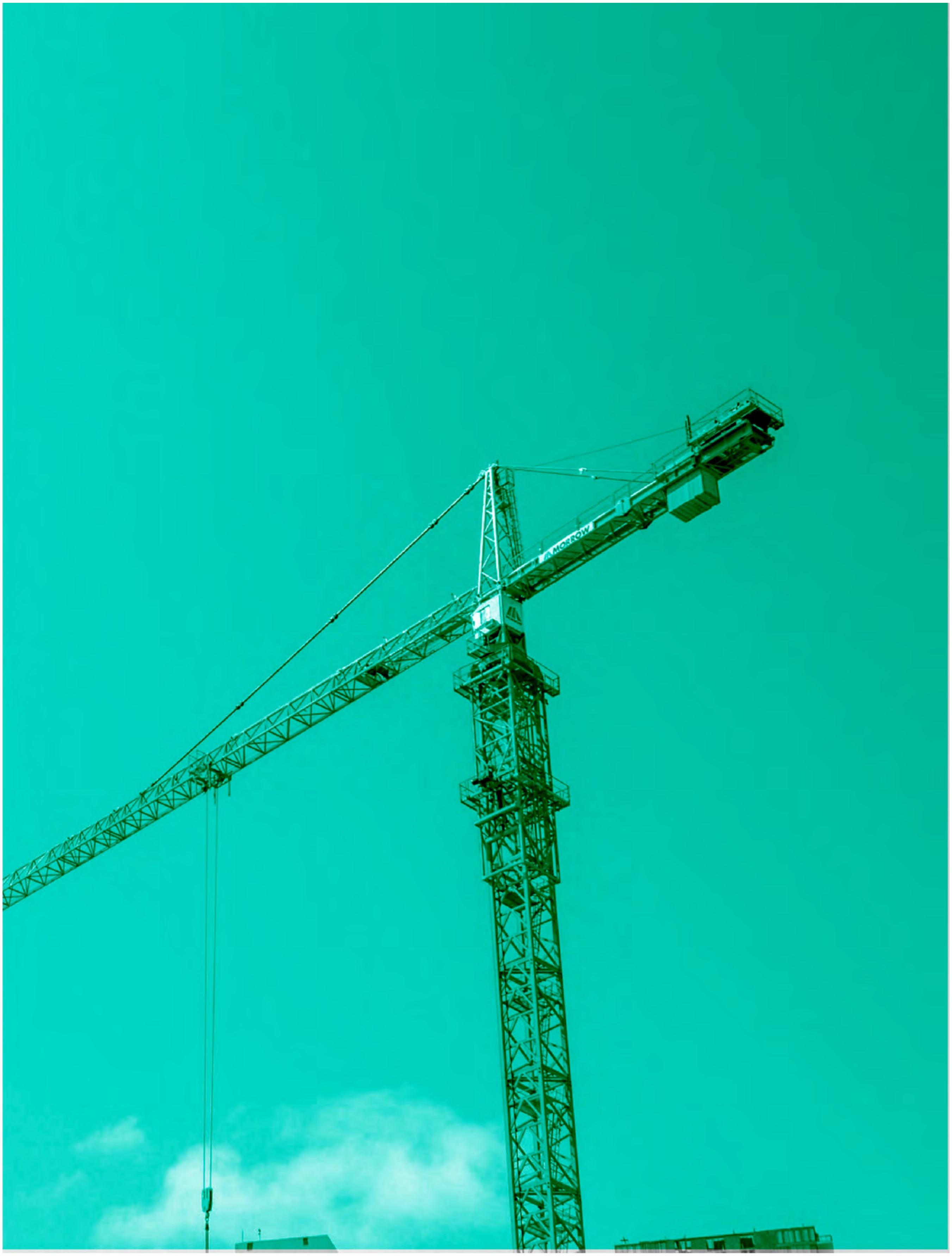
CITY SPACES

A PATH TO PARTNERSHIP

A Guide to Navigating Non-Profit Partnerships with Developers in Mixed-Tenure Developments

July 2021

BCNPHA
BC Non-Profit Housing Association



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1. Introduction

1.1 The Purpose of This Guide

This Guide is intended to be used by non-profit housing providers that are exploring the idea of obtaining ownership or a long-term lease in a privately led new development project. The thought of securing new housing for your non-profit is an exciting prospect but understanding how an organization goes from entertaining the idea to turning the key on new housing units can be difficult. The Guide is designed for non-profit housing providers initiating this process and will be useful to your organization if:

- You are interested in partnering with a developer on a project with affordable units.
- You have been approached by a developer looking to partner in a development with affordable units.
- You are working with a local government or your organization is on a local government partner list to obtain affordable units in new developments.
- A local government is obliging a developer to include non-market/affordable units in a new development (inclusionary zoning) and the developer is required to find an operator.

This Guide also addresses a series of key questions about the process of partnering in a new development, such as:

- What do I need to know about the development process and my role in it?
- What kind of stake can my non-profit have in a private development?
- What questions do I need to ask when I'm exploring a partnership?
- What are the financial commitments and risks of partnership in a mixed-tenure building?

The following section (section 2) of the Guide provides an overview of Mixed Tenure Partnerships, including the key actors, the development process, and key considerations for non-profits in preparing for new projects and entering into a potential partnership. Section 3 of the Guide reviews a number of considerations for within a partnership, including the various agreements, the form and design of the project, and cost considerations. The final section of the Guide (section 4), contains three hypothetical scenarios to illustrate a number of practical considerations in various types of mixed-tenure partnerships.

This Guide was commissioned by BC Non-Profit Housing Association (BCNPHA) and developed by CitySpaces Consulting. Through a combination of research, key informant interviews, and a focus group with non-profit sector leaders, the contents of this Guide reflect the experiences and best practices found in the sector at the time of writing. Partnerships between non-profits and developers are becoming more commonplace in British Columbia with the growth and use of local government tools that require non-market units in multi-unit development projects. As a result, the researchers recognize that there is room for this Guide to evolve as best practices evolve.

2. Mixed-Tenure Partnerships

2.1 Key Actors in Mixed-Tenure Partnerships

THE DEVELOPER

Real estate developers are ultimately in the business of delivering development to a community, such as residential buildings, as well as making a profit. The decisions a developer makes are informed by their need to minimize risk to the potential profit yield of their project, and this is done by maintaining strict control over costs and timelines. When a developer initiates a project, they have made a calculated assessment of:

- **The Type of Building They Will Be Able to Build**
  - > What existing height and density will permit and/or what potential increases to these allowances they can reasonably hope to have approved by local government; and
  - > Whether the building will be sold as strata units after completion, be sold as a rental tenure building, or maintained by the developer as an income generating rental building.
- **The Timeframe in Which They Will be Able to Build**
  - > The length of time it will take to secure financing, land, and services for the construction of the building; and
  - > The length of the local development approvals process (an illustration of a typical development and approvals process is found in Section 2.2 on page 7).
- **The Cost of Development**
  - > How much they will have to borrow in order to finance the purchase of the land and materials, and to hire the people responsible for building it; and
  - > The soft costs associated with legal and technical services, marketing, development fees and permits, taxes, and public amenity contributions to the local government (such as affordable housing contributions).

Developers take financial risks when they undertake a project. Ahead of embarking on a development process, a developer prepares a document called a pro-forma, which weighs these factors against one other and determines how much they can borrow and at what cost, and whether the anticipated sale or rental of the building will allow them to service and repay their debts and make a profit. Delays to the development process are costly to a developer and can threaten the viability of a project. For a non-profit, they can threaten the viability of the relationship established with a developer.

