

UNLOCKING HOUSING CO-OPERATIVES:

An Exploratory Study of Financial,
Incorporation and Ownership Issues

Influencing the Development of Housing
Co-operatives in Western Australia

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EXECUTIVE SUMMARY

The focus of this exploratory research is the limited equity (also known as shared equity) housing co-operative model. Presently, this model is not an element of the Western Australian housing co-operative mix. The motivation for investigating the potential of the limited equity housing co-operative model is partly related to the housing affordability issue, a well recognised problem for many Australian households. Housing options for people on low to moderate incomes are restricted within both the private and social housing sector. The question arises as to whether the limited equity model has some potential to expand the options available for affordable housing.

Another rationale for exploring this model is its capacity to provide scope for members to gain equity in their own dwelling. For those with access to some funds, but insufficient to enter the private property market in their own right, the limited equity model may allow individuals to collectively accumulate partial equity in their own homes while concurrently retaining the social and community benefits of living within a housing co-operative. Lastly, the research examines the limited equity housing co-operative model as a strategy to reinvigorate the housing co-operative sector in Western Australia and lessen the sector's reliance on the dominant rental housing co-operative model linked to the Department of Housing's social housing framework.

Within the context of the limited equity co-operative housing model, this research seeks to answer the following questions:

- What legal structures are available to incorporate housing co-operatives?
- What financing options are available in Australia to help members fund land acquisition and construct dwellings for a housing co-operative?
- What forms of ownership can be used for the housing co-operative model?

Additionally, a case study approach is used to examine examples of group-based community living initiatives that have been established in Western Australia and other parts of Australia. These case studies may provide further Australian based strategies related to legal, ownership and financial matters that could have application to housing co-operatives.

The report firstly reviews the features of the archetypal model of housing co-operatives, as developed in other countries, to establish the basic structure of the model. It then reviews the modifications of the model, such as the limited equity model, by comparing it with the standard model.

The archetypal housing co-operative model is a form of group housing on one title. The owner of the housing co-operative is the co-operative corporation incorporated under a co-operatives statute. The members/residents own an undivided share in the whole of corporation within a contractual arrangement that enables them to occupy a specific dwelling.

The limited equity housing co-operative is a variation of this archetypal model. The focus of limited equity housing co-operatives is to maintain long-term housing co-

operative affordability to initial and future members. This is the key variation from the archetypal model. Rules are established by the membership regarding pricing of shares below market value by an agreed formula. When a member decides to sell that share, its price is limited by a pre-determined formula, ensuring the ongoing affordability of the housing co-operative to future members. However, the limited equity housing co-operative model allows some percentage of financial appreciation in the member's share. The remaining increase in equity is retained by the housing co-operative for the benefit of present and future members.

In seeking to determine if the limited equity housing co-operative model is applicable in Western Australia, by investigating the three research questions, there are several key findings.

Firstly, on the basis of a review of the options for incorporation, it has been shown that housing co-operatives potentially have three choices when determining how to incorporate. The *Co-operatives Act 2009* (WA) is viewed as the most appropriate for an embryonic housing co-operative for incorporation. This dedicated co-operatives statute enables the housing co-operative to use the word 'co-operative' in its name and now, whilst its practical application is still being analysed, incorporates a financial instrument (co-operative capital units) which may enhance a co-operative's capacity to raise capital. As 2012 is the International Year of Co-operatives, emerging co-operatives can benefit from the momentum of these celebrations and be part of the long history of the international co-operative movement by choosing to incorporate under this Act.

Secondly, in discussing the complexity in working with the finance industry to fund housing co-operatives, the report suggests that the archetypal co-operative housing model is difficult to implement in Australia. This is partly attributed to the lack of understanding of, or empathy with, the co-operative model by the finance sector. At the same time, the issue of member shares is problematic for the finance sector as it does not provide the usual form of security, namely, a property title with the borrower's name on it as registered owner. Several case studies demonstrated strategies that may be relevant for the housing co-operative sector in adopting innovative staged approaches to financing a housing development. The case studies also demonstrated the value of separating land ownership from dwelling ownership, a significant diversion from the archetypal co-operative housing model.

Lastly, ownership issues for housing co-operatives were considered, building on the concept of separating land ownership from dwelling ownership. Strata schemes and the strata titles statute were analysed to determine their potential application to the housing co-operative model. Again the case studies provided some insights into using the strata titles system to achieve this while also concurrently addressing the issue of financing.

Based on the examination of these factors, the report proposed, albeit in exploratory form and meriting further detailed consideration, a modified form of a limited equity housing co-operative. The proposed model could develop along the following lines.

The co-operative incorporates itself under the co-operative statute. To overcome the problem associated with member shares, the co-operative adopts the strata title form to

develop the dwelling and common facilities. The co-operative corporation undertakes the development of the project. On completion, the co-operative corporation, as a strata company, owns the land and common property. The members own the strata titled dwellings that are held in their individual names. This arrangement separates the ownership of the common property from that of the dwellings. The members finance their purchase of these dwellings via a mainstream loan secured by the strata title.

The co-operative nature of the entity is captured within the by-laws/constitution of the strata company/co-operative corporation, including a clause capping returns on the sale of the dwellings to ensure the limited equity concept is retained. The by-laws of the strata company reflect similar community based concepts as the co-operative principles and values enabling effective and efficient management of the co-operative within the context of a strata scheme. As a result, the housing co-operatives are incorporated under the co-operatives statute and, at the same time, are subject to the strata titles statute. Members will benefit from knowing that in the event they sell that, within the agreed by-law cap, they will enjoy an increase in the equity of their personal dwellings.

As part of the overall focus on affordable housing strategies in Australia, further research is required to identify if the modified limited equity housing co-operative model proposed in this report has some potential within Western Australia. Of particular importance is finding a strategy for people on low to moderate incomes with some, but insufficient funds, to buy their own dwelling and gain some equity in it over time. The limited equity housing co-operative, in the modified form proposed in this report, suggests such a mechanism while also maintaining the well-researched and documented benefits of living within a housing co-operative community.

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PREFACE

This report is part of ongoing research by the Federation of Housing Collectives (FOHCOL), the peak body representing the housing co-operative sector in Western Australia. It follows on from the FOHCOL 2010 paper entitled 'Benefits of Housing Co-operatives and the Present Barriers to Growth in Western Australia'.¹ That report explored the benefits of the housing co-operative model for its members, community and wider society, as well as the factors that have limited its capacity to enable more housing co-operatives to be formed in Western Australia. It analysed the dominant housing co-operative model in Western Australia, the non-equity (also referred to as rental or common equity co-operative) model, which is part of the state government's social housing framework. The report further sought to explain why housing co-operatives, despite the well-documented benefits of the model, have reached some sort of impasse whereby there have not been any new housing co-operatives formed since the mid-1990s.

In its concluding section, the report briefly examined some alternative housing co-operative models that are not currently available in Western Australia, and argued that these models could provide future growth strategies for housing co-operatives in Western Australia. One of these models is the limited equity housing co-operative.

INTRODUCTION

The focus of this exploratory research is the limited equity (also known as shared equity) housing co-operative model.² This variation of the housing co-operative model is presently not part of the Western Australian housing co-operative mix. Part of the rationale for investigating the potential of the limited equity housing co-operative model in Australia is related to the housing affordability issue. Housing affordability is a well recognised problem by most institutions working in the housing arena for an increasing number of Australian households. Housing options for people on low to moderate incomes are restricted within both the private and community housing sector. Perhaps the limited equity model has some potential to expand the options available for affordable housing.

Another reason for exploring this model is its capacity to provide some scope for housing co-operative members to gain equity in their own dwelling. For those with access to some funds, but insufficient to enter the private property market on their own, and on the basis of the co-operative concept of mutual self help, the limited equity model allows for individuals collectively to accumulate some equity in their own homes while concurrently retaining the social and community benefits of living within a housing co-operative.

Lastly, the research examines the limited equity housing co-operative model as a strategy to expand the housing co-operative sector in Western Australia outside the

¹ This is an unpublished paper. However a copy is available on request from FOHCOL.

² The limited housing co-operative model is examined in a section following.

dominant rental housing co-operative model linked to the Department of Housing's social housing framework.

Within the context of the limited equity co-operative housing model, this research seeks to answer the following questions:

- What legal structures are available to incorporate housing co-operatives?
- What financing options are available in Australia to help members fund land acquisition and construct dwellings for a housing co-operative?
- What forms of ownership can be used for the housing co-operative model?

These questions have arisen over an extended period in informal discussions within FOHCOL in seeking to develop and promote the housing co-operative sector in Western Australia. It is believed that exploring these issues further in a more formal and detailed way may help clarify some elements that have inhibited the establishment of new housing co-operatives in the past.

As there have not been any new housing co-operatives established in Western Australia since the mid 1990s, much first-hand knowledge and experience about establishing housing co-operatives has been lost. Additionally, there is minimal knowledge in establishing limited equity co-operatives generally in Australia. While the report analyses these key factors to assist supporters of housing co-operatives, developing a new housing co-operative in Western Australia will be very much a learning activity for all actors involved in the process. No amount of research – only firsthand experience – can truly provide the answers to these questions.

This report firstly reviews the features of the archetypal model of housing co-operatives, as developed in other countries, to establish the basic structure of the model. It then reviews the modifications of the model, such as the limited equity model, by comparing it with the standard model and other versions. The report then analyses the standard model against Australian and Western Australian finance, incorporation and ownership factors to determine some notion of 'best fit'. Based on this analysis, some suggestions are made concerning the limited equity model to assist in its implementation in Western Australia.

Additionally, a case study approach is used to examine examples of group-based community living initiatives that have been established in Western Australia and Australia. These case studies may provide further Australian based strategies related to legal, ownership and financial matters that could have application to housing co-operatives.

The report does not attempt to review the underlying theory associated with co-operatives and housing co-operatives in particular as this, to some extent, has been addressed in the first FOHCOL 2010 report.³ Further, this report does not address the many well-documented social and community benefits of housing co-operatives or

³ See earlier reference and footnote.

discuss the organisational and management issues of established housing co-operatives.⁴ Lastly, the report also does not consider the non-equity (also referred to as 'rental') housing co-operative model⁵ unless to reinforce a significant matter.

THE 'ARCHETYPAL' HOUSING CO-OPERATIVE MODEL

The archetypal housing co-operative model,⁶ as adopted internationally, is usually distinguished by several features particularly its ownership and management arrangements. Within that standard model, housing co-operatives effectively have two owners. The first owner is the co-operative corporation which is a legal entity generally incorporated under a co-operatives statute within a particular country. The co-operative corporation owns (or leases) the entire housing venture including all land, the dwellings and other structures and the common areas.

