



Ms Maria Fidge
Manager Business and Finance Services
SACHA
GPO Box 1669
ADELAIDE 5001

9th August 2005

Dear Maria,

Re : Draft Funding Agreement

I am writing to provide the Community Housing Council of SA's initial response to the first draft of the proposed Funding Agreement between SACHA and community housing organisations registered with SACHA. We thank you for the work which has been undertaken to date on the new Agreement, which goes a significant distance to meeting the sector's concerns. The increase in overall funding to the sector is welcome. However we believe the draft could be considerably improved.

The Council held feedback workshops for CHOs on 22nd July 2005. Feedback has also been received directly from CHOs either verbally or in writing. I am enclosing a summary of the workshop feedback which also contains some of the written commentary from various CHOs. I understand that some CHOs have provided with you with their own feedback as well. The workshop feedback also contains recommendations to SACHA and the CHCSA regarding advancing the draft Funding Agreement to the next stage. CHCSA does not necessarily endorse these recommendations, however our role is to collect information from CHOs and pass this on to you.

In summary we propose the following principal steps as a way of addressing our concerns about the draft Funding Agreement :

- That introduction of the new Agreement be deferred until 1st July 2006 for CHOs which would prefer this timeline
- That SACHA fund the CHCSA to obtain legal and financial advice on the implications of the new Agreement, with a three month reporting timeline
- That the CHCSA and SACHA set up a joint working party to further develop the draft and consider an implementation timetable
- That the draft be recast into language which reflects more strongly a partnership approach between government and the community sector and which further simplifies compliance and administrative requirements while promoting desirable outcomes and meeting performance standards
- That SACHA consider the draft as a template and be willing to enter into bi-lateral negotiations with CHOs where appropriate rather than relying on the hardship clause only
- That as much detail as possible be moved from schedules and policies into the body of the Agreement

- That consultation and negotiation processes be strengthened and formalised into the Agreement
- That appeal and arbitration provisions be introduced
- That the market rent provisions be considered further in the light of GST requirements
- That the relativities between co-operatives and associations be reconsidered in the light of undertakings given in SACHA's Strategic Plan
- That the 90 property changeover point be given further consideration
- That the provision regarding non-retention of funds to cover vacancies be further considered
- That a way to give some flexibility in rent setting when a CHO can make efficiencies in its costs be examined
- That the rent policy be an in-depth focus of the proposed working party
- That the Agreement for more flexible use of capital contributions particularly in regard to CHOs' accessing private capital and the strict requirement around debentures be softened to allow affordable housing models to be developed
- That concerns around the changed maintenance provisions be addressed
- That issues to do with properties outside the Agreement be resolved.

Our detailed comments on the draft Funding Agreement are :

This is a major set of proposals with far-reaching and long range implications for the community housing sector. It is the first major re-draft of the Funding Agreement in fifteen years. We should not rush into adopting the draft without detailed consideration. CHOs and the CHCSA need time to consider the impact in great detail and want an opportunity to understand the implications in depth. We propose that SACHA fund CHCSA to obtain independent legal and financial advice on the draft Agreement, with a three month timeframe. We seek to negotiate a budget for this with you.

A related area requiring independent legal advice is in regard to the draft Agreement's impact of other legal obligations on CHOs notably the Associations Incorporation Act, Australian Tax Office rules and the Residential Tenancies Act.

The language of the draft has caused considerable consternation among CHOs. It is not written in the language of partnership and a negotiated agreement between equals. We believe it could easily be re-written in more inclusive and conciliatory language. Rights and responsibilities are not equally distributed between SACHA and CHOs. There should be more balance in the Agreement, for example, where penalties for non-compliance are concerned. The current draft significantly shifts the power balance in favour of SACHA.

The aim of the Change Management Process was to provide flexible management and compliance reporting and simplify management processes. The focus was to be less on compliance reporting and more on promoting desirable outcomes and meeting performance standards. It is difficult to see this goal being reflected in the draft Agreement. In some directions these changes have occurred but it is arguable that there is further scope for simplification. Compliance requirements could be seen to have increased in some ways, particularly through SACHA's reservation of policy-setting powers. Another example is the totally prescriptive clause on insurance, which gives CHOs no choice at all and allows for variation at will by SACHA. This clause may also cause problems for CHOs with mixed portfolios of properties inside and outside the Agreement.

