

5 February 2014

Consultation on CHP regulation proposals, c/o Social Housing Unit
Construction and Housing Markets Branch
Ministry of Business, Innovation and Employment
PO Box 10729
Wellington

By email to: CHP.regulations@mbie.govt.nz

Community Housing Aotearoa (CHA) is the peak body for the Community Housing sector, and we are pleased to provide the comments below regarding the proposed *Regulatory Framework for Community Housing Providers* consultation document issued in December 2013. We are encouraged to note that government is proceeding with this important aspect of the Social Housing Reform Programme and is proposing a framework that shares many components with our *Preliminary CHA Position Statement: Accreditation and Regulation* issued 17 December.

This submission incorporates the views of our members as we have heard them, and where possible, CHA has attempted to put forth a shared view. We have encouraged our members to support this submission, and when there are points of difference, to make those clear in their own individual submissions. We also wish to express support for the submissions made by our members. Given the limited amount of time for this consultation we welcome the opportunity to discuss the views expressed. We welcome ongoing dialogue and debate.

As noted in both the consultation document and our Position Statement, a well-structured and properly implemented regulatory framework can provide confidence to all participants for on-going large scale investment in the sector. We believe a process of continuous improvement and increasing community benefits can be fostered through an appropriate regulatory approach. New Zealand is at the initial stages of the transformation of the sector and the regulator needs to adopt a framework that facilitates the desired end-state. A process that embeds partnership between government and the sector is desirable. This approach recognizes the need to allow both the Regulatory Authority and the sector to mature and understand the new playing field being developed. This non-adversarial approach will save both government and the sector time and money better devoted to addressing New Zealand's housing needs.

The consultation document proposals and questions are in italics; our responses to the specific proposals and questions are provided below:

Proposal 1: *There will be two classes of registered CHP in the end-state regulatory framework:*

- . Class I: Social Landlord (for CHPs seeking to access IRRS); and,*
- . Class II: Portfolio/Asset Manager and Developer (for CHPs seeking to access capital funding).*

Question 1: *Do you think that the two classes of registration are appropriate and sufficient to oversee all CHPs accessing any form of Government funding and investment?*

Response 1: No; we would propose that they be called “Categories”. There would appear to be two viable options, each with different merits and challenges.

We suggest that further consideration be given to these options, including some work on costs and benefits for each. The reason we suggest this is to better understand whether one of the options better achieves the goals of the reform programme, and its desire to achieve an end-state of a strong community housing sector fit for purpose of meeting the needs of a wide range of housing challenges across the housing continuum.

Option 1: no classes or categories; instead a single minimum set of common standards that any community housing entity (see definition in Response 3 below) would need to satisfy with regards to its governance, management, and financial systems. From there, organisations would be assessed against common standards, for their capacity to deliver high quality services, in defined activity areas. The list of activity areas would include, but may not be limited to:

- Social rental housing
- Affordable rental housing
- Emergency housing
- Tenancy management
- Portfolio/Asset management
- Housing Development

For example, a Registered community housing entity would identify which one or several of these activities it is involved in, and submit the necessary evidence of its capacity to deliver relative to that activity.

The different standards relevant to the various activities would be assessed in proportion to the level of risk each activity presents, adjusted for the size and scale of the organisation and its projects.

Further consultation and discussion is necessary to get these groupings right.

Option 2: Three Categories: In this approach we would agree with Category I as proposed. Category II should be defined as Portfolio/Asset Manager and a new Category III Developer should be created. We also propose that these new Categories be defined now and consulted upon by 1 July to permit asset transfers and new capital funding to proceed. Without such certainty, the reform program may lose momentum and not achieve its goals.

There are fundamentally different risks inherent in Portfolio/Asset Manager and Developer roles. The creation of the Category III developer appears necessary to comply with the tiered regulatory approach according to functions and in proportion to the level of risk each class presents.

We propose a definition of the core functions of Category II Portfolio/Asset Manager as follows:

- a. determining changing housing needs and planning asset acquisitions, disposals and reconfiguration to respond to that need (strategic asset management);
- b. setting and meeting relevant property condition standards;

- c. planning and undertaking responsive, cyclical and life-cycle maintenance to maintain property conditions (asset maintenance); and,
- d. complying with all relevant legislative requirements (including, but not limited to, the Building Act 2004, the Building Regulations 1992, and the Residential Tenancies Act 1986).