To say that a developer is driven by profit is not to question their motives, but that they are driven by a real need to minimize risks that will threaten not only the projected profit, but the viability of the project itself, and even the ability of the developer to continue doing business. Understanding this in engagement and negotiations with a developer is an important step in developing a successful relationship.

Your partnership with a developer is, in an increasing number of jurisdictions, a required part of the development process. Inclusionary zoning legislation, community amenity agreement policies, and density bonusing agreements may require that a developer provide affordable rental or turn-key strata units for affordable housing purposes. While the developer may value their partnership with your non-profit, the obligation to provide affordable housing is ultimately registered as a cost against the potential profit that could be generated by a project. In a developer's efforts to minimize risk, reduce costs, and streamline processes, they may conclude that the cost of their partnership with your non-profit is ultimately too high. This may occur because:

- The market related to borrowing costs and the potential sale value or rental income of the proposed development changes, making the cost associated with providing the form and quantity of affordable housing your organization requires untenable for the developer; and/or

- The developer chooses to pursue a development model that, under local regulations, does not require affordable housing. For example, partnering with a non-profit housing provider can result in more generous development permissions from the local government; but, for a number of reasons, the developer may decide that the potential benefits of such an agreement are less desirable compared to a smaller development that proceeds without a non-profit component.

The amount of inclusionary housing that is achievable in a development depends on the value of the bonus density provided, therefore the amount and affordability of the inclusionary homes may vary greatly by area and market factors. In current market conditions, it is unlikely inclusionary housing is achievable in areas where there is little demand for high density development.

THE LOCAL GOVERNMENT

All local governments in British Columbia are required by the *Local Government Act* (or, in the City of Vancouver, the *Vancouver Charter)* to address affordable housing, rental housing, and special needs housing in their Official Community Plans (or in the City of Vancouver, Development Plans). However, local governments range widely in the complexity and efficacy of their housing policies. Some have a limited number of simple policies, others implement affordable housing practices on a case by case basis, while others have complex systems wherein the local government plays an executive role in shaping the requirement of affordable units through the development process. The affordable housing yielded from these policy tools is secured through a housing agreement, which is a formal legal agreement registered on title and obligates the developer to meet conditions established in the approvals process.

The local government's involvement may vary from driving the process of securing non-market units and finding a non-profit operator to requiring the developer to partner with a non-profit. More information on the main local government tools for securing affordable housing and local government partnership structures are found in Part 3 of this Guide on page 13. A general guide to the local government approvals process alongside the development process is found in Section 2.2 on page 7.

THE NON-PROFIT HOUSING PROVIDER

There is no one-size-fits-all model when it comes to mixed-tenure partnerships. Given that each project is distinct, it is important to complete the required due diligence before committing to a new partnership. Important questions to ask your organization include:

- Have we done the appropriate analysis?
- Can we manage the risks?
- Are we getting what we need for our tenants, staff, and programs?

Alignment of Values

While it is important to understand the role of risk and profit in a developer's actions, the non-profit should take steps to ensure that the values of their organization align with those of the developer. Many developers understand and value the contributions non-profit housing providers make to providing safe and affordable housing options. Key questions to ask when exploring or beginning a relationship with a developer include:

- **Has the developer successfully completed mixed-tenure projects with other non-profits?** If so, it is valuable to understand the experiences of non-profits previously partnered with the developer in question.
- **Does the level of risk the developer is asking your organization to undertake align with your organization and board's risk tolerance?** Does the developer understand the financial constraints and governance requirements of non-profits and understand the differences in levels of risk that non-profits can assume compared to developers? Do they understand the more limited extent to which non-profits can make financial and legal commitments to projects before questions such as financing and development approvals have been finalized? Do they understand the funding approvals process and timelines (a general overview of the funding approvals process is found in Section 2.2 on page 7)?
- **Is the developer transparent and forthcoming with reasonable inquiries regarding costs, processes, and schedules?** Assuming that non-profit inquiries are reasonable within the framework of a development process and the non-profit has the capacity to quickly and decisively respond to such inquiries, is the developer forthcoming in response to inquiries regarding things such as soft costs and borrowing costs that are passed on to the non-profit, and changes to development specifications, materials, and other development consideration?

Red Flags

In the interviews and focus group, participants identified certain "red flags" that non-profits should be aware of as they navigate mixed-tenure partnerships:

- If a developer is not willing to share project costs, particularly those that have been prepared by a Quantity Surveyor, there is cause for concern. Transparency around costs is very important to building trust which is an essential component of a successful partnership.

- If the costs do not line up or if decisions related to project expenses do not align with your organizational values, re-evaluate the mixed-tenure partnership.

- If significant risk is pushed too early in the project (e.g., land is purchased before rezoning is approved), re-consider your involvement with the developer.

- If a developer asks for specific screening requirements for future residents (i.e. credit checks) or does not appear prepared to address public misconceptions or prejudice against low-income residents, assess the partnership and consider whether there is values-based alignment.

- Should you encounter a developer that specifies exactly what you should do in the development process and how they can help your organization, be mindful and re-evaluate the partnership to ensure there is mission alignment.

- If the developer is not clear on the responsibility for cost overruns, push to have clear guidelines on the form and quality of the development, and a delineation of responsibilities for any cost escalations/increases. If the developer is not transparent or willing to delineate these responsibilities, reconsider whether this is the right partnership for your non-profit.

2.2 The Development Process

A housing project will typically go through parallel processes, as shown in Figure 1 on page 8. The non-profit may join the process at any stage, depending on when they are invited to join a partnership. This figure has been adapted from the BCNPHA Guide to Hiring + Working with Development Consultants to provide a general overview of the key steps in development and approvals

1. DEVELOPER PROCESS

All projects proceed through these general stages from project concept to greater levels of drawing detail, applying for local government approvals, and then construction. If the non-profit has been invited into a partnership in the earlier stages and they have the capacity to do so, they are able to provide greater input into design details. The developer, concurrently with the drawing developments, is preparing and updating capital and operating budgets for the project, including construction cost estimates. It is important that this process is transparent between project partners.

