any wrap around or other support services will be made available to occupiers of the houses in the development.

In circumstances where land in the community housing development will be disposed of on the open market,

whether it be to a targeted group such as first home buyers or the elderly or to the wider public more generally, the relevant properties will need to be marketed for sale with your target group in mind (if applicable) and agreements for sale and purchase entered into in the usual way.

In circumstances where land in the community housing development will be retained:

- as to the fee simple interest in the land or Māori land, you will be responsible to any relevant local authorities for the continued payment of any rates relating to the property and it is advisable that you maintain insurance for the property; and
- as to the leasehold interest in the land, you will need to comply with the terms and conditions of your lease throughout the lease term, including in relation to the payment of all rent and outgoings, any relevant maintenance obligations, and maintaining any required insurance.

Regardless of whether your retained interest in the land in the community housing development is a fee simple interest, a leasehold interest, or Māori land, you will also need to (in the case of Māori land, subject to the provisions of the Te Ture Whenua Māori Act 1993):

- put residential tenancy agreements or other occupational arrangements in place with any occupiers of the homes in the community housing development, where you rent out any of the houses as affordable market rentals, as part of a cohousing arrangement, or where you are a CHP and you are renting to people on the Housing Register under the IRRS scheme;
- put arrangements in place for the management of any tenancies, either by yourself or by a third party pursuant to a management services agreement;
- comply with the terms and conditions of any agreement

¹A shared ownership arrangement whereby the cost of a property is split between the primary buyer and another party, such as a trust or a private entity.

²Such as rent-to-buy arrangements which allow people to rent a property with the option to purchase it over time.

³Cohousing typically involves the establishment of an intentional neighbourhood where households have self-contained homes plus shared facilities and a governance system designed to support community life.

you have with HUD and any reporting requirements of the CHRA, where you are a CHP renting housing to people on the Housing Register under the IRRS scheme;

- comply with any statutory requirements and other rules applying to any residents association established in relation to the development or any Body Corporate where the development has been unit-titled⁴;
- comply with any ongoing conditions of any resource consents pertaining to the land;
- comply with any obligations owed to any lenders under lending and mortgage documentation;
- comply with the provisions of the Te Ture Whenua Māori Act 1993, where the land constitutes Māori land; and
- comply with all other legal requirements – for example, in relation to:
 - the ongoing administration of your organisational structure⁵;
 - tax reporting and payment obligations;
 - obligations owed to employees and volunteers;
 - health and safety and privacy requirements; and
 - Police vetting.

In circumstances where there will be both disposal and retention of land in the community housing development pursuant to for example a shared equity or progressive ownership scheme (“the Scheme”), consideration should, in addition to the matters set out above, be given to:

- the timeframe within which the primary buyer(s) participating in the Scheme (“Scheme Participant”) will have to complete payment of the purchase price, and what happens if they do not complete payment within the specified timeframe;
- whether payments will need to be made regularly (for example, on a fortnightly or monthly basis) or whether lump sums will be paid at certain specified milestones;
- whether the Scheme Participant will be recorded on the Record of Title as owning a proportionate share in the property and whether this will be regularly updated as their proportionate ownership share in the property increases;

- how involved a lender financing the Scheme Participant’s purchase might be in approving the Scheme and any documentation relating to it;
- whether there are any other payment obligations the Scheme Participant should be responsible for, including for example the payment of a fee for participation in the Scheme or a ground rent charge;
- whether there are any other obligations the Scheme Participant should be required to comply with in order to participate in the Scheme, for example financial literacy courses;
- what happens in the event of the Scheme Participant’s death and whether another member of their whānau are able to take over their rights and obligations under the Scheme;
- what happens where the Scheme Participant is a couple and they separate – is one of them able to take over participation in the Scheme?;
- how responsibility for maintenance of the property should be allocated, whether an objective standard should be set in relation to maintenance, the nature of any mechanism permitting checks on whether maintenance obligations are being complied with, and what rights you have in the event of non-compliance;
- how responsibility for payment of outgoings should be allocated for the property (for example, rates and insurance); and
- whether the Scheme Participant can make additions or alterations to the property/house and whether any money expended can be applied towards reducing the balance owing on the purchase price.

Finally, for many people and organisations wanting to or already operating in the community housing space, their motivation for being involved extends beyond facilitating pathways for people in the community to access home ownership, affordable market rentals, cohousing or communal living arrangements, and long-term government-supported rental options; their heart is to see people from all walks-of-life flourish. They also know that some people need more than the provision of a warm, safe, dry and affordable home for this to occur.

