

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

Written Statement

To: Joint Oireachtas Committee on Housing, Planning & Local Government
From: David Rouse / Bryan Maher, Apartment Owners' Network
Date: 19 April 2018

Subject: Issues Impacting Apartment and Multi Unit Developments

A Chathaoirligh agus a Chomhchoiste, ar dtús ba mhaith linn ár mbuíochas a ghabháil libh as cuireadh a thabhairt dúinn labhairt libh inniu. Chairman, we wish to thank the Committee for your invitation to appear here this morning.

My colleague Bryan Maher and I are volunteer directors of the Apartment Owners' Network. We are also volunteer directors of the owners' management companies for our respective apartment developments.

We propose in this Statement briefly to cover four key themes-

- We will provide some background about the Network
- Then we will identify from our experiences the main challenges facing apartment dwellers and home owners in managed estates
- We propose to highlight for you the principal problems with the governance of the multi-unit development sector, and in particular difficulties with current legislation including the Multi-Unit Developments Act, or "the MUD Act" for short
- Finally, we propose to put forward the main reforms we would like to see in the sector.

1. About the Apartment Owners' Network

By way of background, the principal object of the Apartment Owners' Network is to represent the views of owners, owners' management companies and directors of owners' management companies in managed estates. We should say that we do not represent managing agents, developers, or landlords per se. However, there are areas of common ground and of common interest with these groups.

The detailed objects of the Network are summarised in Appendix I to this Written Statement.

A sample of our recent public consultation submissions is in Appendix II. These documents set out in detail the problems in the sector and our suggested solutions and reforms.

Before going any further we wish to cut through some of the jargon around the operation of owners' management companies.

An "owners' management company", or "OMC" for short, is a term from the MUD Act. The OMC is made up of all the owners in a development.

The board of directors is elected by the owners. The board is in effect a committee of civic-minded owners who decide to take on the role of director, and in that way to help to manage their estate for the benefit of the wider community.

2. Apartment Problems

In order to provide context for our remarks, it might be useful to outline the size of the apartment and multi-unit development sector in the country.

Census 2016 recorded that about a half a million of the population live in apartments and flats, and that there were about 205,000 apartments in the country at that point.

Best estimates are that there is somewhere between five and seven thousand owners' management companies in the country. If there are at least three directors on the board of each OMC, there could be upwards of 15,000 volunteer directors throughout the country, working stoically for the betterment of their communities. The number of OMC volunteer directors could fill a football stadium, and yet we hear very little about them or their responsibilities; that is part of why we are here today.

In our experience the biggest problems, in no particular order, affecting the apartment and multi-unit sector, and facing volunteer directors, include-

- Firstly, OMC potential insolvency. This risk arises from uncollected or underestimated service charges. Studies have shown that many OMCs collect less than 70% of the service costs budgeted and agreed by the community at the annual meeting. Research indicates that some management companies have debtor balances outstanding for five years or more. Cumulatively, service charge debt can exceed 100% of the annual budget required to run the estate.
- Second is the absence of sinking funds, also known as "building investment funds". Sinking fund provision is in many cases tied up in uncollected annual service charges. This means that the OMC is forced to use all of its available cash to meet the day-to-day costs of maintaining the bare minimum estate services such as insurance, waste collection, and lighting. The company has no cash to set aside for long-term, big ticket spending like lift replacement, or emergency fire safety repairs. We all know the names of the apartment blocks where fire has damaged homes, damaged lives, and even, sadly, led to loss of life.
- Third of the major challenges is that the service charges set by developers and by OMCs in the early years of a development are simply not enough to cover-
 - (i) day-to-day costs, and
 - (ii) future maintenance.
- The fourth big issue is the problem of building defects, which left unresolved can lead to breaches of fire safety regulations, a subject with which this Committee is very familiar; and in this regard we greatly appreciate your recent work in producing the "Safe as Houses" report.
- Next on the list is failures by OMC directors to comply with the basics of Company Law, for example inadequate accounts filings with the Companies Office, or the mishandling of board affairs and AGMs.
- Last of the big issues is poor management practices carried on by OMC directors. This encompasses abuses of positions, conflicts of interest, non-compliance with the MUD Act, and mishandling of relationships with management agents.

In a "do nothing" scenario, where action on regulation is not taken soon by those in authority, in our opinion it may ultimately fall on the State's resources to resolve the problems, when they crystallise in a crisis. Examples have already been seen in high profile cases such as Priory Hall, Long Boat Quay, and others.

It seems to us that in the absence of urgent reform, considerable funding may be required from either Local Authorities or national Government to "bail out" crisis owners' management companies. To a certain extent we have already seen a comparable situation in the form of the pyrite resolution process.

These problems will materialise over the next five to ten years as apartment blocks get older; left unaddressed now they represent a ticking “time bomb” in the sector. In our opinion the problem will only get bigger as the apartment sector grows.

3. Main problems with governance in the sector, including the MUD Act

We wish briefly to refer to the problems with the governance of the multi-unit sector, and with the MUD Act in particular, being the main piece of legislation affecting the sector.

The Act has been in effect since the first of April 2011; it has had seven years to prove its effectiveness. In our opinion there is now a legislative itch to be scratched.

From our experience, the main short-comings of the MUD Act are that-

- While it provides for the setting up of a sinking fund, it does not provide meaningful guidance on the amount of money that an OMC should set aside for its particular building investment needs.
- The Act does not contain measures to make it easy and cheap for the collective community to recover service charge debt from so-called “free-riders”, in other words owners who can but won’t pay their service charges.
- Breaches of the Act are not being policed by anyone, and remedies under the Act require expensive Circuit Court cases, which are not viable or practical for home owners in developments.
- In the case of disputes within the OMC, for example where directors act improperly in relation to the company’s affairs, Company Law remedies are too onerous and too expensive for most OMC members to access, and the MUD Act does not contain provisions to regulate the effective stewardship of OMCs by volunteer directors.

4. Reforms in the sector

Having identified some of the problems, we feel we have a responsibility to come up with solutions.

- There should be a regulator of OMCs- the Condominium Authority of Ontario is a very good template for such a regime. Our dialogue with the Property Services Regulator indicates that many of the complaints to her office from apartment owners, ostensibly about property management agents, in fact arise from the conduct of owners’ management company directors.
- Because of their unique responsibilities for common areas of apartment developments, affecting so many homes in the country, in our view there is a public interest in having a national register of owners’ management companies. Registration with the Companies Office alone is not enough to allow for robust regulation of the sector, and we have suggestions for reform in this area.
- We would like to see Ministerial regulations under the MUD Act, or amendment of the Act, to ensure sinking fund provision is professionally determined, and that it is adequate to cover future building maintenance.
- We submit that changes to the law are needed to allow efficient and timely recovery of service charge debts. This is because the current Courts route is both disproportionate and cost prohibitive.
- We propose that training and support for volunteer directors is a missing component of the current regime.
- Because the MUD Act was initiated through the work of the Law Reform Commission, and many of the Act’s provisions refer to matters of property title, the MUD Act falls under the remit of the Department of Justice and Equality. In our opinion the growth of the apartment sector as a form of housing, and the policy changes required, point towards

transferring responsibility for the Act from Justice to the Department of Housing, Planning and Local Government.

Many of these matters were considered in the Law Reform Commission consultation and report that preceded the MUD Act, however they did not make their way into the final legislation.

Other reforms we have already put forward through various public consultations include-

- Law reform to permit formal representation of long-term tenants in OMC affairs.
- Reforms that would encourage landlords and Approved Housing Bodies with multiple properties in an estate to appoint directors to the board- it shouldn't be left to a few civic-minded owner occupiers to run the OMC.
- In our opinion there needs to be a review of the Taking-In-Charge process for parts of multi-unit estates transferred from developers to Local Authorities. The process needs to be faster, and OMCs need to be involved and informed about their rights and responsibilities.
- We are aware of this Committee's work and report last year in relation to short-term lettings. Apartment owners and owners' management companies need to be aware of the obligations and risks under leases, House Rules, insurance policies, and planning law that arise from short-term lettings in their blocks.
- Finance providers need to develop structures and products for owners' management companies- to allow them to borrow for capital purposes, which already happens in Australia, and to earn a return on sinking fund deposits.
- We would like to see changes to tax law to put apartment developments on the same footing as traditional housing, for example to allow apartment owners to get the benefit of the Home Renovation Incentive for the cost of works to apartment common areas.

Most of the policies we propose are already common practice in the mature apartment sectors of countries such as Canada, New Zealand, and Australia, as we have already mentioned. We suggest that Ireland has an opportunity to select the best of these policies and approaches, and to adapt them to suit our own needs.

We have made progress in raising some of these issues with the Department of Housing, and with the Housing Agency. Our efforts have borne fruit most recently in the updated Apartment Planning Guidelines. A planning application for an apartment development must now include a building lifecycle report. In addition, planning authorities are advised to attach conditions requiring the establishment of an appropriate sinking fund, and requiring compliance with the provisions of the MUD Act, such as they are.

As you may know, the Housing Agency has commissioned studies of the apartment sector. One study is to assess the qualitative aspects of apartment living. The other is quantifying the exact number of OMCs in the country, and assessing the financial health of a representative sample of companies. We wish to acknowledge the value of the Agency's engagement with us.

We respectfully submit that the Committee might wish to consider holding wider hearings on the regulation and governance of the apartment and multi-unit development sector, to receive input from other stakeholders such as the Society of Chartered Surveyors Ireland, the legal profession, and construction industry bodies.

We very much look forward to hearing your comments, and to answering your questions this morning.

Go raibh maith agaibh.

Appendix I - Objects of Apartment Owners' Network CLG

- To achieve the proper regulation of owners' management companies;
- To seek reform of the law governing the operation of owners' management companies;
- To promote best practices among owners' management companies and the conduct of their directors;
- To educate, inform and communicate with its members in relation to matters of relevance and importance to the multi-unit development sector and such other companies whose operations affect, directly or indirectly, the purchase, sale or ownership of residential units in multi-unit developments or of owners' management companies;
- To influence public policy for the betterment of multi-unit development living;
- To influence for the better the general public's perception and understanding of multi-unit development living;
- To engage with other parties with common interests in the multi-unit development sector;

Appendix II - Sample of Public Consultation Submissions

- 1. AON / Society of Chartered Surveyors Ireland - Joint Submission to the Review Group on the Administration of Civil Justice (March 2018)**
- 2. Apartment Planning Draft Guidelines - Submission to Department of Planning, Housing and Local Government (January 2018)**
- 3. Budget 2018 - Submission to Department of Finance (July 2017)**

Submission to
Review Group on the
**Administration
of Civil Justice**

February 2018

Abbreviations/Acronyms Used

| | |
|---------|--|
| DHPLG | Department of Housing, Planning and Local Government |
| DJE | Department of Justice and Equality |
| MUD | Multi-Unit Developments, as described in section 1(1) of the MUD Act |
| MUD Act | Multi-Unit Developments Act 2011 |
| OMC | Owners' Management Company as defined in section 1(1) of the MUD Act |
| PMA | Property Management Agent |
| PSRA | Property Services Regulatory Authority |
| SCSI | Society of Chartered Surveyors Ireland |

1.0 Introduction

1.1 Executive Summary

This submission responds to the request for submissions issued on 29 November 2017 by the Review Group on the Administration of Civil Justice (“the Group”).

Our submission covers the following (three of the five) topical areas of the Group’s work¹-

- (c) Encouraging alternative methods of dispute resolution;
- (d) Reviewing the use of electronic methods of communications including e-litigation and possibilities for making court documents (including submissions and pleadings) available or accessible on the internet;
- (e) Achieving more effective outcomes for court users, particularly vulnerable court users.

The submission addresses these areas as they apply to the interaction of the following parties with the civil justice system-

- Owners’ Management Companies (“OMCs”)
- Directors of OMCs
- Unit owners in multi-unit developments (“MUDs”)/OMC members²

Our principal concerns are-

- Enforcement of Lease & Lessor covenants in the common interest
- Achieving a more effective and efficient method of recovering unpaid service charges
- Removing costs in enforcing (currently through the Circuit Court) the wider provisions of the MUD Act.
- Improving the understanding of the MUD/apartment sector within the wider Civil Justice system and in particular the understanding of the OMC representing the community and common interest of all unit owners.
- Achieving consistency of approach (so-called “joined up thinking”) between Civil Law, Housing policy, and the realities of apartment management on the ground.

We note that some of the matters raised in this submission may be beyond the scope of the Group’s terms of reference. It may be the first time that certain suggestions on dispute resolution, etc. (drawn from other Common Law jurisdictions) have been articulated in an Irish context. The Network takes the opportunity of this consultation process to start a conversation on such matters.

¹ As set out on the Group’s website <http://www.civiljusticereview.ie/en/cjrg/pages/submissions>

² Under sections 1(1) and 14 of the MUD Act, every unit owner is a member of the OMC with one vote.

1.2 About us

Apartment Owners' Network

The Network is established as a Company Limited by Guarantee (CRO No. 592683).

Policy engagement

The AON has working relationships with various national and local government agencies, including the Housing Agency, DHPLG, the Law Reform Commission, the Department of Justice and Equality, the PSRA, and all four Dublin Local Authorities.

The Network played a central role in securing the formulation and enactment of the MUD Act 2011.

We contributed to the preparation of the Property Services (Regulation) Act 2011, and related secondary legislation.

The Network liaises with the SCSI (Residential Committee), as the representatives of the Property Management Agent sector. We have working links with the Owners Corporation Network in Australia.

Monthly forum meetings

Open forum meetings are held approximately once a month at DCC Civic Offices, Wood Quay, Dublin 8.

Meetings and activities are currently facilitated by funding from DCC, and by the involvement of the Network's volunteer members. Funding requests to support the Network's activities on a full-time professional basis currently lie with the Housing Agency and Dublin Local Authorities.

Further information about the Network's activities is available at:

<http://www.apartmentownersnetwork.org>

We are active on:

Twitter @ApartmentOwners

Facebook-

<https://www.facebook.com/apartmentowners>

Society of Chartered Surveyors Ireland

The Society of Chartered Surveyors Ireland is the independent professional body for Chartered Surveyors working and practising in Ireland. Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognized mark of property professionalism.

SCSI has a membership of over 5000 with many of these Property Management Surveyors being employed in management of multi-unit developments on behalf of Owners' Management Companies.

Society of Chartered Surveyors Ireland

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1.3 Brief overview of apartment management sector

To inform the reader, and to provide context for the proposals in this submission, we present a brief overview of how apartment and multi-unit developments are currently structured and managed.

Sector Size

It is anticipated that nearly 500,000 people live in units in multi-unit developments in Ireland and that there is in excess of 7,000 OMCs.

It is clear from the migration patterns both nationally and internationally that as our population increases so will our dependence on our cities for accommodation and employment (estimated at 80% of our population or 4.8 million by 2040 as opposed to 3.1 million currently).

As our dependence of urban centres increases so will the need for a sustainable and functioning apartment living sector.

Owners' Management Companies

An OMC comprises a board of volunteer directors, typically civic-minded residents or owners in the estate. The directors are elected by the wider body of apartment/unit owners in the estate, i.e. the membership of the OMC.

In the vast majority of cases the directors are not paid. They are, however, charged with the primary responsibility of managing the estate common areas and shared services, and of ensuring adherence to the principles of good estate management. Effective stewardship of the OMC is vital to ensuring the upkeep of the estate. It is essential to ensuring that the estate is a good community in which to live.

The MUD/OMC model of apartment management in Ireland means that property assets worth hundreds of millions of euro are under the stewardship of volunteer directors. Other than the usual CRO and ODCE filing requirements and enforcement measures, and the generality of Company Law, there is no specific regulation of OMCs.

The OMC agrees an annual budget for the year. It then issues an annual service charge to each unit owner. This service charge pays for the aforementioned services.

The service charge must by law³ include a contribution to a long-term building investment ("sinking") fund for non-recurring/capital expenditure (e.g. lift replacement). The amount of the sinking fund contribution is set by the members; it is open to them to agree there shall be no contribution.⁴ It is submitted that this is a flaw in the legislation and that it should require the OMC to professionally determine the appropriate level of sinking fund required before agreeing the level to be collected at a general meeting of owners.

A management agent is appointed by the OMC to attend to the day-to-day operational running of the estate. This includes common area maintenance and upkeep, block insurance, domestic waste disposal, landscaping, etc.

³ Section 19(3) of the Multi-Unit Developments Act 2011 obliges the owner of each unit in a multi-unit development to make a payment to the sinking fund of the amount of contribution fixed in respect of the unit concerned in accordance with the section.

⁴ Section 19(5) provides that the amount of the contribution to be paid as respects a unit by each unit owner to the sinking fund shall be €200, "...or such other amount as may be agreed by a meeting of the members...".

Mutuality/community ethos

An OMC is *de jure* a company, a body corporate. *De facto*, it is a committee of volunteer directors made up of home owners, usually the residents. In this way, an OMC is often referred to as “the residents’ committee”.

An OMC is established in law typically as company limited by guarantee. It has no shareholders, only guarantors, usually for an amount up to a nominal sum, €10. The OMC is not-for-profit, and does not pay dividends. In substance it is a mutual organisation.

Any excess of income over expenditure is either allocated to the building investment/sinking fund, or else it is carried forward towards the cost of provision of estate services for the following year.

Apartment Service Charges

Service charge debt recovery and OMC illiquidity are widely accepted as the most significant and immediate financial challenges confronting OMCs and their volunteer directors.

Independent academic research demonstrates the considerable difficulties faced by OMCs in recovering service charges.⁵

Many OMCs are faced with current fee recovery rates of less than 70%. Aged debtors can run to five or more years. Accumulated debtors can represent in excess of 100% of the OMC annual budget. Insolvency is a real prospect for many OMCs.

Sinking fund provision is in many cases tied up in debtors. As a consequence many OMCs are forced to give priority to the costs of basic estate services only: insurance, refuse collection and common area lighting.

In practical terms OMCs often inflate service charges and sinking fund levies in order to account for the non-payment of contributions by their members and unit owners.

⁵ “Service Charge Collection In Multi-Unit Developments”, Adele McKeown, DIT MSc in Real Estate, 10 October 2016
“Owners’ Management Companies - The Ticking Time-Bomb Of Service Charge Collection”, Adele McKeown
<https://apartmentownersnetwork.org/2017/06/19/adele-mckeown-scsi-presentation-omc-service-charge-collection/>
“Financial Planning in Multi-Unit Developments”, Finbarr Malone, DIT MSc in Real Estate, 23 October 2017
<https://apartmentownersnetwork.org/2018/01/08/academic-study-of-multi-unit-developments-confirms-imminent-funding-crisis/>

2.0 Details of Submission

2.1 Achieving more effective outcomes for court users, particularly vulnerable court users

(a) Service charges recovery

Existing law

In effect the law already recognises that OMCs should recover service charges in full. We submit that there are other changes to the Civil Law that would-

- Remove OMCs and apartment owners from costly court processes
- Enable faster service charge recovery

Excludable debt

The mutual and unique nature of OMC service charge debt was recognised in law by section 2(1) of the Personal Insolvency Act 2012 (“the PI Act”).

Services charges are an “excludable” debt under the PI Act, meaning that they may be covered by a Personal Insolvency Agreement only with the consent of the creditor.⁶ In the case of apartment service charges, the OMC is the creditor.

(i) **Proposal to re-categorise service charge debts, to exclude from Statute of Limitations**

Service charge debts arise under the covenants of the lease between the OMC, the apartment owner and the estate developer. They are treated in law as a contract debt.

Under section 11 of the Statute of Limitations 1957, court actions for the recovery of contract debts may be brought only within six years of when the sum became due. (In the case of a contract debt, the debt normally becomes due as is agreed in the terms between the parties, e.g. invoice date plus 30 days.)

The position in relation to court action changes where the debtor (apartment owner)-

- acknowledges the debt after it becomes due, or
- makes a part payment towards the debt.

In these circumstances the right of action is deemed to have accrued on the date the debt was acknowledged, or on the date of the part payment, i.e. on a later date, and giving more time to the creditor to pursue action for recovery.

In the same way that the unique nature of services charges is given recognition by treatment as an excludable debt under a PIA, exceptional treatment should be provided by specifically excluding MUD service charges from the Statute of Limitations.

OMCs are funded entirely through the service charge receipts from its members. These constitute trade debtors on their balance sheet and the writing down of such debt has an impact

⁶ See for details <http://www.personal-insolvency-arrangement.ie/resources/Excluded-And-Excludable-Debts-In-A-PIA.asp>

on the robustness of the OMC. In addition, writing down of service charge debt is ultimately funded by other members of the company, giving rise to a double payment and inequity.

Over recent years, where many unit owners have experienced difficulty in maintaining mortgage payments, a large number of properties in MUDs have had receivers appointed and owners struggle with potential insolvency. This has led to many OMCs facing the prospect of issuing legal proceedings simply to obtain judgements but not realising any financial benefit, simply protecting the debt.

The exercise is a costly one, where the outcome is known at the outset. The process simply increases the cost of all owners' service charges.

(ii) Enforcement of Service Charge Debt in Court

As detailed previously, the impact of non-payment of service charges is not only detrimental to the operation of a MUD but also inequitable to the other owners.

Lease titles executed by apartment owners contain many clauses designed to encourage the prompt payment of service charges. Clauses include the application of penalty interest (typically linked to overdraft rates plus a small margin), the ability to recover legal fees, and to withdraw services where applicable.

The experience when seeking recovery in the Courts often reduces or eliminates the interest charges and rarely awards full costs. This continues the trend of other unit owners paying the cost of recovery and it unnecessarily adds to their service charge costs.

We suggest that the attitude toward service charge debt recovery by an OMC should be changed. The interest of the collective ownership should be taken as a positive. Non-payment of service charges should be enforced vigorously by the Courts to encourage prompt payment by owners. It will encourage efficient pursuit of debts by OMCs, in the knowledge that their actions will be supported in contract, statute and the Courts.

(iii) Enforcement of Judgements

Following an award by the Courts it is often difficult for the OMC actually to recover monies from the defaulter. In many circumstances the subject property is rented with the owner receiving rental income directly from the tenant.

In other jurisdictions in the interests of the common good more severe remedies against defaulters are available. Remedies include garnishing orders on rents, temporary charge of the property for the OMC to receive rent until debt and costs are cleared, or the removal of certain rights of the owner until payment is made. The latter can include curtailing the right to use the common areas and other facilities, thereby preventing enjoyment of the property.

(iv) Service of Proceedings

Section 8(3) of the MUD Act requires unit owners to provide their correspondence address to the OMC. In the event that unit owners have not furnished such details, meaning that the OMC cannot locate the owner, we submit that the OMC should be entitled to serve any proceedings to the subject property, i.e. the apartment/unit in the estate managed by the OMC.

It is worth noting that in the event that the property is rented, under section 12(1)(f) of the Residential Tenancies Act 2004, the landlord is obliged to deliver to a tenant a “point of contact”⁷.

(b) MUD enforcement in the Courts

In addition to the recovery of service charge debt by OMC there are a number of other issues where the rights of the individual appear to take precedence over the rights of the collective and the Lease title executed.