We are concerned that the proposed date of introduction is midway through a financial year. CHOs should have the option of not introducing the new Agreement until 1st July 2006 if they wish, to avoid confusion with bookkeeping requirements. This may necessitate a one-off change

to the date of one of the Rent Reviews due in 2006. We recognise that some CHOs may be keen to introduce the new arrangements prior to that date. They should have the option to do so if they are willing to undertake the administrative responsibilities involved in changing over midway through a financial year. They should also recognise that they will be signing up to a rent policy which is still being finalised and which will change with the introduction of market rents later in 2006.

It may be that a staged introduction of the new Agreement is required. We would be very happy to work with you on an implementation timetable for 2005 and 2006. The idea of a 'dry run' with one or two CHOs has merit in our view.

There may be inconsistencies in the way policies, schedules and guidelines are treated in the draft Agreement. This would merit further exploration.

It would have been better to make financial modelling of the impact of the draft available to CHOs sooner rather than later.

We view the draft as a template agreement. We believe it should be available as a bilateral agreement between SACHA and CHOs and therefore there could be individual modifications according to need. Large CHOs have quite different tenant profiles, links with sponsor organisations and other characteristics. CHCSA would be willing to assist in bi-lateral negotiations.

As an example of a bi-lateral approach, SACHA may wish to consider basing costs centres on actual costs facing individual CHOs rather than on a mixture of notional percentages of property values and set estimates of other costs. What would happen if there were a significant shift in property costs in one direction or the other and the 1% were no longer appropriate? Presumably the figure has been set at 1% as this represents an average. Is a fixed rate of maintenance allowance appropriate given the variety of housing styles, sizes, ages, conditions and locations of the dwelling stock?

There is considerable concern at the inclusion of so many significant policies as Schedules to the Agreement, which in effect give SACHA the power to modify the Agreement unilaterally.

With limited exceptions to cover government eligibility criteria and rent policy, we can see no necessity or justification for this approach. It would be desirable to move as much detail as possible from the current schedules into the body of the Agreement to forestall these problems emerging in the first place. If this is not to be the case then the policies should form part of the Agreement and not subject to change without the agreement of the CHO as one of the parties to the Agreement.

It is confusing to have the funding requirements divided into three areas – the main document, the schedules and the policies. CHOs already have to hunt through many complex documents for the answer to questions – the Act, Regulations, Rules and By-Laws and so on – and this adds another layer of complexity.

Although the draft refers to consultation around proposed policy changes, there are no guarantees as to the process. The current wording makes consultation sound like something which happens after the event not before it. The process should comply with recognised community standards and protocols for consultation processes, eg giving adequate notice; putting proposals in writing; ensuring the consequences of proposed changes are clearly understood by those affected by them; and other measures. The draft should be strengthened to

refer to negotiation rather than consultation. SACHA should agree to consult the CHCSA before introducing policy changes. We suggest the Agreement specifically acknowledge CHCSA as the sector peak through which policy changes will be negotiated before change is implemented. A set period of notice for consultation should be specified. The endorsement of SACHA Board should be required before policy changes come into effect.

Additionally, we believe the Agreement should spell out appeal mechanisms and in particular we propose that in matters of dispute arising from the Agreement, including proposed changes to SACHA policies, CHOs have the capacity to refer their concerns to the Health and Community Services Commissioner for resolution. This would be in addition to or as alternative to appeal rights under Section 84 of the Act.

There are concerns about the proposed move to market rents. While the move appears to be designed to redress inequities caused by the current ceiling rent approach, it appears the change could also cause problems for some CHOs in regard to compliance with ATO GST rules and the charging of non-commercial rents. We recognise that some CHOs do support the move to market rents as a way of addressing issues with ceiling rents, however in solving one problem we should take care not to create another. We believe that SACHA must find a way to address these concerns. One approach might be to negotiate special provisions for CHOs with the ATO. For example, if in the aggregate a CHO charged rents which are no more than 74.9% of market rents across its stock, this would be accepted even if individual tenants paid more than 74.9%. This would be similar to the approach taken with housing of applicants in different categories where the Commonwealth accepts that individual sectors of the social housing system do not have to meet the target for housing applicants in Categories 1 and 2, provided the system as a whole meets these targets.

It is believed that a proportion of tenants will be subjected to rent rises as the result of the introduction of market rents. It is suggested that the Agreement specifically limit such rises to a set amount per week eg \$5.00 and that this be included in the body of the Agreement not in the policy.

SACHA's Strategic Plan states :

“We will provide assistance to CHOs to manage their business by employing registered service providers, for example, external trainers, clerical, financial management and maintenance assistance”.