The second owner is the collection of the members of the co-operative corporation, as it is jointly owned by all its members as shareholders in the co-operative. Unlike private ownership of strata titled⁷ or non-strata freehold titled⁸ dwellings, members of housing co-operatives do not own or hold title to their individual dwellings. Instead, the housing co-operative holds title to the whole property and each member owns an undivided share in the co-operative.

To become a member of the co-operative corporation, a prospective member is required to purchase a share in the co-operative. As a shareholder, the member signs a legal contract with the co-operative that gives the member an exclusive right to occupy a specific dwelling unit subject to meeting all obligations (by-laws) of the co-operative.

As the co-operative corporation is the legal owner of the property it is therefore responsible for meeting all its financial obligations including mortgage repayments, rates and taxes, management and maintenance costs. These amalgamated costs are passed proportionately onto the members who pay a monthly fee to cover these costs.

Variations of this standard model enable different versions of housing co-operatives to form to reflect the needs of its membership. A classification based on the amount of

⁴ A useful source of such information is the Northcountry Co-operative Foundation's 'A Guide for Successful Community Development Co-operative Development Toolbox'. The Guide was published in partnership with Northcountry Co-operative Development Fund 2004, Minneapolis, United States.

⁵ See n 4 above. Some discussion is also provided later in this report.

⁶ This description of model type and those following are adapted from the document referred to in n 4 above.

⁷ Western Australian Land Information Authority- Government of Western Australia 'Strata Titles Practice Manual for Western Australia'. 'In a strata or survey-strata scheme individual proprietors may own portions of the land, buildings, air and soil comprising the lot; but any part not individually owned is common property.' p 36, Edition 7.0 January 2011. The Manual is available at www.landgate.wa.gov.au. The site was last accessed 17 September 2011.

⁸ Ibid. 'A title to freehold land that is not strata titled. It is the closest tenure to complete ownership in Western Australia.' P 25. Note that 'freehold' title is also referred to as 'green title'.

equity that members can accumulate in their housing co-operative share delineates the following three versions:⁹

NON-EQUITY RENTAL (ALSO REFERRED TO AS LEASEHOLD OR COMMON EQUITY) HOUSING CO-OPERATIVE MODEL

This model is a variation of the archetypal model in that the members do not have any share ownership in the co-operative. A third party, usually a state agency, owns the co-operative and the tenant members are usually from low incomes and pay a reduced rent. Hence, the non-equity model looks very similar to renting. Members pay rent to the housing co-operative and collectively (and democratically) self manage the co-operative including facilities and maintenance. In Australia, this model involves a direct relationship with the public housing sector. In Western Australia, the public housing authority, the Department of Housing (DoH), vests housing in the housing co-operative via mechanisms such as head leases or deeds of trust. The basis of the housing co-operative is security of tenure and tenant self-management. As the housing co-operative does not own any real estate, it does not build any member equity.

In Western Australia, most of the housing co-operatives fall into the non-equity model and were initially funded by the state and federal Departments of Housing. This type of housing co-operative is a strand of the community (also referred to as social or affordable) housing sector and the primary focus is the provision of affordable rental housing to people on low to moderate incomes. Prospective tenants must meet community housing eligibility criteria determined by DoH and rentals are capped at a percentage of gross income usually 25%. Non-equity housing co-operatives are accountable to the DoH and must comply with the Department's processes.

Non-equity housing co-operatives in Western Australia have not received any additional funding or stock of houses from the Department of Housing for over a decade.¹⁰ Based on information collected by FOHCOL, prospective housing co-operative tenants often face a long waiting list period to become housed in one of these co-operatives.

⁹ Refer to Appendix 1 for further information about different housing co-operative models and how housing co-operatives differ from other forms of housing. Adapted from Northcountry Co-operative Foundation above n 4.

¹⁰ Kadmos, C, 2008, 'Regulation, growth and organisation: what are the options? The Final Report'. Following from Kadmos' report, over the last five years or so FOHCOL has researched new opportunities in the social housing and community housing sector in Western Australia. The most significant outcome of this research and consultation with its membership was the incorporation in 2010 of Co-operation Housing, a company limited by guarantee that is preparing the registration requirements with the Department of Housing to become a housing provider in the social housing arena.

FULL EQUITY (MARKET EQUITY) HOUSING CO-OPERATIVE MODEL

A full equity housing co-operative retains the basic structure of the archetypal model. The venture is fully funded by the members through their personal capacity to raise money, or the co-operative's capacity to raise a mortgage, and is fully owned by its members. The housing co-operative is formed via an incorporated structure under a co-operatives statute and the member may buy or sell a membership share in the housing co-operative at the going market price. Purchase prices and equity accumulation are very similar to the private market. This model is independent of the public housing sector. As the full equity model adopts market price in the buying and selling of shares, it is not a strategy for affordable housing. The model is not discussed any further in this report.

LIMITED EQUITY (SHARED EQUITY) HOUSING CO-OPERATIVE MODEL

The limited equity model is similar in structure to the archetypal model. The members own the housing co-operative and have shares in it. The housing co-operative is incorporated under a Co-operatives statute. The focus of limited equity housing co-operatives is to maintain long-term housing co-operative affordability to initial and future members which is the key variation from the archetypal model. Rules are established by the membership regarding pricing of shares below market value by an agreed formula. When a member decides to sell that share, its price is limited by a pre-determined formula, ensuring the ongoing affordability of the housing co-operative to future members. This model is relatively independent of the public housing sector. Potentially, funding may be from more diverse sources such as a mix of private and public funding.

As part of this research, two other models of potential interest arose. The first is that of Building Co-operatives.¹¹ Building co-operatives are a mechanism for housing provision whereby members of the co-operative collaborate to construct their homes on a co-operative basis by undertaking the planning, purchasing and building of the dwellings to the point of completion of this development phase. On completion of the dwellings, the co-operative entity ends. Various options are available in selling the titles to the end users. The end users may be owner occupiers who have secured individual financing; investors who make the dwellings available for private rental or a housing co-operative.¹²

¹¹ A UWA School of Architect Masters student, Ms A Holderback, is undertaking research of building co-operatives in Australia.

¹² Harvest Road Housing Co-operative, built in the early 1980s in North Fremantle, is arguably an example of a building co-operative. See Dolin, A; London, G; and McQuoid, K; 'Sector 4 Housing, A concept to address the need for urban consolidation and better communities'. A report to The Office Of The Family, Government of Western Australia, March 1992, published by The Rowland Company. Dolin et al refer to Harvest Road Housing Co-operative as a 'limited-use co-operative'. 13 units were constructed and on completion the project was strata titled and each owner financed their own purchase.

The other model of interest is residential Community Land Trusts (CLT).¹³ The CLT usually owns the land, leasing it long-term to the resident land user who owns the dwelling and any other improvements the land user may make on the land. CLTs usually retain rights to buy buildings from residents who move out of the CLT residential community. The goal of residential community land trusts is often to protect housing prices from real estate speculation while simultaneously allowing residents to accrue equity in the actual dwelling, including 'sweat equity'.¹⁴

While the Building Co-operative and Community Land Trust models are of interest, the focus of this report remains the housing co-operative model. The archetypal model has been briefly analysed to identify its basic structure and the following section reviews options for incorporation of a housing co-operative as a legal entity.

LEGAL STRUCTURES

Housing co-operatives within Western Australia have several options for incorporation. These include incorporation under the *Co-operatives Act 2009* (WA), the *Corporations Act 2001* (Cth) or the *Incorporated Associations Act 1987* (WA).

CO-OPERATIVES ACT 2009 (WA)

Until very recently, the legislative framework in Western Australia applicable to co-operatives had little application to the not-for-profit housing co-operative sector in the State. Prior to the promulgation of the new Act, the predominant focus of co-operative legislation was on business entities incorporated under the *Companies (Co-operative) Act 1943* (WA). This was in marked contrast to legislative frameworks in other Australian States which have historically embraced a variety of not-for-profit co-operatives along with for-profit co-operatives. Traditionally, this broader statutory application has also applied internationally to housing co-operatives – for example to North America, UK and other northern European and Scandinavian countries.

The *Co-operatives Act 2009* is a recent piece of legislation now available to proposed housing co-operatives in Western Australia. It is similar to modern co-operatives legislation introduced in other Australian States over the last 15 years or so. The legislation provides opportunities for housing co-operatives that were not available

¹³ The concept of Community Land Trusts has been included in this Report as a result of discussions with a group linked to the Medina Residents Association. The Association is exploring the potential of establishing a Community Land Trust dedicated to affordable housing. The Community Land Trust mechanism was first developed in Britain and Ireland out of experiments in practical land reform by the Co-operative movement and the Chartists in the nineteenth century. 'The Community Land Trust Model', Community Finance Solutions, University of Salford, 2005. The Paper is available at www.communitylandtrust.org.uk. The site was last accessed 17 September 2011.

¹⁴ Sweat equity refers colloquially to the contributions made by members as a result of their own labour and/or effort.

under the now repealed *Companies (Co-operative) Act 1943* (WA).¹⁵ The perceived key benefits of incorporating under this new Act include:¹⁶

- Incorporating the word ‘co-operative’ in the name of the housing co-operative. As use of the word ‘co-operative’ is restricted,¹⁷ this benefit is not available under other forms of State or Commonwealth incorporation;
- The inclusion of provisions to increase co-operatives’ ability to raise capital via a financial instrument called a ‘co-operative capital unit’;¹⁸
- In the event that members decide to wind up the co-operative, they have the capacity to determine where the proceeds go, such as to former members; and
- Costs are similar to those of incorporation as an incorporated association.

At the time of the Act’s introduction to the WA parliament, a specific benefit acknowledged within the (then) Bill’s Explanatory Memorandum was its promotion of co-operative philosophy, principles, practices and objectives.¹⁹ Potentially at least, housing co-operatives have access to a form of incorporation which can reinforce the unique nature of co-operatives, validate their role in society and acknowledge the rich and long history of the international co-operative movement.

The existing housing co-operatives in Western Australia are not incorporated under the State co-operatives legislation for reasons explained in the following section. This is in contrast to other Australian States where housing co-operatives, predominantly the non-equity rental model, are incorporated under their State based co-operatives legislation.

ASSOCIATIONS INCORPORATION ACT 1987 (WA)

All existing Western Australian housing co-operatives (again predominantly the rental model) are incorporated as non-profit associations under the *Associations Incorporation Act 1987*. This form of incorporation was used because, based on advice to the embryonic housing co-operatives from the co-operative sector in the late 1980s to mid 1990s, the then *Companies (Co-operative) Act 1943* did not enable non-profit co-operatives such as housing co-operatives to be incorporated under that Act. As a result, the existing housing co-operatives are not incorporated under the State co-operatives legislation. The unfortunate outcome has been that the word ‘co-operative’ cannot be used in their names.