The areas where this can occur are typically in the enforcement of Lessee covenants under Lease title as follows;

- The covenant not to cause nuisance
- The covenant not to alter
- The covenant regarding user (to prevent short-let (so-called “Airbnb-style”) use)

We submit that the covenants are detailed in the interests of the community and that their existence was clear to any unit owner on purchasing the property.

The inclusion of mediation in the MUD Act 2011 appears to have diluted the rigidity of such covenants and suggests that they are now open to negotiation. We submit that an approach to the Courts weighted towards enforcement of lease covenants would improve the viability of the MUD sector.

2.2 Reviewing the use of electronic methods of communications including e-litigation and possibilities for making court documents (including submissions and pleadings) available or accessible on the internet

Encouraging alternative methods of dispute resolution

Online dispute resolution for MUDs

We propose that dispute resolution for the multi-unit/apartment sector be moved away from the Courts to an online platform, albeit with a right of appeal lying to the Courts.

In Canada, the Condominium Authority of Ontario has recently adopted such an online regime, in the form of the Condo Authority Tribunal (“CAT”).

The stated aim of the CAT is to help resolve disputes conveniently, quickly and affordably.

We understand that the CAT currently deals with disputes about condo corporation (Canadian equivalent of the Irish OMC) records. More cases will be added gradually in the future following the issuing of government regulations.

⁷ The landlord must “provide to the tenant particulars of the means by which the tenant may, at all reasonable times, contact him or her or his or her authorised agent,”

There are three stages to the online process-

1. Negotiation

Users file their case online. For a fee of CAN\$25 they are provided with access to the CAT's online dispute resolution system. Users negotiate in a neutral forum and attempt to resolve the dispute themselves.

2. Mediation

If the dispute cannot be resolved at this stage, the users can move to Mediation. For a cost of CAN\$50 a dedicated CAT mediator joins the case to assist the users in attempting to resolve the matter.

3. Tribunal Decision

If still unresolved, the dispute moves to Tribunal Decision. A dedicated CAT member conducts a formal adjudication of the dispute. The cost here is CAN\$125.

Full details of the online process are available on-
<https://www.condoauthorityontario.ca/en-US/tribunal/the-cat-process/>

The proposal is to initiate a similar process in Ireland for OMCs, suitably adapted for the Irish context.

Practical Irish example

A unit owner wishes to make alterations to an apartment to make it more accessible as they believe they will require the use of a wheelchair in the future.

The OMC refuses the alterations on the basis of the lease clause and the owner appeals the decision to an online dispute resolution process.

Both parties would submit their cases and the adjudicator would deliver a determination based on the arguments put forward suggesting a situation where alterations would be acceptable and with what oversight and certification.

3.0 Conclusion

Both the Society of Chartered Surveyors Ireland and the Apartment Owners' Network are convinced of the long term viability of apartment development as a housing solution in Irish urban centres.

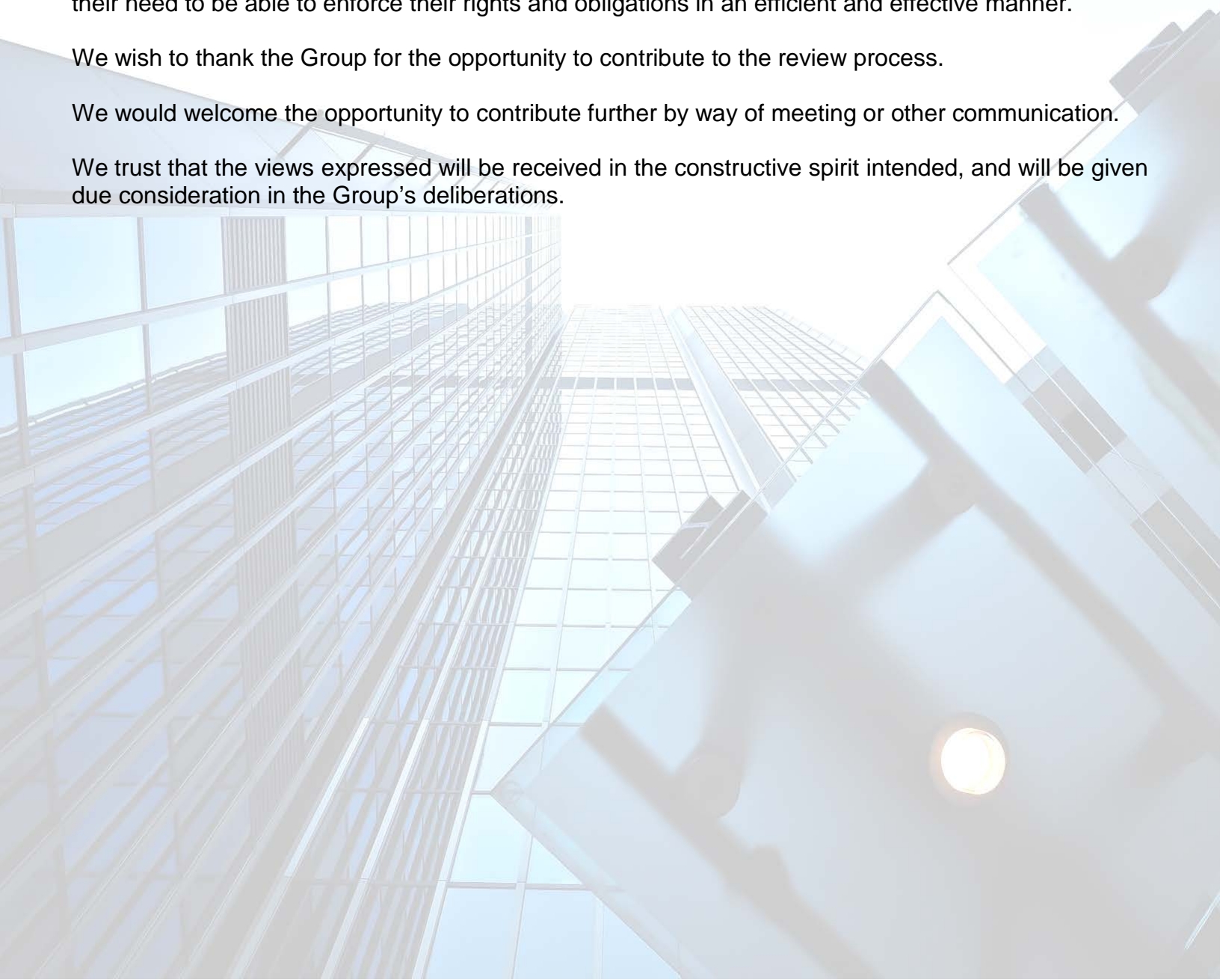
We believe that we can learn from other countries that have similar frameworks and legal structures but that enjoy a greater ability to enforce the rules for the greater good of the wider community.

We believe that Civil Justice needs to be reformed to acknowledge the unique function of OMCs and their need to be able to enforce their rights and obligations in an efficient and effective manner.

We wish to thank the Group for the opportunity to contribute to the review process.

We would welcome the opportunity to contribute further by way of meeting or other communication.

We trust that the views expressed will be received in the constructive spirit intended, and will be given due consideration in the Group's deliberations.



Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

Submission

to

Forward Planning Section

Department of Housing Planning and Local Government

on

**Updated Draft Design Standards for New Apartments -
Guidelines for Planning Authorities**

18 January 2018

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Abbreviations/Acronyms Used

| | |
|---------|--|
| AHB | Approved Housing Body |
| CSO | Central Statistics Office |
| DHPLG | Department of Housing, Planning and Local Government |
| MUD | Multi-Unit Developments, as described in Section 1(1) of the MUD Act |
| MUD Act | Multi-Unit Developments Act 2011 |
| NPF | National Planning Framework |
| OMC | Owners' Management Company as defined in Section 1(1) of the MUD Act |
| PMA | Property Management Agent |
| PSRA | Property Services Regulatory Authority |
| RBI | Rebuilding Ireland |
| SCSI | Society of Chartered Surveyors Ireland |
| TWG | Technical Working Group – drawn together by DHPLG in advance of the publication of the updated draft Guidelines, comprised of representatives of property professionals (IPI, RIAI, SCSI, etc.), Local Authorities, Academia, NTA, and others. |

1.0 Introduction

1.1 Executive Summary

This short submission responds to the request issued by DHPLG on 18 December 2017 for submissions in relation to the updated draft Design Standards for New Apartments - Guidelines for Planning Authorities¹ (“the updated draft Guidelines”).

In this submission we reiterate the views put forward by the Network during the deliberations of the DHPLG Technical Working Group (“TWG”) on Apartment Planning Policies. However, please see the caveat below in relation to the limitation on the scope of the Network’s input to the TWG.

We acknowledge that the updated draft Guidelines refer to the design/construction of apartments. However, in our view the updated draft Guidelines do not take adequate account of the wider context of the apartment sector, as the Network sought to articulate to the TWG sessions, both orally and in writing. This submission is a further articulation to DHPLG of wider proposals to reform the apartment sector to achieve long-term affordability and sustainability.

Design/construction matters are integral to the wider context of successful apartment living and sustainable apartment management. While the updated draft Guidelines may reduce the cost of apartment construction, current State policy fails to address the wider reasons why in Ireland apartments are viewed unfavourably as a housing option.

The OMC

Independent academic research² clearly demonstrates the failures of the current *laissez-faire* approach to the regulation of OMCs. Evidence shows the perilous state of long-term funding arrangements underpinning apartment management in Ireland. In one study 42%³ of OMCs reviewed were found not to have a sinking fund in place.

Research indicates poor financial planning and deficient or non-existent sinking fund provision by OMCs. We submit that these failures are some of the main reasons why Irish people are reluctant to choose to live in apartments.

We submit that the updated draft Guidelines require further amendment to reflect a joined-up policy approach to improving apartments as a housing type.

¹ <http://www.housing.gov.ie/planning/guidelines/apartments/design-standards-new-apartments-guidelines-planning-authorities-0>

² *Service Charge Collection In Multi-Unit Developments*, Adele McKeown, DIT MSc in Real Estate, 10 October 2016
Owners’ Management Companies - The Ticking Time-Bomb Of Service Charge Collection, Adele McKeown
<https://apartmentownersnetwork.org/2017/06/19/adele-mckeown-scsi-presentation-omc-service-charge-collection/>
Financial Planning in Multi-Unit Developments, Finbarr Malone, DIT MSc in Real Estate, 23 October 2017
<https://apartmentownersnetwork.org/2018/01/08/academic-study-of-multi-unit-developments-confirms-imminent-funding-crisis/>

³ McKeown, as at footnote 2 above.

TWG – limitation on scope of AON input

The Apartment Owners' Network is a volunteer-led organisation. We seek to represent and give voice to the interests and views of owners (owner occupiers and investors) of dwellings in managed estates, their OMCs, and directors of OMCs.

Our activities, and our contributions to public policy on the apartment/MUD sector, are undertaken by unpaid representatives acting in their spare time.

At the invitation of the DHPLG, the Network was represented on the TWG. Meetings of the TWG, and related sub-groups, took place between 19 October and 5 December 2017, held principally during business hours.

That our representatives are volunteers meant our contributions to the TWG were limited. Unavoidably, our input was not as extensive and detailed as we would have wished. However, we welcomed the invitation to participate. We felt it preferable to act constructively and to contribute to the process, albeit in the limited fashion available to us.

We endeavoured to articulate to the TWG experiences of apartment living from the perspective of the end user, and the OMC/OMC director.

For the avoidance of doubt, Network representatives did not have sight of the updated draft Guidelines in advance of publication on the DHPLG website on 18 December 2017.

1.2 Apartments sector – reform proposals

In our submissions to DHPLG on the various stages of the draft NPF⁴, on RBI⁵, in our contributions to the TWG, and in submissions to other organs of the State⁶ we have articulated the considerable challenges facing the apartment sector. It is not the purpose of this submission to rehearse these matters in detail.

We submit that the narrative behind the challenges in the sector is one of current policies and legislation that fail to support apartment living.

In our various submissions to the State we have clearly articulated policy reform proposals including-

- A register and regulator of multi-unit developments OMCs- the Condominium Authority of Ontario⁷ is a good example of such a regime
- Amendment of the MUD Act to ensure sinking fund provision is professionally determined and adequate to cover future required building maintenance costs.
- Change in law to allow efficient and timely recovery of service charge debt - the current Courts route is disproportionate and cost prohibitive for OMCs.
- Training and support for MUD OMC directors
- Law reform to permit/encourage long-tenure tenant, landlord and Approved Housing Body involvement in OMC affairs
- Sophistication of financing structures including Credit Union lending to OMCs
- Changes to tax law to support sustainable apartment developments⁸
- Resourcing of Local Authorities' community and planning enforcement functions

Many, if not most, of the policies are already common practice in the mature apartment sectors of other countries (Australia, Canada, New Zealand, etc.).

We reiterate that Ireland has an opportunity to select the best of these policies and adapt them to suit the Irish environment.

⁴ <https://apartmentownersnetwork.org/2017/11/13/aon-submission-draft-of-ireland-2040-our-plan/>

⁵ <https://apartmentownersnetwork.org/2017/08/11/aon-submission-review-of-rebuilding-ireland-action-plan/>

⁶ Submission to Department of Rural & Community Development Statement of Strategy 2017 – 2020
<https://apartmentownersnetwork.org/2017/10/09/aon-submission-dept-of-rural-community-development/>
Submission to Central Statistics Office regarding the questionnaire content of Census 2021

<https://apartmentownersnetwork.org/2017/11/06/aon-submission-cso-census-2021-consulation/>

⁷ <https://www.condoauthorityontario.ca>

⁸ Submission to Tax Policy Division of Department of Finance on the Tax and Fiscal Treatment of Residential Landlords

<https://apartmentownersnetwork.org/2017/04/18/tax-and-fiscal-treatment-of-landlords-aon-submission/>

Submission to Department of Finance on Budget 2018

<https://apartmentownersnetwork.org/2017/07/11/aon-submission-dept-of-finance-budget-2018/>

1.3 More about the Apartment Owners' Network

The Network is established as a Company Limited by Guarantee (CRO No. 592683).

Policy engagement

The AON has working relationships with various national and local government agencies, including the Housing Agency, DHPLG, the Law Reform Commission, the Department of Justice and Equality, the PSRA, and all four Dublin Local Authorities.

The Network played a central role in securing the formulation and enactment of the Multi-Unit Developments Act 2011 ("the MUD Act"). We contributed to the preparation of the Property Services (Regulation) Act 2011, and related secondary legislation.

We liaise with the SCSI (Residential Committee), as the representatives of the Property Management Agent sector. We have working links with the Owners Corporation Network in Australia.

Monthly forum meetings

We meet in open forum approximately once a month at DCC Civic Offices, Wood Quay, Dublin 8.

Meetings and activities are currently facilitated by funding from DCC, and by the involvement of the Network's volunteer members. Funding requests to support the Network's activities on a full-time professional basis currently lie with the Housing Agency and Dublin Local Authorities.

Further information about the Network's activities is available at-
www.apartmentownersnetwork.org

We are active on-
Twitter @ApartmentOwners
Facebook- <https://www.facebook.com/apartmentowners>

2.0 Details of Submission

2.1 Review of the updated draft Guidelines

General

In principle, the Network has no objection to reductions in underground car parking provision, and increases in apartment heights. However, it must be demonstrated that plans are put in place to manage any negative consequences of such measures for subject developments.

Further detail is set out in our memo to the TWG of 22 October 2017 (see Section 2.2 below and Appendix I).

Detailed observations

As noted, our observations are made from the perspective of owners of residential units in multi-unit developments (primarily apartments) managed by OMCs.

Our focus is on the long-term impact the updated draft Guidelines will have on apartment developments as communities, and on the management of common areas on a sustainable and affordable basis.

We observed in particular the undernoted references to service charges/maintenance costs. Each paragraph reference is followed by our comment.

1. Paragraph 3.28

“While up to 12 apartments per floor per core may not be possible or necessary in all blocks in all apartment schemes, subject to good design and compliance with Building Regulations, maximising the number of apartments per floor per stair/lift core will assist in ensuring that service charges and maintenance costs faced by residents into the future are kept at reasonable levels.”

Comment

This is not necessarily a correct statement. The greater the number of apartments per floor per stair/lift core the greater are the maintenance requirements and wear and tear on the common areas concerned.

To provide cost certainty we submit that before the first unit in an estate is sold the developer must provide to the OMC a building survey and property lifecycle/maintenance report.

This material should be prepared by an independent professional. The report will quantify the maintenance costs and sinking fund provision for the property. These costs may then be incorporated into the annual service charge.

2. Paragraph 4.6

“Communal or other facilities within apartment schemes should be subject to negotiation and agreement with the developer as part of the planning process. They should not generally be imposed as requirements by the planning authority in the absence of proposals from and/or the agreement of an applicant. The provision of

such facilities is likely to have significant implications for management and maintenance costs for future residents.”

Comment

The ownership and responsibility for running of such facilities should be clear from the outset. The local authority should agree to take in charge the facilities from the outset, as it would in the case of a community centre or other amenity associated with conventional housing estates in its area.

Alternatively, it should be a condition of planning that the OMC will own the facility, with the proviso that the OMC may incorporate facility costs in the service charge budget.

The comments in relation to a building maintenance lifecycle report for paragraph 3.28 apply in the same way to this paragraph.

3. Paragraph 4.11

“Communal amenity space may be provided as a garden within the courtyard of a perimeter block or adjoining a linear apartment block. Designers must ensure that the heights and orientation of adjoining blocks permit adequate levels of sunlight to reach communal amenity space throughout the year. Roof gardens may also be provided and can offer a satisfactory alternative where climatic and safety factors are fully considered, but children’s play is not passively supervised as with courtyards. Regard must also be had to the future maintenance of communal amenity areas in order to ensure that this is commensurate with the scale of the development and does not become a burden on residents.”

Comment

The comments in relation to a building maintenance lifecycle report for paragraphs 3.28 and 4.11 apply in the same way to this paragraph.

4. Paragraph 6.11

“Finally, it is desirable that planning applications for apartment development would include an assessment of long term (15 year) running and maintenance costs as they would apply on a per residential unit basis at the time of application, well (sic) as demonstrating what measures have been specifically considered to manage and reduce costs for the benefit of residents.”

Comment

“Desirable” is too weak in this context. Absent mandatory requirements in law for building maintenance/sinking fund provision, as outlined above it should be a specific condition of planning that before a unit is sold the developer must provide to the OMC a building maintenance lifecycle report⁹. This should cover the full lifecycle of the building (e.g. lift replacement in year 25, roof replacement in year 40, etc.) and should not be restricted to the suggested 15 years. A 15 year timeframe will act to exclude large cost items. The report will allow the estimation of a meaningful sinking fund budget.

⁹ We submit that this should apply to Strategic Housing Developments under the Planning and Development (Housing) and Residential Tenancies Act 2016, and the Planning and Development (Strategic Housing Development) Regulations 2017

Supporting sinking fund provision through planning

It is plainly in the interest of local authorities to make lifecycle reports for sinking funds a mandatory condition of planning.

Adequate sinking fund provision is clearly in keeping with the overarching principles of planning law, i.e. proper planning and sustainable development.¹⁰

When, in the future, the funding crisis crystallises in an OMC it will be to the local council that residents will turn for financial support. Precedents for a local authority footing the bill have already been set in the context of remediation of construction defects in apartment developments. Media reports indicate that the Priory Hall cost Dublin City Council (“DCC”) €36.4m approximately¹¹. Reports indicate that Longboat Quay cost DCC €1.85m approximately¹².

By 2015 NAMA was reported to have spent €100m approximately on property remediation, mainly in relation to apartments in the Dublin area¹³.

AHBs (funded by local authorities and with local authority tenants) owning properties in MUDs will be hit for service charge levies to meet sinking fund shortfalls.

Sinking funds & MUD Act provisions

Section 19(5) of the MUD Act¹⁴ provides that the amount of the annual contribution to be paid by each unit owner to the sinking fund shall be €200, or such other amount as may be agreed by a meeting of the members.

€200 is a meaningless amount. It takes no account of the nature of the property/common area build, its age, replacement costs, etc. Without a building survey and property lifecycle report it is not possible to determine with any accuracy the size of a suitable sinking fund.

Independent research¹⁵ indicates that among those OMCs surveyed that have sinking funds only €80 per unit per annum, i.e. just 40% of the recommended amount is reflected in the size of the fund. In other words the funds are at a 60% deficit to a recommended amount that has no grounding in the reality of the capex/works costs ahead.

¹⁰ The main purpose of the Planning and Development Act 2000 is “...to provide, in the interests of the common good, for proper planning and sustainable development including the provision of housing...”
<http://www.irishstatutebook.ie/eli/2000/act/30/enacted/en/print>

¹¹ “Priory Hall refurbishment bill likely to exceed €36.4m”, Irish Times, 22/11/2016
<https://www.irishtimes.com/news/social-affairs/priory-hall-refurbishment-bill-likely-to-exceed-36-4m-1.2877185>

¹² “Deal worth €3.1m agreed to remedy Longboat Quay defects”, Irish Times, 19/12/2016
<https://www.irishtimes.com/news/environment/deal-worth-3-1m-agreed-to-remedy-longboat-quay-defects-1.2910796>

¹³ “Bill for defective housing a burning issue”, Irish Examiner, 19/10/2015
<http://www.irishexaminer.com/viewpoints/analysis/bill-for-defective-housing-a-burning-issue-359976.html>

¹⁴ <http://www.irishstatutebook.ie/eli/2011/act/2/enacted/en/print#sec19>

¹⁵ Table 4.2 (page 51) “Financial Planning in Multi-Unit Developments”, Finbarr Malone, DIT MSc in Real Estate, 23 October 2017
<https://apartmentownersnetwork.org/2018/01/08/academic-study-of-multi-unit-developments-confirms-imminent-funding-crisis/>

The “*or such other amount as may be agreed*” provision means members may decide to agree a contribution of €0. This discretionary position is highly unsatisfactory and will lead to a funding crisis when major capital expenditure is required on the building common areas.

Under section 19(9) of the MUD Act the Minister may, for the purpose of advancing the objective of the fair, prudent, effective and efficient operation of OMCs and the fair, prudent, efficient and effective management of the common areas of MUDs, make regulations prescribing-

- (a) a class or classes of expenditure which may be incurred by a sinking fund,
- (b) the procedures to be followed in setting contributions to the sinking fund,
- (c) the matters to be taken into account in the setting of such contributions,
- (d) the arrangements for the levying and payment of such contributions, and
- (e) the thresholds of expenditure (by reference to amounts of expenditure or by reference to the proportion of the sinking fund) which necessitate approval of the members of the OMC.

No such regulations have been made.

We submit that pending wider reform of the MUD Act (for OMC registration/regulation, etc.) regulations should be made in line with the above provisions. Best practice from other jurisdictions should be applied.

As noted above, under regulations the developer should be required before the first unit in the estate is sold to provide to the OMC the building survey and lifecycle report. Liaison with property professionals (SCSI, Engineers Ireland, etc.) is recommended in formulating regulations.

