

AHBA – GUIDE TO CONSTRUCTION LOANS

1 Introduction

National Housing Finance and Investment Corporation (**NHFIC**) provides finance to registered community housing providers (**CHPs**) to fund, among other things, the construction and/or development of dwellings for social and affordable housing, including mixed tenure developments (**Project**).

This guide provides an overview of the process to obtain finance to fund a Project (**Construction Loan**) from NHFIC under NHFIC's Affordable Housing Bond Aggregator (**AHBA**). It covers the construction / development aspects of an application for a Construction Loan and is not an exhaustive list of what is required and is provided for general information purposes only.

All applicants seeking financing under the AHBA **must** be a community housing provider registered under a law of, or under a scheme administered by, a State or a Territory.

2 Overview of the process

Set out below is an overview of the process to obtain an approval and funding of a Construction Loan.

STAGE	DESCRIPTION
Expression of interest (EOI) (2 to 4 weeks)	All CHPs seeking funding under the AHBA are required to submit an EOI. The EOI will be assessed by NHFIC and if eligible, the CHP will be invited to apply for funding (Application). For further details, see NHFIC's website at www.nhfic.gov.au
Application (2 to 3 months)	<p>During the application stage:</p> <ul style="list-style-type: none"> • you will need to provide NHFIC with information and supporting documentation. The information and supporting documentation required by NHFIC is to assist NHFIC to determine, among other things, (i) the most appropriate financing structure NHFIC can provide, (ii) the risks to NHFIC in providing the finance, and (iii) the terms and conditions that NHFIC should apply to any financing provided by NHFIC. A list and description of certain of the information and supporting documentation you may be asked to provide is set out in section 3 below; • you may be provided with a draft non-binding indicative term sheet setting out at a high level the key commercial and legal terms for a proposed Construction Loan (draft Terms). The draft Terms is not an offer to provide finance and you can negotiate the draft Terms if you do not agree; <p>Once the draft Terms are agreed (Indicative Terms), you will have 30 days to accept the Indicative Terms and request NHFIC submit the Indicative Terms to NHFIC's Credit Committee (Credit Committee or Committee).</p>
Credit Committee	All financing transactions must be reviewed and supported by the Credit Committee. The Committee is scheduled to meet at regular intervals throughout

STAGE	DESCRIPTION
<p>Review / support process</p> <p>(subject to schedule of NHFIC's Credit Committee)</p>	<p>the year and your NHFIC Originator will advise when your application has been scheduled for consideration by the Committee.</p> <p>Every transaction submitted to the Credit Committee must include: (i) a credit paper prepared by NHFIC's Origination and credit teams, and (ii) (if available) the Indicative Terms.</p> <p>A significant amount of information (a substantial portion of which needs to be provided by you) and analysis is required to prepare the credit paper. It is important that you provide the information and supporting documentation required by NHFIC in a timely manner to ensure your application can be duly considered when scheduled by the Credit Committee.</p> <p>The Committee will either support or decline your application for finance, subject to certain conditions. In all cases, you will be notified by your NHFIC Originator of the outcome of your application.</p> <p>If your application is supported, your transaction will be submitted for approval at a meeting of NHFIC's Board (Board).</p> <p>If your application is supported, subject to certain conditions, changes to the Indicative Terms may be required. Your NHFIC Originator will discuss these with you. Once the changes to the Indicative Terms have been agreed by you, your transaction may need to be re-submitted to the Credit Committee. If supported by the Committee, your transaction will be submitted to the Board for approval.</p>
<p>Board approval</p> <p>(subject to Board schedule)</p>	<p>All transactions must be reviewed and approved by the Board. The Board is scheduled to meet at regular intervals throughout the year. Your NHFIC Originator will advise when your application has been scheduled for consideration by the Board.</p> <p>The Board may approve or decline your application for finance or approve, subject to certain conditions. In all cases, you will be notified by your NHFIC Originator of the outcome of your application.</p> <p>If your application is approved, in most cases, you will be issued with a commitment letter (Commitment Letter) which may enclose the Board approved Indicative Terms. You will need to accept the Commitment Letter and Board approved Indicative Terms within the time period specified in the Commitment Letter. If you do not return a signed acceptance of the Commitment Letter within the time stipulated in the Commitment Letter, your offer of finance will expire.</p> <p>If your application is approved, subject to certain conditions, changes to the Indicative Terms may be required. Your NHFIC Originator will discuss these with you and the changes that need to be made to the Indicative Terms. Once the changes to the Indicative Terms have been agreed by you, your transaction will be re-submitted to the Board.</p>
<p>Legal documentation</p> <p>(6 to 8 weeks)</p>	<p>Upon accepting an offer for finance from NHFIC by countersigning and returning the Commitment Letter, the transaction will proceed to legal documentation, signing and satisfaction of conditions precedent to first drawdown (Financial Close). During this process, NHFIC will undertake further due diligence to confirm or verify the information it has been provided and the assumptions it</p>