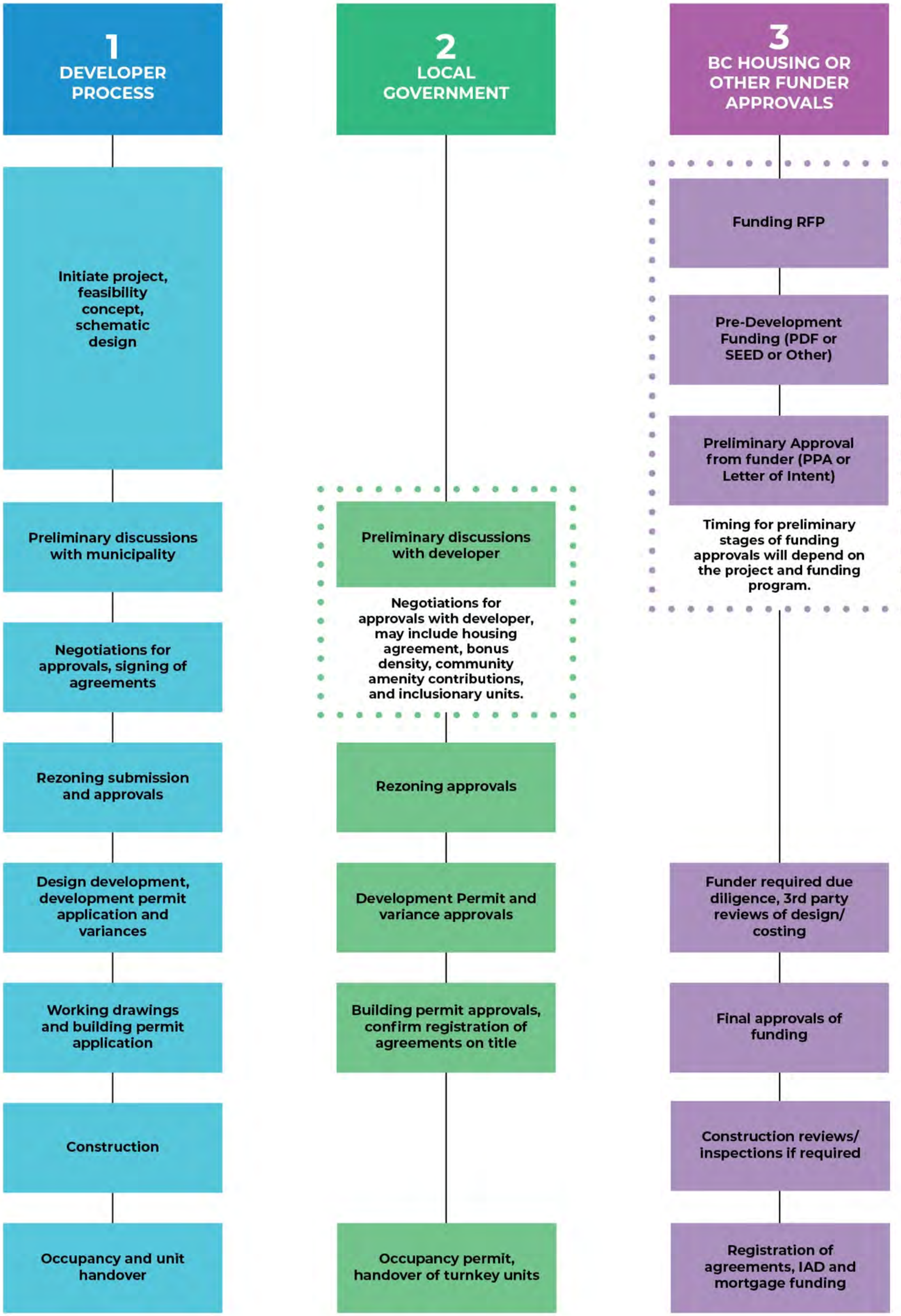
2. LOCAL GOVERNMENT APPROVAL PROCESS

All projects will require local government approvals. At different stages, drawings and specifications may be submitted for staff review and Council approval. This could include amendments to the Official Community Plan (OCP), Rezoning, Development Permits and any Variances, and Building Permits.

3. BC HOUSING OR OTHER FUNDER APPROVAL PROCESS

Most projects in British Columbia receive funding and/or financing from a senior level of government and some rely strictly on financing from a credit union or bank. The process shown in the Figure 1 is a general overview of a funding source's typical approval process.

FIGURE 1: THE DEVELOPMENT PROCESS



2.3 Non-Profit Considerations in Mixed-Tenure Partnerships

THE RISK-REWARD PROPOSITION

The central overarching principle restated by nearly every practitioner interviewed as part of this research was that, in order to for a non-profit housing provider to effectively navigate the development process:

- Non-profit staff and Board must have a clear understanding of the financial and operational risks involved in property development, and

- These risks must be weighed against an equally explicit understanding of the desired benefits to be achieved by the acquisition of new housing and whether the new housing aligns with the non-profit's strategic goals.

In short, every non-profit housing provider needs to understand and be comfortable with the assumed risks and potential rewards of engaging in an inherently unpredictable process.

In order for a non-profit housing provider to become involved in a development partnership, it needs to generate the internal capacity and expertise beyond that required for its regular day-to-day operations. Partnering in development is a demanding task that requires a clear Board mandate, a strong strategic plan, and the staffing resources and knowledge to navigate the development process. Building capacity means transitioning the non-profit from a role as caretaker of existing assets to an active role as creator of new partnerships, new commitments, and an expanded range of service obligations. Approaching with a clear understanding of what is involved in this new role, this task can be managed successfully but non-profits should strongly consider ensuring that they have the following aspects of their organization accounted for before beginning.

STRATEGIC PLANNING

Non-profits vary significantly according to how actively they plan and strategize for their organization's future. By embarking on a development partnership, there is a need to outline these considerations explicitly in a strategic plan that has full Board endorsement. A strategic plan should clearly answer the following questions:

- **Does your organization have the ability to begin the process of expanding and taking on new roles while continuing to fulfill its core non-profit mandate?** That is, is the management and Board of the non-profit involved in any major changes to its current operations that will not permit it to give the attention needed to its new role?

- **Will the types of partnerships available and the forms of housing they can provide meet the service objectives you have for your non-profit clients?** Being offered the chance to create or expand your housing portfolio through partnerships that help offset the cost is an attractive proposition, but the opportunity should be weighed against your organization's predetermined assessment of what types of housing it actually needs. For example, if your organization requires housing for individuals with challenges related to addiction or mental health and a supportive housing form that allows for the provision of health services and counselling, then these needs will have to form part of the non-profit's criteria for establishing a relationship with a developer. Alternatively, the non-profit may want to consider adapting a service model that incorporates non-supportive units that could help subsidize existing operations and development of new supportive housing.

- **How will staffing needs, funding levels, and Board expertise need to change in this new role?** While these subjects are discussed later in this Guide, a strategic plan can help to generally define the non-profit's anticipated needs, including:

    > Whether the scope of its proposed partnerships requires the hiring of a development consultant or bringing a development planner on staff at the organization; and

    > The existing and required financial capacity to cover the soft costs of transitioning to a development role.

BOARD ROLE AND CAPACITY

Building Board capacity means having the knowledge, expertise, and adaptability necessary to review, process, and act on major decisions in a development process. Preparing a non-profit Board for a development process can mean any of the following things:

- **A Board that can be quickly convened to act on development decisions.** If decisions with financial implications for the non-profit need to be taken, it is imperative that the Board is able to understand and respond to these requirements in a timely manner. Failure to do so can result in additional costs and threaten the relationship with the developer.

- **A Board with the expertise to understand complex facets of the development process:** Real estate development involves the expertise of numerous specialized disciplines, and while not every Board member is required to understand every facet of the process, a non-profit housing provider will benefit from a basic fluency in the roles and functions of all parties in a development process. Having a Board member with expertise in finance or law will help the non-profit Board make informed decisions about complex issues that arise in the development process.

- **A Board that can confidently delegate authority to qualified staff:** The Board's role, like that of the developer, is in some respect one of minimizing risk to the non-profit. While major decisions will often still require Board approval, a Board that has confidence in the direction provided by the Strategic Plan and the capabilities of staff or consultants assigned to manage the development process can streamline the development process by delegating many decisions to staff. For example, a CFO or Director of Finance with an accounting background may not have the appropriate skills for a broader perspective of organizational growth and development. A Board may have to adjust its leadership structure or role descriptions when planning for growth. This may including hiring staff or consultants to shepherd and make day-to-day decisions on new development projects.

BCNPHA and other organizations provide educational and training services available to non-profit Boards that can help them become familiar with the development process and their role in it.