¹⁵ Government of Western Australia, Department of Commerce, Co-operatives Bill 2009 Explanatory Memorandum, p 1. The EM is available at www.slp.wa.gov.au. The site was last accessed 25 September 2011.

¹⁶ The listed benefits were identified in a discussion between the author and a Department of Commerce officer, July 2011.

¹⁷ Australian Securities & Investments Commission, ‘SCHEDULE 6 – ‘Availability of Names’ Corporations Regulations 2001 - Reg 2B.6.01, 2B.6.02, 5B.3.01 and 5B.3.02, PART 3 Restricted words and phrases’ 13 December 2010. The Schedule is available online at www.asic.gov.au. The site was last accessed 1 September 2011.

¹⁸ These are discussed in some detail in a section following.

¹⁹ Explanatory Memorandum, Co-operatives Bill 2009 at p 1. Indeed, the Act includes a Table setting out a set of Principles. The EM is available at www.slp.wa.gov.au. The site was last accessed 25 September 2011.

Features of this Act affecting housing co-operatives include:²⁰

- Costs and requirements to incorporate are not onerous;
- Experience in functioning as a housing co-operative under this legislation is well established and easily accessible to potential housing co-operatives;
- The word 'co-operative' cannot be included in the name of the housing co-operative;
- Significantly, in the event that the housing co-operative determines to wind up, its assets must be directed to a like body with similar objects. The assets cannot be distributed to its members; and
- This form of incorporation may be a starting point for incorporating embryonic housing co-operatives which may convert to another form of incorporation, such as a co-operative, at a later date.

At a general level, this form of incorporation may be acceptable. However, by prohibiting the use of 'co-operative' in a preferred designation it diminishes the role and value system of the co-operative movement and is also at odds with the experience of other States.

CORPORATIONS ACT 2001 (CTH)

This Australian wide legislation is the standard form of incorporation for companies. The Australian Industry Securities Commission (ASIC) regulates companies. It can be used for 'proprietary limited' and 'non-profit' limited by guarantee companies. An emerging housing co-operative may adopt either option. Experience in Western Australia with these forms of incorporation for housing co-operatives is limited.

Proponents of a housing co-operative need to be aware that the word 'co-operative' cannot be used in the designation of company names under the *Corporations Act 2001* (Cth).²¹ Nevertheless, to reflect the objective of being a housing co-operative, the co-operative values can be stated in the constitution of the company incorporated under this Act. It is also the case that the costs of incorporation and reporting requirements are greater than under the WA based legislative options.

The following brief discussion of a housing community using the *Corporations Act 2001* (Cth) illustrates the utility of the statute to be used as a form of incorporation for a housing co-operative.

The Eden Road Farm community,²² based in Albany, selected the proprietary limited (Pty. Ltd.) company model after consideration of alternative structures such as the

²⁰ These features were also identified in the discussion referred to above at n 16.

²¹ Above n 17.

²² Discussion of Eden Road Farm community is based on personal conversations in September 2011 with one of its directors.

company limited by guarantee (non-profit company) and the incorporated association models.²³

The company owns the land and all its improvements, housing and other infrastructure. The company has six shares. The four foundation shareholders are the company directors and some directors hold multiple shares.²⁴ Shareholders do not own anything personally except what is inside their allocated private living spaces.²⁵

The company usually holds two formal meetings per year at least one being an annual general meeting (AGM). The cost of establishing the company and meeting the ASIC requirements were not seen as onerous.²⁶

In summary, at least the above three alternatives currently exist for the incorporation of a housing co-operative.²⁷ Due to the inherently 'non-profit' nature of housing co-operatives (as the purpose of the co-operative is essentially to provide housing rather than capital gain), it may not be that critical as to which form of incorporation to use. However, emerging co-operatives, in recognition of their participation and role in a continuum of co-operatives throughout the world would be encouraged to consider the *Co-operatives Act 2009* (WA) for incorporation. The Act, purportedly, has been specifically designed to accommodate a greater diversity of the co-operative model across a range of sectors including that of housing.²⁸ Moreover, it is the only form of incorporation that will enable the co-operative to use the word 'co-operative' in its name.

Consistent with the principle of co-operatives helping co-operatives, the knowledge and experience gained by housing co-operatives in other States of Australia in using their State co-operatives legislation may be a useful resource in determining if the new Western Australian legislation is the best form of incorporation for an embryonic housing co-operative.

The constitutions of the existing Western Australian housing co-operatives incorporated under the *Associations Incorporation Act 1987* (WA), will provide guidance for the

²³ The Eden Road Farm community was established prior to the proclamation of the *Co-operatives Act 2009* (WA).

²⁴ The intention for those with multiple shares is to 'sell' some shares to one or two new incoming members. This will be further discussed under the discussion concerning financing.

²⁵ Shares form part of an individual member's estate and are 'willable'. However, Eden Road Community has the right to buy the share and direct the funds from the sale to the beneficiaries of the estate. The share is then sold to a prospective member.

²⁶ The solicitor and accountant engaged to provide professional advice and assistance to establish the company initially found the purpose of the community outside their usual understanding of a company. Members of an embryonic housing co-operative need to be aware of the possibility of misconceptions by professional advisors and financiers about housing co-operatives. A common misconception is that of a 'hippy commune' and associated stereotypes. Proponents need to be able to dispel these views and reassure advisors that internationally and in other Australian states, housing co-operatives are a legitimate and well recognised form of housing in the community.

²⁷ Community Land Trusts could also explore these three options for incorporation.

²⁸ See Second Reading Speech to Co-operatives Bill 2009 at pp 2044b – 2046a of Hansard, Legislative Assembly, Wednesday 18 March 2009. The Speech is available at www.slp.wa.gov.au. The site was last accessed 11 September 2011.

development of the constitutions of emerging housing co-operatives irrespective of the form of corporation finally determined. The co-operative principles and values form a key object of the housing co-operative constitutions.

Despite the advantages of using the dedicated co-operatives statute, it must be noted that professional advisors such as solicitors, accountants and financiers may not be familiar with the comparatively new *Co-operatives Act 2009* or may lack a proper understanding of the role of co-operatives as a legal entity. As a result, professional advisors may encourage the use of other forms of incorporation. If the membership has determined that the *Co-operatives Act 2009* is the most appropriate form of incorporation for their venture, they must remain firm in that commitment and find or groom professional and technical advisors who will support that objective.

FINANCING (CAPITAL RAISING)

Housing co-operative corporations require funding to purchase the land and build dwellings and other infrastructure. In countries in which housing co-operatives are well embedded structurally, dedicated financial institutions servicing the co-operative sector provide funds to develop housing co-operatives.²⁹ Generally, these financial institutions assist in funding housing co-operatives through a mix of three sources:

- members' equity (savings);
- loans to individual members secured by the member's share (borrowings); and
- loans to the co-operative corporation itself (borrowings).

Parker and Lyons argue that Australia does not have a significant community based financial institution sector and state that 'Australia has failed to follow most other developed countries and to develop a set of specialised financial institutions that are needed for the successful regeneration of disadvantaged communities'.³⁰ Termed community development financial institutions (CDFIs), these institutions are well established in many western developed countries.³¹ CDFIs understand the ownership structure of housing co-operatives, lend to co-operative corporations and fund member shares in housing co-operatives. Until some form of CDFI is established in Australia, limited and full equity housing co-operatives will be required to interact with the mainstream finance sector.

²⁹ Parker, K and Lyons, M, 'Community Development Finance Institutions: Evidence from Overseas and Australia' ACCORD Report September 2003.

³⁰ *ibid* pg 1.

³¹ *Ibid*.

In Australia, the finance/banking industry generally lacks familiarity in dealing with co-operative forms of ownership and tends not to be familiar with the housing co-operative model. The author is not aware of any housing co-operative, established on the archetypal model using the co-operative share as part of the security, being funded solely via the mainstream finance sector in Australia.

The analysis below is based predominantly on discussions with several individuals within the mainstream finance industry (including community banks and credit unions) canvassing finance options for developing housing co-operatives based on the archetypal model.

The discussions reveal that financing a housing co-operative would be viewed as a high-risk scenario by funders compared with funding an owner occupied or investment dwelling or working with an established developer on a multi-housing project. A range of interconnected factors were seen as impacting on the analysis of risk, such as the loan to valuation ratio (LVR), the amount of deposit required, the form of security used for the loan and members' capacity to service the loan. These collectively reveal a cautionary approach adopted by the Australian finance sector towards financing housing co-operatives that may inhibit the range of options fully possible or available to prospective co-operative members.

Firstly, Australian funders would not view a member's housing co-operative share as providing adequate security to fund an individual member applying in his/her own right for a mortgage. Firstly, the share did not provide sufficient security as the share is not a property title with the borrower's name on it. Secondly, if a member defaulted, it would be difficult for the funder to sell the undivided share of the co-operative corporation held by the defaulting member on the open market to recoup the outstanding loan amount. In the circumstances, the funders would not be amenable to funding individuals in possession of a share holding for purposes of a mortgage.

Secondly, there was also a general reluctance on the part of the funders where the co-operative corporation itself became the entity seeking funding, even though the co-operative corporation's name would be on the title. The multiple number of members involved in such a co-operative corporation loan would continue to pose a challenge to the lender given that members in a housing co-operative corporation loan effectively become tenants in common with equal and indivisible shares in the co-operative company.

In this situation and in order to minimise its risk, a prospective funder would likely require security of the whole of the land and all of the housing to protect its interests. Further, the individual members would need to be able to provide sufficient deposit as a group for the co-operative corporation to borrow the remaining funds.

Thirdly, gathering a sufficient deposit presents as another barrier. Whilst some members of the housing co-operative might not need to borrow money or provide a sizeable deposit for their share of the venture, it needed to be acknowledged that many

members of an emerging housing co-operative may have limited personal funds to contribute to such a venture. Therefore, bringing together a sizeable percentage of funds collectively by the members for a deposit could well prove a considerable hurdle.

Discussions with a community-based bank indicated that, due to the perceived high-risk nature of the loan, it would require a very high LVR of a 50% deposit from the co-operative corporation to be in a position to provide funds for the remaining 50% for the project. One should note by way of comparison that an LVR for a freehold titled detached family home or a strata titled dwelling is usually a 20% deposit combined with an 80% loan from the bank. This reflects the lower perceived risk by the bank associated with such a 'standard' dwelling.