⁴The rules of a residents association or Body Corporate could document how any cohousing arrangement is intended to function or document any environmental sustainability objectives for the development.

⁵For example, under your Trust Deed, Constitution or other founding documents together with ongoing reporting requirements to regulatory bodies such as Charities Services and the Companies Office.

This is why many providers in the community housing space, including CHPs, either during the Development Phase or the Operational Phase of a community housing development's lifecycle, put arrangements in place to make support or other wrap around services available to occupiers of houses in community housing developments. Some examples of the kind of support provided include:

- food assistance;
- financial literacy and budgeting advice;
- trauma-counselling and other mental health support;
- addiction recovery;
- youth development;
- educational support;
- safe places for children to be before and after school and during the school holidays;
- support for intellectual disabilities;
- cultural literacy programmes; and
- courses in environmental sustainability.

If you are considering moving into the community housing space or are already involved, including as a CHP or otherwise, there would be real value in considering whether the people who are, or will, occupy houses in your community housing development(s) might benefit from some or all of these support structures or services. If you do not have the resources or skills to provide these support structures or services yourself, there are lots of organisations and people working in these areas and there may be opportunity to partner with any one or more of them. If formal legal documentation is required to underpin any such partnership working-relationship, we would be happy to discuss with you how we might be able to assist in the drafting or review of this documentation.

Conclusion

We hope this Guide has given you a helpful overview of a project. Should you have any questions or need support, we would be happy to help you.



CASE STUDIES: HOME FOUNDATION

Te Pākau Maru

Te Pākau Maru is a \$38 million mixed-tenure development in New Brighton, Ōtautahi Christchurch, completed in 2025. Featuring 63 terraced homes, comprised of one to four-bedroom homes, it prioritises affordable rentals, progressive home ownership, and sustainability. Te Pākau Maru, which means “the sheltering wing,” was inspired by Psalm 63:7: “Because you are my helper, I sing for joy in the shadow of your wings.”

The Beresford Street site, which was acquired in April 2022, was developed by Kāinga Maha, built by Home Construction, and funded by Home Capital Partners being the development, construction and investment arms of the Home Foundation group, respectively.

The mixed-tenure approach encompassed progressive home ownership, affordable market-rented housing and market sales targeted at first home buyers. The affordable rentals are managed by Te Wawata Kāinga, the property management arm of the Home Foundation group.

Key points of interest include:

- 1. Mixed-tenure:** the project demonstrates the successful integration of multiple housing types across a development. This approach requires careful consideration as to the legal intricacies of structuring across different ownership and tenancy arrangements.
- 2. Government:** the project utilised Ministry for Pacific Peoples grants and HUD schemes in order to achieve completion.
- 3. Community engagement:** community consultation was a priority from the outset, making the homes genuinely fit for the community they are situated in. Community engagement pre and during construction also helped to ensure that new residents were welcomed and felt a sense of belonging.
- 4. Progressive Home Ownership:** utilising a progressive home ownership structure allowed Te Pākau Maru to reach whānau who could finally make their dreams of homeownership a reality. This supports long-term housing security and financial resilience.
- 5. Environmental and Building Standards:** the development prioritised high sustainability standards,

with all homes built to a certified HomeStar 7 standard. The homes were also thoughtfully planned to maximise energy efficiency, using durable low-impact materials and minimising carbon emissions.

King Street, Kerikeri

In 2025, Home Capital Partners, through a limited partnership structure, acquired a newly completed six-home development in central Kerikeri. Through a long-term lease with Ngāti Rēhia as the CHP, a subsidy through HUD, and funding through the Community Housing Funding Agency, the acquisition provided immediate housing to six households in the Northland region. A 30% gift of capital gains to the iwi CHP also helps them build their balance sheet.

This project raises the following key points of interest:

- 6. Turn-key and lease:** there are different models available, and CHPs don't always need to develop from bare land. Purchasing or partnering on completed developments and then applying a long-term lease/ CHP overlay can rapidly convert stock into community housing.
- 7. Long-term leasing:** Entering into a 25-year lease gives both the property owner and the CHP enough security to invest in community relationships, whilst giving comfort that income stream is durable.
- 8. Partnerships:** This model shows how iwi leadership, government funding and private capital can work together to deliver high-quality, long-term social housing without requiring iwi or CHPs to carry development or ownership risk. The approach also enables Ngāti Rēhia and Ngāpuhi to grow in capacity as CHPs/tenancy managers and then take an ownership stake post settlement, should they wish.
- 9. Start small:** Six centrally located, well-built, homes can have outsized impact in a town like Kerikeri that has low socio-economic pockets, providing whānau with walkable access to services and community networks.