We note that in the context of the MUD Act “Minister” means Minister for Justice and Law Reform. This is per section 1(1)¹⁶. We submit that for reasons of policy coordination, responsibility for the MUD Act should be transferred to the Minister for DHPLG.

Funding arrangements alternative to sinking funds

The evidence of recent high-profile cases¹⁷ is that special levies by OMCs are strongly resisted by members. Independent research¹⁸ indicates that Irish banks currently will not lend OMCs because OMCs have no valuable collateral assets, have unreliable income streams, are typically companies limited by guarantee, and the directors are volunteers and will not guarantee debts.

¹⁶ <http://www.irishstatutebook.ie/eli/2011/act/2/section/19/enacted/en/html#sec19>

¹⁷ “*Apartment complex residents voice anger over bill to repair building defects*”, Irish Examiner, 16/03/17
<http://www.irishexaminer.com/breakingnews/ireland/apartment-complex-residents-voice-anger-over-bill-to-repair-building-defects-781805.html>

“*Owners of Beacon apartments to pay €10k to fix defects*”, RTE News, 16/03/17
<https://www.rte.ie/news/2017/0316/860134-beacon-quarter-south/>

¹⁸ Chapter 4.1.2 of “*Financial Planning in Multi-Unit Developments*”, Finbarr Malone, DIT MSc in Real Estate, 23 October 2017
<https://apartmentownersnetwork.org/2018/01/08/academic-study-of-multi-unit-developments-confirms-imminent-funding-crisis/>

Other General comments

The updated draft Guidelines are focused on the upfront affordability of apartments, as it is driven by design and construction costs. Nowhere do they refer specifically to the role of the OMC, and the key interaction between the developer and the OMC in the long-term affordability of the property.

As previously noted, a joined-up approach to the sector is required. Changes in law to provide for-

- Regulation of OMCs
- Mandatory building maintenance/sinking fund provision
- Efficient service charge collection
- Enforcement of House Rules

are required to achieve the long-term affordability, sustainability and liveability of apartments.

2.2 Policies proposed to TWG

In our contribution to the TWG, in particular in our contribution to the background TWG paper entitled “*Key Outcomes for the Development of the Apartment sector in Ireland*”, we noted the changes highlighted below in red to key areas of action required to make apartment developments the norm:

1. Ensuring apartments and apartment living are an attractive and sustainable long-term living option for the categories of households that choose it, whether in a home ownership or long-term rental context, through effective and joined-up planning, housing, building standards and multi-unit regulatory systems;
2. Continuing to address legacy issues that have arisen in relation to the standards of apartment developments in the past, whether they relate to the quality of developments or their integration into their wider physical and planning context through the effective resolution of taking in charge processes, the provision of wider supporting infrastructure and their relationship to wider communities;
3. Undertaking complementary investment in both physical (such as public transport) and soft infrastructure (public realm and parks and amenities and effective policing) to create an overall package that will make apartment development the norm in the key cities and larger towns and urban development and redevelopment more attractive than suburban expansion;
4. Ensure that, as well as delivering on quality to underpin objective number 1 above, the development of new apartments is as attractive or more attractive in an economic and regulatory context as other forms of property development and investment, and that there is a balanced approach to investment in property solutions;
5. Ensure that measures are introduced for the effective and efficient collection of Owner Management Company (“OMC”) service charges, the recovery of legacy service charge debt, the handover of building infrastructure to the OMC, and the implementation and funding of sustainable building maintenance (sinking fund) programmes in apartment developments.
6. Develop mechanisms and supports to facilitate and encourage involvement by residents (owner-occupiers and renters) and owners (landlords, AHB’s, etc.) in the management of apartment development common areas through the mechanism of the OMC.
7. Bring about a joined approach between planning policies, the legal and regulatory environments for OMCs and Property Management Agents, building standards and maintenance systems that strike a good balance between provision of amenities and infrastructure in apartment developments and deliver an economic and affordable approach to maintenance costs for residents and owners.

We submit that these changes do not come through in updated draft Guidelines. It is not clear to us how outside of the current exercise these changes will be effected.

Memo of 22 October 2017 to DHPLG/TWG

Following the initial meeting of the TWG on 19 October 2017, we submitted to DHPLG a high-level memo on the issues facing the apartment sector. This memo is included as Appendix I.

Other submissions

As articulated in our submissions, housing policy should focus not only on the initial design, planning and construction cost aspects of such housing types, but should have regard also to the practicalities of apartment/multi-unit living.

Housing policy must mature and develop to regulate the sector. It must address the long-term funding difficulties affecting OMCs. If not tackled soon, these financial difficulties will lead to the deterioration of a significant proportion of the existing apartment stock.

We submit that the development and implementation of the policies we have put forward in our various submissions will promote high quality apartment living in Ireland.

In line with the policies and objectives of the NPF, the changes we put forward will encourage a mature and sustainable apartment component within the national housing stock.

Workshop January 2018 – Expression of Interest

In line with the notice issued by DHPLG on 11 January 2018¹⁹ we wish to indicate our interest in attending the Workshop on Friday 26 January 2018.

¹⁹ Design Standards for New Apartments - Workshop January 2018
<http://www.housing.gov.ie/planning/guidelines/apartments/design-standards-new-apartments-workshop-january-2018>

3.0 Conclusion

We wish to thank DHPLG for the opportunity to contribute to the TWG and to the wider process of the review of the updated draft Guidelines.

It is our view that the policies for the apartment/multi-unit we propose will contribute to developing in Ireland a successful and sustainable apartment sector.

We would welcome the opportunity to contribute further by way of meeting or other communication.

We trust that the views expressed will be received in the constructive spirit intended, and will be given due consideration in the formulation of the final Guidelines.

Appendix I – AON memo of 22 October 2017 to DHPLG

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

Memo

To: Forward Planning Section, DHPLG
From: David Rouse, Apartment Owners' Network
Date: 22 October 2017

Subject: DHPLG Working Group on Apartment Planning Policies

The purpose of this memorandum is to respond to the request for initial observations on discussions at the meeting of the Working Group on Thursday 19 October 2017.

This material is not intended to be prescriptive; it is intended to initiate further discussion. It is not a comprehensive articulation of the views of the Apartment Owners' Network ("AON") on proposed changes to the 2015 Guidelines.

1. Advice of studies of apartment sector

Please be advised that two studies (initiated in conjunction with the AON) are currently in process, under the auspices jointly of the Housing Agency and Clúid Housing. By way of information extracts from the publicly available tender documentation¹ are in Appendix I.

2. Draft Terms of Reference - suggested amendments

Our suggested minor amendments to the draft TOR are tracked in Appendix II. These reflect our initial comments below on aspects of the 2015 Guidelines already flagged for change. Our comments come from the lived experience of apartment-dwelling.

- a. Reduction/elimination of minimum mandatory car-parking provision
 - (i) To be accompanied by complementary/corresponding planning conditionality as to appropriate measures (double yellow lines, bollards, railings) to prevent knock-on consequential uncontrolled parking in estate common areas.
 - (ii) Planning conditionality that the costs of parking management/control services (i.e. clamping) be reflected in initial and on-going service charges.

- b. Lifting Height Caps

Complemented by planning conditionality for measures to facilitate sustainable medium-rise and high-rise living, for example-

- (i) Long-term independently-costed maintenance plans, compiled by qualified property management professionals.
- (ii) Larger lift cars to transport furniture to upper floors.
- (iii) Shorter lift lifespans to be factored into sinking fund contributions from first occupation. The higher the building, the greater lift usage and resulting wear & tear.
- (iv) Waste chute provision in risers, allowing safe and hygienic conveyance of household waste and recycling from all floors.
- (v) Family-sized units to anchor estates, and ensure development of viable and sustainable communities of long-term and permanent residents.

¹ https://irl.eu-supply.com/app/rfq/publicpurchase_docs.asp?PID=115639&LID=125576
<https://www.cluid.ie/wp-content/uploads/2017/07/17-07-11-RFT-OMC-research-FINAL.pdf>

- (vi) Local Authority project co-ordinating manager for infrastructure delivery.
- (vii) Measures (e.g. lease covenants, house rules) to address the following examples of negative aspects of apartment living:
 - I) Anti-social behaviour;
 - II) Sound insulation deficiencies;
 - III) Clothes-drying and adverse impact of condensation

As noted, the foregoing is not intended to be a comprehensive statement of our position.

Apartment sector - additional background information

Included at Appendix III is additional AON material that may be helpful in informing the Working Group deliberations. Our submission, focussed on the apartment sector, to the Review of Rebuilding Ireland is included.

3. Build To Rent - carve out of Apartment Planning Policies

We agree with proposals to consider carving out the BTR sector from the Guidelines.

BTR apartment developments are first and foremost business assets. They are constructed, operated and maintained primarily for the purpose of generating investment returns. Occupants are often typically employees of MNCs, or similar transient renters, with limited ties to the local area/community.

In contrast apartment/multi-unit developments (so-called “build to sell”) are permanent homes and communities. Owner-occupiers and renters (private and social) have connections to the wider surrounding community. The needs and consequently the standards, facilities, amenities, etc. of “build to sell” can often be markedly different from those of BTR.

Appendix I - Extracts from RFT for Review of Apartment OMCs

**Request for Tenders
for the Provision of**

**A research report on Owners' Management Companies
for Clúid Housing in collaboration with The Housing
Agency**

11th July 2017

Part 1: Introduction

- 1.1 Clúid Housing together with the Housing Agency invites responses (“Tenders”) to this Request for Tenders (“RFT”) from economic operators (“Tenderers”) for the provision of the services as described in Appendix 1 to this RFT, “Requirements and Specifications”, (“the Services”). Clúid Housing together with the Housing Agency is the contracting authority for this public procurement competition (“the Contracting Authority”).
- 1.2 The title of this RFT is Request for Tenders for the Provision of (“RFT Title”).
- 1.3 This public procurement competition relates to the provision of research on the performance of owners' management companies. The outputs, which are described in detail in Appendix 1 will be:
- Lot A
1. A directory of OMCs operating in Ireland
 2. A sample analysis of OMC company accounts and director reports
- Lot B
3. A research report which addresses the research questions set out in Appendix 1 and includes recommendations that aim to address the issues raised
 4. A presentation at a seminar at which the research will be launched.
- 1.4 Any contract that may result from this public procurement competition will be issued for a term of no more than six months (“the Term”).
- 1.5 **This Clause 1.5 applies only to certain RFTs; it applies to this RFT.**
The Contracting Authority reserves the right to extend the Term for a period or periods of up to six months with a maximum of one such extension or extensions on the same terms and conditions, subject to the Contracting Authority’s obligations at law.
- 1.6 Tenders must be received not later than 16:00 hours on 8th August 2017. Tenders that are received late WILL NOT be considered in this public procurement competition.

Appendix 1: Requirements and Specifications

Provision of a directory of owner management companies and analysis of company account information and a research report on the performance of Owners' Management Companies for Clúid Housing in collaboration with The Housing Agency.

Introduction

This research is jointly commissioned by Clúid Housing and the Housing Agency.

Clúid Housing is an independent not-for-profit charity which mainly provides social rented homes for people from local authority housing waiting lists. Established in 1994, Clúid is Ireland's largest housing association, with very nearly 6,000 tenants across the country. Clúid's contribution to this research project is funded by the Adrian Norridge Housing Research Bursary, established by Clúid in honour of its founder, Adrian Norridge. The bursary aims to support applied research on housing issues that will be of relevance to the social housing sector in Ireland.

The Housing Agency was set up to work with and support Local Authorities, Approved Housing Bodies and the Department of Housing, Planning, Community and Local Government in the delivery of housing and housing services. It is also the interim Regulator of Approved Housing Bodies. The Agency brings together a wealth of practical, research and technical expertise. The vision of the Agency is to enable everyone to live in good quality affordable homes in sustainable communities and it is driven by an understanding of the central role that housing plays in people's quality of life and life chances.

Background

Apartment living in Ireland has increased significantly in recent years across all housing tenures. Census data shows that in 2002, 70,500 households lived in flats or apartments in purpose built blocks, representing 5.5% of all households. By 2016 this number had multiplied by a factor of nearly 2.5 to 172,000; and the percentage had very nearly doubled to 10%. Although growth between 2011 and 2016 has been modest, there is no doubt that apartment living will be a continuing feature of Irish housing in the future.

It is important to note that apartment living is dominated by renters. Nearly 80% of apartments across the country are rented; approximately 20% are social rented (housing association or local authority) and nearly 60% are rented privately. The remaining 20% are owner occupied. (Census 2016)

Multi-unit developments are developments of several homes that share certain facilities. These can often be entrance halls, lifts or the internal pipework for common systems, such as water or heating. Facilities may also be car parking, common outdoor areas or shared services such as security or waste collection. Multi-unit developments are often apartment buildings or duplexes, but they can also be townhouses or stand-alone houses that share common facilities.

Owners' management companies are established for three main reasons:

- To manage and maintain common areas in a multi-unit developments.
- To be the legal owner of the common areas on behalf of the owner of the units.
- To be the legal owner of the beneficial or reversionary interest of each unit.

(Source: Competition and Consumer Protection Commission (<http://www.ccpc.ie>))

Since The Multi-Unit Developments Act 2011 (MUD Act 2011) all new developments must have an OMC in place before any units are sold. In developments built before the Act developers are legally obliged to establish an OMC. The Act provided a legal framework for the operation of owners' management companies in multi-unit developments.

Six years on, it is timely to assess the operation of owners' management companies in light of this legislation and other factors.

Primary research objective

Considering the rapid growth in the number of owners' management companies and the operation of the Multi-Unit Developments Act 2011, to profile, examine and assess the performance of owners' management companies, and to make recommendations for any necessary changes that could improve their operation.

Research tasks

The research will be commissioned in two Lots. Tenderers may submit tenders to carry out either or both lots. Each Lot will be evaluated separately.

Lot A

- I. To provide an up-to-date directory of OMCs operating in Ireland.

This list to include the name of the OMC, company registration number, address, company contact details, date of incorporation of company. It is envisaged that this information will be taken from an analysis of the Companies Registration Office database. Since 2011 all OMCs are required to have "owners' management company" or abbreviated to "OMC" in the title. A recent search of the database provided over 7,000 names, however some of these may be property management companies or agencies and not necessarily OMCs.

- II. To carry out an analysis of a broadly representative sample of OMCs most recent company accounts and director reports. This analysis would provide information on the level of sinking funds available, debt levels, cash available and comment on the type of risks identified by directors. Depending on the type of information available it may also include other key relevant data as agreed. Provide a report and commentary on the results of this analysis.

Lot B To examine and assess the performance of Owner Management Companies in Ireland, and make recommendations for any necessary changes. This Lot will include the following four elements

- i. Research Report on the operation of owners' management companies in Ireland including an international comparison based on a review of the literature and interviews with key stakeholders.
- ii. Qualitative research report on the operation of owners' management companies based on a broadly representative sample of directors of OMCs, ordinary members of OMCs and residents in MUDs but not members of the OMC (ie. those renting).
- iii. Report to publishable standard bringing together the findings from Lot B and drawing conclusions and recommendations
- iv. An oral presentation on the final report at a specially convened seminar.

Please provide detailed breakdown of staff time and costs for each lot for which you wish to be considered.

In examining and assessing the structure and performance of owners' management companies (OMCs) it will be necessary to seek the views of a range of key stakeholders.

A comprehensive literature review will be required which will include:

- a review of arrangements for the ownership and management of common elements in multi-unit developments in Ireland and selected other countries – a minimum of five countries should be included in the study. Tenderers are required to outline in their tender which countries they would include in the study and why
- legal frameworks for the operation of OMCs in other countries, key success factors for OMCs in other countries
- examination of the regulation of OMCs and MUDs in Ireland and how lessons from other countries might be applied to Ireland

In carrying out this research several questions will need to be considered, including but not limited to, the following:

OMC operation in Ireland

- How are capital works paid for? What sinking fund provision is made by OMCs? How do OMCs determine sinking fund requirements?
- How are any building defects and fire safety issues assessed and managed?
- The Taking in Charge process
- Is the operation of service charges satisfactory?
 - How do OMCs determine the level of service charges to be levied?
 - Issues relating to the collection of service charges.
- How does the dispute resolution mechanism established in the MUD Act work in practice?
- Any practical examples of disputes that have been brought to court and outcomes.
- What is the level of participation in the OMC? For example, what is attendance at AGMs?
- What is the level of awareness and understanding among individual owners of the role and responsibilities of the OMC?
- How is the operation of OMCs affected by ownership patterns and tenures?
 - Where there is a mix of tenures, including owner occupied; privately rented; housing association social rented; local authority social rented, and/or
 - Where there is multiple ownership of rented units by private organisations, housing associations or local authorities, and/or
 - Where units are privately rented from individuals so the individual owners are not resident in the development.

OMC boards of directors

- Issues relating to the corporate governance of OMCs
- Are the responsibilities and duties of OMC directors realistic in light of the likely skills and experiences of owners?
- Is the balance between the voting rights of commercial and residential owners on the OMC equitable?
- Are the respective roles of the OMC and the Management Agent clearly defined and understood by both sides?
- Are OMC's aware of the Property Services Regulatory Authority?

Other issues

- Are any policy, practice or legislative amendments required?

Outputs

There will be two main outputs from the research:

Lot 1 Directory of Owner Management Companies and OMC company accounts sample analysis report.

Lot 2 Report to publishable standard and oral presentation of same at a specially convened seminar.

Proposal requirements

Proposed approach and understanding of the research objective

The proposal should demonstrate a clear understanding of the overall research topic and the research questions; and a clear understanding of the operation of the housing system in Ireland and relevant housing policy issues.

Methodologies

The proposal should include a detailed research plan including the approach envisaged for Lots 1 and / or 2 as relevant.

Tenders should demonstrate in outlining their proposed methodology how they propose to ensure engagement of key stakeholders including: local authorities, developers, estate agents, management agents, the RTB, and the Apartment Owners' Network, directors of OMCs, ordinary members of OMCs and non-OMC member residents (ie. those renting).

The proposal should include the categories of stakeholders to be interviewed and an indication of how they will be identified.

Tenderers are required to outline in their tender which countries they would include in the comparative element of the study and why – a minimum of five countries is envisaged.

The proposal should also include the primary work tasks and a tasks/time chart that includes dates for submission of interim and final reports.

Timescale

It is envisaged that the research project will be completed within six months of the contract being awarded.

Costs

Please provide a detailed breakdown of staff time and costs for each lot for which you wish to be considered.

The tender will be awarded to the most economically advantageous tender in line with the criteria set out in Section 3.3.2 above. The budget for Lot B is €30,000 including VAT.

The amount awarded is all-inclusive, i.e. no additional payment is available for expenses or other disbursements.

Clúid Housing and the Housing Agency will however cover the costs of publishing the research report and a public launch.

The recipient of the award will be responsible for ensuring that any taxation that is applicable is paid in full.

Commissioning Work

Clúid and the Housing Agency reserve the right not to commission any assignments under the contract, depending on its particular requirements. It also reserves to commission the lots to separate individuals or organisations. Clúid and the Housing Agency also reserve the right, notwithstanding this process, to engage other service providers to provide some or all of the services under consideration here.

Appendix II – Suggested Amendments to Draft TOR

DHPLG Working Group on Apartment Planning Policies

Draft Terms of Reference

- i. Identification of technical adjustments to 2015 Design Standards for new apartments guidelines in light of practical experience of their operation to date, while at the same time maintaining or improving quality, having regard to sustainable service charges and building maintenance (sinking fund) provision;
- ii. Identification of supplementary planning measures and complementary conditionality that could be taken to stimulate additional supply, that may include the identification of measures specific to certain types of location, having regard to the sustainability of communities in apartment developments;
- iii. Development of new technical standards for the build-to-rent sector, including the shared accommodation segment (and any consequential adjustments to the 2015 standards);
- iv. A framework for consideration of increased building height and complementary planning conditionality, to include a methodology for the consideration of building height in the context of sustainable apartment communities in the development plan process;
- v. Analysis of comparable standards/best practice from comparable jurisdictions.

Appendix III – AON Submissions

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

BY EMAIL: Linda.Sheridan@drccd.gov.ie
Ms. Linda Sheridan
Department of Rural and Community Development
Government Buildings
Ballina
Co. Mayo
F26 E8N6

2 October 2017

Dear Ms. Sheridan,

**Re: Department of Rural and Community Development
Statement of Strategy 2017-2020**

On behalf of the Apartment Owners' Network I enclose a short submission in relation to the above.

Please confirm receipt of the attached in time for your deadline of close of business on Monday 2 October 2017.

Kind regards,

Yours sincerely,

*[*Sent by email and accordingly bears no signature]*

David Rouse
Director

Encl.

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

Submission

to

Department of Rural and Community Development

on

Statement of Strategy 2017-2020

2 October 2017

CONTENTS

1.0 Introduction

2.0 Submission

3.0 Conclusion

Abbreviations/Acronyms Used

| | |
|---------|--|
| DHPCLG | Department of Housing, Planning, Community and Local Government |
| MUD | Multi-Unit Developments, as described in Section 1(1) of the MUD Act |
| MUD Act | Multi-Unit Developments Act 2011 |
| NPF | National Planning Framework |
| OMC | Owners' Management Company as defined in Section 1(1) of the MUD Act |
| PMA | Property Management Agent |
| PSRA | Property Services Regulatory Authority |
| RBI | Rebuilding Ireland |
| TIC | Taking in Charge |

1.0 Introduction

1.1 Executive Summary

This submission responds to the call for submissions of 14 September 2017 issued by the Department of Rural and Community Development (“the Department”) in relation to the Department’s Statement of Strategy 2017-2020 (“SOS”).

Our submission is concerned primarily with the Community functions of the Department. The observations we put forward will help foster apartment developments and MUD estates as vibrant, inclusive and sustainable communities.

In preparing our submission we are conscious of the Irish seanfhocal “*Ar scáth a chéile a mhaireann na daoine*” meaning “*We live in the shelter of one another's shadows*”, and the tradition of the meitheail, the sharing of work in communities.

Successful apartment/MUD communities depend on shared services and shared property spaces, in the form of common areas overseen by community Owners’ Management Companies. Our submission explains how apartment management depends on the volunteer spirit, and how the Community function of the Department can provide support.

Changing communities

Ireland’s population is growing. How and where we live is changing. Housing arrangements and community configurations are changing. It is clear that apartment living will form an increasingly larger component of the housing that will be needed in Ireland in the future.

Communities within communities

Apartment developments and managed estates are communities within communities. Census 2016 records that apartments and flats are not confined to Ireland’s cities¹; there are apartments and managed estates throughout the country. The SOS should therefore reflect policies to support sustainable apartment living and communities in managed estates. This approach will help to promote the social and economic development throughout Ireland’s regions.

The Apartment Owners’ Network submits that public policies to create vibrant, inclusive and sustainable apartment communities throughout the country must involve the re-imagination of how apartment living should work.

Cultural change is required to ensure that apartment living is a sustainable form of housing into the future. This should take into account the practicalities of the current volunteer-director model of OMCs explained in this submission.