Combined with an economic environment of global financial crisis as a result of which lending criteria have tightened in the mainstream sector, obtaining funding for an entity in which knowledge and understanding is limited presents a major impediment. The concept of a housing co-operative and the motivations of the individuals involved in behaving in a collective manner – on the surface an unusual situation in a society oriented towards individualised actions – are notions which are quite novel to traditional funding institutions.

Finally, financiers are most acquainted and comfortable with other forms of incorporation such as the *Associations Incorporations Act 1987* (WA) or the *Corporations Act 2001* (Cth), which further adds to the hesitancy of funding a housing co-operative incorporated under the *Co-operatives Act 2009* (WA).

LIAISING WITH MAINSTREAM FUNDERS

The response of the mainstream finance sector suggests the onus rests more with housing co-operative members being more prepared to engage with prospective financiers over a longer period with the intention to develop the funding body's knowledge of housing co-operatives.

As mentioned several times previously, housing co-operative proponents need to be aware that the housing co-operative model is not well understood by the finance industry. The WA co-operatives statute, in its former and present forms, is not a widely adopted mechanism under which to incorporate an entity. Outside a narrow area of expertise by a select group of professionals involved with the co-operative sector, professional knowledge of the statute, at both an institutional and employee level, is minimal.

However, the traditional housing co-operative model incorporated under a co-operatives statute is similar in structure to a proprietary limited company or a company limited by guarantee, incorporated under the *Corporations Act 2001* (Cth) and regulated by ASIC. One strategy for members is to reinforce this similarity and encourage a prospective funder to evaluate the co-operative corporation proposal in the same way that it would analyse a company venture. This will assist in familiarising the funder with the concept and lessen the perceived risk associated with the model and the development.

Members may also need to give greater emphasis to demonstrating their long-term capacity to 'project manage' the development and repay the loan. The case studies below demonstrate that individuals both individually and collectively in some form of group housing have been able to develop the necessary skills to successfully move a project forward. By necessity, this has involved skills in finance as well as planning and local government matters. Alternatively, and perhaps more realistically, the members may wish to groom a group of technical professionals to assist in this process. Whatever the vehicle used to progress the venture, demonstrating a relevant and strong skills base will assist in enhancing the funders' confidence in the ability of the group of individuals to establish the co-operative. Concurrently with discussions with financiers, members of embryonic housing co-operatives are also encouraged to pursue conversations with local and state governments to gain their support and determine if there is any financial sponsorship or other innovative strategies to assist in acquiring the land and/or buildings.

One lender³² suggested the preparation of a business plan with detailed financial projections to indicate the potential cash flow and financial viability of the project along with details of the capacity of individual members to repay their 'share' of the loan. The lender proffered the following information as likely to be required as part of a business plan:

- A detailed description of the project (total cost, total dwellings, housing style);
- Details of government funding (cash grant or land gift) and/or NRAS^{33 34} income;
- Detailed cash flow projections (revenue against expenses);
- Detailed project viability (grants, cash, debt finance, sales);
- Applicant (the co-operative) specifics (members, relevant member experience and skill base, experience of similar projects undertaken, etc);
- Developer details and specifics (name, credentials, experience of comparable projects); and
- An indication of loan terms sought (Principal and Interest, Interest Only or Line of Credit, fixed or variable interest rate).

Another bank representative³⁵ reiterated that the co-operative corporation needed to demonstrate, via a profit and loss statement, that it could generate an income from its 'rent' and make a profit. He further indicated that the bank would not be willing to lend to individuals wishing to buy into the co-operative, only to the co-operative corporation

³² Personal and email communication with **mecu** Limited (Bank) representative, December 2009.

³³ The National Rental Affordability Scheme (NRAS) is an initiative of the Australian Government to invest in affordable rental housing. The Scheme seeks to address the shortage of affordable rental housing by offering financial incentives to the business sector and community organisations to build and rent dwellings to low and moderate income households at a rate that is at least 20% below the prevailing market rates. See <http://www.environment.gov.au/housing/nras/index.html>. The site was last accessed 21 September 2011.

³⁴ Also note that NRAS funding has not been included in this report as its potential capacity for use by a group for a housing co-operative independent of a government linked entity will be explored further by FOHCOL.

³⁵ Personal communication with Bendigo Bank representative, Fremantle, May 2011.

itself, due to the member share issue. He could see no way around this problem with existing banking products.

From these discussions it appears that financing the co-operative corporation concept is outside current banking norms. Arguably, considerable policy development work in a broader finance industry forum is needed before a bank would be comfortable lending to a housing co-operative corporation.

As a key impediment identified is that the co-operative share does not provide adequate security against which to hold a mortgage, one banker believed that it would be better to structure a co-operative on existing land title systems, specifically the strata title form of ownership. This concept is discussed further in a section following.

In summary, the discussion of mainstream funding for housing co-operatives based on the archetypal model suggests considerable barriers need to be addressed. Although some strategies have been proposed to mitigate these difficulties, the fundamental structure of the model seems to be the main obstacle. The case studies in the next section may provide some other strategies to address financing issues.

ALTERNATIVE FINANCE STRATEGIES

In addition to seeking funds from the mainstream finance sector, housing co-operative members may also consider other strategies to access funds. These options may be from one or a combination of:

- contributions from the community (either as donations or a form of ethical investment);
- investment from private sources (such as philanthropists and religious bodies);
- long term, low interest loans from government; and
- loans from the secondary market such as superannuation funds.³⁶

The case studies below demonstrate that there are other innovative strategies to apply for funds to at least start the process of some form of community housing development. These strategies are now briefly discussed below.

ENVIRONMENTAL NEIGHBOURHOOD DEVELOPMENT ASSOCIATION (BEND)³⁷

A group of like-minded people in Bega in New South Wales wanted to establish an environmental 'community' or precinct on a north-facing site outside of Bega. They identified a suitable site of 36 acres reasonably close to the centre of town but with only 6 acres that could be used for building. The remainder of the site was restricted to undertaking various agricultural activities.

³⁶ Funding from secondary markets is not explored in this research as a form of funding.

³⁷ The following details are based on the author's personal telephone communication with one of BEND's members in September 2011.

The site owner was prepared to sell and an agreed price was struck. The group established an incorporated association to further progress the concept. It was termed the Bega Environmental Neighbourhood Development Association and became known as BEND.

Funds to purchase the site were raised by various means. Essentially, it involved using 'friends with money who trust you and believe in what you are trying to achieve and want to put money into their local community'.³⁸ Some of the lenders were from within the Quaker community and some were from outside Bega. For example, one lender was from Canberra but believed in what the group was seeking to do and it made sense to this person to lend money.

A legal template contract was drawn up by a solicitor that stipulated the conditions of the loan such as interest rate and period of loan. The solicitor allowed the original contract to be copied without charge to each new lender with amendments for loan interest rates and periods. Some people lent money interest free, some at 'below market' rates and some at or near market rates.

Once sufficient funds were raised in this informal manner, BEND purchased the land. It then applied to the local council to subdivide the 6 acres of land into 30 community titled housing lots.³⁹ Each lot was dual occupancy, so potentially 60 dwellings could be constructed. The development approval process took two to three years which was an unexpected delay. The process also involved a rapid growth of a broad range of finance-related and planning skills by both the local council and BEND members, especially as the development was to be environmentally sustainable.

BEND was particularly concerned for the Bega council to gain a good understanding of the philosophy of what it was trying to achieve in order to enable future similar subdivisions to go through smoothly. The council became more confident over time and was encouraged by council staff some of whom were briefed on the project and were in support of the plans.

Once the Development Authority had been approved and obtained, BEND began selling 15 of the strata lots off the plan to prospective owner-occupiers who also had a common share in the remaining property and facilities. The cost of the lots incorporated all the development costs up to that point in time. Significantly, buyers of these lots were able to obtain mainstream banking mortgages for their purchases in their own right.

Owners had to be willing to sign a covenant in support of the group's philosophy and become members of BEND itself. As a community title had been established, BEND

³⁸ *ibid.*

³⁹ Within New South Wales, community titles enable shared property (shared use of common facilities) to be created within conventional subdivision. The community title provides for (amongst other things) common areas within a community development owned and managed by an association comprising all lot owners. Further information is available at www.lpma.nsw.gov.au under a section entitled 'Plans'. The site was last accessed 15 September 2011. These types of community titles do not exist in Western Australia. However, a 2010 Landgate Consultation Paper has indicated the State's intention to examine the community title concept.

needed to create its own by-laws, referred to as its Management Statement. The by-laws are in effect a contract between BEND and the buyer and one of the by-laws stipulates that the buyer must have his/her dwelling built to lock-up stage within seven years.

The sale of the initial lots enabled BEND to repay the original informal investors. BEND now had a mortgage-free block of land with a Development Authority in place with half the blocks pre-sold. BEND then successfully approached a mainstream bank for funds to develop the site. This included funds for the installation of all the services, such as electricity, gas, water, roads and the common facilities in the estate.⁴⁰

EDEN ROAD FARM COMMUNITY, ALBANY⁴¹

Four like-minded individuals with a commitment to community housing, forged while living in similar housing situations previously, aspired to create a comparable environment but with members in full control and establishing their own rules.

The members wished to own land in their own right, to benefit from the increasing value of their land (although within limits as affordability for new members was a key issue), to be independent, not be restricted by onerous rules and regulations and to have greater control over their own futures.⁴² Around 2003, the four members started a search for rural acreage in the Great Southern that was not too expensive and found a suitable site within a reasonable timeframe.

The founding members established a proprietary limited company registered with ASIC under the Commonwealth's *Corporations Act (2001)*. The company owns the land and all its improvements and infrastructure. Shareholders do not own anything personally except what is inside their personal living spaces.

The company has six shares and the four foundation shareholders comprise the company Directors. Two Directors (a couple) own three shares, another member Director owns two shares and the remaining member Director has one share. The intention of those with multiple shares is to 'sell' some shares at a later date to one or two new incoming members.

⁴⁰ Of interest is that the association had always wanted to have a small rental component (approximately a third of dwellings) in the subdivision to provide accommodation for people on lower incomes. However, it did not have the capacity to finance the construction of the houses. The association was directed to a community based social housing provider registered with the NSW Department for Housing. It specialised in housing co-operatives and had a compatible philosophy to BEND. The housing provider was able to access federal and state funding to purchase and build on five of the lots. With the dual occupancy mechanism available in NSW, ten dwellings could be constructed. The rental houses will be allocated to tenants on a mix of very low to moderate incomes. The intention is that the tenants will form a co-operative as a structure to self manage the property management aspects of the rental dwellings.

⁴¹ Discussion based on the author's personal telephone conversation with a Director in September 2011.