We propose a definition of the core functions of Class III Developer as follows:

- a. Determining local affordable and social housing demand and planning developments to respond to that need;
- b. Acquiring property, securing required consents, managing the architectural, engineering and construction process to build and/or rehabilitate housing and related community facilities;
- c. Setting and meeting relevant property development standards with priority placed upon long-term durability and functionality;
- d. Complying with all relevant legislative requirements (including, but not limited to, the Resource Management Act 1991, the Building Act 2004, and the Building Regulations 1992).

Regardless of which option, we would hope that officials would do some further work with the sector to understand which of these options would best deliver an end state regulatory framework, and then pursue the full option at this time.

Since the Housing Act provides the authority for the currently SHU-Prequalified organisations to enter into contracts with government for the Income Related Rent subsidy for up to one year from the April 2014 deadline, we believe it is worth the investment of time to get this framework right.

Proposal 2: *In the early stages of operation of the regulatory framework, only one class of provider (Class I – Social Landlord) will be operational. Class II registration will become operational at a later time, as required to support the SHRP.*

Question 2: *Do you agree with the definition and purpose of Class I registration?*

Response 2: We can see the reasoning behind commencing a limited scope to the Regulatory Authority relative to roll out of the IRRS, however given our comments above and suggestions in Response 3, modifications would be recommended.

It is essential that all classes or categories of registration are turned on at the same time. We have reached this conclusion as we hear that there will not be any funding proposed for the Social Housing Fund as requested in our December 2013 open letter. Instead we are hearing that asset transfers, utilising the HNZC stock may be a preferred approach from government's perspective. If this is in fact the case, the the opportunity for redevelopment of that stock, to achieve the reform goals, implies the need to have the regulatory framework in place to foster Portfolio/Asset Management as well as Development activities. Surely we'd need to have the Regulatory Framework ready and fit-for-purpose, wouldn't we?

Proposal 3: *That the eligibility criteria for Class I registration contained in this section are adopted, including the requirement that applicants for registration must conform to the definition of 'Community Housing Provider' contained in the Amendment Act.*

Question 3: *Are there any additional qualifications to the eligibility criteria required – if so what would they be and why?*

Response 3: The proposed definition of Community Housing Provider is flawed; We suggest the following changes to align with the definition of a Community Housing Entity as set out in Clause 29 of the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill. We believe it is essential that the terminology in these two pieces of legislation are brought into alignment:

“Definition

“(2) In this section and section LD 3 (Meaning of charitable or other public benefit gift), community housing entity means a trust and its trustees, or a company, that carries on the business, and–

“(a) the business is not carried on for the private pecuniary profit of any individual; and

“(b) all profit of the business is reinvested into the business; and

“(c) no person with some control over the business is able to direct or divert, to their own benefit or advantage, an amount derived from the business.

We suggest that the above are the essential test of a community housing entity that the Regulatory Authority should be concerned with. The reason is to ensure maximum leverage and retention of the public investment in social and affordable housing is able to be recycled for ongoing deployment into the organisations business.

Please see our submission on the Taxation Bill (attached) for a fuller explanation of the definition, and the proviso that we have suggested. If the Taxation Bill resolves an acceptable definition, then we see great merit in ensuring that the Regulatory Framework utilise the same definitions. If, however, we end up with an unworkable definition in the Taxation Bill, then we would want to have further dialogue to understand if a different definition for regulation makes sense.

This question of timing is yet another reason why we ask the Regulatory Authority to take time and ensure all of the working pieces are properly coordinated.

Returning our minds to consideration of the definition proposed in the consultation document, we suggest that it might work if it were headed as a Social Landlord, meaning a housing provider that has, as one of its objects, the provision of one or both of the following types of housing: a) social rental housing; b) affordable rental housing. This approach would be in line with our suggestions set out in Option 1 of Response 1 above, where we establish the definition of the Community Housing Entity, and then describe several activity areas in which it operates.

In principle, if the goal is to create a level playing field for all providers, then we do not agree that HNZA should be excluded. What regulations then is it governed by? Are they more or less stringent than those that community housing entities are held to?

Proposal 4: *That Local Authorities and Council Controlled Organisations are not eligible to apply for registration at this time.*

Question 4: *Do you agree that Local Authorities, Council Controlled Organisations and/or their majority controlled subsidiaries should be ineligible to apply for registration at this time? Why?*

Response 4: A stated outcome at the 'end-state' for the social housing reforms is a level playing field between HNZC and other providers. If true competition in the market to enable greater consumer choice and diversity is another important outcome, how can different rules be applied to the potential competitors? We do not understand how the playing field is levelled when Local Authorities and Council Controlled Organisations are not treated consistently with other market participants.