We submit that there is a compelling case for reform of the law and the regulation applicable to OMCs of apartment developments. More sophisticated financing structures are required. The Network is working for these changes. We submit that the Department’s SOS should support our objectives in the interests of the development of sustainable and vibrant MUD communities. These supports are also consistent with policy objectives that counter social isolation and disconnectedness in apartment developments.

¹ See Appendix I for Census 2016 breakdown of the numbers of apartments and flats by Local Authority area.

1.2 Apartment numbers nationally

Census 2016 recorded that there are about 204,000 occupied apartments in Ireland². Approximately 500,000 people live in homes in multi-unit developments³.

There has in the last 10-15 years been a rapid growth in the number of apartment/multiunit development homes as a component of the national housing stock. Apartments, which have increased in number by 85% since 2002, accounted for 12% of all household types in 2016, compared with 11% in 2011.

According to Census 2016⁴, since 2011 there has been an increase of 15% in the number of apartment dwellings in the State. In the same period the total number of homes in the country grew by 3%. This means that the apartment sector represents by far the fastest growing component of the national housing stock.

As shown in Appendix I⁵, there are apartments and flats in all counties. These figures do not take account of conventional houses in managed estates with OMCs.

1.3 About the Apartment Owners' Network & OMC directors

We are a volunteer-led, independent, non-party political group representing the interests and views of owners, both owner occupiers and investors, of dwellings in managed estates, and their OMCs, throughout Ireland. The AON is a Company Limited by Guarantee.

Membership of the Network is diverse and includes owners who are directors of OMCs, residents living in estates where the OMC remains controlled by the estate developer, and residents of houses in managed estates.

The Network is an information resource for apartment owners, in particular those owners who have stepped forward to act as volunteer directors of their OMC.

Volunteer directors play a vital role in the oversight of large estate management budgets. They carry much responsibility for the sustainability of their communities.

Directors take decisions on a wide and varied range of matters affecting their communities. Such matters include-

- Fire safety
- Insurances
- Rectification of building defects
- Waste management
- Service charge collection (see below)

² Census of Population 2016 - Profile 1 Housing in Ireland <http://www.cso.ie/en/releasesandpublications/ep/pcp1hii/cp1hii/od/>

³ Presentation to AON by P Mooney, Benchmark Property, 14 January 2016 (The term "multi-unit development" encompasses dwellings such as conventional houses, duplexes, townhouses, etc. where there is an OMC managing the estate. The term is not restricted to developments comprising of apartments only.)

⁴ Census 2016, Chapter 9 "Housing"-

www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_9_Housing.pdf

⁵ Census 2016 Profile 1 Housing in Ireland Tables (Statbank), E1002: Private Households 2011 to 2016 by Type of Private Accommodation and County

- Building maintenance/sinking fund provision
- Anti-social behaviour
- Security
- Contracts tendering
- Financial statements preparation and sign-off

The foregoing is by no means an exhaustive list; it is but a sample of the matters on which volunteer directors work in the interest of their communities.

The role of volunteer director can often be stressful and thankless. Drawing on our cultural tradition of the meitheail, the sharing of experiences and solutions through the Network provides vital assistance and support. Without community volunteer directors the OMC model of apartment management simply would not function.

Where within the current MUD legal/regulatory framework solutions to a particular problem are not available, the Network leadership engages with the relevant authorities. We propose action and we promote legislative change.

As of the date of this submission, 470 multi-unit stakeholders approximately are engaged with the AON. Many more multi-unit estates engage with the Network on an ad hoc or informal basis.

Policy engagement

The AON has working relationships with various national and local government agencies, including the ODCE, the Law Reform Commission, the Department of Justice and Equality, the PSRA, and Dublin City Council (“DCC”).

We liaise with the Society of Chartered Surveyors Ireland (Residential Committee), as the representatives of the Property Management Agent sector. We have working links with the Owners Corporation Network in Australia.

The Network played a central role in securing the formulation and enactment of the Multi-Unit Developments Act 2011 (“the MUD Act”). We contributed to the preparation of the Property Services (Regulation) Act 2011, and related secondary legislation.

Monthly forum meetings

The AON meets in open forum once a month at DCC Civic Offices, Wood Quay, Dublin 8. Meetings and activities are currently facilitated by funding from DCC, and by the involvement of the Network’s volunteer members.

The Network incorporated as a CLG (No. 592683) on 10 November 2016, and is establishing formal structures as a full-time representative organisation.

Further information about the Network’s activities is available at-
www.apartmentownersnetwork.org

We are active on-

Twitter @apartmentowners

Facebook- <https://www.facebook.com/apartmentowners>

1.4 Context to submission

Brief overview of apartment management

An apartment/MUD Owners' Management Company comprises a board of volunteer directors, typically civic-minded residents or owners in the estate. The directors are elected by the membership of the company, i.e. the wider body of unit owners.

As outlined earlier, these unpaid directors are charged with the primary responsibility of managing the estate. This refers in particular to the upkeep of the common areas, and delivery of shared property services, and to ensuring adherence to the principles of good estate management.

Effective stewardship of the OMC is vital to ensuring the maintenance of the estate, the built environment of the community. An effectively run OMC means the estate will be a good community in which to live.

It is important to note that while taking the form of a body corporate, an OMC is in reality a voluntary community organisation. It is akin to a residents' committee, but in corporate form. It facilitates the orderly running of a residential estate for the benefit of the wider neighbourhood and community. An OMC is a not-for-profit company. Its core function is the stewardship of the finances underpinning the successful management of the estate.

A Property Management Agent ("PMA") is appointed by the OMC to attend to the operational running of the estate- common area maintenance and upkeep, block insurance, domestic waste disposal, landscaping, etc.

The OMC levies an annual service charge on each unit owner. This annual management charge pays for the aforementioned services. The charge is required by law to include a contribution to a long-term sinking fund for non-recurring/capital expenditure (e.g. lift replacement).

Service charge collection problems

Service charge debt recovery is widely accepted as the most significant financial challenge facing OMCs. Many OMCs are faced with current fee recovery rates of less than 70%. Aged debtors can run to five or more years, and cumulatively can represent in excess of 100% of the OMC annual budget.

Sinking Fund provision is in many cases tied up in debtors, with the priority given by the OMC to meeting the day-to-day costs of maintaining core estate services.

We have in our other submissions put forward proposals around OMC regulation, seeking to address issues including financial underprovision.

We enclose at Appendix II for the information of the Department our submissions to DHPCLG on the recent review of Rebuilding Ireland and the National Planning Framework. This material will inform the reader on the current and future challenges facing the OMC sector.

2.0 Details of Submission

We set out below our high-level observations on how the Community functions of the Department, as articulated in the Department's SOS, should support apartment/MUD communities.

We submit that the measures put forward will help foster apartment developments as vibrant, inclusive and sustainable communities. These measures will feed into the wider public policy framework for the social and economic development of the country.

Our proposals are borne out of our practical experience of living in and the management of apartment/multi-unit developments.

1. Support residents' groups in managed/MUD estates

OMCs frequently struggle to involve residents as directors. As outlined earlier, where the OMC is poorly run, because there are insufficient, inexperienced or unsupported directors, the estate and the community will suffer.

A poor built environment, i.e. an estate with rundown common areas, will detract from the sustainability and vibrancy of the community.

Local residents' and community groups represent a pool of civic-minded persons who would be willing to act as OMC directors. Accordingly such groups should be supported.

Government policy, through the Community function of the Department, should support residents' involvement in OMCs, and should also promote volunteer director training.

2. Support AHBs and tenants to promote participation in estate management

Many multi-unit estates have a social or affordable housing component. Engagement by Approved Housing Bodies ("AHBs") and their tenants in their local communities contributes to the inclusivity, vibrancy and sustainability of those communities.

Participation in the running of the OMC by owners and residents of diverse backgrounds is an essential part of ensuring social cohesion in a development. It contributes to engendering a strong community in the estate.

Government policy, through the Community function of the Department, should provide practical support to AHBs and tenants to promote their participation in estate management.

3. Local authorities' support for OMCs and directors

Local Authorities' planning conditions for apartment developments include a requirement for a management company to run the estate common areas. However, there is little or no follow through from Local Authorities on this condition once the estate has been developed and the homes are sold.

Public policy, through the Community function of the Department, should require Local Authorities to undertake measures to provide support to MUD OMCs and their volunteer directors.

Taking in Charge

As regards the Taking in Charge (“TIC”) of residential housing estates, there should be a defined and transparent process that involves all stakeholders, including estate OMCs, residents’ and community groups, etc. This should ensure the timely and appropriate process for TIC of estates (roads, lighting, etc.) by Local Authorities.

As it stands, due to delays in TIC, particularly in part-completed estates, affected communities are left to deal directly with developers (or receivers) on matters of road safety, services, and the upkeep of the public realm. However, many developers simply fail to engage. Such situations put at risk wider public safety. We are aware of cases of residential estates where roads and services remain for decades not taken in charge.

The current laissez-faire approach, where estates are in limbo until such time as a developer decides it is ready to hand over the roads and services, is detrimental to the creation of vibrant and sustainable communities. It is not satisfactory that volunteer-led OMCs are left to depend on a developer for the completion of the built environment of their communities. We submit that the Community function of the Department has a role in improving the current situation.

3.0 Conclusion

We wish to thank the Department for the opportunity to make what is a very high level submission on the SOS.

Apartment and MUD estates are the built environment of many emergent communities throughout Ireland. The measures put forward in this submission will help foster apartment developments and MUD estates as vibrant, inclusive and sustainable communities.

As noted, in order to support volunteer OMC directors in our communities there is a pressing requirement for reform of the law, the regulation, and the financing structures applicable and available to OMCs. We have addressed these in our submissions to DHPCLG and the Department of Finance, among others.

Over and above the foregoing, we submit that the Community functions of the Department of Rural and Community Development have an essential role to play in creating the climate for vibrant, inclusive and sustainable communities in apartment/MUD estates across the country.

We trust that the views expressed will be given due consideration in the Department's strategy formulation.

We would welcome the opportunity to contribute further to the Department's work by way of meeting or other communication.

Appendix I – Census 2016 – distribution in Ireland of apartments/flat

Private Households 2011 to 2016 (Number) by Persons per Household, Type of Private Accommodation, County and City and Census Year

2016

All private households

| | |
|---|---------|
| Flat or apartment in a purpose- built block | |
| State | 172,096 |
| Carlow | 922 |
| Dublin City | 60,349 |
| Dún Laoghaire-Rathdown | 15,974 |
| Fingal | 16,445 |
| South Dublin | 12,327 |
| Kildare | 6,232 |
| Kilkenny | 1,250 |
| Laois | 1,101 |
| Longford | 550 |
| Louth | 2,456 |
| Meath | 4,388 |
| Offaly | 752 |
| Westmeath | 2,373 |
| Wexford | 1,743 |
| Wicklow | 3,381 |
| Clare | 1,954 |
| Cork City | 7,409 |
| Cork County | 5,829 |
| Kerry | 1,984 |
| Limerick City and County | 6,172 |
| Tipperary | 1,455 |
| Waterford City and County | 2,480 |
| Galway City | 6,055 |
| Galway County | 1,732 |
| Leitrim | 415 |
| Mayo | 1,431 |
| Roscommon | 436 |
| Sligo | 1,315 |
| Cavan | 869 |
| Donegal | 1,631 |
| Monaghan | 686 |
| Flat or apartment in a converted house or commercial building | |
| State | 28,783 |
| Carlow | 222 |
| Dublin City | 12,177 |
| Dún Laoghaire-Rathdown | 1,255 |
| Fingal | 570 |
| South Dublin | 402 |
| Kildare | 742 |
| Kilkenny | 306 |
| Laois | 177 |
| Longford | 78 |
| Louth | 392 |
| Meath | 507 |
| Offaly | 215 |
| Westmeath | 318 |
| Wexford | 576 |
| Wicklow | 789 |
| Clare | 343 |
| Cork City | 2,121 |
| Cork County | 1,675 |
| Kerry | 572 |
| Limerick City and County | 896 |
| Tipperary | 623 |
| Waterford City and County | 501 |
| Galway City | 769 |
| Galway County | 670 |
| Leitrim | 70 |
| Mayo | 501 |
| Roscommon | 152 |
| Sligo | 227 |
| Cavan | 241 |
| Donegal | 479 |
| Monaghan | 217 |

Appendix II – RBI & NPF submissions

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

Review of Rebuilding Ireland Action Plan

Submission

to

**Department of Housing, Planning, Community and Local
Government**

11 August 2017

CONTENTS

1.0 Introduction & Context

2.0 Details of Policy Submissions

3.0 Conclusion

Abbreviations/Acronyms Used

| | |
|---------|---|
| AON | Apartment Owners' Network CLG |
| DCC | Dublin City Council |
| DHPCLG | Department of Housing, Planning, Community and Local Government |
| LRC | Law Reform Commission |
| MUD Act | Multi-Unit Developments Act 2011 |
| OMC | Owners' Management Company |
| PIA | Personal Insolvency Act 2012 |
| PMA | Property Management Agent |
| PSRA | Property Services Regulatory Authority |
| SCSI | Society of Chartered Surveyors Ireland |

1.0 Introduction & Context

1.1 Apartment Living - Background & Public Policy

The apartment sector is by far and away the fastest growing component of Ireland's housing stock¹.

It has been acknowledged in Rebuilding Ireland: Action Plan for Housing and Homelessness ("the Plan") and by the National Competitiveness Council that national economic competitiveness and social cohesion are dependent on the availability of an affordable supply of housing, including a well-maintained stock of apartments².

Minister Murphy has recognised explicitly this position in recent remarks to the Housing Agency Annual Conference-

"Apartment living is essential if we are to be able to leverage public money & resources properly. If our cities are to continue to work and grow. We need higher density.

But did the failures of builders in the boom time put people off buying apartments? And thus, new builders building more apartments?"³

Key to limiting urban sprawl, achieving increases in residential densities in urban areas, and encouraging a more vibrant and sustainable rental market are Government policies that promote high quality apartment living.

Recent rent and property price increases in urban areas indicate that supply in both the apartment rental and owner-occupier markets is not meeting demand.

It is clear that there are economic, cultural and regulatory barriers in Ireland to high-quality apartment living.

This submission outlines some of the more significant barriers and puts forward policy changes for the Plan to overcome these obstacles. Where relevant it addresses the specific questions posed in the DHPCLG Information Document⁴.

¹Census 2016 "Census 2016 Profile 1 - Housing In Ireland"

<http://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/od/>

Apartments have grown in number by 85% between 2002 and 2016.

The number of occupied apartments rose by 11.4% from 183,282 to 204,145 over the period 2011-2016. The number of detached and semi-detached houses experienced increases of 2.2% and 3.4% respectively.

CSO Statistical Release, 23 June 2017- Planning Permissions

<http://www.cso.ie/en/releasesandpublications/er/pp/planningpermissionsquarter12017/> notes that Q1 2017 shows 61% increase in planning permissions granted for apartments versus Q1 2016. The equivalent increase for houses was 48%.

² Context for Action Plan "Housing and Wider Public Policy", page 19, Rebuilding Ireland – Action Plan for Housing and Homelessness

http://rebuildingireland.ie/Rebuilding%20Ireland_Action%20Plan.pdf

National Competitiveness Council publishes Ireland's Competitiveness Challenge 2016

<http://www.competitiveness.ie/Publications/2016/Competitiveness-Challenge-2016-Press-Release.pdf>

³ Minister Eoghan Murphy's Housing Agency conference speech 28 June 2017

housing.gov.ie/housing/rebuilding-ireland/minister-eoghan-murphys-housing-agency-conference-speech

⁴ <http://rebuildingireland.ie/install/wp-content/uploads/2017/07/2017-07-20-Information-Note-for-Public-Consultation-on-RI-Review.pdf>

In the absence of public policy action on the matters raised in this submission, i.e. in a “do nothing” scenario, we submit that the apartment sector cannot develop in line with the expectations and objectives articulated in the Plan.

There is an opportunity for the State to get ahead of the problems facing OMCs, and in this way to give effect to the objectives of the Plan for high quality sustainable apartment living in Ireland.

Briefings to DHPCLG, et al.

As noted, this submission develops material previously submitted to the DHPCLG, and other organs of the State. In particular we refer to meetings of 31 January and 16 May 2017, and related Briefing Documents and other material provided to the Housing Market Policy and Land Management Division of the DHPCLG⁵.

We note that we have engaged with the DHPCLG by way of submission on the Pre-Draft Stage of the National Planning Framework⁶.

We have engaged with the Housing Agency on many of the matters contained in this submission⁷.

We have liaised with senior personnel in the Housing sections of the four Dublin Local Authorities. From their “on the ground” experience they are fully aware of the issues raised, and have indicated broad agreement with our analysis.

In this document we draw together and augment the aforementioned material already landed in the public policy realm.

We trust that our observations will be received in the constructive spirit with which they have been developed.

⁵ We note also our submission of 30 May 2017 to the Public Consultation on Housing Economics Research Programme - Invitation for Research Topic Suggestions- <http://www.housing.gov.ie/housing/policy/housing-economics-research-programme-invitation-research-topic-suggestions-0>

Our submission is on our website- <https://apartmentownersnetwork.org/2017/06/19/aon-submission-to-dhpcldgesri-housing-research-programme/>

⁶ <https://apartmentownersnetwork.org/2017/04/13/national-planning-framework-aon-submission/>

⁷ We wish to acknowledge the Housing Agency in relation to the “*Apartment Living*” roundtable under “*Cluster 1 / The Housing Stock*” at its Annual Conference of 28 June 2017. We understand that the policy report/output from the Conference is a work in progress.

The Housing Agency and Clúid Housing have commissioned a study on the OMC sector, see details on our website- <https://apartmentownersnetwork.org/2017/07/26/research-report-on-omcs-cluid-housing-agency/>

1.2 High Level Context - Volunteer model

Apartment developments have common areas. High quality apartment living requires active management of these common areas by well-run Owners' Management Companies ("OMCs").

OMCs are in essence cooperatives, led by committees made up of apartment owners. Committee members are owners who volunteer to step forward to take on the responsibility of the stewardship of the estate common areas through the OMC.

The volunteer structure of the Irish apartment management model means that the quality of apartment stock worth billions of euro depends on the work of volunteer directors. As articulated elsewhere in this and our other submissions, existing regulatory weaknesses and deficiencies undermine the sustainability of the apartment management model.

In order to support sustainable high quality apartment living, Housing policy as set forward in the current version of the Plan needs to be supplemented. Over and above Company Law and the MUD Act, the wider legislative framework around multi-unit developments requires urgent reform.

This submission puts forward how the Plan should be augmented with policies to support high quality sustainable apartment living. It refers to and develops positions in the material previously submitted to the DHPLCG, as noted above.

1.3 High level context – International

International models

Many of the policies articulated in this submission and supporting material are already common practice in the mature apartment sectors of other countries. Ireland has a unique opportunity to select the best of these policies and adapt them to suit the Irish environment. We may also learn what does not work.

Jurisdictions with legal systems of common law origin, including the UK, Australia, Canada, and the US, offer examples of policies and legislative frameworks supporting sustainable and high quality apartment living.

In this regard we are in on-going communication with our counterparts in Australia⁸. Our research indicates that the Australian “strata” model is closest in similarity to the Irish model. We will welcome an opportunity to expand on learnings from Australia.

Apartment living – EU comparators

In 2015, more than 4 out of every 10 persons (42%) in the EU-28 lived in apartments/flats⁹. The proportion of people living in apartments was highest in Spain (65%), Latvia (65%) and Estonia (62%).

In stark contrast, Ireland (7%) was by far and away the country with the lowest proportion of apartment dwellers¹⁰. Ireland had less than half the proportion of the UK (15%), the country with the second lowest proportion.

We submit that the narrative behind the Irish statistic is one of current policies and legislative supports that fail to encourage apartment living.

We put forward what we contend are constructive and effective policy solutions to remedy the position. These will support the objectives of the Plan.

⁸ Owners Corporation Network- <https://www.ocn.org.au/>

⁹ http://ec.europa.eu/eurostat/statistics-explained/index.php/Housing_statistics#Type_of_dwelling

¹⁰ See detailed table [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Distribution_of_population_by_dwelling_type,_2015_\(%25_of_population\)_YB17.png#file](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Distribution_of_population_by_dwelling_type,_2015_(%25_of_population)_YB17.png#file)

1.4 About the Submitter

The AON is a volunteer-led, independent, non-party political organisation. Membership of the Network is diverse. We represent the interests and views of owners, both owner-occupiers and investors, and OMCs, of dwellings in managed estates throughout Ireland.

As of the date of this submission, 470 multi-unit stakeholders approximately are engaged with the AON. Many more multi-unit estates engage with the Network on an ad hoc or informal basis.

Policy engagement

The AON has working relationships with various national and local government agencies. These include the Law Reform Commission, the Department of Justice and Equality, the DHPCLG, the PSRA, the ODCE, the Housing Agency, Dublin City Council (“DCC”) and the other three Dublin Local Authorities.

We engage with other organisations in the sector including the Society of Chartered Surveyors Ireland (Residential Committee). We have working links with the Owners Corporation Network in Australia.

The Network played a central role in securing the formulation and enactment of the Multi-Unit Developments Act 2011 (“the MUD Act”). We contributed to the preparation of the Property Services (Regulation) Act 2011, and related secondary legislation.

Monthly meetings

The AON meets in open forum approximately once a month at DCC Civic Offices, Wood Quay, Dublin 8. Meetings and activities are currently facilitated by funding from DCC, and by the work of its volunteer members.

The Network incorporated as a Company Limited by Guarantee (No. 592683) on 10 November 2016, and is establishing formal structures as a representative organisation.

Contact information

Further information about the Network’s activities, including all of the submissions referred to in this submission, is available at-
www.apartmentownersnetwork.org.

We are active on-

Twitter [@apartmentowners](https://twitter.com/apartmentowners)

Facebook- <https://www.facebook.com/apartmentowners>.

1.5 Detailed context to submission

1.5.1 Apartment numbers nationally

Census 2016 recorded that there are about 204,000 occupied apartments in Ireland¹¹. Approximately 500,000 people live in homes in multi-unit developments¹².

There has in the last 10-15 years been a rapid growth in the number of apartment/multi-unit development homes as a component of the national housing stock. Apartments, which have increased in number by 85% since 2002, accounted for 12% of all household types in 2016, compared with 11% in 2011.

According to Census 2016¹³, since 2011 there has been an increase of 15% in the number of apartment dwellings in the State. In the same period the total number of homes in the country grew by 3%. This means that the apartment sector represents by far the fastest growing component of the national housing stock.

Apartments are the main household type in the Dublin City local authority area. They account for 35% of all occupied homes in the capital.

Given these rapid changes, public policy should support the sustainability of apartments and multi-unit developments as a key component of the national housing stock.

We note that the relatively short timeframe for the preparation of responses to the Public Consultation, and the volunteer nature of the Network leaders, mean that this submission is not intended to represent a comprehensive analysis of the issues facing the multi-unit/apartment sector. We look forward to having the opportunity to expand on our policy proposals.