For more on Home Foundation, visit their website at: homefoundation.org.nz



*Pictured: Te Pākau Maru development, New Brighton, Ōtautahi Christchurch.
Photo credit: Izaac Reed, theCreator.*

CASE STUDY: OXFORD TERRACE HOUSING COMMUNITY

After the 2010-2011 Canterbury earthquakes destroyed its historic central Christchurch building, Oxford Terrace Baptist Church chose not simply to rebuild a place of worship, but to reimagine its land as an integrated hub for housing, work, worship, and community connection. The completed development brings together church facilities, office spaces, shared community spaces, and 14 apartments on a centrally located site.

The residential component includes five two-bedroom, six four-bedroom and three five-bedroom apartments, providing a mix of homes for families, young adults and residents with accessibility needs. Half of the apartments are allocated to applicants on the social housing register and to refugees who need stable, secure accommodation and wraparound support, with the balance available for family housing or rent-by-the-room accommodation for first-year students and young adults.

Within the housing development, there is intentional connection with the Oxford Terrace Baptist Church, with three families from the church living within the 14 housing units. The residents who have chosen to live in the Housing Community believe in the neighbouring kaupapa, with a shared sense of fostering community and connection to create a modern-day monastery where people can live, work, and worship together.

The project demonstrates how a faith-based organisation can use strategically located land to respond to housing need while retaining a clear community and mission focus. It also illustrates the wider potential for churches and other mission-aligned landowners to unlock land for social and community benefit.

This project raises the following key points of interest:

- 1. Mission clarity:** the project demonstrates how a faith-based landowner can respond to a significant loss of built form by reimagining its land for a broader community purpose. Following the Canterbury earthquakes, Oxford Terrace Baptist Church chose to develop spaces where people could live, work, and worship. This clear mission focus appears to have shaped the housing, office space, community, and worship elements of the development from the outset.
- 2. Church-held land can unlock housing:** the project is a strong example of how centrally located church land can be used to provide housing outcomes in high-value urban locations. Rather than treating the site solely as a replacement church building, the land was used to deliver

14 apartments, including larger family-sized homes and accessible units. This demonstrates the potential for churches and other mission-aligned landowners to contribute meaningfully to housing supply.

- 3. Mixing use and tenure supports viability:** the mix of social housing, refugee accommodation, family housing and rent-by-the-room accommodation creates a diverse resident community which is strengthened by the intentional involvement of three church families living within the development, helping to foster a shared kaupapa of community, connection, support and belonging. This approach supports community development while also requiring careful consideration of eligibility, tenancy management, affordability settings, and long-term operational sustainability.
- 4. Good design supports social outcomes:** the shared garden, central courtyard, vegetable garden and orchard all support neighbourly connection and provide safe common areas for tamariki and families. The inclusion of warm apartments, shared facilities, bike and storage sheds, plus the opportunity to access free community internet and below-market-rate solar power also demonstrates how design and amenity can contribute to practical wellbeing.
- 5. Steward your partnerships:** a development of this nature requires alignment between the church's mission, the needs of residents, social housing allocation pathways and the ongoing management of shared spaces. Oxford Terrace Baptist Church has not only enabled the physical development, but has also continued to steward the shared kaupapa that underpins it, intentionally nurturing connection between the church and housing communities through the presence of church members living onsite, and supporting the long-term community development, belonging and mutual care that sit at the heart of the model.