We understand that there is limited funding for the IRRS pilot. However this is not a reason to exclude Local Authorities.

We believe setting aside the larger principles on which the reform is based for a short term benefit is wrong. If LAs and CCOs engaged in the provision of social housing are not brought under the same regulatory framework, what standards will be applied to them? How are these determined and what are the consequences of not achieving the standards? There are many opportunities for partnerships with local authorities and having them inside the tent is the best way to foster those outcomes.

CHA's members include local authorities, and we support their inclusion in a broad based housing continuum, which will best happen when they are part of the regulatory system.

Proposal 5: Applications for registration are accepted throughout the year.

Question 5: Should there be regular application/registration 'rounds', or should the Regulatory Authority accept applications throughout the year?

Response 5: The Regulatory Authority should accept applications throughout the year. This will be effective to promote new entrants as they are ready to proceed and smooth the workflow for staff managing the process. We believe it will permit better dialogue between applicants and staff and produce better outcomes. Also, as discussed in our comments, market-based Accreditation should be an accepted, alternate path to registration.

Proposal 6: Applications for registration are in electronic format and involve on-site assessment by the Regulatory Authority.

Question 6: Should applications (and supporting documentation) be submitted in hard copy, or would you support electronic submission of applications accompanied by on-site assessment by the Regulatory Authority?

Response 6: We support the electronic submission of applications for those choosing to work with the Regulatory Authority directly. Due to privacy concerns, there will be documents that organisations will prefer to have the Regulatory Authority view on-site, and not to send in, and that flexibility should be allowed for. We would expect that any information required would be able to be submitted in a time-effective, electronic manner.

Proposal 7: That appropriate performance standards are developed as the basis for registration and on-going monitoring purposes.

Question 7: Are there any additional standards that should be included in the sample performance standards? If so, why?

Response 7: No additional standards should be included in the sample performance standards.

Question 8: *Are there any standards in the sample performance standards that should not be included? If so, why not?*

Response 8: In reviewing the sample performance standards we have some concerns. In keeping with the stated intent of regulating according to functions and in proportion to risk levels, it is necessary to understand what objective criteria would be applied to the standards. As an example, standard 3.a. requires “ensuring a viable capital structure”. We believe this standard would be considerably different for an organization engaged solely as a Social Landlord compared to one actively undertaking Development. Other criteria in this section and other sections also imply an evaluation of results and not an objective review of adopted policies and procedures. As written, we are not sure how some standards could be objectively evaluated. For example, a sub point in 1.3 requires “maintaining the reputation of the community housing sector”. How would that be objectively evaluated?

Apart from the general concerns raised above, there are standards we do believe are sufficiently clear to require changes. Some of the standards included for Property and Asset Management are not appropriate for a Class I Social Landlord. This category should be divided between the distinct and separate roles of Property Management concerned with daily operations of housing and Asset Management concerned with longer term ownership issues of housing. Specifically, standards 5.a. “determining changing housing needs and planning asset acquisitions, disposals and reconfiguration to respond to that need (strategic asset management)”; and 5.e. “planning and delivering its housing development programme (asset development)” should be removed. These are clearly concerned with asset management (owner responsibilities) aspects of housing and not social landlord (property management) responsibilities.

Question 9: *Which of the sample performance standards are most important for assessing Class I registered CHPs?*

Response 9: The most important performance standards for assessing Class I registered CHPs are those contained in Attachment 1 Section 4 covering Tenancy Management and Section 5 Property and Asset Management sub items b, c and d.

Proposal 8: *That the attached draft Guidance Notes be used as the basis for the performance standards that will be used for registration and on-going monitoring purposes for Class I CHPs.*

Question 10: *Do you support the description of the key functions (column 3 in Attachment 2) of Class I registered CHPs?*

Response 10: Yes.

Question 11: *Do you think the supporting evidence requirements (column 6 in Attachment 2) that CHPs would need to provide are sufficient to oversee CHPs in receipt of IRRS/about right / too burdensome on CHPs?*

Response 11: As discussed in our introductory comments, we believe that for initial registration two paths should be available to CHPs (for those not approved based upon an existing contract with the Social Housing Unit). A CHP should be able to register by either independent Accreditation or register through an assessment by the Regulatory Authority.