⁴² One could note that these motivations are entirely consistent with co-operative principles.

The Pty Ltd company model was chosen after consideration of alternative structures such as the company limited by guarantee (non-profit company) and the incorporated association models.⁴³

The four founding members funded the original purchase through a mix of deposit (equity) and debt. One member had full equity and did not need to borrow. The couple had a sizable deposit and the remaining member did not have funds to contribute.

The company borrowed from a mainstream bank, with a third of the cost of the land as deposit and two-thirds borrowed. Under the terms of the loan, all four members as Directors are collectively and individually responsible for the loan. Therefore, the member who did not need to borrow for his share became potentially responsible for the entire loan in the event that any of the other three were to default on the loan.

This was viewed as an acceptable risk for the four Directors to take as:

- they all knew each other well over an extended period of years;
- all had long histories of living in group based housing;
- all shared common values about what they were trying to achieve on a collective basis; and
- a high level of trust existed between all of them as members.

The site was then developed to enable all shareholders to live permanently on the property. Each shareholder repays their proportional share of the mortgage according to the amount that was required to fund their share.

ST PAULS ANGLICAN CHURCH CONGREGATION MEMBERS, HAMPTON ROAD, SOUTH FREMANTLE⁴⁴

Around the mid 1990s, a group of five like-minded Church congregation members shared a vision of congregation members living in a housing community in close proximity to the Church. Meeting regularly, the group refined the concept further over the next few years. This planning stage involved discussions with similar group housing developments including 'First Fremantle', 'Freo Fringe' and 'Pinakarri' housing co-operatives. Some of the group members had previously been involved with these housing co-operatives. Some members had also previously belonged to another group that was also exploring housing based around a community of interest. This latter group met regularly for several years but it did not evolve past the concept phase.

It happened that a subdividable property comprising a dwelling and land directly behind the Church was to be auctioned as a deceased estate in early 2002 at an estimated value of \$800,000. The group members sought a benefactor to assist in purchasing the

⁴³ Incorporation under the then WA co-operative statute was not considered.

⁴⁴ The discussion is based on the author's personal communication with a St Paul congregation member in May 2011.

property and approached the Anglican Church. However, the Church declined to participate in the project.

One group member strongly believed that the purchase of the property should be the beginning of their project and that 'as it was the right thing to do and she had the ability to do it then she should make every effort to do it'. The member approached two friends asking if they were prepared to lend her \$40,000 each to enable her to gather the anticipated 10% deposit of \$80,000 to bid at the auction. They agreed to her request.⁴⁵

The group member was successful at the auction. The next step was to secure financing for the balance of the purchase price. Following her approach, a local bank committed to lend her \$300,000 against her own debt free house on the condition that two guarantors also became involved. The member was able to obtain the two guarantors required by the local bank. The remaining \$500,000 on the purchase was funded via a so-called 'low doc' loan with an eastern states institution using the new property as security.

The financing took several months to negotiate and the member had to pay significant interest penalties to the estate while completing settlement. Being on a very low income it was difficult to pay the interest penalties, so again the member sought the help of congregation members. The congregation lent small and large amounts of money to the member during this period.

To help reduce the mortgage, the member sold her own house in October 2002 and moved into the property. The member then started the process of subdividing the land into strata blocks. Local Council zoning practices at that time meant that only three strata blocks could be created from the property including the original house. Plans were drawn up for two strata-titled dwellings that could accommodate two households each. As a result, five households in total could be accommodated on the property.

In 2008, the two newly created strata-titled blocks were sold at market value and building of the dwellings commenced. The funds from the sale reimbursed the lead group member for her personal financial contribution to the project. The houses were completed in 2010 albeit some 8 years after the original purchase of the property.

Each of the two strata-titled properties were bought by two separate households as tenants in common. In effect, the two dwellings housed four family groups. As tenants in common, each property was mortgaged with both households on the mortgage and title. The households as tenants in common prepared between themselves repayment schedules for the mortgage and other shared utility expenses, rates and taxes based on the proportion of living space occupied by each household.

⁴⁵ The lead member commented in her discussion with the author that the idea of asking her friends for the deposit emanated from the concept regularly communicated by St Paul's Rector that there are resources in the community and that the issue was how to unlock them. Accessing these resources became an attitudinal issue rather than one of their ready availability.

The capacity for two households to live in the one dwelling may potentially reduce the associated costs for each household. The houses were purchased at market rate but, in effect, the purchase cost was reduced proportionately as each dwelling was configured to house two families.

On buying into the properties, each owner (as tenant in common) was required to sign an agreement that in the event that one wished to sell they undertook to:

- firstly, offer it to the other tenant in common;
- on refusal of that offer, offer it to a member of the congregation; and
- on that further offer not eventuating, offer it for sale to the wider community.

These three matters were developed following consultation with those who expressed an interest in buying into one of the properties for sale but had concerns personally or expressed by family and/or friends about the risks associated with doing this.

ANALYSIS OF CASE STUDIES

What is significant in these case studies is firstly, and importantly, the use of friends, supporters and networks to help with the initial purchase via informal loans of the desired property. Substantial trust was demonstrated in each case that was outside current financial norms about not lending to 'family and friends'. Significantly, each case of borrowing funds from family and friends did not result in any breakdown or exploitation of relationships. The case studies also revealed that the initial members themselves had some personal financial resources to contribute to the project.

Secondly, the staged nature of the development is apparent. The land was purchased and, in two cases, rezoning and subsequent mainstream refinancing enabled the repayment of initial 'informal' loans. It was some time later that the dwellings were built. The length of the process was an unexpected aspect in two of the projects.

Lastly, it is evident that the proponents in all the case studies had considerable internal and external resources. They had a range of skills developed in other spheres of their lives that were transferrable to the project. Additionally, their personal and professional networks enabled them to access additional technical or professional skills useful in the development of the project.

These brief insights may give guidance to emerging housing co-operative members. The case studies suggest members should consider developing the project in a staged manner by firstly focusing on acquiring the land. This can be achieved by seeking funds from within their networks and community to gather a deposit for the land that can then be financed by a mainstream bank. Like-minded people may be identified who are interested in supporting a worthy community initiative which can contribute to the well being of the neighbourhood by lending funds to the housing co-operative. Once an informal lender is identified, negotiated loans can be at near market interest rates or less and protected via legal contractual arrangement between the housing co-operative corporation and the individual lender. The case studies also demonstrated that the

proponents had the capacity to develop the diverse range of skills or to draw around them skilled people required to move the project forward.

CO-OPERATIVE CAPITAL UNITS

Co-operative Capital Units (CCUs) are a new feature of the co-operative landscape in Western Australia having been adapted from the New South Wales experience in their state-based co-operatives statute and now incorporated in the *Co-operatives Act 2009* (WA).⁴⁶

The Act defines a CCU as ‘an interest issued by a co-operative conferring an interest in the capital, but not the share capital, of a co-operative’⁴⁷. According to the Explanatory Memorandum (EM) prepared at the time of then Bill’s progress through the WA parliament, CCUs constitute ‘a new type of financial instrument which will enhance a co-operative’s capacity to raise capital by enabling fundraising amongst non-members’.⁴⁸ The Act sets out their general nature and the terms and conditions governing their use.⁴⁹ Again according to the EM, the CCU provisions ‘incorporate a number of checks and balances to ensure that the co-operative principles are not compromised’.⁵⁰ The Act also stipulates that a co-operative may not issue CCUs unless the terms of issue have been approved by both a special resolution and the Registrar.⁵¹

There are also two points of interest in the Act worthy of particular note. Firstly, the Act incorporates a Table setting out seven ‘co-operative principles’.⁵² Secondly, the Act stipulates that, in the matter of any interpretation of a provision of this Act, ‘a construction that would promote co-operative principles is to be preferred to a construction that would not promote co-operative principles’.⁵³

It has also been observed that the key features of CCUs are that they:

- can be structured as debt or equity;
- can be issued to both members and non-members;
- do not carry the rights of co-operative membership (ie they confer no member voting rights) and

⁴⁶ A three year research project at the University of Western Australia titled ‘Sustainable Co-operative Enterprise: An Investigation into the Factors Influencing the Sustainability and Competitiveness of Co-operative Enterprises’ is exploring the mechanics of how CCUs may be applied in the co-operative sector. See University News ‘UWA researchers to identify best practice for co-ops’, Monday, 5 July 2010 at www.news.uwa.edu.au. The site was last accessed 11 July 2011.

⁴⁷ *Co-operatives Act 2009*, section 257.

⁴⁸ Explanatory Memorandum, Co-operatives Bill 2009, p1. The EM is available at www.slp.wa.gov.au. The site was last accessed on 15 September 2011.

⁴⁹ *Co-operatives Act 2009*, sections 257-266.

⁵⁰ Explanatory Memorandum, Co-operatives Bill 2009, p37. The EM is available at www.slp.wa.gov.au. The site was last accessed on 15 September 2011.

⁵¹ *Co-operatives Act 2009*, section 262.

⁵² *Ibid*, section 6.

⁵³ *Ibid*, section 7.

- may only be redeemed out of profits (surplus) or the proceeds of a fresh issue of shares or CCUs⁵⁴.

In the opinion of these same observers, the introduction of CCUs in the new Act is designed not to impinge upon co-operative principles or erode member rights and control while achieving the mechanism for sourcing additional capital that members by themselves are unable to provide.⁵⁵

Further investigation of the potential of CCUs for emerging housing co-operatives (and community land trusts incorporated as co-operatives) would appear necessary and is highly encouraged. Whilst it is premature to say so at this early stage, CCUs potentially provide a legislatively supported mechanism for community actors to 'invest' in a local community initiative in a manner that can serve as an investment for individuals but also unlock much needed funds for housing co-operatives outside the mainstream finance sector.

VENDOR FINANCE

Another potential strategy that a housing co-operative could investigate to assist incoming members finance the dwellings relates to a concept called 'vendor finance'.⁵⁶ This concept is only relevant once the housing co-operative is established and some members wish to leave and others wish to move in.

Vendor finance is the overarching term used for a range of methods to buy a home without using a standard bank loan. Typically, this involves the seller (vendor) or a private investor helping the purchaser to purchase the property by allowing a proportion of the price to be paid off over time. One form of vendor finance, an instalment contract, may have potential for a housing co-operative and is discussed in the hypothetical scenario below.

An exiting housing co-operative member sells her share containing an attached right to occupy a particular dwelling back to the co-operative corporation. The co-operative corporation then sells the share to an incoming member. If the member cannot pay for the share (with dwelling attached) using personal savings, an instalment contract may provide an alternative way of financing. It enables the co-operative company to sell the share to an incoming member, let the member occupy the dwelling and pay for the share over time.