STAGE	DESCRIPTION
	<p>has made when approving your application for finance. NHFIC must be satisfied with the outcome of its due diligence process before any financing can occur.</p> <p>A list and description of certain of the legal documentation that may be required for a Construction Loan is set out in section 4 below.</p>
Bond issuance or line of credit	<p>Your Construction Loan may be funded from a number of different sources, including from proceeds raised from an issuance of bonds by NHFIC in the Australian debt capital markets, or via a line of credit facility provided to NHFIC by the Federal Government. Construction Loans will in many cases not be provided by way of a single lump sum in advance of the Project commencing, and in such cases will be provided: (i) after all other sources of capital agreed to fund the Project have been injected into the Project; and (ii) over the course of multiple advances provided on a monthly basis in an amount required to fund the builder's or developer's progress claim for that month (with such progress claim being reviewed and signed-off on by NHFIC's consultant for the Project as a condition to the advance is made).</p> <p>You will be informed of the most appropriate funding mechanism for your transaction as part of your application. You should be aware that how your Construction Loan is funded will have an impact on how and when you can draw down on your facility and even how and when you can pre-pay your facility. If you have any concerns or questions, you should discuss these with your NHFIC Originator at the earliest opportunity.</p>

3 Application – information and supporting documentation

Projects are either undertaken by a CHP on its balance sheet or in a special purpose vehicle established and operated by the CHP (**SPV**). If a Project is to be undertaken by an SPV established and operated by the CHP, the SPV will need to be registered as a CHP.

Set out below is a list of the information and supporting documentation NHFIC will require applicants for a Construction Loan to provide when applying for a Construction Loan to fund a Project it proposes to undertake on its balance sheet.

DOCUMENT	DESCRIPTION
General	NHFIC will need to understand: (i) what you are planning to build, (ii) how you are planning to build it, (iii) how you plan to fund the build (including all debt and equity), (iv) the people you have (or will engage) to help you build (and their experience in undertaking Projects of a similar kind) and (v) the risks arising from the Project and how you plan to manage them.
Project Budget or Financial Model	NHFIC will require a budget or financial model for the Project. This should include details on the Project's expected: (i) costs, fees and expenses, (ii) revenues and (ii) sources funding and their cost. The budget or financial model should set out the assumptions upon which it has been prepared. Any budget or financial model will need to be in form and substance satisfactory to NHFIC before any loan will be approved.

DOCUMENT	DESCRIPTION
Design & Specification documents	NHFIC will require details of the design and specifications of the buildings you plan to build. You will need to provide copies of working plans, design drawings, engineering plans and specifications for the construction of the works.
Approvals, consents & assessments	NHFIC will need to understand what approvals and consents you require to undertake the Project. These will include providing details of the approvals (including planning approvals), consents (including from a State/Territory or any third parties) and assessments (including environmental) required and potentially copies of the approvals, consents and assessments.
Builder / developer information	<p>Selection of the right builder / developer is key to the success of a Project. NHFIC will need to understand the likelihood of the builder / developer being able to complete the Project in time and on budget.</p> <p>If, at this stage, you know which builder / developer you would like to appoint to undertake the Project, then you will need to provide the following information to enable NHFIC to undertake an assessment of the builder / developer: (i) financial statements of the builder / developer for the past 3 years, (ii) details of the builder's / developer's track record and capability statement, (iii) details of the builder's / developer's project pipeline and current projects (including commentary on any material contractual issues), (iv) evidence the builder / developer is in compliance with government regulations, including workplace health and safety issues, public service funding and the Australian Tax Office.</p> <p>If you do not know which builder / developer you would like to appoint yet, your application can still proceed but NHFIC will need to know and be satisfied with the above before any funds can be made available to you under the Construction Loan.</p>
Builder - WHS Accreditation	<p>Depending on the value of a Project, only builder(s) accredited by the Federal Safety Commissioner under the WHS Accreditation Scheme (the "Scheme") can be engaged on projects financed by NHFIC.</p> <p>If the following conditions are met, any builder appointed by a CHP will need to have accreditation under the Scheme:</p> <ul style="list-style-type: none"> • The project includes building work of \$4 million or more (including GST); and • The value of the NHFIC financing is at least \$6 million (including GST) and represents at least 50% of the total construction cost of the project; OR • The NHFIC financing is \$10 million (including GST) or more, irrespective of the proportion of NHFIC financing to the total construction cost of the project.
Reports from consultants and advisers	<p>CHPs and/or NHFIC will often engage consultants and advisers to prepare reports for the Projects. To the extent any have been commissioned by the CHP, NHFIC will require copies of these (potentially with reliance) to be provided to further understand the Project.</p> <p>These include:</p>