This has happened in respect of housing associations but not to the same degree for housing co-ops. The introduction of differential administrative allowances between the two sub-sectors should be reviewed to ensure housing co-ops have equitable access to service providers as promised in the Strategic Plan. This could also be an issue as we work together on the development of a Regional Infrastructure Network for CHOs, which could require CHOs to fund the cost of engaging a regional service provider. It would be unfortunate if co-operatives were discriminated against and unable to afford such assistance whereas a housing association could afford it.

Another major concern is the limit of 90 properties at which the proposed administrative allowance cuts in. We are uncertain of the basis on which this limit was created. Is there an actuarial basis for it ? Are there known costs which cut in above this level ? We believe it may be an inappropriate driver with unexpected consequences. Perhaps a sliding scale would offer a more refined approach. If this is not possible then at the very least there should be a provision for a review of this component within two years, to assess its viability.

The provision that a CHO cannot retain funding to cover vacancies is perplexing. Costs remain the same when there is a vacancy, indeed costs may increase due to the need to repair damage and fill the vacancy. Yet funding reduces. This can only lead to situations where the CHO will require deficit funding from SACHA to cover the gap. Why not let the CHO retain the same allowance if there are sufficient funds ? Will CHOs who are Comhouse members still be required to pay maintenance allowance to Comhouse when a property is vacant?

At the present time Operating Levy is a floating amount. If a CHO can maintain tight control over its costs then it can lower its rents as compensation. This provision is particularly useful to housing co-ops where member participation is highly valued. Under the draft Agreement this flexibility and incentive is lost. Is there a way to retain this feature in the new Agreement ?

It appears that the Rent Policy is still a work in progress. We propose a specific negotiation process be entered into over the next twelve months for this policy, due to its wide-ranging impact and complexity.

We believe the time has come to move beyond the current restrictive funding arrangements for community housing. Rather than automatically requiring that capital contributions be returned to SACHA, the Agreement should allow CHOs to use these funds to help finance borrowings, provided those borrowings are used to acquire additional stock, are financially responsible and fit within a sector-wide plan for the expansion of community housing.

Associated with this, we question why the draft Agreement states that SACHA “will” require a funded CHO to issue a debenture rather than “may” as in the current Agreement. Does the draft provide the flexibility to ensure that SACHA and CHOs can enter into possible new arrangements for affordable housing flowing from the Housing Plan for South Australia ?

While we support the development of maintenance plans for CHOs, we have several concerns about the proposals in the draft. Firstly, will the removal of a requirement to budget for cyclical maintenance result in CHOs under-funding their future maintenance requirements and lead to serious deficits in future years ? Secondly, will smaller CHOs in particular have the time and resources to prepare effective maintenance plans ? Assistance to CHOs needs to be significant to ensure adequate maintenance planning. Thirdly we believe that CHOs should have a choice over who they use as property inspectors and that this should be written into the Agreement.

Finally we note that CHOs which are Comhouse members are in fact treated differently by being required to pay 47% of their allowance to Comhouse – effectively this is still the major maintenance levy.

We question whether there is sufficient clarity about properties funded outside the Agreement eg in clauses 6.1.1. and 2.5.1.

We put forward the following additional recommendations based on CHO feedback :

- That the draft Agreement specifically authorise maintenance funds to be used to offset the costs of maintenance administration where a CHO employs administrative staff or a service provider
- That the Agreement make it clear that funds under the Property Allowance and Administration Allowance can be combined into one expense pool
- That SACHA increase the proposed 10% levy on Non-Member Tenants to a more realistic level which encourages such tenants to become co-op members where appropriate
- That SACHA coordinate its advice to CHOs regarding tenancy issues with the RTT

- That the section on new-build construction be amended to require SACHA to consult with CHOs over design and materials especially with reference to housing for people with disabilities or mental health issues
- That the entire Agreement be subject to review after five years not ten years
- That the due date for monthly capital contribution reports be the 28th rather the 21st, to fit in with other CHO administrative requirements

In Conclusion

Due to the tight timelines on consultation we have not yet had sufficient time to do a thorough comparison of the draft Agreement with the current Agreement. Therefore there may be further points which we would wish to discuss.

I would like to assure you that CHCSA is committed to working with you in development of the Funding Agreement in order to obtain the best possible outcome for all. However, further time for consideration is required. We would be happy to suggest re-wording in certain clauses to reflect our concerns. To address these concerns we propose that SACHA and CHCSA jointly establish a working party to consider the draft in more detail. The working party could also include CHO representatives.

Yours Sincerely,

Ciaran Synnott
Executive Officer

Attachment : Summary of workshop held on 22nd July 2005