The purchase price for the share is split into a series of periodic payments that the member must repay over a specified period at an agreed interest rate to the co-

⁵⁴ Limnios, E and Watson, J, University of Western Australia 'The Purpose and Structure of Co-operative Capital Units: An Experts Perspective'. Presentation by Sustainable Co-operative Enterprise, UWA, Co-operatives WA Conference, September 14 2011, Perth Western Australia.

⁵⁵ *ibid.*

⁵⁶ Please refer to The Vendor Finance Association of Australia; www.vendorfinance.asn.au. The site was last accessed 10 September 2011.

operative corporation. The member can negotiate with the co-operative corporation how much deposit, if any, needs to be paid.

The co-operative corporation retains the share as security for the period of the instalment contract. If the member were to default, the co-operative corporation is not disadvantaged as it still owns the share until the final payment by the member.

While the share remains the property of the co-operative corporation, the member can buy it outright at any point for the balance remaining on the loan. When the member makes the final repayment, the share is transferred to the member's name under a contract of occupancy between the buyer and the co-operative corporation.

If the co-operative corporation has an existing mortgage, the contract with the member would reflect the interest rate of the existing mortgage. If the co-operative corporation's mortgage interest fluctuates, the buyer's interest rate will also move in tandem. If the rate is fixed for, say three years, the contract will fix the buyer's interest rate for three years as well (with the same break costs). A solicitor will be required to draft the conditions of the instalment contract.

Further research is required to determine if this strategy has some potential for financing member shares in housing co-operatives.

CREATING EQUITY FOR MEMBERS OF A HOUSING CO-OPERATIVE

One of the limitations of the present social housing non-equity rental co-operative model described earlier is the inability of existing housing co-operative tenants (ie members of the incorporated association) to buy the dwelling they have been renting. These tenants (association members) have no ownership stake in a rental housing co-operative model and buying is not an option under the current implementation of this model. Some tenants, particularly those whose income has increased over time, can find this limitation on the rental housing co-operative model a frustrating situation.

Those who wish to gain some form of equity in their dwelling have few options. They can choose to shift away from the co-operative model entirely and move into the open market as a private renter or purchaser. However, affordability is an issue as although their income may have risen over time, they may still not be in a position to purchase or rent privately in the open market. As a result, tenants can be 'locked' into their rental housing co-operative situation. They may even see greater merit in reducing their working hours and income to ensure their continuing eligibility for their social housing rental accommodation.

A number of rental housing co-operative tenants have indicated their interest to FOHCOL in gaining some form of equity in a housing co-operative. They remain philosophically committed to the concept of living in a housing co-operative community but are ready to go beyond renting and start to buy. Their preference would be to buy into a housing co-operative rather than in the open market for affordability reasons and to retain all the social and community benefits personally experienced while living as a tenant in a housing co-operative.

Some of the Eden Road Farm community share holders were former tenants in a Perth based housing co-operative and faced this dilemma as their income increased. Their solution was to leave the rental housing co-operative and establish the small, six share rural housing community. While, individually, this option would not be available, as a group, they were able to purchase the land and subsequently develop the property. They brought their well-developed skills in community based living to the establishment of the new community.

Another finance case study worthy of note is the Wolery Ecological Community.⁵⁷ The Wolery Ecological Community is a well-established, Denmark-based housing community on a property under one title with 15 dwellings situated on it. It is incorporated as a non-profit association and has over 30 years of history. The land and specified improvements (such as community hall and kitchen, agricultural shed and implements, dams – to which members have access and may use) belong to the association while members own their individual dwellings. Over time, members have come and gone with members' houses being bought and sold in the process. It is understood that incoming members pay a membership fee to the association while the negotiated price and sale of a dwelling is a private matter between a seller and an incoming member.

Incoming members have the same problem as discussed previously concerning finance in that they do not have a title with their name on it and are unable to get a mainstream loan to fund their dwelling purchase. This places a natural limitation on the price that can be offered for a dwelling.⁵⁸ It appears that this mechanism ensures that the houses remain affordable for incoming members. A second feature of buying into the Wolery Ecological Community is the eligibility of members as first homebuyers for the First Home Owners Scheme.⁵⁹

The Wolery Ecological Community separates land ownership⁶⁰ vested in the non-profit association with dwelling ownership whereby each member has ownership and occupation of one dwelling. By way of contrast, the Eden Road Farm community referred to earlier and which is incorporated under a company structure, does not separate land and dwelling ownership. There, the company owns all assets.

The separation of land (and community improvements) ownership and private dwelling ownership adapted by the Wolery Ecological Community contains some similar features to the residential Community Land Trust model. There are also some parallels with the National Lifestyle Villages concept discussed below.

⁵⁷ Conochie, E&I, 'The Wolery at 25', Imprint Denmark Western Australia, 2002.

⁵⁸ It is understood that the initial members used a variety of methods to fund the construction of their dwellings none of which comprised a mainstream loan.

⁵⁹ Conochie, E&I at n 57 above.

⁶⁰ This is aside from the more communal use improvements described above.

National Lifestyle Villages (NLV)⁶¹ has adopted an innovative approach to moderate cost housing under the *Caravan Parks and Camping Grounds Act 1995* (WA) which also separates land ownership from dwelling ownership. NLV procures the land and develops the site with roads, community facilities and the home sites.⁶² Each site has around 300 home sites. Nine villages have been developed in WA with one under development in Victoria and all are situated in urban fringe locations.

Incoming residents purchase a pre-fabricated, factory built home for around \$260,000 which is transported to the site they have reserved.⁶³ They need to purchase with cash as this model faces the same difficulties with financing as housing co-operatives due to the inability of the bank to hold security over the dwelling.⁶⁴ As the development is under the camping grounds legislation, structures are 'transportable' and can be moved if required although essentially they are 'permanent' dwellings.

Occupants pay a weekly fee for leasing the site on which their dwelling sits and for maintenance of common facilities. Occupants hold a 60 year lease on the site for the dwelling leading to security of tenure. Commonwealth rent assistance is available for Centrelink clients as technically they are renting their home.

The model has been operating for over a decade and has been well accepted by the market. There may be opportunities for housing co-operatives in land zoned and operating as camping grounds as higher density and relatively permanent housing is allowed.

MODIFIED LIMITED EQUITY HOUSING CO-OPERATIVE MODEL

As stated previously, an archetypal housing co-operative owns all land, dwellings and infrastructure. The limited equity housing co-operative is a variation of this archetypal model.⁶⁵ The rationale for the limited equity housing co-operative model is to maintain long-term housing affordability for present and future members. In a limited equity housing co-operative, members adopt bylaws that limit the maximum resale prices of the share. However, the limited equity housing co-operative model allows some percentage of financial appreciation in the member's share. The remaining increase in

⁶¹ Discussion partly based on personal communication with a representative, National Lifestyle Villages, East Perth in May 2011.

⁶² NLV Summary of Expertise and Experience 'In the NLV traditional villages, residents own their homes and lease the land that they are located on. These land-lease communities are an NLV innovation, where residents have absolute security of tenure, with a 60 year lease and own a willable asset in the home. If they sell, the capital gain in the home is theirs. NLV charges a weekly lease fee which covers the cost of the land, rates and taxes, maintenance of common areas and front gardens and access to resort style communal facilities. This model has met great acceptance in the market, to the extent that NLV currently manages communities housing over 1500 households, growing weekly' NLV promotional material provided by NLV representative May 2011.

⁶³ NLV has a complementary business in prefabricated dwellings.

⁶⁴ Residents tend to be home owning retirees downsizing. The sale of their family home provides the funds for the purchase, often with a surplus for other lifestyle activities, such as travelling. See n 61 above.

⁶⁵ See the brief description given earlier in this paper.

equity is retained by the housing co-operative for the benefit of present and future members.

The Wolery Ecological Community and NLV case studies suggest that there could be potential to develop a hybrid limited equity housing co-operative model that separates the co-operative corporation's ownership of the land and common facilities from the ownership of the actual dwelling. In this way, the members belong to and have a share in the co-operative that owns the land but the members own the actual dwellings. As with the limited equity concept, members establish by-laws that cap the increase in equity to keep the share and attached dwelling affordable, but members are able to enjoy some increase in the value of the dwelling.

In summary, this section has explored some case studies to illustrate a situation in which the incorporated entity owns the land but the members own the dwellings that are sited on the land. It has suggested that the separation of land from dwellings could be applied to a modification of the limited equity housing co-operative model. This hybrid model does not answer the problem associated with accessing mainstream funds to assist members with buying their dwelling. However, the case studies have demonstrated alternative strategies to raise funds to get the project underway. The next section explores forms of ownership that could resolve the issue of accessing mainstream funding for members and the co-operative corporation itself.

FORMS OF OWNERSHIP WITHIN A HOUSING CO-OPERATIVE

To recap, the archetypal housing co-operative model is a form of group housing on one title. The owner of the title is the co-operative corporation incorporated under a Co-operatives statute and the title is held in the name of the housing co-operative corporation. The members/residents own shares in the corporation with a contract that enables them to occupy a specific dwelling.

The purpose of exploring ownership is linked to the finance factors outlined above. It has been established previously that the mainstream banking sector would be reluctant to lend to a co-operative corporation structured as an archetypal model. One explanation for this is the lack of familiarity with the model. Secondly, the lack of a title held in the name of an individual seeking the loan leads to a general reluctance by the bank to fund. Holding of a share in a housing co-operative is not sufficient security for a bank to lend to an individual.

The existing rental housing co-operatives in Western Australia are a variation of the archetypal model.

The most significant difference is that ultimate control of the co-operative rests not with the members but by an external agency, the State government housing agency. Under legal arrangements to which most of the housing co-operatives are signatories, the housing co-operatives hold legal title to the property but only as trustee on behalf of the State government housing agency. The effect is that the latter retains the beneficial interest in the property. As a result, the housing co-operatives have strict duties as trustees to act in the best interests of the agency as the beneficiary of the trusts.

According to legal advice obtained by the Federation of Housing Collectives in late 2008, the fact that the trustees (ie the housing co-operatives) are the registered owners of the property give the trustees some degree of power but, in the final analysis, the trust property must be treated for the benefit of the government housing agency.⁶⁶

The rental housing co-operatives (with some exceptions discussed below) are on one title with a dozen or so dwellings clustered on the block. The site is usually Local Council zoned for a higher density of housing than that of its neighbouring housing lots. The higher density associated with ten to fifteen dwellings on the one site of the Western Australian housing co-operatives is viewed as highly beneficial by the members. Any new housing co-operatives in Western Australia would seek to replicate the higher density, co-located approach successfully demonstrated by the existing housing co-operatives.