¹¹ Census of Population 2016 - Profile 1 Housing in Ireland <http://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/od/>

¹² Presentation to AON by P Mooney, Benchmark Property, 14 January 2016 (The term "multi-unit development" encompasses dwellings such as conventional houses, duplexes, townhouses, etc. where there is an OMC managing the estate. The term is not restricted to developments comprising of apartments only.)

¹³ Census 2016, Chapter 9 "Housing"-
www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_9_Housing.pdf

1.5.2 Brief overview of apartment management

In order to inform the reader, and to provide context for the proposals in this submission, we present a brief explanation of how apartment and multi-unit developments are structured and managed.

OMC

An OMC is established to manage the common areas of a multi-unit development. The members of the OMC are the owners of the housing units of the development. At general meetings of the OMC each member has one vote for each housing unit owned. The members elect directors to manage the affairs of the OMC.

In the vast majority of cases the directors are not paid. However, they are charged with the primary responsibility of managing the estate common areas and shared services, and of ensuring adherence to the principles of good estate management.

Effective stewardship of the OMC is vital to ensuring the upkeep of the estate. It is essential to ensuring that the estate is a good community in which to live.

The MUD/OMC model of apartment management in Ireland means that property assets worth hundreds of millions of euro are under the stewardship of volunteer directors. Other than the usual CRO and ODCE filing requirements and enforcement measures, and the generality of Company Law, there is no effective practical regulation of OMCs.

The OMC agrees an annual budget for the year. It then issues an annual service charge to each unit owner. This management fee pays for the aforementioned services.

The management fee must by law¹⁴ include a contribution to a long-term building investment (“sinking”) fund for non-recurring/capital expenditure (e.g. lift replacement). The amount of the sinking fund contribution is set by the members; it is open to them to agree there shall be no contribution¹⁵. It is submitted that this is a flaw in the legislation.

Typically a Property Management Agent (“PMA”) is appointed by the OMC to attend to the day-to-day operational running of the estate¹⁶. This includes common area maintenance and upkeep, block insurance, domestic waste disposal, landscaping, etc.

Mutuality/community ethos

An OMC is *de jure* a company, a body corporate. In reality, *de facto*, it is a cooperative of owners who elect volunteer directors (usually residents) to manage the affairs of the OMC. It is a mutual organisation. An OMC is often referred to as “the residents’ committee”, reflecting the background of the participants on the board.

¹⁴Section 19(3) of the Multi-Unit Developments Act 2011 obliges the owner of each unit in a multi-unit development to make a payment to the sinking fund of the amount of contribution fixed in respect of the unit concerned in accordance with the section.

¹⁵Section 19(5) provides that the amount of the contribution to be paid as respects a unit by each unit owner to the sinking fund shall be €200, “...or such other amount as may be agreed by a meeting of the members...”.

¹⁶ Some estates are self-manged, i.e. the directors/members effectively undertake the PMA role, however such arrangements are relatively rare.

An OMC is established in law usually as company limited by guarantee. By definition it has no shareholders, only guarantors, usually for an amount up to a nominal sum, €10. The OMC is not-for-profit, and does not pay a dividend.

Any excess of income over expenditure is either allocated to the building investment/sinking fund, or else it is carried forward towards the cost of provision of estate services for the following year.

1.5.3 Service charge recovery challenges

Service charge debt recovery and OMC illiquidity are widely accepted as the most significant and immediate financial challenges confronting OMCs and their volunteer directors¹⁷.

Many OMCs are faced with current fee recovery rates of less than 70%. Aged debtors can run to six or more years. In this way debt recovery risks becoming statute barred. Accumulated debtors can represent in excess of 100% of the OMC annual budget.

Sinking fund provision is in many cases tied up in debtors. As a consequence many OMCs are forced to give priority to the costs of basic estate services only: insurance, refuse collection and common area lighting.

Properly funded OMCs that can-

- meet their annual expenses (particularly non-discretionary costs such as insurance and waste collection), and
- appropriately enhance the estate over time,

ensure the maintenance and improvement of apartments as a growing component of the national housing stock.

Sound financial management reduces the risk of developments looking to the State or local government for support in the future for funding; this is in contrast to regrettable difficulties experienced in recent high profile cases.

As noted, the problem of service charge arrears is widespread in the OMC sector. Poor recovery restricts the provision of vital services, negatively impacting the overall quality and supply of owner occupier and rental apartments to the market.

¹⁷See Adele McKeown SCSl Presentation: *OMC Service Charge Collection* on our website-
<https://apartmentownersnetwork.org/2017/06/19/adele-mckeown-scsi-presentation-omc-service-charge-collection/>

2.0 Details of Policy Submissions

2.1 Action Plan for Housing and Homelessness – content on apartment sector

We have reviewed the Plan; it contains ten explicit references to apartments.

Our review indicates that eight of the references fall under either Pillar 3 “Build More Homes” or Pillar 4 “Improve the Rental Sector”.

The three references under Pillar 3 are in the context of delivery costs, i.e. construction costs, apartment design standards, and planning guidelines¹⁸.

The four references under Pillar 4 deal with the proposal to supply apartments by way of the build-to-rent model. Here again the focus is on construction costs, planning and design. There is one reference to “...storage and amenity provision standards, to support high quality apartment living.”¹⁹.

The other two references are largely incidental-

(1) page 28 Graph 7: Rent Affordability Index (RAI) for Comparator Regions, 2015

(2) page 77, Pillar 5 “Utilise Existing Housing” and getting vacant apartment back into use.

Information Document

The Information Document issued for the Public Consultation has three references to apartments²⁰. Two of these deal with the supply-side- construction costs/design. The third refers to “the need to facilitate sustainable apartment/build-to-rent developments in city centre locations”.

Plan Omissions

By this review it may be seen that the focus of Housing policy in the Plan and the Information Document as regards the apartment sector is almost exclusively on the initial design, planning and construction cost aspects.

Policy omits to address the practicalities of apartment living once apartments have been constructed. There is an absence of policy to deal with regulation of the sector, in particular the funding difficulties affecting OMCs.

We submit that including and acting on the policies we articulate will promote high quality apartment living in Ireland. It will encourage the development of a mature and sustainable apartment model.

¹⁸ Pages 58 and 62.

¹⁹ Page 73

²⁰ <http://rebuildingireland.ie/install/wp-content/uploads/2017/07/2017-07-20-Information-Note-for-Public-Consultation-on-RI-Review.pdf> pages 2, 4 and 9.

2.2 Supplement the Plan

We submit that the Plan should be supplemented with policies that will, *inter alia*, -

- Support the sustainability of the apartment OMC model, the success of which depends on volunteer directors
- Allow timely recovery of service charge debt
- Address the sinking fund “time bomb” and encourage suitable sinking fund provision
- Mandate developers to engage in the preparation of sinking fund framework
- Involve long-term tenants, and landlords, in the sustainability of their apartment estate through OMC structures
- Assist wider funding mechanisms for OMCs

This document and other material already in the public policy realm put forward the necessary policies.

2.3 Service Charges & Sinking Fund Provision

Sinking funds are required by OMCs for two distinct purposes:

1. To act as a saving fund for long-term planned maintenance projects such as lift refurbishment/replacement, roof repairs, maintenance of external surfaces, internal redecoration, etc.
2. As a “rainy day fund” to cover unexpected events that may not be covered by insurance, unplanned legal expenses, or unforeseen cashflow shortages such as arise in a severe recession.

It is essential that Government and planning authorities recognise that prudent sinking fund provision by OMCs is essential to the long-term sustainability of high-quality apartment living in Ireland, as envisaged in the Plan.

OMCs that cannot repair roof leaks, cannot replace dilapidated elevators, or cannot redecorate buildings directly adversely impact the value of apartments, and undermine the desirability and sustainability of apartment living.

Our experience indicates that sinking fund provision is insufficient in most developments in Ireland.

Deficiencies

Factors and behaviours giving rise to sinking fund deficiencies include²¹:

1. Year 1 service charges, which may or may not include a sinking fund provision, are set by the developer. Anecdotal evidence and discussions with industry professionals lead us to believe that the service charge is dictated by those

²¹ See research on the matter by Ms. Adele McKeown in her SCSl Presentation: OMC Service Charge Collection, available on our website- <https://apartmentownersnetwork.org/2017/06/19/adele-mckeown-scsi-presentation-omc-service-charge-collection/>

marketing the development rather than any scientific costing by the engineers/QS associated with the original build.

As a result, the service charge is set at a level that will not prove an impediment to the sale of the housing units. It is then up to owners in subsequent years to attempt to raise the charge to a more realistic level.

2. It is “politically”/culturally difficult in Ireland to increase service charges. There is a cultural reluctance in Ireland to the payment of service charges. Most owners are unwilling to become involved in the management of their OMC (via voluntary directorships).

Many owners simply want the lowest possible service charge. They are slow to familiarise themselves with the detail of OMC management.

3. There is little public education on the role of OMCs in apartment management. Many owners are surprised to learn that they must pay a service charge when they purchase an apartment.

Many owners do not know the difference between the Property Managing Agent and the OMC. The roles are conflated and the majority of owners consider that the PMA is the OMC.

If owners hear a negative story about a PMA in a development separate from their own they immediately associate this story with the management of their own estate; many OMCs share the same PMA. Consequently, a lack of confidence in the sector arises, as does a reluctance to pay charges, or to agree to necessary increases.

4. Many owners do not or did not intend to own their apartment for longer than an initial short period of time. Apartments were viewed as starter homes.

Owners with short-term horizons do not see the value in contributing towards a sinking fund from which they believe they will never benefit. Such owners will typically vote to minimise the service charge where there are no large refurbishment costs on the immediate horizon.

Financial “time bomb”

As a consequence of the poor level of sinking fund provision, a version of pass the parcel is occurring in apartment ownership in Ireland. Those left holding the parcel will in fact have on their hands a ticking financial “time bomb”.

The time bomb explodes when substantial funds for building refurbishment are required. Owners will face severe increases in service charges, or immediate cash calls. Owners are unlikely to be in the position to afford these demands.

It is clear that in the absence of urgent action (through public policy and legislative change) this problem will crystallise for the majority of so-called “Celtic Tiger” developments over the next 10 years.

Solutions

We make four proposals in this regard:

1. Service charges for new developments must be set by an independent professional. The developer must provide all relevant information with regard to the required maintenance of the development's infrastructure and a timeline for refurbishment/replacement.

The independent professional must calculate a required sinking fund provision to be incorporated in the Year 1 service charge on the basis of a Planned Preventative Maintenance (PPM) programme. The PPM must include the refurbishment of all aspects of the building and should not be time limited so that there is no risk of some building infrastructure being excluded (e.g. some PPMs cover a 20-year period that will typically exclude lift replacement as lifts have an average life of 25 years). The PPM must take account of expected price inflation (we suggest the European Central Bank target rate of 2%)

2. The MUD Act must be amended to require all MUD developments to prepare a PPM. This will inform the setting of sinking funds and related contributions. Current legislation requires amendment to include mandatory provisions as to sinking funds. As it stands the legislation leaves too much discretion to directors, who may have little expertise to determine the funding levels necessary.
3. Tax policy must incentivise prudent sinking fund provision. (See our submissions to the Department of Finance in this regard²².)
4. Expenditure on long-term maintenance projects that enhances the quality of apartment buildings in Ireland should be encouraged by tax policy.

MUD Act inadequacies

The MUD Act has been in operation since 2011; it has had time to prove its efficacy.

Industry professionals and academics have articulated their views on the limitations of the legislation, particularly in relation to service charge recovery and sinking funds²³. The Network agrees with these views.

The *laissez-faire* approach to OMC regulation in the consultations and reports²⁴ prefacing the formulation of the MUD Act has been proven to be incorrect. Existing remedies in Company Law and other sources have proven inadequate.

²² <https://apartmentownersnetwork.org/2017/07/11/aon-submission-dept-of-finance-budget-2018/>

²³ For example see-

Has the Multi-Unit Development Act 2011 Been A Success? - Brendan Sharkey, Partner, Property & Probate Department, Reddy Charlton Solicitors- <http://www.reddycharlton.ie/insights/has-the-multi-unit-development-act-2011-been-a-success/insolvency-a-risk-owners-must-account-for-with-management-companies-> Paul McNeive (SCSI), Irish Independent, 13 April 2017- <http://www.independent.ie/business/commercial-property/insolvency-a-risk-owners-must-account-for-with-management-companies-35617809.html>

Crisis looms for under-funded owners' management companies – Dr. Lorcan Sirr, DIT, The Sunday Times, 26 February 2017-

<https://www.thetimes.co.uk/article/crisis-looms-for-under-funded-owners-management-companies-9bl3dkkbb>

²⁴ Consultation Paper on Multi-Unit Developments, The Law Reform Commission (LRC CP 42-2006)- <http://www.lawreform.ie/2006/consultation-paper-on-multi-unit-developments.203.html>

In a “do nothing” scenario in relation to legislation on service charge debt recovery and sinking fund provision, the costs will inevitably fall on the Exchequer. Pyrite resolution mechanisms, and the Priory Hall and Longboat Quay cases bear out the likelihood that the State will end up footing the bill for underfunded OMCs.

An overhaul of the MUD Act is the legislative route to defusing the financial “time bomb” latent in the apartment sector.

We note that the unique character and importance of service charge debt is already recognised in one instance by Irish law. Service charge debt is an “excludable debt” from a Personal Insolvency Agreement under the PIA²⁵. It is submitted that the solutions put forward by the Network are in keeping with this positive, albeit limited, legislative representation of public policy on OMCs.

As noted, there is an opportunity for the State to get ahead of the problems facing OMCs, and in this way to give effect to the objectives of the Plan for high quality sustainable apartment living in Ireland.

2.4 Carbon Emissions Reduction

OMCs can play a role in environmental sustainability and the reduction of carbon emissions in Ireland. We make the following proposals:

1. The promotion of the use of bicycles as a sustainable transport alternative to private motor vehicles is a key objective for local and national transport authorities. Due to inadequate secure storage available in apartment blocks bicycle theft from apartments is a major problem.

The lack of secure storage options is a major disincentive for apartment dwellers considering purchasing a bicycle. In recent years, several Local Authorities have recognised this issue, and referenced secure bicycle storage provision for apartments in their Development Plans. While future apartment developments may adequately cater for bicycle storage, existing developments do not. OMCs should be incentivised to retrofit/invest in secure storage facilities via grants and tax relief.

2. As electric vehicles gain popularity, more charging points will be required. OMCs should be both facilitated and incentivised to provide charging points in their developments.

Report Multi-Unit Developments, The Law Reform Commission (LRC 90 – 2008)-
http://www.lawreform.ie/_fileupload/Reports/Report%20MUDs.pdf

In particular we reference the statements in paras 32 to 34 (pages 11&12) including-

“The Commission considers that effective and co-ordinated use of existing powers by the various regulatory bodies already involved in the sector means that there exists currently a wealth of expertise available to regulate multi-unit developments. In this light, the Commission therefore recommends that it would not be appropriate or necessary to recommend an entirely new regulator for multi-unit developments.”

²⁵ Section 2(1)(f) PIA, “excludable debt” includes a “debt due by the debtor to any owners’ management company in respect of annual service charges under section 18 of the Multi-Unit Developments Act 2011 or contributions due under section 19 of that Act”

3. OMCs are responsible for the lighting of common areas in residential developments. OMCs should be actively encouraged and facilitated to upgrade lighting to high energy efficient standards. There is a consensus among our members that there is currently little or no active engagement from the SEAI with OMCs on this matter.

2.5 Provision of funding to OMCs

For our further detailed policy proposals on the sustainable funding of OMCs please refer to the following submissions, available on our website-

1. Budget 2018, submission to Department of Finance, 10 July 2017²⁶
2. Consultation on Potential Changes to the Investment Framework for Credit Unions, submission to Registry of Credit Unions, 27 June 2017²⁷
3. Tax and Fiscal Treatment of Landlords Consultation, submission to Tax Policy Division, Department of Finance, 6 April 2017²⁸

The thrust of these submissions is that public policy changes can improve the finances of OMCs. The submissions articulate the practical ways of giving effect to the policies.

2.6 Involving tenants and landlords in apartment management

According to Census 2016²⁹ nearly 80% of apartments across the country are rented; approximately 20% are social rented (housing association or local authority) and nearly 60% are rented privately. The remaining 20% of apartments are owner occupied.

Given this profile of apartment occupiers, it is submitted that the inclusion of long-term renters/tenants³⁰ in the running of a development is necessary if the estate is to be a success in terms of sustainable and high quality accommodation.

As it stands, provided an OMC Constitution (Memorandum and Articles of Association) does not prevent non-owners from being directors, theoretically a long-term tenant may become a director. We submit that this matter requires further exploration. The rationale is to ensure that all parties involved in an estate share the responsibility of sustainable management.

This policy is put forward in the context of the Irish apartment sector moving towards the international model. It is predicated on the introduction of residential tenancies of a duration longer than is typically the case now. We understand that this is in keeping with the objectives of the Plan for a more vibrant and responsive rental sector.

It is acknowledged that the mechanics and practicalities of this require further exploration as the Irish apartment rental sector matures.

²⁶ <https://apartmentownersnetwork.org/2017/07/11/aon-submission-dept-of-finance-budget-2018/>

²⁷ <https://apartmentownersnetwork.org/2017/06/29/aon-submission-registry-of-credit-unions/>

²⁸ <https://apartmentownersnetwork.org/2017/04/18/tax-and-fiscal-treatment-of-landlords-aon-submission/>

²⁹ Analysis of Census 2016 contained in Request for Tenders for the Provision of a research report on Owners' Management Companies for Clúid Housing in collaboration with The Housing Agency, 11 July 2017; available on <https://apartmentownersnetwork.org/2017/07/26/research-report-on-omcs-cluid-housing-agency/>

³⁰ We do not wish to be prescriptive as regards a definition of "long-term", however a tenancy of a minimum of five years' duration/term would seem reasonable.

Apartment landlords

Anecdotal evidence indicates that it is apartment owner-occupiers (residents), rather than apartment landlords, that go forward as directors of OMCs. This is likely to be because owner-occupiers experience the direct effects of the quality of management of the estate. Landlords of course wish to protect their investments, however their experience and knowledge of the quality of estate management is by definition indirect and remote.

Measures to promote greater participation by apartment landlords as OMC directors will support the sustainability of the multi-unit development sector. Expansion on the detail of this proposal is beyond the scope and time allowed in the preparation of this submission.

AHB directors for OMCs

In a similar vein we submit that Approved Housing Bodies owning in excess of a determined proportion (e.g. 10% or more) of units in a MUD estate should be mandated by law to appoint a director to the OMC board.

2.7 Specific Questions for Public Consultation

We comment below very briefly on two of the specific questions raised in the Information Document for the Public Consultation. The other questions are considered without the remit of the Apartment Owners' Network; we have therefore restricted our responses to those within our remit.

These responses are of necessity very brief. They are not designed to capture the detailed substance of our submission.

Q.1 Do the above objectives remain relevant and valid and are there other priorities we should also be focussing on over the medium term?

The overarching objective of the Plan is to increase overall housing supply to a more sustainable level of around 25,000 homes per year by 2020. It aims to deliver an additional 47,000 social housing units by 2021, within an overall budget of €5.35 billion.

In addition, the Plan also recognises the following core objectives:-

- addressing the unacceptable level of households and families in emergency accommodation,
- moderating rental and purchase price inflation,
- addressing the affordability gap for prospective purchasers,
- maturing the rental sector,
- enabling housing to make a steady, supportive and sustainable contribution to economy, and
- ensuring a housing delivery model, which meets current needs while contributing to sustainable urban and rural development.

As set out in our detailed observations in this submission, and as articulated in other material submitted to the Housing public policy realm, Housing supply through the apartment sector requires reform of the legislative and regulatory framework for OMCs.

The sustainability of the apartment sector at a bare minimum requires reform of the law in relation to service charge recovery and sinking fund provision.

Q.5 How can we encourage increased supply of rental accommodation and foster a sustainable sector that meets the needs of all tenants across the different rental market segments?

As regards encouraging the supply of high quality sustainable apartment accommodation in the rental sector, we have articulated in considerable detail in this submission the policy changes and supports required for the OMCs of such multi-unit estates.

We submit that a conversation needs to be opened in relation to the role and involvement of landlords and tenants in apartment OMCs.

3.0 Conclusion

The Network wishes to thank the Department for the opportunity to make this submission.

We trust that we have demonstrated the opportunity for the State to address the problems facing OMCs.

Housing policy and legislative change can give effect to the objectives of the Plan for high quality sustainable apartment living in Ireland.

We trust that our views will be given due consideration in the Department's review of the Plan.

We very much look forward to expanding on our proposals, by way of meeting or in another appropriate forum.

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

Ireland 2040 Our Plan

National Planning Framework

Pre-Draft Stage

Submission

to

Forward Planning Section

**Department of Housing, Planning,
Community and Local Government**

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3.0 Conclusion

Abbreviations Used

| | |
|---------|--|
| DHPCLG | Department of Housing, Planning, Community and Local Government |
| MUD | Multi-Unit Developments, as described in Section 1(1) of the MUD Act |
| MUD Act | Multi-Unit Developments Act 2011 |
| NPF | National Planning Framework |
| OMC | Owners' Management Company as defined in Section 1(1) of the MUD Act |
| PMA | Property Management Agent |
| PSRA | Property Services Regulatory Authority |

1.0 Introduction

1.1 Executive Summary

This submission responds to the public consultation request of 2 February 2017 issued by the Department of Housing, Planning, Community and Local Government in relation to the National Planning Framework (“NPF”).

Our submission is concerned with the Housing aspects of this pre-draft stage of the consultation process.

Our initial observations are based on a high level review of the DHPCLG Position Paper “*Ireland 2040 Our Plan Issues and Choices*” (“the Position Paper”) of February 2017¹.

It is clear that with a focus on urban living, increased housing densities, and affordability, apartments will form an increasingly larger component of the housing that will be needed in Ireland in the future.

The Network submits that as a country we must re-imagine how apartment living in Ireland should work. There is a cultural change required. This should be prompted and sustained by hard-headed practicalities.

We submit that there is a pressing requirement for reform of the law and the regulation applicable to OMCs of apartment developments. More sophisticated financing structures are required. The Network is working for these changes. We submit that the NPF should support our objectives in the national interest.

1.2 Apartment numbers

It has been estimated that in Ireland 500,000 people approximately live in homes in multi-unit developments².

There has in the last 10-15 years been a rapid growth in the number of apartment/multi-unit development homes as a component of the national housing stock. According to Census 2011 there were 177,587 occupied apartments in 2011, an increase of 27% on 2006.

Apartments comprised 10.9% of all occupied households in 2011 and accounted for almost one third of all household types in Dublin City³. From 2011 to early 2015 an estimated 6,000 further apartments have been constructed in Ireland⁴. The CSO advises that figures from Census 2016 remain to be released, and are expected to be made available in April 2017⁵.