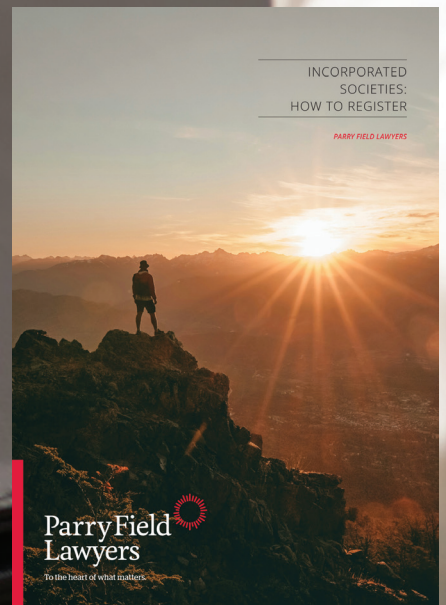
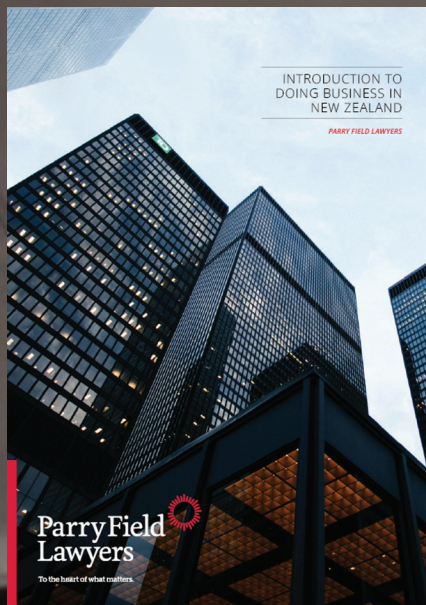
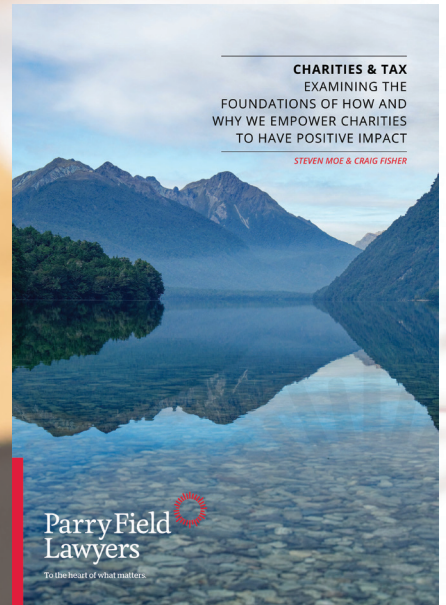
Awards and Recognition:

- Housing Multi-Unit Winner, 2026 Canterbury Regional Architecture Awards
- Gold Award and National Category for Multi-Unit Housing Winner, New Zealand Commercial Project Awards 2025
- Public Architecture Winner, 2019 Canterbury Regional Architecture Awards

For more on the Oxford Terrace Housing Community, visit the website at: otbc.org.nz/facilities-housing/housing

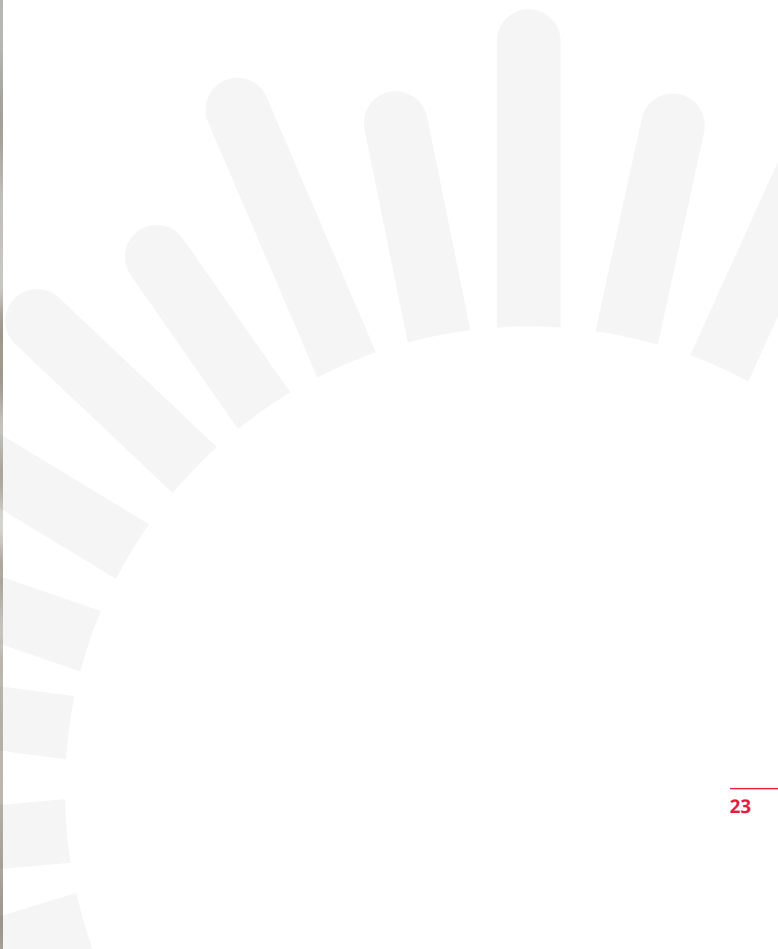


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