DOCUMENT	DESCRIPTION
	<ul style="list-style-type: none"> • a legal property due diligence report which deals with matters including: (i) encumbrances on the title, (ii) planning restrictions, (iii) approvals and consents required for the Project; and (iv) key Project documents, including Building Contracts and Housing Programme Agreements (each as defined below); and • a report from a consultant to confirm construction costs for the Project.
Risk matrix	A detailed risk matrix of where risks arising from the Project lie, and how the CHP proposes to mitigate those risks.

4 Legal documentation

After signing the Commitment Letter, the transaction enters the legal documentation phase. All legal documents must be signed before you can draw down under a Construction Loan. The exact list of documents that need to be signed that will apply to your Construction Loan will generally be set out in the Indicative Terms sheet, unless the Commitment Letter is signed subject to further due diligence being conducted during the conditions precedent satisfaction phase in which case the list of documents may be further considered by NHFIC on completion of the due diligence.

Set out below is a list and description of certain of the legal documents required for a Construction Loan:

DOCUMENT	DESCRIPTION
Finance Documents	<p>These are the legal agreements to document the Construction Loan to be provided by NHFIC to the CHP for the Project. These generally include:</p> <ul style="list-style-type: none"> • a Common Terms Agreement that sets out all the terms and conditions of any financing between NHFIC and the CHP: representations and warranties, undertakings, reporting obligations, events of default and review events; • a Facility Agreement that sets out the commercial terms of the Construction Loan: the facility limit, interest rates, draw down mechanics (usually progressive), repayment and pre-payment rights and conditions precedent to first draw down and each draw down; • a general security agreement in favour of NHFIC (or a security trustee) to provide security over all of the assets of the CHP; • a real property mortgage in favour of NHFIC (or a security trustee) over the Project site and the dwellings constructed on it; • a builder side deed in favour of NHFIC (or a security trustee) to grant NHFIC certain rights during the construction period (see below); • if applicable, tripartite and/or priority arrangements with such other third parties as NHFIC requires (see below); • if applicable, a bank account deed in favour of NHFIC (or a security trustee) over certain bank accounts of the CHP to provide NHFIC (or a security trustee) with certain rights to operate and withdraw monies from the account on the occurrence of a certain event (e.g. an event of default);

DOCUMENT	DESCRIPTION
	<ul style="list-style-type: none"> • if applicable, a security trust deed to establish a security trust for the securities described above to be held by the security trustee for the benefit of the financiers to the Project; and • if applicable, a cost overrun guarantee.
Building Contract	<ul style="list-style-type: none"> • The is a contract entered into between the CHP and a builder / developer to build the dwellings for the Project. The Building Contract must be in form and substance satisfactory to NHFIC prior to Financial Close taking place. • The Building contract must: (i) be a fixed price and time contract, (ii) allow the builder to be replaced if it defaults or is insolvent, (iii) include a requirement that (if applicable) the builder must be accredited, comply with, and not do anything which would cause the CHP or NHFIC to be in breach of, the WHS Requirements, and (iv) be acceptable to the NHFIC in all other respects (including the provision of builder security).
Builder’s Side Deed	<p>This is an agreement entered into between the CHP, its builder / developer and NHFIC. Its purpose is to give NHFIC the right to cure any defaults by the CHP before the builder / developer can exercise any of its right to terminate the Building Contract.</p> <p>This is because if the builder / developer terminates the Building Contract, completion within the expected timeframe and cost will be at risk together with the CHP’s ability start earning income from the dwellings to service its loan with NHFIC.</p>
State / Territory Priority Deeds and/or Tripartite Deeds	<ul style="list-style-type: none"> • Certain States / Territories under certain housing programs may transfer land to a CHP and/or provide funding and financing to a CHP. The CHP is subject to certain obligations to the State / Territory under the housing programme for which the State / Territory will want to remain protected, even if the CHP proposes to undertake a new development on the property with finance from NHFIC. In addition, NHFIC may require the State / Territory to acknowledge and agree to certain matters to protect NHFIC’s interests as a financier. • In these cases, the State / Territory will require (or NHFIC may require) the CHP to enter a priority or tripartite deed with the State / Territory and NHFIC. • Due to the number (and nature) of the counterparties involved in negotiating and agreeing a State / Territory Priority Deed or Tripartite Deed, these can often be the critical path to achieving Financial Close.
Financiers Priority Deed / Intercreditor Deed	<ul style="list-style-type: none"> • If a Project is being financed by more than once financier who are all to have the benefit of a security over the properties in the Project, then a Priority Deed / Intercreditor Deed will be required to govern the rights between the financiers – in particular, order of ranking of their respective debts and the enforcement rights of each financier.
Housing Programme Agreements	<ul style="list-style-type: none"> • If the Project is being undertaken as part of a certain housing program established and operated by a State / Territory, then the State / Territory will often require those arrangements to be documented in an agreement setting out each party’s rights and obligations and this may include a right for the Project to: (i) receive certain funding from the State / Territory during its