STAFF ROLE AND CAPACITY

Non-profit staff in an affordable or supportive housing organization are primarily concerned with the well-being of their residents. It is a skill set that differs significantly from the time-sensitive, executive role of a development consultant. While staff will learn more about development in the course of a project, real estate development should not be seen as a 'learn as you go' discipline or something that can be added to existing staff's workload.

A non-profit should build internal staffing expertise according to the scope of their development aspirations. If an external development consultant is being hired, then the non-profit should invest in training that allows assigned staff to knowledgably review, approve, and amend documents as varied as pro forma analyses, housing agreements and airspace parcel agreements, architectural plans, and lease agreements.

EXTERNAL SUPPORT

In certain cases, the scale of the non-profit's development ambitions will justify the hiring of a development consultant. The hiring of a development consultant that is able to shepherd the process through from conception to completion will reduce staff time dedicated to project details, serve as a link between the developer and the board, and can provide specialized support to the unique needs of non-profits when it comes to real estate development. Consulting firms that provide development planning services are excellent resources with the full range of skills necessary to see your project through to completion. However, there is a cost to their services that would need to be paid for through pre-development funding or internal resources. More information on hiring and working with a development consultant can be found in BCNPHA's Guide to Hiring + Working with Development Consultants (2020).

As previously mentioned in this Guide, real estate development is a multidisciplinary field. The non-profit will require outside legal advisement and should seek legal expertise with specific experience in non-profit housing development. A lawyer with strong real estate experience is recommended, as a number of registrations and agreements will be signed that require an understanding of the real estate and non-profit implications.

It may also be worth hiring for independent technical expertise such as an architect or design professional. The purpose of their expertise would be to help review drawings and confirm specifications for alignment with non-profit operating needs as well as any funder requirements (i.e. BC Housing Design Guidelines and Construction Standards).

EXIT STRATEGY

While thoughtful and careful consideration may be undertaken before entering into a partnership with a developer, there is always the risk that the project may experience unforeseen challenges and/or one or both partners is unable to continue to meet the obligations of the partnership. In discussions with sector leaders, it was recommended that a non-profit should have an exit strategy built into the agreements and commitments of the partnership. This can be done in consultation with your legal counsel to ensure that any agreements provide for an exit if necessary.

One suggestion raised by non-profit sector leaders was to create key milestone "off-ramps" in the partnership agreements, as long as they do not compromise any funding approval timelines. For example, an agreement could note that Development Permit must be approved by a particular date and if not, the non-profit has the right to terminate the partnership agreement. These "off ramps" could align with key local government approval stages (i.e. rezoning, development permit, building permit) or funding stages (Preliminary project approval, final project approval).

By way of an example, if a project partnership and the non-profit's involvement is predicated on approval for funding from senior levels of government, the necessity of funding approval should be recognized in the partnership agreements with the developer. Additionally, the partnership agreements should include reference to any funding conditions that may affect the design, sustainability targets, accessibility requirements, and construction standards in the development.

3. Agreements, Development Form, Design, and Costs

3.1 The Framework

A housing development involves commitment to a range of agreements – each of which needs to be carefully negotiated, reviewed and adhered to. The agreements may or may not involve the non-profit, depending on the project, local government, and/or funder.

LOCAL GOVERNMENT TOOLS AND AGREEMENTS

As noted in Part 1 of this Guide, all local governments in British Columbia are required by the *Local Government Act* and the *Vancouver Charter* to address affordable housing, rental housing, and special needs housing in their Official Community Plan. However, local governments range widely in the complexity and efficacy of their housing policies. The two primary tools local governments currently use to develop affordable housing are density bonusing and inclusionary zoning (see call out boxes to the left and on the next page). The affordable housing yielded from these policy tools is secured through a housing agreement, which is a formal legal agreement registered on title and obligates the developer to meet conditions established in density bonusing or inclusionary zoning process.

- **Local Government Driven Process:** In cities with well-established affordable housing policies, the local government will sometimes play a decisive role in negotiating and administering housing agreements with private developers. In cities such as Richmond and Vancouver, the local government will negotiate directly with the developer for an affordable housing component in a new development. The City can then either go through a tendering process to secure a non-profit partner or allow the developer to establish its own partnership with a non-profit.

  > This approach has the advantage of formalizing and streamlining the process.

Inclusionary Housing Policies

Inclusionary Housing Policy describes a local government's intention and approach to ensuring that affordable housing units are included in new developments. An Inclusionary Housing Policy can be implemented using different tools, and can work particularly well in communities where additional density can be supported by the market. In these circumstances, built affordable housing units can be effectively secured through density bonus provisions (described separately) in a local government's zoning bylaw.

Local governments can accept cash-in-lieu in cases where there are challenges building affordable units on site. Cash-in-lieu contributions are often allotted to an Affordable Housing Reserve Fund (described separately) for the purpose of contributing to a future affordable housing project for land and/or capital costs.

Some local governments have a provision for density transfer (i.e., transferring development density from one site to another) in cases where there is unused density from under-utilized sites, or where affordable housing units cannot be built on site. Density transfer can be an option to assemble scattered affordable housing units from multiple sites and concentrate them to one site. In cases where non-market housing units are secured, this approach can benefit non-profit housing societies by making operations more efficient.

> The disadvantage of this approach is that it may limit the non-profits' ability to shape the type of housing provided by the developer.

- **Developer and Non-Profit Partnerships:** Some local governments allow developers, in anticipation of local government obligations to provide affordable housing, to partner with a non-profit of their choice ahead of a formal submission. The proposal brought forward is then evaluated against local government policies. This approach:

  > Permits non-profits to play a formative role in the shaping of the development; and

  > Requires non-profits to be able to act as a full partner in the development process.

It is also important to note that many local governments also have design or building form guidelines which will impact the design of the building and rental replacement or tenant relocation policies which may impact the priority of tenants that return to a redeveloped site. This may impact the delivery of design elements that are requested and the start-up operations by the non-profit.

PARTNERSHIP AGREEMENTS

Once a non-profit has confirmed capacity and alignment with a developer, generally the next step is to enter into a Memorandum of Understanding (MOU) to address and agree to the broad terms and conditions for the partnership. This allows the two parties to obtain greater certainty in the project timeline, approvals, funding, and any key terms that will guide the partnership.

As the project and any funding or local government approvals progress, the developer and non-profit can begin preparing any agreements regarding the lease or transfer of ownership, cost sharing agreements, and operating agreements. In a strata scenario, a non-profit will want the opportunity to review the proposed strata corporation documentation and bylaws.

Density Bonusing

Density provisions in a zoning bylaw include a "base density" and "bonus density" for select zones. Applicants can develop within the parameters of the base density, or they can pursue the additional density by providing affordable or special needs housing (or other amenities) as specified by the local government.

Housing Agreements

Housing Agreements are contractual arrangements between property owners and local governments. This tool is used to specify parameters that ensure, that for the long term, housing is affordable and/or used for special needs housing. Housing Agreements can include various restrictions on the proposed development that cannot be regulated through zoning, including:

- **The characteristics of persons who may occupy the units (e.g., seniors);**
- **The tenure of the occupants of the units (e.g., rental);**
- **Limitations on the amount of rent that can be charged;**
- **Administration and management of the units; and**
- **In a condominium development, re-sale price controls.**

With the potential risk for price escalation or unforeseen conditions on site that run the risk of cost overruns, a true fixed price is recommended as part of negotiations. Therefore any overages would be the developer's to bear. It is important to structure these agreements to ensure that these risks remain with the developer and not the non-profit society.