To illustrate, the First Fremantle Housing Collective is on a lot of approximately 4000 square metres, with 14 dwellings and one hall with attached kitchen, office and common laundry. By way of zoning contrast, the neighbouring properties are predominantly lower density, with single dwellings on freehold title lots of approximately 500 square metres each.

Another WA housing co-operative comprises multiple grouped housing with a hall and kitchen on the site. The site has a similar high density, Council zoning to First Fremantle Housing Collective. Adjoining this site are four strata titled properties. These strata titled properties are privately owned and their registered owners are voluntary members of the housing co-operative. Prior to construction of both the DoH and their own properties, the original owners expressed a desire to purposefully join with the tenants of the housing co-operative with the aim of forming an intentional community.⁶⁷ As a result, there is a consistency in the architecture and other design features between the social housing rental and privately owned properties. The owners of the privately owned properties have not erected fencing in their 'backyards' (along the survey boundaries) to allow the space to be contiguous with that of the rental housing open space.

Over time, these private homes have changed hands and those purchasing the homes have tended to be philosophically aligned with the values expressed by the intentional community. The successive owners also voluntarily become members of the co-operative and participate in decision-making activities that affect the overall community and readily undertake the responsibilities that being a member of a housing co-operative entails.⁶⁸

⁶⁶ See page 5 of the legal advice to FOHCOL dated 16 December 2008 and entitled "Department of Housing and Works Service Level Agreement and Deeds of Trust". The information provided represents a para-phrasing of the relevant information in the advice.

⁶⁷ Metcalf, W, *The Findhorn Book of Community Living* defines an intentional community as a community that is formed when people choose to live with or near enough to each other to carry out a shared lifestyle, within a shared culture and with a common purpose. (Findhorn Press, 2004).

⁶⁸ While tenants are required to comply with DoH requirements, private owners are not.

An additional facet worthy of note with that particular housing co-operative is that several members (DoH tenants), who over time had the capacity to purchase their own properties on the open market, have opted to do so in a nearby location. Moreover, while they are no longer tenants of the housing co-operative, they have remained members. Effectively the housing co-operative is growing by this informal process of ex-tenants becoming homeowners in their own name but remaining active members of the co-operative.

Another model of the rental housing co-operative exists in Victoria.⁶⁹ Unlike Western Australia where all housing co-operatives are co-located on the one site, in Victoria, many of the rental housing co-operatives are single house dwellings on their own lot and dispersed within a limited geographical location. Member tenants meet regularly to address property management issues related to the separate dwellings. The shared responsibility of property management underpinned by the co-operative housing management processes creates networks, skill development and socialisation that may not be found in standard single dwelling social housing.

Perhaps there are opportunities to 'retrofit' the housing co-operative management structure within a suburb of privately owned houses. These examples suggest that there is potential for the owners of privately owned houses and strata title properties who have never been tenants of rental housing co-operatives in Western Australia to become members of a co-operative because of the philosophical values behind the concept as well as its related social and community benefits. Ownership of the dwelling still remains private but the owner becomes a member of the co-operative, thereby expanding the sector.

While there may be some opportunities to develop the housing co-operative sector in the manner described above, the following section seeks to identify how a limited equity housing co-operative could retain the benefits of the higher density in the present Western Australian co-located rental housing co-operatives, while concurrently incorporating member ownership into the model through the state titles system.

TITLES OPTIONS

It has been established above that there are some difficulties in Western Australia to initiate a housing co-operative structured along the archetypal model. This is partly attributed to the lack of knowledge of the model by the finance industry that can lead to a hesitancy to fund initiatives. At the same time, from a funder's perspective, if the security is not held in the name of the party seeking the loan then there will be a general reluctance to fund.

In the circumstances, investigation of alternative forms of ownership is warranted. Options in Western Australia include the freehold title, the share title and the strata title. The freehold title option usually involves one dwelling on one lot, often with a substantial

⁶⁹ Common Equity Housing Limited. See www.cehl.com.au for more information. The site was last accessed 27 September 2011.

land component in the lot. While there are examples of housing co-operatives, such as in Victoria, being on discrete freehold blocks and peppered throughout a local geographical area, the Western Australian version of housing co-operatives involves higher density dwellings clustered on one site. This is viewed by housing co-operative members in Western Australia as a strength of the model as it helps build the social cohesion so valued in living within housing co-operatives. As a result, freehold title is not considered in this report.

Past practice in Western Australia relating to a group-based form of title saw the issuing of share titles which are also known as a 'purple titles'. It refers to an undivided share title of a whole parcel of land.⁷⁰ It was used for issuing share titles for high-rise buildings prior to the implementation of the State's strata titles statute. This title form resonates with difficulties confronting the archetypal housing co-operative structure. As with the housing co-operative structure, the disadvantage of a share title is that it is for a share in the whole of the property not for a specific part. Financiers are again reluctant to lend to buyers as the bank's security could not be linked to an identifiable part of the property. As a result, buyers require other forms of funding to buy and occupy a specific dwelling in a share title.

While still available in WA as a form of title, the use of share titles has declined. Indeed, many share title properties in Perth have been converted to strata title.

STRATA TITLES ACT 1985 (WA) (AS AMENDED)

The State's strata titles statute may offer a simpler way to develop housing co-operatives in Western Australia that will ease the finance problem. The key advantage of strata titling for a housing co-operative is that the strata title is issued for a defined part of a parcel such as a lot or a building which can then be mortgaged for a loan by a mainstream bank. Further, residential strata schemes are most suited to grouped housing within a community context. Use of common facilities, the possibility for reduced ongoing costs and comparatively lower entry costs for buyers can make strata schemes attractive for many people. There appears to be a high level of compatibility between the objectives of a strata scheme and those of housing co-operatives.

Briefly, strata schemes provide for a form of subdivision of buildings and land into separate lots. Certificates of title are established for each lot, usually a dwelling. Group members, as buyers, become the registered owners of lots with their names appearing on the title and hold the title to that lot. Ownership, as reflected by registration of the title in one's name, may be used by funders as security for a mortgage against that property.

Generally, all registered owners within the group automatically become members of a strata company (elsewhere called an owners corporation) which is a body corporate. The strata company automatically comes into existence once a strata plan is registered and titles issued. The strata company, in accordance with provisions laid down within

⁷⁰ 'Strata Titles Practice Manual for Western Australia', pg 160 at 13.7, Edition 7.0 January 2011. A copy of the Manual is available at www.landgate.wa.gov.au. The site was last accessed 15 September 2011.

the relevant strata titles statute, controls and manages the common property for the benefit of all owners. It also establishes and enforces by-laws and maintains and upgrades the common property.

The strata company is usually operated by a council of owners which is elected annually. The council runs the strata company in accordance with the provisions of the relevant statute, the regulations, the by-laws in force for the strata scheme and subject to any restriction imposed or direction given at a general meeting of the strata company.

Included amongst the powers and duties conferred on the strata company under the Act is the power to impose on owners levies and fees usually in the form of a general administrative fund as well as a sinking fund. Each owner contributes towards the costs associated with common areas such as lighting of entrances and hallways, gardening and maintenance. The latter fund is usually associated with longer term maintenance of the common property or specific maintenance projects.

The Western Australian Government is presently reviewing its strata titles statute with the objective of introducing greater flexibility in types of strata titles.⁷¹ This is intended to enable a greater mix of densities and heights within the one development. The possibility of strata title on leasehold land is also expected to be part of the review. The review should be of interest to future housing co-operatives and merits FOHCOL monitoring developments in this area.

Two of the case studies above (BEND and St Pauls) used the relevant State strata titles statute to redevelop their properties. The Urban Coup,⁷² a co-housing initiative in inner Melbourne in its early planning stages is working through the process of establishing their community. The Urban Coup has incorporated itself as an association under Victoria's *Associations Incorporation Act (1981)*. In seeking to make provision for members to own their own dwellings Urban Coup intends to use strata titling to create 30 privately owned dwellings with a medium density mix of apartments and townhouses up to five storeys. These strata titled dwellings will be bought and sold on the open market via self-funded mainstream loans. There will also be community ownership of common facilities, self-managed by residents, such as a common house for meals, meetings and socialising, some guest accommodation and gardens. This is a substantial project, estimated to cost around \$15 million by completion.

This discussion of titles suggests that the indivisible share by members in an archetypal housing co-operative can be addressed via the use of the strata titles system. As a result, the issue of a member seeking finance for the purchase of their dwelling is also lessened. The case studies of BEND, St Pauls and Urban Coup indicate that using the existing and well established form of strata titling has or can facilitate access to finance in the mainstream sector.

⁷¹ The current review of tenure legislation is intended to facilitate greater flexibility including community title strata arrangements – see 'Schemes within Schemes, Leasehold Strata and other Reforms to Strata Titles Legislation in WA', July 2010. The consultation Paper is available at www.landgate.wa.gov.au. The site was last accessed on 22 September 2011.

⁷² For further information see www.urbancoup.org. The site was last accessed 27 September 2011.

In an earlier discussion above, a modified limited equity housing co-operative model that separates the co-operative corporation's ownership of the land and common facilities from the ownership of the actual dwelling was proposed. Developments using strata schemes under strata titles potentially enable this model to be further developed. The co-operative corporation, as a strata company, owns the land and common property. The members own the strata titled dwellings that are held in their individual names. The members finance their purchase of these dwellings via a mainstream loan secured by the strata title. The co-operative nature of the entity is captured within the by-laws/constitution of the strata company/co-operative corporation including a clause capping returns on the sale of the dwellings.

Members will be able to benefit within the agreed by-law cap from an increase in the equity of their personal dwellings at sale whilst preserving the co-operative context within which they live. The members on a co-operative basis may undertake the property management of the common property. The venture is still incorporated under the co-operatives statute and, at the same time, is subject to the strata titles statute.

CONCLUSION

This report has explored three areas of interest to the future development of housing co-operatives with a particular focus on limited equity housing co-operatives.

Firstly, the options for incorporation were discussed. Housing co-operatives potentially have three choices when determining how to incorporate. The *Co-operatives Act 2009* (WA) is viewed as the most appropriate for an embryonic housing co-operative for incorporation. This dedicated co-operatives statute enables the housing co-operative to use the word 'co-operative' in its name and provides access to the new financial instrument of Co-operative Capital Units. As 2012 is the International Year of Co-operatives, emerging co-operatives can benefit from the momentum of these celebrations and be part of the long history of the international co-operative movement by choosing to incorporate under this Act.

