

Funding Round 3 – Exposure Draft Process

Funding Agreement and Concessional Loan Agreement – Departure Table Submission

Date: 19 February 2026

Faith Housing Australia (FHA) provides the following proposed departures for Housing Australia's consideration in response to Addendum No.1 to the Funding Round 3 Call for Submissions.

These comments draw on a detailed review of the exposure draft documentation by experienced sector participants and Board members with expertise in capital structuring and project delivery within the community housing sector. They are provided to identify material commercial and operational issues that may affect faith-based community housing providers' ability to progress efficiently to financial close and delivery.

Faith-based providers often operate across multiple charitable entities, utilise land subject to trust, gift, or mission-based restrictions, and apply blended capital structures that combine recycled charitable capital, grants, mezzanine funding, and senior debt. The observations below are provided to assist Housing Australia in ensuring that the Round 3 documentation accommodates these structural characteristics in a commercially workable manner, without altering the underlying risk intent of the program.

In particular, the following overarching matters warrant consideration:

- **Stewardship of Charitable Land** – Many faith-based housing sites are held within broader charitable entities and are subject to trust deeds, gift conditions, denominational governance requirements or mission-based restrictions. Portfolio-level “Market Process” enforcement mechanisms that assume a standard commercial sale pathway may not align with these stewardship obligations and may introduce legal, governance and balance sheet risk beyond the individual project.
- **Complexity of the Capital Stack** – HAFF projects commonly require early-stage liquidity for land acquisition, land deposits or turnkey deposits. Where drafting or product settings effectively require all equity and mezzanine funding to be contributed before any senior debt or concessional loan drawdown, this can create material liquidity gaps and affect timely progression to financial close — particularly for community housing providers reliant on recycled mission capital and blended funding arrangements.
- **Tenancy and Governance Risk** – Mandatory termination of tenancies where income thresholds are exceeded may conflict with State tenancy frameworks and create governance challenges for Boards with long-term mission-driven tenancy sustainment mandates.

The proposed departures set out in the table on the following pages are provided to support efficient delivery and improve commercial workability across the sector.

Departure Table

No	Clause number & clause heading	Proposed Departure	Explanation for Proposed Departure	Level of Importance (low/medium/high)
Funding Agreement (FA) or other funding documents (as identified)				
1	Funding Agreement – Portfolio Structure	Permit project-specific Funding Agreements within a portfolio, or provide clear project-level release mechanisms.	<p>A default in one project currently defaults the entire portfolio. A delay or default in one project should not automatically trigger a market process affecting other performing charitable assets within the portfolio. This structure introduces cross-project exposure risk and may discourage participation by providers managing complex charitable asset structures.</p> <p>Consideration could be given to funding each project under a separate Funding Agreement and Concessional Loan structure where portfolio cross-default risk cannot otherwise be mitigated.</p>	High
2	FA Clause 4.3(b) – Concessional Loan Drawdown Timing	<p>Allow tranches of the Concessional Loan to be drawn on a project-by-project basis upon completion milestones.</p> <p>Current drafting provides that funding for any Concessional Loan Agreement awarded for the Project will only be made available after the last of the Projects achieves its Date of Operating Phase Commencement.</p>	<p>This may delay occupancy of completed homes and defer capital recycling while awaiting portfolio-level completion, reducing delivery efficiency and impacting capital deployment.</p> <p>During HAFF Round 1, concessional loans were generally drawn first or early and used to fund land acquisition or turnkey deposits.</p>	High
3	FA Common Terms – CI 2.1(g) / 4.3(g) (Cross Default)	Remove cross-default termination rights arising from individual project delays or Condition Precedent failures.	If a project fails a Condition Precedent or falls behind, the whole Funding Agreement may be terminated. This creates cross-project exposure risk within the portfolio and may place otherwise performing assets at risk due to one problem project.	High
4	Tenure Eligibility – CI 5.4(c)	Remove the requirement to terminate tenancies where income thresholds are exceeded.	Mandatory termination where tenants exceed income thresholds may conflict with certain State residential tenancy laws (e.g., NSW) and create governance challenges for Boards with long-term mission-driven tenancy sustainment mandates.	High
5	Senior Debt – Interest Rate	Allow a grace period or lower initial hedge	Mandatory 100% hedging from day one can be costly. For CHPs with smaller balance sheets, maintaining swaps	Medium