Most importantly, a non-profit should budget and plan for legal support throughout the drafting and signing of these agreements. External legal counsel that have experience working with non-profit housing providers and real estate development is a must have for any development project/mixed-tenure partnership. The costs associated with these legal agreements will vary depending on the scale and complexity of the project and partner roles, so it is important to budget appropriately with input from a development consultant, legal advisor, and BC Housing.

FUNDING AGREEMENTS

While the purpose of this Guide is not to review the various funding sources and agreements available to non-profits, it is important to note the approval processes and any conditions for certain funding sources that would affect the development, design, timeline, and security (i.e., insurance, bonding). It is advantageous to have the funder provide input on a project and its agreements in earlier stages, because any funding conditions can be built into agreements with the developer. It is also important the non-profit seek legal advice from a lawyer with strong real estate experience to understand the implications of these agreements on the transaction and long term operations.

Developers may expect non-profits to be able to access the funding quickly, but it often takes years and depends on what government programs are available. These timing expectations should be discussed up front with a developer, to avoid any conflicts later in the process.

3.2 The Form of Development

In the simplest terms, a partnership means owning or leasing units or property in a private development. When a developer starts a multi-unit residential project, they have one of two choices: whether they are going to build a strata or market rental building. This decision starts to shape the type of role a non-profit can have in that development.

- **Strata**: In a strata building, the developer builds the building and then sells individual units that are then controlled by a strata corporation that is comprised of strata owners.

- **Market Rental:** In a market rental building, the developer or another company continues to own the building and rents the units to tenants.

In both strata and market-rental scenarios, the developer builds on one parcel of land and the parcel is either owned in its entirety by a strata corporation (comprised of strata owners) or a rental company. To separate and secure the non-profit units, a portion of the parcel is carved off to be "owned" by the non-profit by one of the following mechanisms:

- **Long-Term Lease:** The non-profit can lease a portion of the units or lease an air space parcel from the developer, while retaining the title ownership. In some circumstances, the developer is required to create an air space parcel and transfer ownership to the local government, which would then lease the units to a non-profit. In most circumstances, the length of time for the lease is 60 years.

- **Ownership of Strata Lots or Air Space Parcel:** The non-profit gains ownership of a portion of the units that may be as individual strata lots, in one strata lot block, or in an air space parcel. If the building is a strata, the non-profit becomes a voting member of the strata corporation.

- **Short-Term Lease:** The non-profit enters into a short-term lease agreement that is similar to a rental agreement that any other market rental tenant would sign.

These mechanisms can result in one of many different combinations of building components, as summarized in the following table. The selected mechanism will depend on the developer, the local government's policies, funding requirements, and the non-profit's preferences.

Market Component	Non-Profit Component
Strata	> Long-Term Lease on Strata Units
	> Ownership of Strata Units
	> Ownership of Air Space Parcel / Block Strata
	> Long-Term Lease of Air Space Parcel / Block Strata
Market Rental	> Long-Term Lease on Market Units
	> Short-Term Lease
	> Ownership of Air Space Parcel / Block Strata
	> Long-Term Lease of Air Space Parcel / Block Strata

SECTOR FEEDBACK ON FORM OF DEVELOPMENT

Based on interview and focus group feedback, there appears to be no preferred form of mixed-tenure development, as each project is fundamentally context-specific. With particular benefits and drawbacks associated with both an ownership and leasehold approach, it is important to understand the contextual factors and devise a model that works in each individual case. As noted previously in this Guide, the more important question is value alignment: does this partnership deliver on our mission? What are the developer's expectations?

- If a non-profit embarks on a mixed-tenure project, there are not many advantages associated with having multiple strata titles, as non-profits are still at a disadvantage when it comes to decision-making. Owners may not want to pay for larger items which can limit the non-profit's ability to complete necessary repairs and maintenance.

- There are certain advantages with an approach that involves an airspace parcel, as the non-profit would be mortgaging against a larger asset, which could result in more long-term financial control (i.e., it would be easier to refinance a large lot as opposed to five individual units). Additionally, in a strata, the non-profit is subject to strata rules and changes, which can lead to compromising liveability and viability of the affordable units (i.e. large expenditures on upgrades/new equipment, new restrictions on pets/smoking).

    - The advantages of air space parcel is further re-enforced by operational learnings from Richmond's Low End Market Rental program. Initially, this program dispersed units throughout market housing. Feedback from non-profits indicated greater efficiencies are associated with clustering units. In this example, low end of market units are clustered on a single floor or in a stand-alone building on the same site. Operationally, there is greater simplicity in having a single title to one building or a cluster of units that would be administered by an operator and building manager. Non-profits can also have more input into the design of a stand-alone building as opposed to scattered units.

    - While there are potential operational efficiencies with a clustered approach, the non-profit housing sector's broader social inclusion goals could be seen as being diminished by having affordable units isolated from other units in a development. Some non-profits prefer the scattered approach for this reason.

    - In a Strata Corporation, there may be added limits over time that are placed on the non-profit operator by the entire strata. In most circumstances, the non-profit would hold a small percentage of the total units which means they may be outvoted on matters that concern the greater strata. If a strata arrangement is necessary, the operating freedom of the non-profit will need to be addressed early in any agreements.

    - In the interviews, it was noted that there are additional risks in strata projects where a certain proportion of unit pre-sales has to be reached in order to achieve construction financing. If this ratio is not reached, or is delayed, the project may not move ahead.

- The City of Vancouver recently conducted a study with CitySpaces Consulting on its approach to mixed-tenure developments. The City's typical practice has been to separate market and non-market uses into different air space parcels. While this approach can be seen to allow non-profit operators to independently manage operations and maintenance, the separation has led to concerns of stigma and social isolation for non-market tenants.

    - The City surveyed both residents and operators, and among those who design, operate, and manage mixed-tenure buildings, integration is valued when it can benefit residents without unduly complicating building operations.

    - The City's report concludes the operational concerns of non-profits and the interests of residents should inform the level of integration offered in mixed-tenure developments. With the quality of housing for tenants as the primary goal, the level of integration (i.e. scattered versus block/parceled) should be a means to that end, and not an objective to be pursued in all developments.

- In the interviews, non-profit housing providers referenced the benefits of direct partnerships with BC Housing. For non-profit organizations, it can be challenging to work directly with developers, particularly from an operations perspective, as there may be a disconnect between standards and expectations from owners and renters. Additionally, financing is improved when BC Housing retains ownership of the units secured in a mixed-tenure partnership.

- Even if a project is not subject to BC Housing funding approvals, the BC Housing Design Guidelines and Construction Standards are a valuable resource. BC Housing's technical expertise and experience with building housing across the Province is a resource available to non-profits, even if you are not using their funding.

DESIGN DECISIONS

During the interview process and focus group, non-profit sector representatives illustrated the importance of involving non-profits in the design process, given they will be the eventual operators of non-market units and responsible for a proportion of building costs.

- Many times, non-profits are brought on-board to operate units once a building has been constructed (i.e., turnkey scenario). This leaves little flexibility for the non-profit to advise on design or other matters that can affect operations.

    - For example, does the building contain any office or management space or indoor/outdoor amenities? Does the design address specific liveability considerations such as storage, balconies, and unit configuration?

- In addition, many funders are placing a greater focus on sustainability considerations in new buildings. This is a positive step for operational efficiencies and the building's overall impact on the environment, however non-profits should be aware of the potential trade-offs with higher sustainability targets.

    - By way of an illustration, higher steps in the BC Energy Step Code may require additional material costs for windows and insulation, or may require reduced window sizes or remove balconies from the design.

