

Mr. Andrew Plant
General Manager Strategic Purchasing
Ministry of Social Development

10 April 2018

RE: Introduction of an Encumbrance Instrument

Dear Andrew,

Thank you for following up with me yesterday regarding the concerns our members have raised regarding the introduction of an encumbrance instrument for long-term Income-Related Rent Subsidy contracts and Development Cost Funding agreements. CHA only became aware of this encumbrance on 15 March, when we received a copy from a member who wanted others to be informed of this new requirement.

I immediately followed up with Jo Murray, National Manager - Commercial, who is leading the next generation contract framework. This work began in August 2017, but has been stalled and not progressed for about six months. I had expected that the introduction of such a change would have been progressed through that existing channel, however that proved to not be the case. A meeting was held with Jo, Brigid McArthur from Greenwood Roche and Andrew Barker from your team on 20 March. From that meeting I understood that the new supply team had driven this work and that Jo was not involved. Andrew indicated that he would be progressing with individual negotiations with each CHP to agree the terms of the encumbrance.

CHA has long advocated for retention of the value created by government investment. We reiterated this in our newsletter articles on 19 March informing our members about this new requirement. We have requested and received feedback from our members on the impact of the new requirement. The bottom line is that this is adding unforeseen costs and causing delays to their developments at a time when there is a need to crack on with building. We understand this is impacting several hundred new homes, adding cost and risk to CHPs, and potentially delaying critically needed social housing supply.

The concerns they have expressed are summarised below.

Lack of notice and transparency

Members expressed the concern that this new requirement came to them without any advance notice nor explanation. CHA is deeply worried that the manner MSD chose to implement this new requirement undermines confidence in government as a partner. To date, there continues to be no explanation from MSD as to why this was implemented, why now and what it intends to achieve. This lack of forthright communication has created many of the additional concerns below.

Relationship to contracts and regulation

Members expressed a belief that the best way for the New Zealand community housing sector to deal with this issue is to use the regulatory system (CHRA) we have. Disposals of housing funded through govt investment should require the permission of the regulator – as they do in many other countries. They are already keeping records of owned housing by CHPs and any changes. This function could be easily enhanced and the authority given more powers.

Given the registration requirements and capacity contract terms, CHPs are already bearing additional cost compared to other housing providers. There are sufficient mechanisms that can be applied under contract without the need for an encumbrance and the additional cost, administration and restrictions on flexibility that they will impose.

Level playing field and equitable treatment

Members do not understand why/how a new requirement is being introduced under the same RFP process in which prior transactions were completed without this requirement. They are also concerned that since the negotiations are occurring between individual providers and MSD, that there may be advantages received by some parties that are not equally available to all. For example, in the 20 March meeting it was stated that both consideration is being given to being subordinate to mortgage lenders in some circumstances.

Intent of the encumbrance

Members are unclear as to what the encumbrance is meant to protect. Some have heard it is to protect the up-front Crown contributions, others to ensure the continued use of the property for social housing. As the draft encumbrance includes a rent charge, it appears that the money may be the priority. Clarity of the intent would assist in understanding the best mechanism to achieve that intent.

Proposed way forward

Members wish to work with MSD to design an overall environment that balances risks, incentives, controls and benefits that encourage and maximise the delivery of long-term affordable and social housing in a way that values and respects the contribution of the sector. That is the work which we thought MSD had committed to with the next generation contracting framework group. As this encumbrance issue has progressed on a separate track, we wish to sit down with you immediately to address this newly imposed barrier to delivery.

A group of community housing provider members have agreed to negotiate as a block, ensuring all get a fair and equal treatment on this issue. They are willing to take joint legal advice to ensure they can proceed with their developments in a timely and cost-effective manner. Please confirm your willingness to engage in this work by Monday 16 April, so we can inform our members in our upcoming newsletter. Kind regards,

Chris Glaudel



Deputy Director

cc: Cassandra Rivers, National Manager Strategic Stakeholder Engagement, Housing, MSD
cc: Fiona Fitzgerald, Manager, Community Housing Regulatory Authority