	Hedging (MCP Part D) ¹	ratio during the Development Phase.	against undrawn construction limits can create negative carry during the development phase and reduce available mission equity.	
6	AHBA Loan Product Statement – Base Rate Locking	Provide a rate lock option at the time of Letter of Offer.	Between Letter of Offer and Financial Close, interest rate volatility can materially impact the financial model. A government-backed rate lock would reduce model break risk and support Board approval certainty prior to financial close.	High
7	Common Provisions – Hedge Break Costs	Limit recipient liability for break costs where termination arises from force majeure or Government policy change.	If a project is cancelled due to factors outside the CHP's control, significant swap break costs could create disproportionate balance sheet exposure relative to the scale of the individual project.	High
8	Financial Undertakings – DSCR Buffers	Adjust DSCR calculations to recognise CPI-indexed rental income as a natural hedge.	Many CHPs index rental income to CPI. Recognition of this natural hedge would allow proportionate buffer requirements without compromising prudential integrity.	Low
9	FA Common Terms – CI 5.2 (Deemed Availability)	Expand “Deemed Availability” to include remediation following lawful eviction or tenant damage.	Availability payments currently cease during repairs following tenant damage. Continuation of payments during remediation would support restoration of the asset's social purpose.	Medium
Intercreditor Principles				
10	Intercreditor Principles – Third-Party Grants	Allow flexibility for charitable or State grants to sit outside the common security package.	Certain charitable donations or bequests may be legally restricted from forming part of a common security package. Greater structural flexibility would mitigate legal conflict risk.	Medium
11	Tripartite Provisions – Standstill Period	Reduce or vary the 365-day standstill period during construction.	A 365-day standstill period during construction may be commercially challenging for senior and mezzanine lenders, particularly where the event of default arises from builder performance.	Medium
Development related items (Preferred Contract Terms)				
12	Preferred Contracting Principles – 10% Bank Guarantee	Reduce requirement to 5% or permit insurance bonds as an alternative.	A 10% security requirement may reduce the pool of builders willing to work on HA-funded projects, as the level of bonding required exceeds typical residential market practice. Reduced competition may increase costs for CHPs. The available builder pool is already constrained by FSC accreditation requirements.	High
13	Preferred Contracting Principles – Contractor Security	Reinstate acceptance of insurance bonds where appropriate.	Many builders utilise insurance bonds due to working capital constraints associated with bank guarantees. Allowing bonds would broaden builder	High

¹ HAFF Senior Debt Memorandum of Common Provisions (MCP)

			participation and support competitive pricing.	
14	Funding Offer & Common Terms (D&C) – Contingency	Align contingency treatment with standard market practice.	Holding contingency against cost to complete for the duration of the project is not consistent with standard market practice and does not align with the typical commercial purpose of contingency in a D&C contract.	High
15	Preferred Contracting Principles (D&C) – Liquidated Damages	Remove termination trigger solely upon LD cap being reached.	Builders may be unwilling to accept termination solely upon the LD cap being reached, as this is not standard market practice. Verification of LDs is typically managed by the superintendent or independent certifier, if required.	Medium
16	Preferred Contracting Principles (D&C) – Professional Indemnity Insurance	Reduce \$40m aggregate PI requirement to reflect market availability.	\$40m aggregate PI is not commonly obtainable in the current insurance market and may materially limit consultant participation.	High
Concessional Loan Agreement				
17	Concessional Loan – CPs 7.2(g) / 7.3(d)	Clarify objective evidence required to demonstrate that no events will prevent Operating Phase Commencement.	This is a highly subjective requirement. Greater clarity regarding the objective evidence required would assist in enabling effective contractual pass-through to builders or vendors and support finance certainty.	Medium

FHA appreciates the opportunity to provide feedback through this exposure draft process and would welcome further engagement should Housing Australia wish to clarify or discuss any of the matters raised. We remain committed to supporting commercially workable settings that facilitate the timely delivery of social and affordable housing under Round 3.

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