Secondly, the complexity in working with the finance industry to fund housing co-operatives was reviewed. The report suggests that the archetypal co-operative housing model is difficult to implement in Australia. This is partly attributed to the lack of understanding and perhaps knowledge of the co-operative model by the finance sector. At the same time, the issue of member shares is problematic for the finance sector as it does not provide the usual form of security, namely, a property title with the borrower's name on it. Several case studies demonstrated lessons and strategies that may be relevant for the housing co-operative sector in adopting innovative staged approaches to financing a housing development. The case studies also demonstrated the value of separating land ownership from dwelling ownership.

Lastly, ownership issues for housing co-operatives were considered, building on the concept of separating land ownership from dwelling ownership. Strata schemes and the strata titles statute were also analysed to determine their potential application to the

housing co-operative model. Again the case studies provided some insights into using the strata titles system to achieve this and also address the issue of financing.

Based on the examination of these factors, the report proposes, albeit in exploratory form meriting further detailed consideration, a modified form of a limited equity housing co-operative. The proposed model could develop along the following lines.

The co-operative incorporates itself under the co-operative statute. To overcome the problem associated with member shares, the co-operative adopts the strata title form to create a strata company with strata lots held in the name of members. This arrangement separates the ownership of the common property from that of the dwellings. The co-operative corporation undertakes the development of the project. On completion, the common property is held in the name of the co-operative corporation, while the dwellings are held in the name of the members. The co-operative's constitution enshrines the co-operative principles and values, including the agreed cap on pricing of the dwelling below market rate, that in turn provide the guidance for members in managing the housing co-operative for its long-term viability. At the same time, the by-laws of the strata company reflect similar community based co-operative principles and values enabling effective and efficient management of the co-operative within the context of a strata scheme.

As part of the overall focus on affordable housing strategies in Australia, further research is required to identify if the modified limited equity housing co-operative model proposed in this report has some potential within Western Australia. The modified limited equity model potentially has some capacity to reinvigorate the Western Australian housing co-operative sector and concurrently reduce the sector's reliance on the rental model linked to the Department of Housing's social housing framework. Of particular importance is finding a strategy for people on low to moderate incomes with some, but insufficient, funds to buy their own dwelling on a shared equity basis and gain some equity in it over time. The limited equity housing cooperative, in the modified form proposed in this report, suggests such a mechanism, while also maintaining the well-researched and documented benefits of living within a housing co-operative community.

APPENDIX 1

Comparison of Western Australian Housing Options

	Full Equity Co-operative	Limited Equity Co-operative	Non-Equity Co-operative*	Strata Title	Rental in private rental market	Home ownership
Ownership	Member/residents are the sole owners through a corporation/co-operative, which in turn owns the land and buildings. Each member has the exclusive right to occupy a particular dwelling unit in perpetuity.	Member/residents are the sole owners through a corporation/co-operative, which in turn owns the land and buildings. Each member has the exclusive right to occupy a particular dwelling unit in perpetuity.	Title of the property may be held by the co-operative but a caveat over the titles by the Department of Housing effectively means that the Department has final say over the property.	Unit owners take title to the internal space of the dwelling, plus an undivided interest in the common property (buildings and land)	The landlord owns the land and buildings. Each tenant has the exclusive right to occupy a particular dwelling during the term of the lease.	Owners take title and land directly.
Security of Tenure	Assured if member abides by the occupancy agreement and co-operative rules	Assured if member abides by the occupancy agreement and co-operative rules	A principle of the co-operative but challenged by Department of Housing policies which do not support security of tenure	Determined by the unit owner	Security of tenure exists for the duration of the lease.	Determined by the owner
Annual/ Quarterly/ Monthly Costs	Members pay the co-operative a pro-rata share of actual borrowing costs, instalments on principal and interest loan, rates and taxes, insurance and maintenance reserves. Members with personal share loans make personal principal and interest loans directly to their lender.	Members pay the co-operative a pro-rata share of actual borrowing costs, instalments on principal and interest loan, rates and taxes, insurance and maintenance reserves. Members with personal share loans make personal principal and interest loans directly to their lender.	Members pay up to 25% of their gross income as rent to the co-operative. The co-operative sets aside a portion of rents for short and long term maintenance	Unit owners pay strata title fees, which are a pro-rata share of actual operating costs, insurance and reserves. Unit owners with mortgages make payments directly to their lender. Unit holders pay their own rates and taxes.	Tenants pay the rent specified in the lease.	Owners with mortgages make payments directly to their lender. Owners make their own payments for rates and taxes.

Maintenance and Repairs	Co-operative is responsible for external maintenance. Co-operatives can choose how they allocate responsible for dwelling unit maintenance and repair between individual member and co-operative as a whole.	Co-operative is responsible for external maintenance. Co-operatives can choose how they allocate responsible for dwelling unit maintenance and repair between individual member and co-operative as a whole. Many limited equity co-operatives assume most or all responsibility for dwelling unit maintenance and repair, in order to even out and reduce costs to their members.	The co-operative is responsible for internal and external maintenance and repairs	Strata owners, perhaps via a managing agent, is responsible for external maintenance. Individual unit owners are responsible	Landlord is responsible for all maintenance and repairs	Owner is responsible for all maintenance and repairs
Purchase Costs/ Move-in Costs	Purchaser pays market price for shares or membership of the corporation. Pro-rata share of co-operative's loan remains in place. Purchase assumes the seller's obligations under occupancy agreement. Few settlement costs.	Purchaser pays predetermined price for shares or membership of the corporation to ensure affordability criteria. Pro-rata share of co-operative's loan remains in place. Purchase assumes the seller's obligations under occupancy agreement. Few settlement costs	Tenant typically pays 4 weeks rent in advance and 4 weeks rent as bond.	Purchaser pays market price for strata unit. Purchaser required to pay strata management fees. Settlement costs include adjustment of rates, strata management fees, stamp duty, settlement costs, etc	Tenant typically pays 4 weeks rent in advance and 4 weeks rent as bond.	Purchaser pays market price. Settlement costs include adjustment of rates, stamp duty, settlement costs, etc
Financial Liability	Members have no personal liability on co-operative's loan. Members are obligated under occupancy agreement to make pro-rata contributions to the co-operative's actual borrowing costs, instalments on principal and interest loan, rates and taxes, insurance and maintenance reserves. Members with share loans (if any) are personally liable to their lenders for their loan.	Members have no personal liability on co-operative's loan. Members are obligated under occupancy agreement to make pro-rata contributions to the co-operative's actual borrowing costs, instalments on principal and interest loan, rates and taxes, insurance and maintenance reserves. Members with share loans (if any) are personally liable to their lenders for their loan.	Tenant/members are obligated to pay their rent while they live in the property	Unit owners are obligated to pay strata management fees. Unit owners with mortgages are personally liable to their lenders for their private loans.	Tenants are obligated under their lease to pay their rent to the end of the lease term.	Owners with mortgages are personally liable to their lenders for the amount of the loan.

Community Control	Members democratically govern the co-operative and elect management committee to oversee operations. Co-operative has the right to approve all potential members and can terminate membership and evict residents who violate occupancy agreement.	Members democratically govern the co-operative and elect management committee to oversee operations. Co-operative has the right to approve all potential members and can terminate membership and evict residents who violate occupancy agreement.	Members democratically govern the co-operative and elect management committee to oversee operations. Co-operative has the right to approve all potential members and subject to Residential Tenancies Act can terminate membership and evict residents who violate occupancy agreement. However, as security of tenure is a key component, eviction is rarely pursued	Strata body corporate or management company has little or no control over sale of units or behaviour of unit owners. Unit owners democratically govern the strata body corporation, often via a strata management company.	Tenants have no control over who moves into neighbourhood and no control over behaviour of neighbours	Owners have no control over who moves into neighbourhood and no control over behaviour of neighbours
Long Term Maintenance, major upgrades	Three methods are available to finance co-operative improvements 1 assessment of individual members for pro-rata share of the total cost 2 establishment and funding of replacement reserves in long term maintenance fund 3 New long term bank loan in co-operative's name	Three methods are available to finance co-operative improvements 1 assessment of individual members for pro-rata share of the total cost 2 establishment and funding of replacement reserves in long term maintenance fund 3 New long term bank loan in co-operative's name	Co-operative sets aside a portion of rents to pay for long term maintenance	Two methods are available to finance improvements of the common elements 1 assessment of individual unit owners for their pro-rata share of the total cost	The landlord decides if and when to undertake renovations or improvements.	Owner is individually responsible for all maintenance, improvements and renovations.
Property management	Co-operative members democratically elect management committee, which determines if this is shared among members or subcontracted out.	Co-operative members democratically elect management committee, which determines if this is shared among members or subcontracted out.	Co-operative members democratically elect management committee and committees are established, one of which is a property management (continued)	Members via the strata management company subcontract work out.	The landlord is responsible for property management, possibly via a property manager.	Owner is individually responsible for all aspects of property management.

			committee to undertake or oversee this work			
Tax Benefits	Nil	Nil	Nil	Capital Gains Tax exemption	Tenants – Nil Landlord – negative gearing	Capital Gains Tax exemption
Centrelink	Tenants eligible for Centrelink payments may be able to claim Commonwealth Rent Assistance (CRA) as they are effectively tenants of the corporation.	Tenants eligible for Centrelink payments may be able to claim Commonwealth Rent Assistance (CRA) as they are effectively tenants of the corporation.	Tenants eligible for Commonwealth Rent Assistance (CRA) direct this to the co-operative as part of their rental payment.	Pensioners and seniors may claim local council and water rebates		
Home Equity	Co-operative members build equity as the value of their co-operative interest/share increases and their personal loan share is paid down	Growth in equity is limited through a limitation of resale prices as determined by the co-operative rules. Generally a formula is used to determine the portion the selling member will receive of the increase in value of the co-operative interest and the pay-down of the co-operative mortgage.	Nil	Unit owners build equity as the value of their unit increases and the mortgage is paid down.	Any increase in value belongs to the landlord and is usually reflected in the increased rental.	Owners build equity as the value of the home increases and as the mortgage is paid down.

Source

Based on Co-operative Housing Development Toolbox, A Guide for Successful Community Development, Published by Northcountry Co-operative Foundation in partnership with Northcountry Co-operative Development Fund, 2004, Minneapolis, Minnesota, United States.

* While this is the dominant model of co-operative housing currently in Western Australia, Pinakarri and Mia Mia have full-equity houses where the owners of these houses join in full membership of the housing co-operative with the non-equity cluster.

For further information about this or any housing co-operative research in Western Australia, or to discuss your interests and concerns in this area, please contact the Federation of Housing Collectives, incorporated since 1987 to act as the peak body for housing co-operatives in WA.