¹ <http://npf.ie/wp-content/uploads/2017/02/Position-Paper-Issues-and-Choices-Ireland-2040-web.pdf>

² Presentation to AON by Paul Mooney, Benchmark Property, 14 January 2016

³ Census 2011 Profile 4 The Roof over our Heads - Housing in Ireland

<http://www.cso.ie/en/media/csoie/census/documents/census2011profile4/Profile,4,The,Roof,over,our,Heads,Full,doc,sig,amended.pdf>

⁴ “*An Analysis of the Impact of the Multi-Unit Developments Act 2011 on New Multi-Unit Developments*”, speech Paul Mooney, Director Benchmark Property delivered to the SCSi on 03/07/2015 <http://www.benchmarkproperty.ie/blog/an-analysis-of-the-of-the-impact-of-the-multi-unit-developments-act-2011-on-new-multi-unit-developments/>

⁵ <http://census.ie/how-we-do-it/publishing-the-data/>

1.3 About the Submitter

The AON is a Company Limited by Guarantee. We are a volunteer-led, independent, non-party political group representing the interests and views of owners, both owner occupiers and investors, of dwellings in managed estates, and their OMCs, throughout Ireland.

Membership of the Network is diverse and includes owners who are directors of OMC, residents living in estates where the OMC remains controlled by the estate developer, and residents of houses in managed estates.

As of the date of this submission, residents of 300 estates approximately are recorded as being engaged with the AON- see details on www.apartmentownersnetwork.org. Many more estates engage with the Network on an ad hoc or informal basis.

The AON has working relationships with various national and local government agencies, including the ODCE, the Law Reform Commission, the Department of Justice and Equality, Society of Chartered Surveyors Ireland (Residential Committee), the PSRA, and Dublin City Council ("DCC"). The Network played a central role in securing the formulation and enactment of the Multi-Unit Developments Act 2011 ("the MUD Act").

The AON meets in open forum once a month at DCC Civic Offices, Wood Quay, Dublin 8. Meetings and activities are currently facilitated by funding from DCC, and by the involvement of volunteer members.

The Network incorporated as a CLG (No. 592683) on 10 November 2016, and is establishing formal structures as a representative organisation.

Further information about the Network's activities is available at www.apartmentownersnetwork.org.

1.4 Context to submission

Brief overview of apartment management

An OMC comprises a board of volunteer directors, typically civic-minded residents or owners in the estate. The directors are elected by the membership of the company, i.e. the wider body of unit owners. These unpaid directors are charged with the primary responsibility of managing the estate. This refers in particular to the upkeep of the common areas, and delivery of shared property services, and of ensuring adherence to the principles of good estate management. Effective stewardship of the OMC is vital to ensuring the maintenance of the estate. A good OMC means the estate is a good community in which to live.

It is important to note that while taking the form of a body corporate, an OMC is in reality a community/mutual organisation. It facilitates the orderly running of a residential estate. An OMC is a not-for-profit company. Its core function is the stewardship of the finances underpinning the successful management of the estate.

A property management agent (“PMA”) is appointed by the OMC to attend to the operational running of the estate- common area maintenance and upkeep, block insurance, domestic waste disposal, landscaping, etc.

The OMC levies an annual service charge on each unit owner. This annual management charge pays for the aforementioned services. The charge is required by law to include a contribution to a long-term sinking fund for non-recurring/capital expenditure (e.g. lift replacement).

Service charge recovery

Service charge debt recovery is widely accepted as the most significant financial challenge facing OMCs. Many OMCs are faced with current fee recovery rates of less than 70%. Aged debtors can run to five or more years, and cumulatively can represent in excess of 100% of the OMC annual budget.

Sinking Fund provision is in many cases tied up in debtors, with the priority given by the OMC to meeting the day-to-day costs of maintaining core estate services.

Our proposals around OMC regulation seek to address issues including financial under provision.

2.0 Details of Submission

We comment on the detail of our proposals. Our comments are borne out of our practical experience of issues arising in the management of multi-unit/apartment developments.

We have the following high-level observations at this pre-draft stage:

1. As noted, there is a pressing requirement for a re-imagination of how apartment living in Ireland should work. This should include statutory provision for the design, planning and implementation of enhanced common areas in apartment developments, to include-
 - a. Individual and communal storage facilities
 - b. Communal services, e.g. laundries
 - c. Community recreation areas, amenities and leisure facilities

It was interesting to observe that the sole reference in the Position Paper to apartments as a housing type was by exclusion. Figure 3.4.1 “Planning Permission Grants Houses 2001-2015” (page 32) of the Position Paper (reproduced in Appendix I to this submission) excludes apartments and flats as a housing type.

We submit that the absence of references to apartments is a good example of why there is a requirement for a cultural change in the perception of apartments as a sustainable home.

2. As noted, it is clear that apartments form a growing and increasingly significant component of the future national housing stock. There is a pressing requirement for reform of the law, the regulation, and the financing structures applicable and available to OMCs of apartment estates.

As Ireland prepares to plan for hundreds of thousands of new housing units in the period to 2040, a “lessons learned” review is required of the delivery of MUD housing in the State to date.

- a. This might involve an assessment of the success of physical planning (bricks & mortar), e.g. local authorities plan for a certain amount of car spaces, typically insufficient to satisfy natural demand, however do not as a condition of planning allow for restrictions on disruptive parking practices.
- b. The success of procedural planning requires analysis. There is little or no reference in any planning documentation as to how an OMC lease agreement should be drafted. The lease splits out how service charges must be allocated. Where commercial and residential units co-exist in one OMC, the question arises- have these leases distributed the voting power fairly? Purchasers are expected to sign up to the lease agreement as an afterthought.
- c. A review of the MUD Act to include all relevant parties and stakeholders.
- d. A regulator for OMCs. Currently we have regulation without enforcement.
- e. A census of OMCs to include:

- i. Compliance with the MUD Act
 - ii. Assessment of building defects and fire safety
 - iii. Effective planning for future upgrades/maintenance
 - f. An assessment is required of the delivery of infrastructure in conjunction with residential development – how can we ensure concurrent delivery?
3. Future financing arrangement for OMCs:
- a. Products to incentivise/encourage prudent saving by OMCs.
 - b. Lending facilities for those OMCs who meet certain compliance criteria.
 - c. Possibility of combining the above into a single fund. This might perhaps be State sponsored. If OMCs were to borrow from such a fund there would need to be a State guarantee for depositors (akin to the mutuality of Credit Unions).
4. As regards “Taking in Charge” of residential housing estates, there should be a transparent process that involves all stakeholders, including estate OMCs. This should ensure the timely and appropriate process of taking in charge of estates (roads, lighting, etc.) by local authorities. The current laissez faire approach, until such time as the developer is ready to hand over the estate, is not sustainable in the context of volunteer-led OMCs.

3.0 Conclusion

The Network wishes to thank the Department for the opportunity to make what is a very high level submission.

We trust that the views expressed will be given due consideration in the Department’s pre-draft stage deliberations.

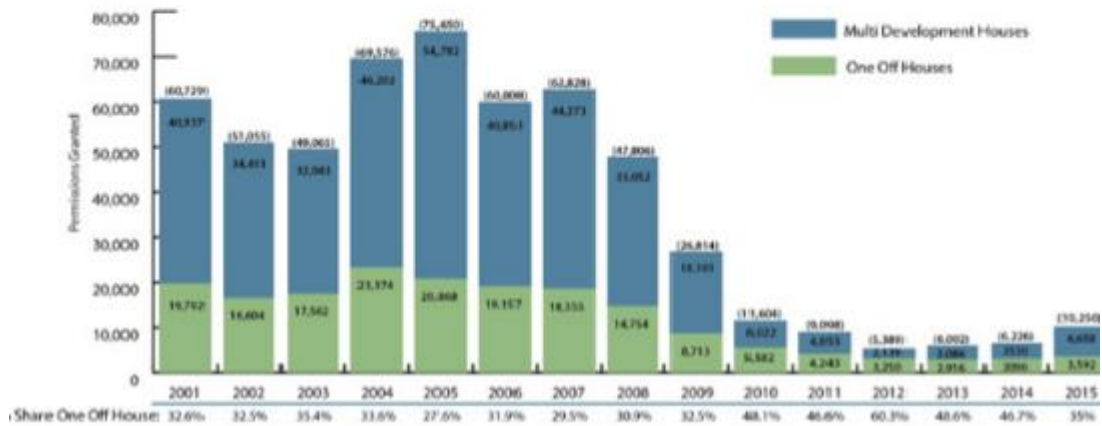
We would be pleased to engage in further stages of the consultation, or other events, as these apply to the Housing sector.

Appendix I – Figure 4.3.1

Figure 4.3.1

Planning Permission Grants, Houses 2001 - 2015

(Excludes Flats/Apartments) Source: CSO, Statbank BHA02



Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

BY EMAIL: minister@finance.gov.ie
Minister Paschal Donohoe TD
Department of Finance
Government Buildings
Upper Merrion Street
Dublin D02 R583

10 July 2017

Dear Minister Donohoe,

Re: Budget 2018 Submission

On behalf of the Apartment Owners' Network I enclose our submission in relation to Budget 2018.

We should be obliged to have an acknowledgement in due course of safe receipt of this submission.

Kind regards,

Yours sincerely,

*[*Sent by email and accordingly bears no signature]*

David Rouse
Director

Encl.

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

Budget 2018

Submission

to

Department of Finance

10 July 2017

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1.0 Introduction

2.0 Details of Submission

3.0 Conclusion

Abbreviations/Acronyms Used

| | |
|---------|--|
| AON | Apartment Owners' Network CLG |
| LRC | Law Reform Commission |
| MUD Act | Multi-Unit Developments Act 2011 |
| OMC | Owners' Management Company |
| PIA | Personal Insolvency Act 2012 |
| PRTB | Private Residential Tenancies Board |
| PMA | Property Management Agent |
| PSRA | Property Services Regulatory Authority |
| TCA | Taxes Consolidation Act 1997 |

1.0 Introduction

1.1 Our Proposals

The apartment sector is and will in the immediate future continue to be by far and away the fastest growing component of Ireland's housing stock¹.

It has been acknowledged that national economic competitiveness and social cohesion are dependent on the availability of an affordable supply of housing, including a well-maintained stock of apartments². Recent rent and property price increases indicate that supply in both the apartment rental and owner-occupier markets is not meeting demand.

Key to limiting urban sprawl and achieving increases in residential densities in urban areas are policies that promote high quality apartment living.

Our proposals will support the apartment sector into the future. They are consistent with stated public policy frameworks in areas including Housing, Construction Regulation, Energy and Environment.

Time bomb

A financial "time bomb" is ticking in the apartment sector. Many Owners' Management Companies are grossly underfunded. At current rates of financial provision they cannot hope to meet the costs of replacing ageing building components.

The Network submits that there are immediate budgetary and other measures that should be implemented by Government to address this latent crisis.

In this submission targeted taxation and other measures are put forward in order to defuse the financial time bomb facing apartment OMCs. Our proposals promote the sound management of the most rapidly growing component of the national housing stock.

Other financial supports and legislative changes are suggested to improve the operation and governance of the sector.

The details of our proposals are set out in Section 2.

¹Census 2016 "Census 2016 Profile 1 - Housing In Ireland"

<http://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/od/>

Apartments have grown in number by 85% between 2002 and 2016.

The number of occupied apartments rose by 11.4% from 183,282 to 204,145 over the period 2011-2016. The number of detached and semi-detached houses experienced increases of 2.2% and 3.4% respectively.

CSO Statistical Release, 23 June 2017- Planning Permissions

<http://www.cso.ie/en/releasesandpublications/er/pp/planningpermissionsquarter12017/> notes that Q1 2017 shows 61% increase in planning permissions granted for apartments versus Q1 2016. The equivalent increase for houses was 48%.

² Rebuilding Ireland – Action Plan for Housing and Homelessness

http://rebuildingireland.ie/Rebuilding%20Ireland_Action%20Plan.pdf

National Competitiveness Council publishes Ireland's Competitiveness Challenge 2016

<http://www.competitiveness.ie/Publications/2016/Competitiveness-Challenge-2016-Press-Release.pdf>

1.2 About the Submitter

The AON is a volunteer-led, independent, non-party political organisation. Membership of the Network is diverse. We represent the interests and views of owners, both owner occupiers and investors, and OMCs, of dwellings in managed estates throughout Ireland.

As of the date of this submission, 470 multi-unit stakeholders approximately are engaged with the AON. Many more multi-unit estates engage with the Network on an ad hoc or informal basis.

The AON has working relationships with various national and local government agencies. These include the Law Reform Commission, the Department of Justice and Equality, the Department of Housing Planning Community & Local Government, the PSRA, the ODCE, the Housing Agency, Dublin City Council (“DCC”) and the other Dublin Local Authorities.

We work with other organisations in the sector including the Society of Chartered Surveyors Ireland (Residential Committee). We have working links with the Owners Corporation Network in Australia.

The Network played a central role in securing the formulation and enactment of the Multi-Unit Developments Act 2011 (“the MUD Act”). We contributed to the preparation of the Property Services (Regulation) Act 2011, and related secondary legislation.

The AON meets in open forum approximately once a month at DCC Civic Offices, Wood Quay, Dublin 8. Meetings and activities are currently facilitated by funding from DCC, and by the work of its volunteer members.

The Network incorporated as a Company Limited by Guarantee (No. 592683) on 10 November 2016, and is establishing formal structures as a representative organisation.

Further information about the Network’s activities is available at-
www.apartmentownersnetwork.org.

1.3 Context to submission

1.3.1 Apartment numbers nationally

Census 2016 recorded that there are over 204,000 occupied apartments in Ireland³. 500,000 people approximately live in homes in multi-unit developments⁴.

There has in the last 10-15 years been a rapid growth in the number of apartment/multi-unit development homes as a component of the national housing stock. Apartments, which have increased in number by 85% since 2002, accounted for 12% of all household types in 2016, compared with 11% in 2011.

³ Census of Population 2016 - Profile 1 Housing in Ireland <http://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/od/>

⁴ Presentation to AON by P Mooney, Benchmark Property, 14 January 2016

According to Census 2016⁵ since 2011 there has been an increase of 15% in the number of apartment dwellings in the State. In the same period the total number of homes in the country grew by 3%. This means that the apartment sector represents by far the fastest growing component of the national housing stock.

Apartments are the main household type in the Dublin City local authority area. They account for 35% of all occupied homes in the capital.

Given these rapid changes, public policy including tax policy, should support the sustainability of apartments and multi-unit developments as a key component of the national housing stock.

1.3.2 Brief overview of apartment management

In order to inform the reader, and to provide context for the proposals in this submission, we present a brief explanation of how apartment and multi-unit developments are structured and managed.

OMC

An Owners' Management Company comprises a board of volunteer directors, typically civic-minded residents or owners in the estate. The directors are elected by the wider body of apartment/unit owners in the estate, i.e. the membership of the OMC.

In the vast majority of cases the directors are not paid. However, they are charged with the primary responsibility of managing the estate common areas and shared services, and of ensuring adherence to the principles of good estate management. Effective stewardship of the OMC is vital to ensuring the upkeep of the estate. It is essential to ensuring that the estate is a good community in which to live.

The MUD/OMC model of apartment management in Ireland means that property assets worth hundreds of millions of euro are under the stewardship of volunteer directors. Other than the usual CRO and ODCE filing requirements and enforcement measures, and the generality of Company Law, there is no specific regulation of OMCs.

The OMC agrees an annual budget for the year. It then issues an annual service charge to each unit owner. This management fee pays for the aforementioned services.

The management fee must by law⁶ include a contribution to a long-term building investment ("sinking") fund for non-recurring/capital expenditure (e.g. lift replacement). The amount of the sinking fund contribution is set by the members; it is open to them to agree there shall be no contribution⁷. It is submitted that this is a flaw in the legislation.

⁵ Census 2016, Chapter 9 "Housing"

www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_9_Housing.pdf

⁶Section 19(3) of the Multi-Unit Developments Act 2011 obliges the owner of each unit in a multi-unit development to make a payment to the sinking fund of the amount of contribution fixed in respect of the unit concerned in accordance with the section.

⁷Section 19(5) provides that the amount of the contribution to be paid as respects a unit by each unit owner to the sinking fund shall be €200, "...or such other amount as may be agreed by a meeting of the members...".

A management agent is appointed by the OMC to attend to the day-to-day operational running of the estate. This includes common area maintenance and upkeep, block insurance, domestic waste disposal, landscaping, etc.

Mutuality/community ethos

An OMC is *de jure* a company, a body corporate. In reality, *de facto*, it is a committee of volunteer directors made up of home owners, usually the residents. It is a mutual organisation. An OMC is often referred to as “the residents’ committee”.

An OMC is established in law as company limited by guarantee. By definition it has no shareholders, only guarantors usually for an amount up to a nominal sum, €10. The OMC is not-for-profit, and does not pay a dividend.

Any excess of income over expenditure is either allocated to the building investment/sinking fund, or else it is carried forward towards the cost of provision of estate services for the following year.

1.3.3 Service charge recovery challenges

Service charge debt recovery and OMC illiquidity are widely accepted as the most significant and immediate financial challenges confronting OMCs and their volunteer directors⁸.

Many OMCs are faced with current fee recovery rates of less than 70%. Aged debtors can run to five or more years. Accumulated debtors can represent in excess of 100% of the OMC annual budget.

Sinking fund provision is in many cases tied up in debtors. As a consequence many OMCs are forced to give priority to the costs of basic estate services only: insurance, refuse collection and common area lighting.

Excludable debt

The mutual and unique nature of annual service charge debt was given recognition in law by Section 2(1) of the Personal Insolvency Act 2012. Services charges are an “excludable” debt under the PIA, meaning that they may be covered by a Personal Insolvency Agreement only with the consent of the creditor, in this case the OMC.⁹

Most other excludable debts are State-owned debts, e.g. VAT, LPT, PRSI and local authority rates and service charges.

Public policy has therefore already acknowledged the desirability that OMCs should recover service charges in full.

⁸See Adele McKeown SCSJ Presentation: *OMC Service Charge Collection* on our website-

<https://apartmentownersnetwork.org/2017/06/19/adele-mckeown-scsi-presentation-omc-service-charge-collection/>

⁹ See for detail <http://www.personal-insolvency-arrangement.ie/resources/Excluded-And-Excludable-Debts-In-A-PIA.asp>

Similarities between service charges and tax revenues

Following on from the unique treatment of service charge debt in a PIA, in many ways service charge debts and estate services represent a microcosm of Exchequer revenues and public services. They have the same collective and mutual features.

In both cases, where compliance levels and recovery rates are poor, service provision can deteriorate. Where a proportion of individuals fails to contribute, there are adverse effects for the wider community. In the case of apartment developments the adverse effects are felt by neighbours and other owners.

Properly funded OMCs that can-

- meet their annual expenses (particularly non-discretionary costs such as insurance and waste collection), and
- appropriately enhance the estate over time,

ensure the maintenance and improvement of apartments as a growing component of the national housing stock.

Sound financial management reduces the risk of developments looking to the State or local government for support in the future for funding; this is in contrast to regrettable difficulties experienced in recent high profile cases.

As noted, the problem of service charge arrears is widespread in the OMC sector. Poor recovery restricts the provision of vital services, negatively impacting the overall quality and supply of owner occupier and rental property to the market.

The Network submits that through the practical taxation and other measures laid out in this submission the State can support the proper funding of OMCs. It is submitted that these measures will sustain the apartment/MUD sector as a housing type into the future.

2.0 Details of Submission

We expand below on the detail of our proposals. They reflect the community and not-for-profit nature of OMCs.

Our proposals are intended to support the sustainability of apartment dwellings as a rapidly expanding proportion of the national housing stock.

Our proposals reflect our practical and lived experience of issues arising in the management of multi-unit developments.

1. Implementation of measures in our submission of 6 April 2017 to the tax Policy Division Public Consultation concerning the Tax and Fiscal Treatment of Residential Landlords (included as Appendix I).

We summarise these measures-

- (1) Home Renovation Incentive Scheme to allow relief for OMCs/apartment owners
- (2) Tax deduction for management fees only where tenancy registered with PRTB
- (3) Tax deduction for management fees available only on paid basis
- (4) Exemption from Corporation Tax for OMCs in respect of incidental income
- (5) Exemption from Income Tax for fees and expenses paid to OMC directors
- (6) VAT recovery on sinking fund capital expenditure incurred by OMCs
- (7) Temporary exemption from Income Tax for "accidental" landlords
- (8) Increase Revenue powers to inspect OMC records

Further details on each proposal are set out in Section 2 of our submission of 6 April 2017, contained in Appendix I.

2. Introduce Income Tax credit for the element of OMC service charge or cash calls attributable to Sinking Fund contribution and works

This will support the remediation of defects where the developer is no longer in business and the OMC has no other recourse to recover remediation costs. It should incentivise OMC members to pay service charges/cash calls for building investment (sinking) fund works.

3. Introduce Income Tax credit for element of OMC service charge attributable to waste recycling costs

As #2, with an attendant environmental/green benefit.

4. Allow VAT incurred on Building Investment (Sinking) Fund expenditure as a credit against tax liabilities suffered by OMC

OMCs, being not-for-profit, rarely have income that can be subject to tax. However, to the extent that an OMC has a tax liability, credit should be allowed against that tax for VAT suffered by the OMC on capital investment. There is overlap here with the HRI scheme.

Credit should be available against DIRT/Corporation Tax on sinking fund interest, Employer's PRSI, tax on incidental rental profits, etc.

The objective of this proposal is to encourage building investment/sinking fund provision and necessary works.

5. Allow OMCs to access the Ireland Strategic Investment Fund or other similar funds to borrow for Building Investment (Sinking) Funds

OMCs are mutual/community organisations. The predominant source of OMC income is the annual management service charge. OMCs have no assets against which borrowings may be secured on a commercial basis.

The Network submits that it is in the interests of public policy that OMCs should be allowed access to low cost loan finance.

We submit that loans should be made available to OMCs by the organisations providing finance to Approved Housing Bodies. These lenders would include the ISIF, the Social Finance Foundation and the Housing Finance Agency.

6. Allow Credit Unions to lend to OMCs

We have submitted a paper to the Central Bank Public Consultation on Potential Changes to the Investment Framework for Credit Unions (CP109).

This submission proposes that Credit Unions be allowed lend to OMCs. We submit that the organisations' ethos matches, and the counterparty risks are suitable to the Credit Union sector.

Our paper is included at Appendix II.

7. Introduce State-sponsored/underwritten financial products to incentivise/encourage prudent saving by OMCs

A State-supported collective investment fund for OMCs should be established. It should have the guarantees that attached to the SSIA or Savings Bond investment products. It should be administered by the PSRA, in conjunction with the NTMA.

Such products would allow those well-funded OMCs around the country to invest their sinking fund monies in a safe environment. The maturity of the products should match the timing of required draws on sinking funds.

8. Defects insurance should be a statutory requirement for MUD developers

No company or individual should be permitted to operate in the MUD construction sector without having in place suitable Latent Defects Insurance (“LDI”). LDI is designed to cover the cost of remediation of construction defects¹⁰.

This requirement should be introduced by way of the Building Control (Construction Industry Register Ireland) Bill 2017, the General Scheme of which was published earlier this year. Alternatively it should be legislated for at the next available opportunity, e.g. by way of amendment to the Planning and Development Act 2000.