DOCUMENT	DESCRIPTION
	<p>construction; and/or (ii) earn certain income / revenues from the State / Territory.</p> <ul style="list-style-type: none"> • If the Project relies on funding and/or revenue in each case earned from a housing program, then NHFIC may require a tripartite to be entered into between the CHP, the relevant State / Territory and NHFIC. • Due to the number (and nature) of the counterparties involved in negotiating and agreeing a State / Territory Housing Program Agreements, these can often be the critical path to achieving Financial Close.
Other side deeds	<ul style="list-style-type: none"> • If a Project has entered into an agreement with, and relies on, a certain counterparty, then depending on the role the counterparty has in contributing to the success of the Project, NHFIC may require the counterparty to enter into a side deed with NHFIC. • Its purpose is to give NHFIC the right to cure any defaults by the CHP under the agreement with the counterparty before the counterparty exercises any of its right to terminate the Building Contract.

5 Financial Close

After signing the legal agreements, the transaction enters into the condition precedent satisfaction phase. This is where certain matters which NHFIC has relied upon in deciding to provide you with a Construction Loan are verified. All conditions precedent must be in form and substance satisfactory to NHFIC before you can draw down under a Construction Loan. The exact list of conditions precedent that will apply to your Construction Loan will usually be set out in the Indicative Terms sheet, unless the Commitment Letter is signed subject to further due diligence being conducted during the conditions precedent satisfaction phase in which case the list of conditions precedent may be further considered by NHFIC on completion of the due diligence.

Set out below is a list of some of the conditions precedent you may be required to satisfy prior to being able to draw down under your Construction Loan:

DOCUMENT	DESCRIPTION
Finance Documents	<ul style="list-style-type: none"> • All Finance Documents must be agreed and signed. Some may need to be registered before funding occurs – e.g. security documents • Those which involve State / Territory or other third parties are likely to be the critical paths to Financial Close.
Project Documents	<ul style="list-style-type: none"> • All Project Documents must be agreed and signed. In addition, they must be in form and substance satisfactory to NHIFC. • These may include: (i) Housing Agreements; (ii) acquisition documents (e.g. contracts of sale) to acquire land upon which the dwellings for Project will be built; and (iii) the Building Contract.
Financial Model / Budget	<p>This is where the figures and assumptions contained in the Financial Model or Project Budget are analysed and to the extent possible, verified. This may include obtaining an audit of the Financial Model or Project Budget.</p>

DOCUMENT	DESCRIPTION
Due diligence reports	Indicative Terms will set out the due diligence reports required for your transaction. This may include: a property due diligence report, a financial due diligence report, a technical due diligence report on the builder /developer, a legal due diligence report and a report from the consultant to confirm the construction costs for the Project.
Valuations	<ul style="list-style-type: none"> • NHFIC will require an as if complete valuation for the Project. This is a forward looking estimation of the property value (exclusive of GST) as if it was completed having regard to the development’s plans, level of fit out, cost, pre-sales contracts, completion date and comparable sales data. • NHFIC is responsible for obtaining this at the cost of the CHP. NHFIC will engage one of its panel valuers to provide as part of the conditions precedent satisfaction process to Financial Close.
Legal opinions	Prior to making funds available, NHFIC will want to ensure the Finance Documents and, in certain cases, the Project Documents, are valid, binding and enforceable against those whose obligations are critical to the success of the Project (typically, the CHP).