> Depending on the design, some sustainability considerations could result in increased electricity bills for residents which will affect the affordability levels the non-profit is trying to achieve.

- It was recognized by interviewees that early involvement in design is likely dependent on non-profit capacity. Should a non-profit not have capacity, it is unlikely they will be able to participate in the project design.

3.3 How Units Are Priced

In many cases, a partnership with a developer will ultimately involve a payment, either to the developer or to the local government, for the units being leased or sold to the non-profit. This is one aspect of the development process that often remains obscure to non-profits, and understanding how units are priced, as well as the differences between private and non-profit perspectives on pricing, is key.

Housing units provided to a non-profit are a potential loss of revenue to the developer. It is therefore in the developer's interest to try to recoup whatever costs possible. The following are several key questions to consider when understanding the cost of the units you are being provided:

- **Was density bonusing provided?** In cases where the partnership between the non-profit and the developer is established outside of a formal local government process, the costing of units is the result of a negotiation between the developer and the non-profit. It is important to understand that, if a developer received a bonus in density in exchange for the provision of affordable housing, they may have, in essence, already been compensated for the cost of the units. For example, see the following development scenario:

Development Details	
Site Area (SA)	50,000
Existing Floor Space Ratio (FSR)	2.0
Square Foot Sale Value	$800
Bonus Density	25%
Affordable Housing Requirement	15%

> In this scenario, where a developer chooses not to include affordable housing and instead would develop based on existing density permissions, a development would yield a total square footage of 100,000 ft^2 (50,000 ft^2 * 2.0 FSR) selling at a cost of $800 and yielding a sale value of $80,000,000.

> Were the developer to get bonus density of 25% in exchange for providing 15% of the total resulting floor space as affordable housing, they would yield a total of 125,000 ft^2 of floor space, 18,750 ft^2 of which would be affordable housing. The remaining 106,250 ft^2 of floor space could be sold for a total of $85,000,000.

> **This example demonstrates why a development with density bonusing should be seen as one where a developer may already have been compensated, in part, in full or and then some, for their provision of affordable housing.**

> Understanding that these numbers are speculative, do not account for increases in developer cost associated with a lengthening of the development process or higher building costs, or reflect a specific existing scenario, it is nevertheless important for the non-profit to understand what the developer has already been given in exchange for the affordable housing they are providing.

> A local government may also prescribe the cost of the units in their affordability policies/requirements.

- **What are construction costs, and how much of a role do you have in them?** In most cases the developer is responsible for costing in a development. They source and purchase materials, hire construction managers and tradespeople, and are generally responsible for the day-to-day administration of a project.

  > Non-profits must bring some knowledge of construction costs and contracts to the table if they have structured an agreement where their sale value is contingent on construction costs. If a non-profit intends to play a more active role in construction management, whether in order to have some control over the quality and form of the finished product or in an agreement scenario where they are responsible for cost overruns, the non-profit must first and foremost have the ability to knowledgably and efficiently work within the timelines and requirements of a standard development process. They must not delay construction decisions and, in many contracts, can be held liable for construction delays if they are not able to turn around decisions quickly enough.

  > A non-profit should push for a fixed cost purchase/lease agreement. This would ensure that any cost escalation, design changes, or additional costs from unforeseen site conditions are at the risk of the developer rather than the non-profit.

  > If a developer is not willing to open up the costing and contract process to the non-profit despite the non-profit being in a position to credibly participate in decision making, then the non-profit should have in-place formal conditions on the limit and extent of cost escalations and contingency costs. Such resistance to transparency should also give non-profits pause on whether to proceed with the partnership in the first place.

- **Is there a clear mutual understanding of non-profit and developer perspectives on costing?** Developers and non-profits approach the question of cost in fundamentally different ways. For a non-profit, the maximum cost of an affordable housing component is equivalent to the largest mortgage that can be serviced by the rents of the non-market units (with any possible funding sources). For a developer, the bare minimum cost of a unit should cover construction and soft costs, including borrowing costs, except (as discussed) when density bonusing is involved.

> These two costing methodologies, 'At Cost Value' and value determined by revenue, should form the two boundaries of your negotiation with a developer. While most non-profits will have to secure funding from an agency such as BC Housing to finance the purchase of units, and through that process have their capacity to service their debt tested as a condition for borrowing, there have been some instances where non-profits have brought their own capital to the table and have purchased units they are unable to finance effectively, putting other assets and services at-risk.

- **What about operating costs and cost sharing?** Given mixed-tenure partnerships likely result in shared amenities or some form of shared operational costs, it is imperative that a cost-sharing agreement is created to determine responsibility for certain expenses. Typically, the developer will drive these conversations, but it is important that the non-profit advocate for a structured agreement that provides protection around cost escalations and contains language about completion timing. A clear understanding regarding costs and shared amenities should be established early on in the project development process and certain interviewees recommended setting up a project steering committee to ensure decision-making reflects the perspective of both the developer and non-profit. Non-profits are more open to public scrutiny which can be a factor to consider if the building condition were to deteriorate significantly. In general, interviewees also recommended that affordable units be built to the same standard as market units.

> In market strata/condo or rental developments, amenity sharing can be contentious and interviewees highlighted the need for equal access to amenities. With regard to operating costs, shared amenities can increase expenses as integrated services tend to have higher costs. It can also be challenging to negotiate shared amenities with developers as interviewees indicated there is a perception that shared amenities decrease the price of market units.

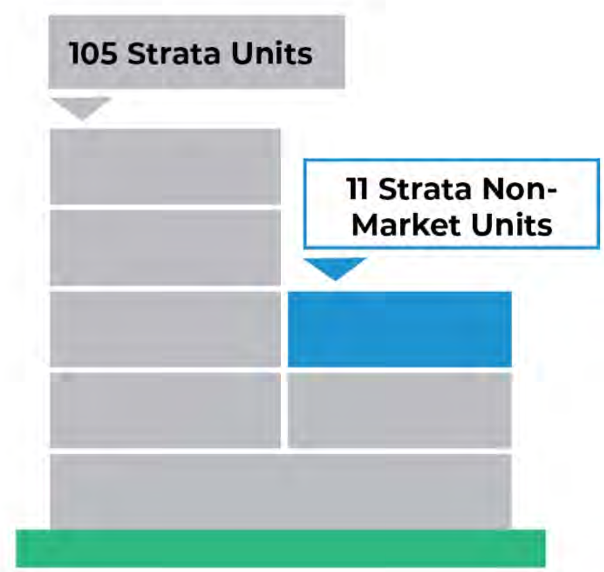
> Some interviewees noted that it may be worth considering having different common areas for the non-profit from the strata. By having separate common areas there is a potential reduced risk of conflict and costs can be easily separated. When making decisions about the best fit for operations, it is also important to view shared space considerations through an equity and inclusion lens to ensure the project helps to reduce stigma. Mixed income developments are important not just for financial feasibility, but because there is potential to grow stronger, more integrated communities.

4. Three Scenarios

The following are hypothetical scenarios for the purpose of illustrating the process of entering into a private partnership. Each scenario includes a short description of the project, ownership structure, and key considerations for the non-profit organization. Following each scenario is some discussion of the opportunities and risks with each project based on the shared learnings from the interviews and focus group.