9. Link estate Taking in Charge to developers’ tax filing/compliance/VAT refunds

Tax Clearance and VAT recovery on construction costs should be denied to a developer where the developer fails to arrange estate Taking-In-Charge to the satisfaction of the requirements of the Local Authority and the estate OMC.

This is targeted at incentivising developers to bring estates up to standards required by Local Authorities, and to ensure such works are undertaken in a timely manner.

10. Link MUD commercial unit owners tax filing/compliance/VAT refunds to payment of service charges

Tax Clearance and VAT recovery should be denied to an owner of a commercial premises in a multi-unit development unless the owner is certified as being in good standing with the OMC as regards service charges.

11. The State to establish a fund via NAMA to identify and repair construction defects discovered in MUDs

Serious cases of latent construction defects in multi-unit developments have been widely reported in recent years. The Network understands that a significant number of further cases have yet to come to public attention.

One of the purposes of the National Asset Management Agency Act 2009 is “*to contribute to the social and economic development of the State*” (section 2(b)(viii)).

The State, via NAMA, is due to make an economic profit on the purchase and disposal of developer loans. Given the provenance of this profit, i.e. the property developer

¹⁰ Useful recent commentary on this matter is available at-
<http://www.irishtimes.com/business/construction/developers-must-get-building-defect-insurance-says-broker-1.2967162>

sector, it should be directed towards the costs of identifying and rectifying construction defects in multi-unit developments.

It is submitted that a significant social dividend would arise to the State from the adoption of this policy. A substantial and rapidly growing portion of the national housing stock will be brought up to a standard that is fit for purpose. It would also serve to mitigate controversy attaching to the apartment/MUD sector as further construction problems come to light.

12. Provide grant assistance to OMCs for energy efficient expenditure through Building Investment (Sinking) Funds

OMCs, as typically not having a tax liability, cannot claim the benefit of accelerated capital allowances on expenditure on energy efficient equipment, under the provisions of Schedule 4A TCA.

As a green energy incentive, the State should provide grants for OMC capex on energy-efficient lighting, solar power to plant in common areas, micro-wind turbines, etc.

On a related point, we submit that as an overarching theme, policies in the MUD sector should to the extent possible be aligned with other public policies around competitiveness, sustainability, etc. This should apply in building/construction regulation, waste management, transport, energy and other relevant policy areas.

13. Provide VAT rebates/PRSI credits on renewable electricity costs

An OMC should be entitled to VAT rebates on its electricity costs where the electricity provider to common areas sources power from renewable sources.

14. Review of the Multi-Unit Developments Act 2011

While not strictly a matter for the Department of Finance, the Network submits that the Department of Housing Planning Community and Local Government should undertake a comprehensive review of the effectiveness of the MUD Act. This review should include all interested parties.

There is a template for this process, in the form of the Law Reform Commission Consultation leading up to the formulation of the MUD Act, and the Property Services (Regulation) Act 2011.

15. Implementation of recommendations outstanding of the LRC Consultation Paper on Multi-Unit Developments

The Network calls on the Government to revisit and implement the recommendations of the Law Reform Commission Consultation Paper (LRC CP 42-2006) of December 2006¹¹ as they relate to Owners' Management Companies.

In particular, we call for urgent implementation of the following measures-

1. The establishment of a Regulatory Body to oversee regulation of the multi-unit development sector in Ireland. This body should be established under the auspices of the Property Services Regulatory Authority.
2. Every MUD and OMC should be registered with, and file annual reports with the Regulatory Body. These reports would encompass matters including sinking fund provision, insurance cover, building regulations and fire safety compliance, etc.
3. The creation of statutory regulations for the regulation of service charges and building investment (sinking) funds.

We call for the establishment of a non-judicial body for the mediation and resolution of disputes involving OMCs, developers and owners. A right of appeal would lie from this body to the Courts, as is the case with Residential Tenancies Board.

16. Addition of OMC service charge arrears to the Central Credit Register

Under the Credit Reporting Act 2013, the Central Bank of Ireland created the Central Credit Register ("the Register"). This provides a full record of individuals' loans and loan applications. Lenders, banks, credit card providers, etc. must send data to the Register. Credit reports will be generated from 2018.

The Network submits that it is in the interests of public policy for the proper funding of OMCs that owners' service charge debts outstanding be included in the Register.

As noted earlier in this submission, there is precedent for the exceptional treatment in law of service charge debt. The mutual nature of service charge debt was recognised by Section 2(1) of the Personal Insolvency Act 2012. Services charges are an "excludable" debt under this legislation. This means that they may be included in a PIA only with the consent of the creditor, in this case the OMC. Our proposal in relation to the Credit Register is consistent with this exceptional treatment.

17. Consideration should be given to the removal of the audit exemption in the case of certain OMCs¹²

The Companies Act 2014 provides an audit exemption for Companies Limited by Guarantee ("CLGs"). OMCs are typically established as CLGs.

¹¹ http://www.lawreform.ie/_fileupload/consultation%20papers/cpMUDs.pdf

¹² Considered in Chapter 2.3.5 of *Service Charge Collection In Multi-Unit Developments*, Adele McKeown, MSc in Real Estate, DIT, 10 October 2016
<https://apartmentownersnetwork.files.wordpress.com/2017/06/a-mckeown-service-charge-collection-muds-full-thesis.pdf>

The exemption was introduced in order to reduce the financial and administrative burden on small companies.

Any one member of the CLG may object to the exemption, meaning that an audit is required- section 1218(1) Companies Act 2014 refers.

The Network submits that an audit of OMC financial statements and records supports the good financial health of OMCs and the MUD sector generally.

Value of audit report

An auditor is charged with providing an independent report to the OMC members. The report contains an opinion as to whether the financial statements-

- give a true and fair view of the assets, liabilities and financial position of the company as at period end, and of its excess income/deficit for the year end; and
- have been properly prepared by the directors in accordance with the relevant reporting framework and, in particular, with the requirements of the Companies Act 2014.

The matters on which an auditor is required to report by the Companies Act 2014 are-

- They have obtained all the information and explanations which they consider necessary for the purposes of the audit.
- In their opinion the accounting records of the company were sufficient to permit the financial statements to be readily and properly audited.
- The financial statements are in agreement with the accounting records.
- In their opinion the information given in the directors' report is consistent with the financial statements.

Under the Companies Act 2014 auditors are required to report "by exception" on certain other matters. This could include whether in their opinion the disclosures of directors' remuneration and transactions specified by sections 305 to 312 of the Act are not made.

Absence of audit

As mentioned, the absence of an external audit is considered to lead to less accountability and transparency in the running of the OMC. This is particularly so in the case of OMCs-

- (a) where the developer is still in control
- (b) with large annual budgets (e.g. in excess of €100,000 per annum)
- (c) with significant service charge debtors
- (d) without sinking fund provision

In the absence of an independent audit poor financial provision, potential conflicts of interest, and the opportunity for fraud can arise.

The Network submits that consideration should be given to the removal of the audit exemption in the case of certain OMCs, by reference to some or all of the criteria listed at (a) to (d) above.

2.1 Submission Costings

As a volunteer-led organisation the Network does not have the resources to undertake costings of the proposals in this submission. We would be glad to engage with the Department in this regard.

3.0 Conclusion

The Network wishes to thank the Department for the opportunity to make its submission.

We trust that the views expressed will be given due consideration in the Department's deliberations in framing Finance Act 2017.

We submit that the non-tax measures should be raised by the Department of Finance with the relevant/responsible Government departments, in particular with the Department of Housing, Planning, Community and Local Government.

We would be glad to expand on our proposals at a meeting or in another appropriate forum.

Appendix I – Submission on the Tax and Fiscal Treatment of Residential Landlords

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

BY EMAIL: taxpolicy@finance.gov.ie
Tax and Fiscal Treatment of Landlords Consultation
Tax Policy Division
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2
D02 R583

6 April 2017

Dear Sirs,

**Re: Tax and Fiscal Treatment of Landlords
Public Consultation**

On behalf of the Apartment Owners' Network I enclose a short submission in relation to the above.

We should be obliged if you would confirm safe receipt of the enclosed in time for your deadline of Friday 7 April 2017.

Yours faithfully,



David Rouse
Director

Encl.

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

Tax and Fiscal Treatment of Landlords Consultation

Submission

to

Tax Policy Division

Department of Finance

6 April 2017

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Abbreviations Used

| | |
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| AON | Apartment Owners' Network CLG |
| MUD Act | Multi-Unit Developments Act 2011 |
| OMC | Owners' Management Company |
| PIA | Personal Insolvency Act 2012 |
| PMA | Property Management Agent |
| PRTB | Private Residential Tenancies Board |
| PSRA | Property Services Regulatory Authority |
| RTA | Residential Tenancies Act 2004 |
| TCA | Taxes Consolidation Act 1997 |

1.0 Introduction

1.1 Executive Summary

This submission responds to the public consultation of 10 March 2017 issued by the Tax Policy Division of the Department of Finance in relation to the tax treatment of residential landlords.

The Apartment Owners' Network submits that the following amendments to tax law be considered-

1. Home Renovation Incentive Scheme to allow relief for OMCs/apartment owners
2. Tax deduction for management fees only where tenancy registered with PRTB
3. Tax deduction for management fees available only on paid basis
4. Exemption from Corporation Tax for OMCs in respect of incidental income
5. Exemption from Income Tax for fees and expenses paid to OMC directors
6. VAT recovery on sinking fund capital expenditure incurred by OMCs
7. Temporary exemption from Income Tax for "accidental" landlords
8. Increase Revenue powers to inspect OMC records

Further details on each proposal are set out in Section 2.

1.2 About the Submitter

The AON is a volunteer-led, independent, non-party political organisation. We represent the interests and views of owners, both owner occupiers and investors, and OMCs, of dwellings in managed estates throughout Ireland.

Membership of the Network is diverse. We include owners who are directors of OMCs, residents living in estates where the OMC remains controlled by the estate developer, and residents of houses in managed estates.

As of the date of this submission, residents of 300 estates approximately are recorded as being engaged with the AON- see details on www.apartmentownersnetwork.org. Many more estates engage with the Network on an ad hoc or informal basis.

The AON has working relationships with various national and local government agencies. These include the Law Reform Commission, the Department of Justice and Equality, the PSRA, the ODCE, Society of Chartered Surveyors Ireland (Residential Committee), and Dublin City Council (“DCC”).

The Network played a central role in securing the formulation and enactment of the Multi-Unit Developments Act 2011 (“the MUD Act”).

The AON meets in open forum approximately once a month at DCC Civic Offices, Wood Quay, Dublin 8. Meetings and activities are currently facilitated by funding from DCC, and by the work of its volunteer members.

The Network incorporated as a Company Limited by Guarantee (No. 592683) on 10 November 2016, and is establishing formal structures as a representative organisation.

Further information about the Network’s activities is available at-
www.apartmentownersnetwork.org.

1.3 Context to submission

1.3.1 Apartment numbers

It has been estimated that in Ireland 500,000 people approximately live in homes in multi-unit developments¹.

There has in the last 10-15 years been a rapid growth in the number of apartment/multi-unit development homes as a component of the national housing stock.

According to Census 2016² since 2011 there has been an increase of 15% in the number of apartment dwellings in the State. In the same period the total number of homes in the country grew by 3%. This means that the apartment sector represents by far the fastest growing component of the national housing stock.

Apartments now comprise 11% of all occupied homes nationally. They account for 34% of all occupied homes in Dublin City.

Given these changes public policy, including tax policy, should support the sustainability of apartment and multi-unit developments as a key component of the national housing stock.

1.3.2 Brief overview of apartment management

In order to inform the reader, and to provide context for the tax proposals in this submission, we provide a brief explanation of how apartment and multi-unit developments are structured and managed.

¹ Presentation to AON by P Mooney, Benchmark Property, 14 January 2016

² Census 2016, Chapter 9 “Housing”

www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_9_Housing.pdf

An Owners' Management Company comprises a board of volunteer directors, typically civic-minded residents or owners in the estate. The directors are elected by the wider body of apartment/unit owners in the estate, i.e. the membership of the OMC.

In the vast majority of cases the directors are not paid. However, they are charged with the primary responsibility of managing the estate common areas and shared services, and of ensuring adherence to the principles of good estate management. Effective stewardship of the OMC is vital to ensuring the upkeep of the estate. It is essential to ensuring that the estate is a good community in which to live.

The OMC agrees a budget each year and levies an annual service charge on each unit owner. This management fee pays for the aforementioned services. It is required by law to include a contribution to a long-term sinking fund for non-recurring/capital expenditure (e.g. lift replacement).

A management agent is appointed by the OMC to attend to the day-to-day operational running of the estate. This includes common area maintenance and upkeep, block insurance, domestic waste disposal, landscaping, etc.

Mutuality/community

It is important to note that while taking the form of a body corporate, an OMC is in reality a community/mutual organisation. This is borne out by the fact that an OMC is often heard to be referred to as "the residents' committee".

An OMC is established in law as company limited by guarantee. It is not-for-profit, by definition has no shareholders, and does not pay a dividend.

Any excess of income over expenditure is either allocated to a sinking fund, or it is carried forward towards the cost of provision of estate services for the following year.

1.3.3 Service charge recovery challenges

Service charge debt recovery is widely accepted as the most significant and immediate financial challenge confronting OMCs and their directors.

Many OMCs are faced with current fee recovery rates of less than 70%. Aged debtors can run to five or more years, and cumulatively can represent in excess of 100% of the OMC annual budget. Sinking Fund provision is in many cases tied up in debtors. As a consequence many OMCs are forced to give priority to the costs of basic estate services only: insurance, refuse collection and common area lighting.

The mutual and unique nature of annual service charge debt was given recognition in law by Section 2(1) of the Personal Insolvency Act 2012. Services charges are an "excludable" debt under the PIA, meaning that they may be covered by a Personal Insolvency Agreement only with the consent of the creditor, in this case the Owners' Management Company.

In many ways service charge debt and estate services represent a microcosm of Exchequer revenues and public services. They have the same collective and mutual

features. In both cases, where compliance levels and recovery rates are poor, service provision can deteriorate. Where a proportion of individuals fails to contribute there are adverse effects for the wider community. In the case of apartment developments the adverse effects are felt by neighbours and other owners.

Properly funded OMCs that can-

- meet their annual expenses (particularly non-discretionary costs such as insurance and waste collection), and
- appropriately enhance the estate over time,

ensure the maintenance and improvement of apartments as a growing component of the national housing stock. Sound financial management reduces the risk of developments looking to the State or local government for support in the future for funding; this is in contrast to regrettable difficulties experienced in recent high profile cases.

As noted, arrears in the payment of management fees are endemic in the OMC sector. This problem severely restricts the optimal management of estates. It restricts the provision of vital services, negatively impacting the overall quality and supply of owner occupier and rental property to the market.

The Network submits that through the practical tax measures laid out in this submission the State can support the proper funding of OMCs. It is submitted that these tax measures will sustain the apartment/MUD sector as a housing type into the future.

2.0 Details of Submission

We expand below on the detail of our tax proposals. They reflect the community and not-for-profit nature of OMCs. Our proposals are intended to support the sustainability of apartment dwellings as a growing proportion of the national housing stock.

Our proposals are borne out of our practical and lived experience of issues arising in the management of multi-unit developments.

1. The Home Renovation Incentive Scheme should be amended to allow relief to OMC members for qualifying expenditure incurred by OMCs

There is a clear inequity in the Home Renovation Incentive (“HRI”) Scheme as between the tax treatment of owners of traditional residential dwellings and the tax treatment of the owners of apartments/multi-unit developments.

As the HRI is currently constituted in Section 477B TCA neither an OMC nor its members are entitled to claim tax relief for the VAT element of the cost of repair, renovation or improvement works to the common areas of apartment blocks.

An owner (owner-occupier or landlord) of a traditional residential dwelling may access tax relief for the VAT (at 13.5%) on qualifying expenditure in respect of the entirety of the physical structure of his property. Whereas, in contrast, an owner of an apartment is not entitled to access tax relief in respect of all of the physical structure of the property. This is even though, like the first owner, he will in substance have incurred the qualifying expenditure. In the apartment owner’s case some of the expenditure in question is incurred through his annual service charge.

Qualifying expenditure

The HRI relief applies to a wide range of expenditure including landscaping, plumbing, painting and decorating, window replacement, etc. Common areas of apartment blocks (e.g. water tanks, lifts, etc.) are obviously essential to the habitability and sustainability of an apartment as a home. In substance such facilities are an integral part of the owner’s residence or rental property. In legal form, the OMC discharges the cost of repairs, renovations and improvements to apartment common areas. However, as noted above, the works are in substance funded by a proportion of the owner’s annual service charges.

Inequitable treatment

An apartment owner is not entitled to relief because, while he, together with his neighbours/co-owners, has funded the works, he has not “incurred” the expenditure directly. This is a clear discrimination in tax law between taxpayers who are in substance in the same economic position.

The OMC does not qualify for relief under HRI because the common areas are not considered to be “qualifying premises”. In addition, OMCs, as not-for-profit entities, are highly unlikely to have a tax liability against which a VAT refund could be credited.

In order to qualify for relief, an apartment owner would be required to pay the contractor directly for the cost of the works to the common areas. However this proposition is simply not practical. It fails to take account of the realities of how apartment dwellers and apartment owners pay for the upkeep of the complete physical structure of their homes. It does not recognise how apartment blocks are maintained and upgraded at a collective level, through the mechanism of the OMC.

The Network submits that the HRI legislation in Section 477B TCA be amended to allow OMC members access tax relief for qualifying expenditure incurred by an OMC on their behalf. This is provided the owner meets the conditions of the scheme in all other respects. It should also be conditional on the owner being in good standing with the OMC as regards service charges.

Alternative measure

This suggestion is made without prejudice to the above.

An element of the annual service charge comprises a contribution towards enhancement capital expenditure on the property. Explicit reference in Section 552 TCA should be made to owners in apartments/MUDs. This would ensure that they are clearly entitled to a base cost deduction for Capital Gains Tax on the element of the service charge made up of enhancement expenditure incurred by the OMC on the owner/member's behalf.

This proposal is obviously of relevance only to owners not entitled to avail of Principal Private Residence Relief from Capital Gains Tax under Section 604 TCA.

2. Conditionality on tax deduction for landlords for apartment management fees

A tax deduction for apartment management fees should be available to residential landlords only where the tenancy has been registered with the PRTB under the RTA.

This proposal mirrors the conditionality in Section 97(21) TCA on the tax deductibility of interest on borrowings for the purchase, improvement or repair of residential property.

This change will have multiple positive effects including:

- a. Improvement of apartment service charge recovery rates for OMCs.
- b. Reduction in the risk of future State bailouts of developments with inadequate sinking funds.
- c. Encouraging compliance with landlord and tenant law.
- d. Improvements in residential letting standards.

3. Tax deduction for apartment management fees available on a paid basis only

This measure is self-explanatory. Its aim is to prevent non-owner occupiers from building up service charge arrears. As outlined earlier, such debts are detrimental to the position of other OMC members, and to the orderly management of the estate.

It is submitted that it is against public policy that delinquent owners are currently entitled to obtain the benefit of a Case V tax deduction for service charges accrued but not in fact paid to an OMC.

4. Exempt OMCs from the charge to Corporation Tax

The Network submits that OMCs should be exempt from the charge to Corporation Tax in respect of incidental/non-service charge income, e.g. deposit interest on sinking fund balances.

This will have multiple positive effects including:

- a. Recognition of the not-for-profit, community/mutual nature of OMCs
- b. Making available additional funds for sinking fund provision
- c. Removal of tax administrative burden (CT1 filing) on currently affected OMCs

5. Exemption from Income Tax for certain fees and expenses of OMC directors

In the vast majority of cases OMC directors are unpaid volunteers, however in Company Law they take on the full responsibilities and duties of the office of director. In cases where OMC affairs require regularisation, or where there is disharmony in the running of the estate, the role of director can involve a considerable time commitment.

The Network submits that in cases where OMC directors are remunerated such income and reasonable expenses should be exempt from Income Tax. This could be subject to a cap of a maximum of €5,000 in total fees and expenses per individual per annum.

This measure will have multiple positive effects including:

- a. Encouraging owners, including landlords, to take up the OMC director role.
- b. Removal of tax administrative burden (PAYE filings) on OMCs.

In this regard, the Network notes the precedent of an exemption from tax for expenses paid to Non-Executive Directors of Irish companies travelling from abroad to Ireland. This treatment is set out in Revenue Operational Manual 05-02-19³.

We note also the favourable treatment afforded to members of non-commercial bodies under Section 195A TCA, as outlined in detail in Chapter 4.9 of Revenue's

³ <http://www.revenue.ie/en/about/foi/s16/income-tax-capital-gains-tax-corporation-tax/part-05/05-02-19.pdf>

Statement of Practice SP - IT/2/07⁴. The Network submits that OMC directors should explicitly be included within the terms of Section 195A.

We note for the avoidance of doubt that this measure should not apply to individuals who act as professional directors for a multiplicity of OMCs.

Alternative measure

As an alternative to an exemption from Income Tax, the Network submits that OMC directors should be entitled to a deduction from Total Income. The deduction would reflect the cost of personal time spent and the responsibilities taken on by acting as an OMC director.

6. Permit VAT recovery on sinking fund expenditure incurred by OMCs

OMCs are not entitled to recover VAT. At current VAT rates most expenditure incurred by OMCs carries an additional cost of up to 23%.

The VAT Consolidation Act 2010 should be amended to allow OMCs to reclaim VAT on common areas capital expenditure, for example lift and other major plant replacement.

Without prejudice to the foregoing, VAT recovery could be subject to the condition that any VAT reclaimed must be contributed to the estate sinking fund. This would allow OMCs to maintain common areas to a high standard.

By improving OMC finances, our proposal would also reduce the likelihood of OMCs reliance on State or local authority funding where sinking funds cannot meet major expenditure.

7. Temporary exemption from Income Tax for “accidental” landlords

Apartment/MUD estates have many so-called “accidental” landlords. This cohort of OMC membership is prevented from adequately maintaining, or disposing of properties. These barriers to an efficient property market arise due to negative equity, and the burden of large loan repayments relative to rental income.

The difficulties are compounded by tax liabilities arising to owners where there are rental losses. This is restricting liquidity in the residential property market. The problem is likely to be exacerbated when interest rates rise.

As noted in the consultation document, accidental landlords may have a taxable rental profit in instances where they have a rental loss in cash terms, after making mortgage repayments and meeting other outgoings, including services charges.

The Network proposes an exemption from Income Tax in such cases for the first five years of rental income. This measure would promote the quality of rented residential stock, and would contribute to liquidity in the residential property market.

⁴ http://www.revenue.ie/en/practitioner/law/statements-of-practice/sp_it_2_07.pdf

This measure is not without comparable precedent. The clawback of Stamp Duty relief for accidental landlords of residential property under Sections 91, 91A, 92 and 92B of Stamp Duty Consolidation Act 1999 was removed by Finance Act 2008. Details are outlined in Tax Briefing 71 (April 2009)⁵.