We believe clarification of the evidentiary documents is needed. First, it appears that there is no distinction between documents required at initial registration and those for on-going

compliance. For example, one of the items is “Independent customer satisfaction surveys [using a methodology prescribed by regulatory authority]” that would imply it does not apply to initial registration. Second, the examples imply thresholds for performance that are not specified. Using the customer satisfaction item above, what level of satisfaction would be considered acceptable? Without further clarification we are unable to assess how burdensome it will be to meet the requirements.

Question 12: *Are there any additional requirements in terms of key functions, areas of focus for the Regulatory Authority, or evidential requirements, that should be added to the Guidance Notes?*

Response 12: No.

Question 13: *Are there any requirements in terms of key functions, areas of focus for the Regulatory Authority, or evidential requirements, that should be removed from the Guidance Notes?*

Response 13: As discussed in Response 11 and Response 8, there is a lack of clarity regarding a number of items. Until the concerns noted in these prior responses are addressed, we cannot provide an informed opinion in response to the question.

Proposal 9: *Smaller scale community housing providers who have received one-off grants for housing will be excluded from automatic inclusion in Class II registration and may opt out of Class I registration unless they wish to receive IRRS.*

Proposal 10: *A final decision on the inclusion of smaller scale community housing providers, who have received one-off grants, in Class II registration will be deferred until the more detailed consultation on further Classes of registration occurs.*

Question 14: *Do you think registration should apply to all Community Housing Providers in receipt of government funding or grants irrespective of their size?*

Response 14: Yes; there should be one set of requirements that apply to all.

Question 15: *How would you define a “smaller scale” Community Housing Provider?*

Response 15: We would not define a “smaller scale” Community Housing Provider. In keeping with the stated intent of regulating according to functions and in proportion to risk levels, the issue of size is not the relevant issue. For all organizations, sufficient time from the initiation of the rules to their final application should be granted to enable them to fully comply.

Proposal 11: *An independent accreditation programme should be used to support the regulatory framework.*

Question 16: *Do you support the use of a voluntary, independent accreditation programme to demonstrate capacity against certain aspects of the performance standards for registration and on-going compliance monitoring purposes?*

Response 16: We believe that the Accreditation approach proposed in our Position Statement needs to be further strengthened in the proposed regulatory approach. We note

that it took three years for the Social Housing Unit to become fully operational and performing at its current level. Undertaking a similarly complex new responsibility, the Regulatory Authority should take advantage of existing processes, skills and capacity to fulfil its responsibilities. The existing market-based Accreditation system should be permitted to operate side by side with the Regulatory Authority approach to assess organizational capacity against objective performance standards and confer approval for registration. CHPs choosing to undergo Accreditation would be on equal footing with those choosing to work with the Regulatory Authority for registration. This would free up Regulatory Authority resources to focus on other areas of regulation, such as refining standards, monitoring outcomes and on-going compliance.

Proposal 12: Appeals against decisions by the Regulatory Authority are heard in the District Court in the short to medium term.

Question 17: Do you support appeals being heard through the District Court in the short to medium term? If not, what would the other alternatives be, and what would be the advantages and disadvantages of each?

Response 17: We believe the use of the Courts to resolve regulatory concerns is an expensive and unpredictable avenue for all parties involved. We believe that a mediation-based approach would provide for a better mechanism to resolve disputes. We also believe an overall approach of partnership and cooperation should be established by the Regulatory Authority. In this way, regulatory concerns would be addressed first through discussion with the CHP to allow for a clarification of issues and exchange of information. If this is not successful, then a formal notice would be issued to the CHP allowing for response by a specified time. Only after notice and response proves unable to resolve the concern should the Regulatory Authority initiate formal action. Should this occur, mediation could be pursued to reconcile the dispute.

The proposed process has the advantage of fostering an environment of open communication to resolve issues. Talking through concerns is a quick and inexpensive way to clarify issues. Should items not be resolved through informal and formal communications, then mediation would be the path available. Mediation is again a quicker and less expensive way to resolve issues compared to the District Court.

Proposal 13: The types of information listed in this section are included on the publicly searchable register of approved CHPs.

Question 18: Do you agree with the information listed above being kept on a publicly accessible register?

Response 18: Yes

Question 19: Is there any additional information that you think should be included on the register?
If so, what information, and why should it be included?

Response 19: No, we do not think there is additional information that should be included.

Question 20: *Should any of the proposed information not be included on the register? If so, what information, and why not?*

Response 20: No.

Thank you for the opportunity to submit. CHA welcomes further dialogue as the details are progressed.

Kind regards

A handwritten signature in blue ink that reads "Scott Figenshow". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Figenshow
Director