4.1 Scenario #1: Strata Project

A large local developer has approached ABC Housing, a non-profit that focuses on providing housing for low-income seniors and families. The project site is undergoing rezoning to permit a 116-unit apartment building with strata ownership. As part of the rezoning, the local government is requiring 11 non-market units in the project through their inclusionary zoning policies and is securing them by way of a Housing Agreement on title. The Housing Agreement prepared by the local government contains a prescribed rent range for the non-market units. The onus is on the developer to operate these non-market units themselves or find an operator. To bolster their rezoning application, they approach ABC Housing to own the 11 units by way of a 60-year lease of a "block strata" (the 11 units in one strata lot). The non-profit will have some input on the building design as rezoning is approved and the projects applies for development and building permits.



The developer has proposed that the non-profit pay the cost of construction based on a fair-market value when the construction commences. This works out to approximately $350 per square foot for the 11 units. With a total area of 7,700 ft^2, the total cost to ABC Housing is $2,695,000. They will pay these costs through a combination of fundraising and debt service by way of a mortgage. This is the first private partnership that ABC Housing has explored.

OPPORTUNITIES AND RISKS

The following are key areas of consideration for the non-profit in this partnership scenario:

- **Staff and Board Capacity**. ABC Housing should first confirm that they have the staff and Board capacity to begin the partnership process. While this project is smaller in scale, it will still require staff time to review agreements, work with external legal counsel, prepare various budgets, and confirm an operating model.

- **Confirm Alignment of Values**. As discussed in the Guide, a non-profit should always confirm an alignment of values through conversations with the developer and talking to other non-profits who have worked with this developer before.

- **Review the Housing Agreement**. The local government may include specific terms regarding the rental rates, annual household income, and access to amenities in the building.

- **Test the proforma**. With a prescribed rent range in the Housing Agreement, ABC Housing should immediately test and ensure that any financing can be serviced with rents in the appropriate range. They will also want to understand any strata fees and if that can be rolled into operating expenses.

- **Confirmation of construction costs**. Ensure that regular updates and costings are built into the project timeline so that the non-profit is apprised of any cost escalation. If possible, try to lock-in the price of the units at an earlier stage of the process.

- **Potential Government Partner Expectations.** It is worth also checking with the local government about any expectations, and specifically related to payment of construction costs.

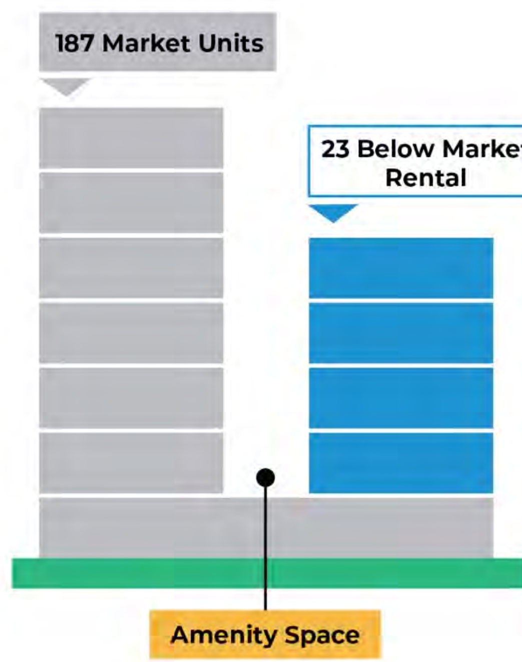
- **Strata costs and amenities**. A clear understanding regarding costs and access to shared amenities should be established early on in the development process. In addition, the non-profit should understand its role in the strata corporation and how many votes it will receive.

- **Fundraising Feasibility.** Part of the due diligence for the non-profit is to confirm the feasibility and target for fundraising.

4.2 Scenario #2: Market Rental

Springtime Affordable Housing provides housing with some supports for individuals having completed addiction treatment programs, successfully completed two years in transitional housing, and have now moved into permanent housing. Springtime Affordable Housing has an existing relationship with a developer who had previously built a housing project for them. The developer has received rezoning and a development permit for a new 210-unit apartment complex that will be market rental housing. The developer has approached Springtime to own and operate 23 units plus amenity space located in a smaller 4-storey building next to the larger rental tower. The two buildings would share one underground parking lot. These 23 below market rental units were a requirement as part of the rezoning and density bonusing process, but the operator was not required to be selected at that time. It is unclear initially how much additional density was provided to the developer through the density bonus policy. The local government has a Housing Agreement on title where it does not prescribe a rent range, but instead provides an annual income limit for residents. The design of the building is fairly complete, with some potential for minor adjustments in the interior ahead of the building permit application.

The developer has proposed that Springtime purchase the 4-storey building in a separate air space parcel. The cost would be based on the fair market construction value when construction commences. The developer has not confirmed the total cost, but based on market conditions, this may range close to $400–$440 per square foot. With a floor area of 18,000 ft^2, this would cost Springtime up to $7,920,000. Springtime will have to apply to Provincial funding sources to cover the cost by way of a grant and a mortgage.



Springtime will have to prepare a funding application and demonstrate that the 23 units can be rented at affordable rates while also providing the necessary support services in the operating budget. They will also have to review the design to confirm it will meet funding requirements and their own program components.

OPPORTUNITIES AND RISKS

The following are key areas of consideration for the non-profit in this partnership scenario:

- **Staff and Board Capacity**. While Springtime may have experience in development, it is always good to re-confirm staff and Board capacity to begin the partnership process.

- **Confirm Alignment with Client Needs**. While the non-profit has worked with this developer previously, it does not mean that another project with the same team will be the right fit. Springtime should confirm internally that the structure, costs, and project form will best serve their client needs.

- **Review the Housing Agreement**. Confirm the terms from the local government regarding annual household income limits and any other terms that may impact operations.

- **Test the proforma**. With a prescribed annual income range in the Housing Agreement, the non-profit should immediately test and ensure that any financing can be serviced with rents in the appropriate range. They will also want to test any funding rent requirements, depending on what funding programs are currently available.

- **Review the design**. With the project design in a later stage, there may not be opportunities to provide input on the drawings. Confirm if the design will meet tenant and program needs.

- **Potential Government Partner Expectations.** It is worth also checking with the local government about any expectations, and specifically related to payment of construction costs.

- **Confirmation of construction costs**. Ensure that regular updates and costings are built into the project timeline so that the non-profit is apprised of any cost escalation. If possible, try to lock-in the price of the units at this stage. Depending on Springtime's relationship with the developer, they may consider negotiating the price based on the density bonus that was achieved by providing the affordable housing units.

- **Amenities and shared costs**. A clear understanding regarding costs and access to shared amenities should be established as soon as possible.

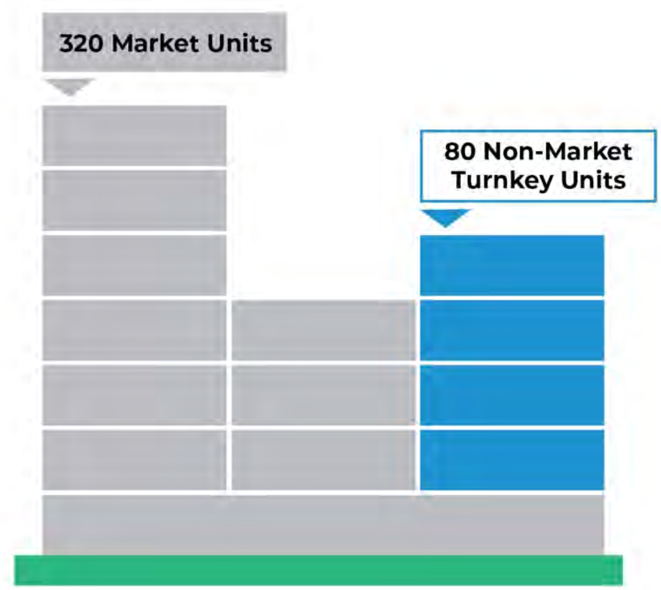
- **Funding availability and timing.** What is the timeline for approval of funding? Ensure that the developer has a realistic understanding of the funding approval process and what amount is needed for Springtime to commit to purchasing the units.