Mortgage Interest Relief – accelerate 100% deduction

We submit also that the phasing in of the 100% tax deduction for interest costs introduced by Section 16(1) of Finance Act 2016 should be accelerated for such cases, such that 100% interest relief applies in respect of interest accrued on or after 1 January 2018. This measure could be made subject to the conditions outlined for Proposals 2 and 3.

8. Increase Revenue powers to inspect OMC records for the purposes of supporting Revenue interventions, up to and including Revenue Audits, in relation to delinquent taxpayers

OMCs retain detailed records of management fee arrears. It is submitted that owners in service charge arrears may have compliance issues in other contexts. OMC records may therefore have a function in assisting Revenue with improving compliance rates.

3.0 Conclusion

The Network wishes to thank the Department for the opportunity to make a submission.

We trust that the views expressed will be given due consideration in the Department's deliberations.

We would be glad to meet with the Working Group to expand on our proposals.

⁵ <http://www.revenue.ie/en/practitioner/tax-briefing/archive/71/stamp-duty-audit.html>

**Appendix II – Submission on Public Consultation on Potential Changes to the
Investment Framework for Credit Unions**

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

BY EMAIL: rcuconsultation@centralbank.ie

Registry of Credit Unions
Central Bank of Ireland
PO Box 559
New Wapping Street
North Wall Quay
Dublin 1

27 June 2017

Dear Sirs,

**Re: Consultation on Potential Changes to the Investment Framework for Credit Unions
Consultation Paper CP109**

On behalf of the Apartment Owners' Network I enclose our submission in relation to the above.

We should be obliged if you would confirm safe receipt of our submission in time for your deadline of tomorrow, 28 June 2017.

We have copied this submission to the Irish League of Credit Unions for their information.

Yours faithfully,



David Rouse
Director

Cc by email: Mr. Ed Farrell
CEO, Irish League of Credit Unions

Apartment Owners' Network

Representing the owners of apartments and houses in managed estates

Submission

to

Registry of Credit Unions

**Consultation on Potential Changes to the Investment
Framework for Credit Unions**

27 June 2017

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1.0 Introduction

2.0 Details of Submission

3.0 Conclusion

Abbreviations/Acronyms Used

| | |
|---------|---|
| AHB | Approved Housing Bodies |
| AON | Apartment Owners' Network CLG |
| CLG | Company Limited by Guarantee |
| CRO | Companies Registration Office |
| DCC | Dublin City Council |
| MUD Act | Multi-Unit Developments Act 2011 |
| ODCE | Office of the Director of Corporate Enforcement |
| OMC | Owners' Management Company |
| PIA | Personal Insolvency Arrangement |
| PI Act | Personal Insolvency Act 2012 |
| PMA | Property Management Agent |
| PSRA | Property Services Regulatory Authority |

1.0 Introduction

1.1 Summary of submission

Section 7 of the Consultation Paper seeks views on potential additional investment classes for Credit Unions, viz.-

“2. Do you have any comments on the potential introduction of additional investment classes for credit unions and the appropriateness of the classes being considered by the Central Bank?”

3. Taking account of the appropriate risk profile for credit union investments, are there any additional investment classes that the Central Bank should consider? If so, please outline the investment classes and why such investment classes are considered appropriate for credit unions.”

We submit that Credit Unions be permitted to provide loan funding to Owners' Management Companies¹ of Multi-Unit Developments², i.e. residential estates comprised principally of apartments.

As we explain in our submission, there are strong parallels between Credit Unions and OMCs. Both are underpinned by an ethos of volunteerism. Their activities are founded on mutuality. They are not for profit. They are community organisations. Their members have strong common bonds and interests.

Lending to OMCs would match Credit Unions' social objects to the pressing need for funds to meet building investment in multi-unit developments experiencing cashflow challenges.

The Network submits that the low risk nature of OMC lending would match the prudent profile of lending already undertaken by Credit Unions.

Permitting Credit Unions to lend to OMCs will have the dual benefit of addressing the funding difficulties of OMCs and providing an investment class appropriate to Credit Unions.

¹ “Owners' Management Company” is defined in section 1(1) of the Mud Act 2011, and means “*subject to subsection (3), a company established for the purposes of becoming the owner of the common areas of a multi-unit development and the management, maintenance and repair of such areas and which is a company registered under the Companies Acts;*”.

² “Multi-Unit Development” is defined in section 1(1) of the MUD Act 2011 and is “*a development being land on which there stands erected a building or buildings comprising a unit or units and that- (a) as respects such units it is intended that amenities, facilities and services are to be shared, and (b) subject to section 2(1), the development contains not less than 5 residential units;*” <http://www.irishstatutebook.ie/eli/2011/act/2/enacted/en/html>

1.2 About the Submitter

The Apartment Owners' Network is a volunteer-led, independent, non-party political organisation. Membership of the Network is diverse. We represent the interests and views of owners, both owner occupiers and investors, and OMCs of dwellings in managed estates throughout Ireland.

As of the date of this submission, 470 multi-unit stakeholders approximately are engaged with the AON. Many more multi-unit estates engage with the Network on an ad hoc or informal basis.

The AON has working relationships with various national and local government agencies. These include the Law Reform Commission, the Department of Justice and Equality, the Department of Housing Planning Community & Local Government, the PSRA, the ODCE, the Housing Agency, Dublin City Council ("DCC") and the other Dublin Local Authorities.

We work with other organisations in the sector including the Society of Chartered Surveyors Ireland (Residential Committee). We have working links with the Owners Corporation Network in Australia.

The Network played a central role in securing the formulation and enactment of the Multi-Unit Developments Act 2011 ("the MUD Act"). We contributed to the preparation of the Property Services (Regulation) Act 2011, and related secondary legislation.

We meet in open forum approximately once a month at DCC Civic Offices, Wood Quay, Dublin 8. Meetings and activities are currently facilitated by funding from DCC, and by the work of its volunteer members.

The Network incorporated as a Company Limited by Guarantee (No. 592683) on 10 November 2016, and is establishing formal structures as a national representative organisation.

Further information about the Network's activities is available at-
www.apartmentownersnetwork.org

1.3 Context to submission

1.3.1 Apartment numbers nationally

Census 2016 recorded that there are over 204,000 occupied apartments in Ireland³. 500,000 people approximately live in homes in multi-unit developments⁴.

There has in the last 10-15 years been a rapid growth in the number of apartment/multi-unit development homes as a component of the national housing stock. Apartments, which have increased in number by 85% since 2002, accounted for 12% of all household types in 2016, compared with 11% in 2011.

According to Census 2016⁵ since 2011 there has been an increase of 15% in the number of apartment dwellings in the State. In the same period the total number of homes in the country grew by 3%. This means that the apartment sector represents by far the fastest growing component of the national housing stock.

Apartments are the main household type in the Dublin City local authority area. They account for 35% of all occupied homes in the capital.

Given these rapid changes, public policy including tax policy, should support the sustainability of apartments and multi-unit developments as a key component of the national housing stock.

1.3.2 Brief overview of apartment management

In order to inform the reader, and to provide context for the proposal in this submission, we present a brief explanation of how apartment and multi-unit developments are structured and managed.

OMCs – how they work

An Owners' Management Company comprises a board of volunteer directors, typically civic-minded residents or owners in the estate. The directors are elected by the wider body of apartment/unit owners in the estate, i.e. the membership of the OMC.

In the vast majority of cases the directors are not paid. However, they are charged with the primary responsibility of managing the estate common areas and shared services, and of ensuring adherence to the principles of good estate management.

Effective stewardship of the OMC is vital to ensuring the upkeep of the estate. It is essential to ensuring that the estate is a good community in which to live.

The MUD/OMC model of apartment management in Ireland means that property assets worth hundreds of millions of euro are under the stewardship of volunteer directors.

³ Census of Population 2016 - Profile 1 Housing in Ireland <http://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/od/>

⁴ Presentation to AON by P Mooney, Benchmark Property, 14 January 2016

⁵ Census 2016, Chapter 9 "Housing"

www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_9_Housing.pdf

Other than the usual CRO and ODCE filing requirements and enforcement measures, and the generality of Company Law, there is no specific regulation of OMCs.

The OMC agrees a budget each year and levies an annual service charge on each unit owner. This management fee pays for the aforementioned services. It is required by law to include a contribution to a long-term sinking fund for non-recurring/capital expenditure (e.g. lift replacement).

A management agent is appointed by the OMC to attend to the day-to-day operational running of the estate. This includes common area maintenance and upkeep, block insurance, domestic waste disposal, landscaping, etc.

Mutuality/community ethos

It is important to note that while taking the form of a body corporate, an OMC is in reality a community/mutual organisation. This is reflected in the fact that an OMC is often referred to as “the residents’ committee”.

An OMC is established in law typically as Company Limited by Guarantee. It is not-for-profit, by definition has no shareholders, and does not pay a dividend.

Any excess of income over expenditure is either allocated to a sinking fund, or it is carried forward towards the cost of provision of estate services for the following year.

1.3.3 Service charge recovery challenges

Service charge debt recovery and OMC illiquidity are widely accepted as the most significant and immediate financial challenges confronting OMCs and their directors⁶.

Many OMCs are faced with current fee recovery rates of less than 70%. Aged debtors can run to five or more years, and cumulatively can represent in excess of 100% of the OMC annual budget. Building investment (sinking) fund provision is in many cases tied up in debtors. As a consequence many OMCs are forced to give priority to the costs of basic estate services only: insurance, refuse collection and common area lighting.

Excludable debt

The mutual and unique nature of annual service charge debt was given recognition in law by section 2(1) of the Personal Insolvency Act 2012. Services charges are an “excludable” debt under the PI Act, meaning that they may be covered by a Personal Insolvency Agreement only with the consent of the creditor, in this case the Owners’ Management Company.

⁶ *Owners’ Management Companies, The Ticking Time-Bomb Of Service Charge Collection*, Adele McKeown BA MSc, presentation to SCSi PM FM Conference, 2 June 2017
<https://apartmentownersnetwork.org/2017/06/19/adele-mckeown-scsi-presentation-omc-service-charge-collection/>

Similarities with Credit Union finance

In many ways service charge debt and estate services are analogous to the financing Credit Union sector. They have the same collective and mutual features. In both cases, where compliance levels and recovery rates are poor, the success of the community suffers.

Where a proportion of individuals fails to contribute, there are adverse effects for the wider community. In the case of apartment developments the adverse effects are felt by neighbours and other owners.

Properly funded OMCs that can-

- meet their annual expenses (particularly non-discretionary costs such as insurance and waste collection), and
- appropriately enhance the estate over time,

ensure the maintenance and improvement of apartments as a growing component of the national housing stock. Sound financial management reduces the risk of developments looking to the State or local government for support in the future for funding; this is in contrast to regrettable difficulties experienced in recent high profile cases.

Service charge arrears restrict the provision of vital services, negatively impacting the overall quality and supply of owner occupier and rental property to the market.

The Network submits that allowing Credit Unions to lend to OMCs will support the orderly operation of OMCs in the wider public policy interest. It is submitted that this will sustain the apartment/MUD sector as a housing type into the future.

2.0 Details of Submission

We expand below on the detail of our submission; it reflects the shared community and not for profit ethos of Credit Unions and OMCs. Our proposal is intended to support the sustainability of apartment dwellings as a rapidly growing proportion of the national housing stock.

Our proposal meets a gap in the funding arrangements currently available to OMCs. At the same time it opens up to Credit Unions an investment class appropriate to the sector, in terms of counterparty characteristics and risk profiles.

Our proposal reflects our practical and lived experience of issues arising in the management of multi-unit developments.

2.1 Credit Unions and OMCs – Common Themes

As noted, Credit Unions and Owners' Management Companies have many similar characteristics. Both are underpinned by an ethos of volunteerism. Their activities are founded on mutuality of obligations.

OMCs and Credit Unions are not for profit concerns. As organisations they are grounded in their communities. Their members have strong common bonds and interests.

Loan funding by Credit Unions to OMCs would match Credit Unions' social objects to the pressing need for building investment (sinking) funds in apartment blocks with cashflow challenges.

Credit Union ethos - statutory basis

Section 6 of the Credit Union Act, 1997 sets out that Credit Unions must be formed for the following objects-

- the promotion of thrift among its members by the accumulation of their savings;
- the creation of sources of credit for the mutual benefit of its members at a fair and reasonable rate of interest;
- the use and control of members' savings for their mutual benefit;
- the training and education of its members in the wise use of money;
- the education of its members in their economic, social and cultural well-being as members of the community;
- the improvement of the well-being and spirit of the members' community; and
- subject to section 48, the provision to its members of such additional services as are for their mutual benefit.

Under section 6(3) admission to membership of a Credit Union requires a common bond between members. One such bond is "*residing or being employed in a particular locality*" (section 6(3)(b)).

Membership of an OMC is defined by the ownership of a property ("unit") in a multi-unit development. The OMC owns the common areas of the estate. In this way the interests

of OMC members are bound together. OMC members are concerned with the proper maintenance and upkeep of the common areas, for the enjoyment of quiet and peaceful occupation of their properties.

OMC members are neighbours, as are those Credit Union members possessing the common bond of residing in a particular locality, as provided for in Credit Union legislation.

The Network submits that there are natural links between, and purposes common to Credit Unions and OMCs. Lending by Credit Unions to OMCs is consistent with the statutory framework for Credit Union lending. Such lending will have a public policy benefit in terms of the sustainability of the apartment sector.

2.2 Section 4.3 - Investments in Approved Housing Bodies

We note in particular that Section 4.3 of the Consultation Paper seeks views as to whether it is appropriate for Credit Unions to undertake investments in AHBs.

We submit that there are strong parallels between AHBs and OMCs, and if investment in AHBs is permitted, lending to OMCs should be allowed.

AHBs and OMCs are privately operated, non-profit organisations in the housing sector. They are underpinned by a social/community theme.

It is submitted that OMCs carry significantly fewer risks and complexities compared with AHBs. There is no development risk with OMCs, nor is there planning permission risk.

We note the following commentary in Section 4.3 (page 15)-

“As with all investments, it is important that credit unions understand that they cannot outsource the judgement regarding investment risk to an external party such as an investment adviser and that the credit union remains responsible for both the investment decisions and the protection of the funds of its members. It is vital that, if credit unions propose investing in AHBs they fully understand the specific characteristics of the underlying investment, the investment vehicle and all associated risks.

Funding from credit unions would also represent a new source of funding for AHBs which may result in certain risks arising as new processes, policies and procedures are developed and implemented by credit unions and AHBs.”

We submit that the same issues arise where Credit Unions lend to OMCs. However, the characteristics of OMCs, and the associated risks, are less complex than those associated with AHBs. We submit that relative to AHBs credit risk assessment of OMCs should therefore be straightforward. We comment on the practicalities of this in Section 2.4 below.

2.3 Australian Apartment Model

Our experience is that of the apartment management models internationally, the closest in similarity to Ireland is the Australian “Strata” model.

Owners’ corporations/strata management companies are the Australian equivalent of Irish OMCs.

Mainstream Australian commercial finance providers lend to strata companies. Examples of lenders in the Australian market are Macquarie Bank⁷ and Westpac Bank⁸. There are also specialist strata finance providers in the Australian market⁹.

We are not aware of such funding available from the Irish pillar banks or other providers. We submit that lending by Credit Unions to OMCs will bridge this gap in the Irish environment. As explained above, there is a natural fit between the funding needs of OMCs and the investment classes of Credit Unions.

2.4 Credit Risk of OMCs

Residential OMCs are governed by a board of directors elected by its membership (the unit owners). Typically the directors are unpaid and are also members (property owners in the estate). As outlined above, it is usual practice for the board to appoint a Property Managing Agent to manage the OMC, with the directors exercising governance, setting policies and deciding on major expenditure.

In conjunction with the Agent, the board formulates an annual budget. This budget covers the annual maintenance of the common areas, insurance, waste management, etc. In addition, the budget incorporates provision for an annual contribution to a building investment (“sinking”) fund. This fund is for large future capex projects such as lift replacement, roof replacement and common area redecoration.

Under the MUD Act the proposed annual budget must be presented to a general meeting of members for approval. Once approved, the budget is sub-divided among members as an annual service charge.

Liquidity risk

Liquidity risk has been a considerable challenge for OMCs throughout the financial crisis. Poor rates of service charge payment have led to, and continue to lead to significant aged debtor balances.

However, from the outset it should be highlighted that with proper financial management and debtor controls, there should not be a solvency risk for OMCs. Effective

⁷ Macquarie bank Strata Improvement Loans (“SIL”) are provided for major renovations, unbudgeted items, e.g. fire order upgrades or emergency repairs, large-scale capital works, etc. See for more details- <http://www.macquarie.com/au/business-banking/loans-asset-finance/expertise/strata-loan> provides lending <http://www.macquarie.com/au/business-banking/campaigns/strata-improvement-loan>

⁸ Westpac bank- <https://www.westpac.com.au/business-banking/industries/strata/>

⁹ Lannock Strata Finance is a specialist strata financing company- <https://lannock.com.au/>

stewardship by the directors, with the operational assistance of the Agent, ensures that most OMCs eventually recover 100% of service charge debt.

The provisions of the lease between the OMC and the debtor, and the unwillingness of a potential purchaser to acquire a unit with arrears attaching, mean that the debt is eventually discharged on a sale of the property.

Most recent Irish academic research¹⁰ has shown that circa 25% of service charge accounts surveyed were in arrears to some degree. A small proportion of the accounts surveyed (5-10%) were in severe arrears. Multiple years' worth of service charges can accumulate, particularly in the case of investor-owners of multiple units in one development.

Most owners in arrears typically make some level of payment to reduce their balances outstanding over time; this is particularly so in the case of owner occupiers. However, the cashflow shortfall to the OMC means that the element of the service charge that should be set aside for sinking fund provision is instead used to meet essential day-to-day expenditure such as waste disposal, insurance, electricity, etc. As a result of this liquidity problem, many OMCs will not have sufficient funds to meet the cost of infrastructure upgrades, for example lift replacements or common area refurbishment.

Permitting Credit Unions to lend to OMCs will have the dual benefit of addressing the funding difficulties of OMCs and providing an investment class appropriate to Credit Unions.

OMC insolvency – very low risk

As noted above, the risk of an OMC becoming insolvent is very low.

The assets of an OMC are made up of cash balances and service charge debtors. Service charges are ultimately fully collectable. OMC management (i.e. the directors) will not facilitate the sale of a unit until the service charge debt has been cleared in full. Therefore, the risk of bad debts and service charge write-offs is extremely low. It will be observed from an analysis of financial statements of OMCs that for this reason they do not carry bad debt provisions.

As noted earlier, service charges are an “excludable” debt under section 2(1) of the Personal Insolvency Act 2012. They may be included in a Personal Insolvency Agreement only with the explicit consent of the creditor OMC. As the debt is recoverable from a property sale, it is only in rare and exceptional circumstances that an OMC would consent to the inclusion of service charge debt in a PIA.

Poor OMC management practice is the final risk that must be considered when assessing the risk of lending to an OMC. The Network is aware of a small number of OMCs that have been struck off by the CRO. These have occurred predominantly

¹⁰ “Owners’ Management Companies: The Ticking Time-Bomb Of Service Charge Collection” Adele McKeown, BA, MSc, Presentation to SCSi, 2 June 2017
<https://apartmentownersnetwork.org/2017/06/19/adele-mckeown-scsi-presentation-omc-service-charge-collection/>
“Service Charge Collection In Multi-Unit Developments” Adele McKeown, MSc in Real Estate, DIT Thesis, December 2016
<https://apartmentownersnetwork.files.wordpress.com/2017/06/a-mckeown-service-charge-collection-muds-full-thesis.pdf>

where developers have retained control of the OMC and did not hold AGMs, or failed to file Annual Returns with the CRO.

The provisions of the MUD Act have greatly reduced the risk of OMC strike-off. The MUD Act stipulates how OMCs are to be managed, and it provides for the speedy and cost-effective re-instatement of OMCs struck-off.

Security & maturity

The Network submits that, given their underlying social/community function, lending to OMCs would involve covenants and terms similar to those attaching to loans already provided in the Credit Union sector. The cost of finance should reflect the low risk nature of the investment. It is submitted that the duration of loans would match OMC sinking fund investment periods.

Credit Unions' risk assessments

The Network submits that Credit Unions' credit committees are well placed to assess OMCs of developments in their local areas.

We submit that the following matters are relevant to assisting with the assessment of the creditworthiness of an OMC-

- Financial statements and an Annual Return are filed with the CRO.
- Although not required for OMCs incorporated as CLGs, most OMCs arrange a statutory audit.
- OMC finances are not complex; they are readily comprehensible to Credit Union credit committees.
- Subject to meeting Data Protection rules, and where Company Law and the OMC Constitution allow, a list of OMC members (i.e. the owners responsible for services charge payment) may be provided to a Credit Union.
- In the vast majority of cases the OMC board is comprised of directors owning properties (either as occupiers or landlords) in the estate, meaning that they have strong connections to the local area in which the Credit Union operates. It is suggested that the OMC directors will be known in the local area.
- There is a licensing and regulatory regime for Property Management Agents. This is operated by the PSRA¹¹. Estates managed by licensed PMA are likely to carry a lower risk than those managed by unlicensed PMA.
- Conveyances of estate common areas to the OMC under the MUD Act should be registered with the Property Registration Authority. Compliance with this obligation signifies a well-run OMC.
- Proposals have been advanced by the Law Reform Commission for the greater regulation of OMCs¹²; the Network supports these. The information available from such regulation could form the basis for credit rating of OMCs.
- The Network supports the inclusion in the Central Credit Register of owners' service charge debts. This would be arranged under the Credit Reporting Act 2013. It would provide a further credit check of the membership of the OMC.

¹¹ <http://www.psr.ie/Website/npsra/npsraweb.nsf/page/licenceapplications-newlicence-en>

¹² http://www.lawreform.ie/_fileupload/consultation%20papers/cpMUDs.pdf

The Network submits that there is ample material available to allow Credit Unions undertake appropriate credit risk assessments of OMCs in their geographical area.

Deposit products

While not a matter for this consultation, we take the opportunity to note that Credit Unions could provide long-term deposit account products to OMCs with healthy sinking fund balances.

We submit that the mutuality/community ethos and themes may apply to the provision of such products in the same way as they apply to proposed Credit Union lending to OMCs.

3.0 Conclusion

Allowing Credit Unions to lend to OMCs will have the dual benefit of tackling the funding difficulties of OMCs, and providing an investment class appropriate to Credit Unions.

OMC lending would be a prudent investment for Credit Unions.

We submit that the counterparty characteristics, in particular local/geographical factors, and the low risk profile of OMCs are appropriate to investment by the Credit Union sector.

OMC lending has public policy benefits consistent with the social objectives of the Credit Union movement. The proposal is in keeping with the existing legislative framework that underpins the movement.

The Network wishes to thank the Registry for the opportunity to make a submission. We trust that the views expressed will be given due consideration in the Registry's deliberations.

We would be glad to meet to expand on our proposal at a meeting or another appropriate forum.