4.3 Scenario #3: Turnkey Project

A local government has inclusionary zoning policies that requires a developer build 80 non-market units (to be operated by a non-profit organization) as part of a large rezoning that will result in multiple apartment buildings with a total 400 units (a combination of market rental and market strata). The development permit and building permit have been issued and construction has already begun on-site. The developer is required to transfer the non-market units as an air space parcel to the local government, to be managed and operated by a non-profit operator. A Housing Agreement is registered on title to secure the non-market units in perpetuity.

The local government has a "preferred partner list" made up of local non-profits who met the criteria from a previous Request for Qualifications issued by the local government. When inclusionary zoning units become available, the City issues a Request for Proposals (RFP) to the preferred partner list.

Avenues Housing Society is a non-profit that is on the preferred partners list and provides housing for single mothers and their children. Another non-profit, Willow House Society that provides affordable housing to singles and families, is not on the preferred partners list with the local government, but has approached Pathways to prepare a joint submission for the 80 units. The two societies would propose to split the 80 units between the two organizations.



OPPORTUNITIES AND RISKS

The following are key areas of consideration for the non-profit in this partnership scenario:

- **Alignment between the two non-profits**. Just as a non-profit should consider whether a developer has alignment of vision, partnering with another non-profit to split and operate units should include a similar confirmation of alignment.

- **Staff and Board Capacity**. As noted throughout this Guide, it is always good to re-confirm staff and Board capacity before beginning the application process.

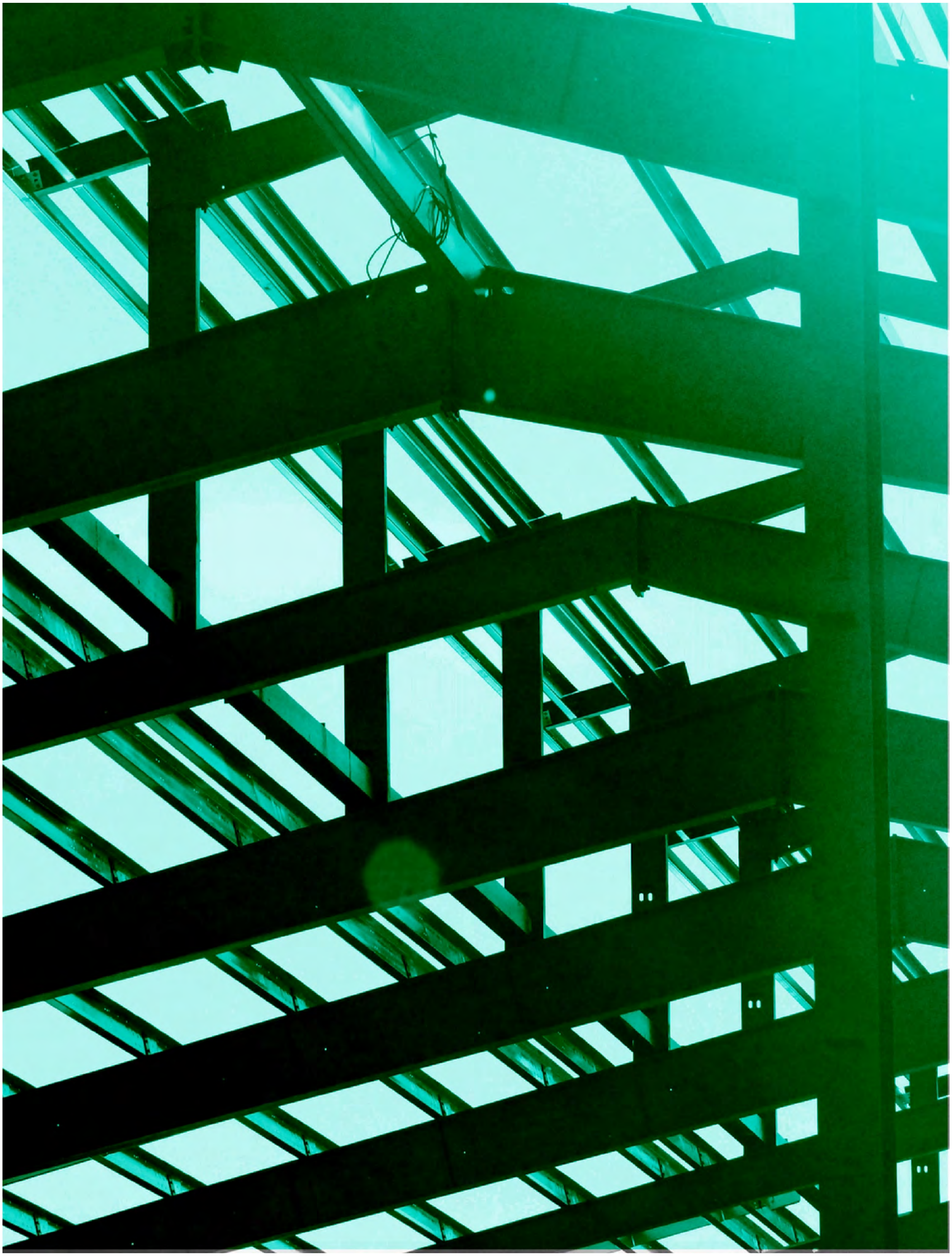
- **Review the terms/agreements**. Confirm the Housing Agreement terms from the local government regarding annual household income limits and any other terms that may impact operations. If the local government has shared any other agreements or terms (i.e., cost sharing, lease agreement, etc.) as part of the RFP, ensure that these terms are suitable to both non-profits. The proposed lease length should also be reviewed. Typically longer leases (i.e. 99 years) are preferred by the non-profit sector so that major asset upgrades or retrofits that usually take place around the 50-60 year mark do not coincide with a lease expiry.

- **Test the proforma**. Both non-profits should immediately test that the operating budget can work with rents in the approved range. It would be recommended that each group share their operating budget and confirm that both groups can make their programs work.
- **Review the design**. With the project already under construction, there are likely no opportunities to provide input on the drawings. Confirm if the design will meet tenant and program needs and that staff are trained and ready to operate the building systems to be inherited.
- **Amenities and shared costs**. A clear understanding regarding any shared costs and access to shared amenities with the rest of the building/complex should be established.

5. Closing

This Guide is intended to be used by non-profit housing providers that are exploring the idea of partnering with a developer for ownership or a long-term lease in a privately led new development. The thought of securing new housing for a non-profit is an exciting prospect and it is important to conduct thorough due diligence before taking the plunge. This includes an internal review of the non-profit's capacity for growth and risk readiness for a new partnership, and the external review of a potential partner to ensure value alignment and clear terms to ensure success in the partnership.

This Guide was developed with input and lessons learned gleaned from leaders in the non-profit sector today. The intent has been to reflect the experiences and best practices found in the sector at the time of writing. As partnerships between non-profits and developers become more and more commonplace, there will likely be new lessons learned and refinement of best practices. As a result, the researchers recognize that there is room for this Guide to evolve as best practices evolve.



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