



WORKSHOP SESSIONS: MSD PUBLIC HOUSING CONTRACT FRAMEWORK

ACTION ITEMS FROM WORKSHOP 16: (27 AUGUST 2018)

Attendees:

- MSD – Jo Murray, Andrew Barker and Aimee Edwards
- CHRA – Nicola Blackburn
- CHA – Chris Glaudel
- HNZ – Yazmin Juned
- Providers – John Cook (Emerge Aoteaora); Julia Saunders (CORT Community Housing), Fiona Matthews (Salvation Army), Cate Kearney (Ōtautahi Community Housing), Zap Haenga (Atareira).
- Bell Gully – Angela Harford, Shaun Burmester and Philip Zander

#	ITEM	STATUS	DESCRIPTION	ACTION	COMPLETE?
General					
1.	Proposed Operational Supplement version of the New Supply Development Funding Services Agreement	Proposed	MSD provided a version of the New Supply Development Funding Services Agreement which shows the changes to Schedule 9 in circumstances where there is only the Operational Supplement.	Providers to consider.	
2.	Operational Manual	Proposed	MSD is proposing to release the amended and compiled Operational Manual. A future workstream is proposed which will review the Operational Manual.	MSD to release to Providers following compilation. No further actions are proposed as part of this workstream.	
3.	Proposed cut-off for adding new properties to current open term contracts	Proposed	MSD is proposing a cut-off for the addition of new properties to existing open term contracts (1 November 2018). Following the cut-off, all new properties for open term arrangements will be required to be under the new contracting framework.	Providers to consider whether this timing is sufficient.	
4.	Sitting Tenant concept	Agreed	The short-term baseline is to be set at 4 months as a default so as to capture most Provider programmes.	Bell Gully to update Services Agreements generally.	
5.	Completed Action Items list	Proposed	MSD has compiled all of the Workshop Action Items lists and will release this document following its completion.	MSD to release following completion of the document.	
New Supply Development Funding Services Agreement					
6.	Key Terms – Plans and Specifications	Agreed	The document will be amended to reflect that the Plans and Specifications need to be consistent with the Configurations, unless	Bell Gully to update Services Agreement.	

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			otherwise agreed by MSD.		
7.	Example Conditions Precedent to Drawdown	Noted	Providers expressed concern with the example drawdown conditions. MSD confirmed that these example conditions are expected to be negotiated so that they are set at an appropriate level for the relevant Services Agreement.	No action required.	
8.	Key Terms – Development Phase Reporting	Agreed	<u>General reporting</u> The Quarterly Development Reports should be required to be provided 10 days after the end of the relevant month, not on the last day of such month.	Bell Gully to update Services Agreement.	
9.	Key Terms – Development Phase Reporting	Agreed	<u>Ad-hoc reporting</u> Providers are unclear what the second bullet requires.	Bell Gully to update Services Agreement.	
10.	Key Terms – Development Phase Reporting	Agreed	<u>Ad-hoc reporting</u> The final bullet point to refer to a Certificate of Public Use and a Code Compliance Certificate (after it has been issued).	Bell Gully to update Services Agreement.	
11.	Schedule 9 Clause 2.2(d) - Good Industry Practice	Noted	Providers expressed concerns relating to the Good Industry Practice requirement. In particular they are concerned that certain third parties may be unable to insure to this standard under professional indemnity insurance. MSD believes that such a requirement is not onerous.	No change proposed. Providers to notify MSD if they run into issues going forward.	
12.	Schedule 9 Clause 3.5	Agreed	Defect remedy period to be aligned with what Providers generally see in their contracts (90 days).	Bell Gully to update Services Agreement.	
13.	Schedule 9 Clause 5.1	Agreed	A new concept of "Material Contract" is to be included in the Key Terms which specifies the contracts MSD believes are material to each Services Agreement and which require MSD's consent (not to be unreasonably withheld or delayed) to be entered into and varied.	Bell Gully to update Services Agreement.	
14.	Schedule 9 Clause 5.1(e)	Agreed	Fixed lump sum concept to be removed.	Bell Gully to update Services Agreements generally.	
15.	Schedule 9 Clause 6.2(d)	Agreed	This clause is to be made subject to the FDD.	Bell Gully to update Services Agreement.	
16.	Schedule 9 Clause 10.2	Agreed	MSD to clarify this provision by listing the instances MSD may expect the repayment of funding (i.e., where the New Supply Properties don't meet the configurations or if there has been a Provider breach leading to termination) and how such repayment will be calculated over the	Bell Gully to update Services Agreement.	

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			term of the Services Agreement.		
17.	Schedule 9 Clause 11.1	Raised	Providers raised concern that this allows MSD to trigger these provisions in situations where the breach could be considered minor. MSD will not add a materiality qualifier as the obligations are already at a high-level and MSD believe that although technically feasible, such action(s) are not likely to be readily taken.	No change proposed.	
18.	Schedule 9 Clause 11.3(d)	Agreed	The suspension right appears to be inconsistent with the rectification programme.	Bell Gully to update Services Agreement.	
19.	Schedule 9 Clause 13.1(b)	Agreed	The drafting needs to be made consistent with the position reached with respect to repayment of Upfront Development Cost Funding.	Bell Gully to update Services Agreement.	
20.	Schedule 10 Clause 1	Agreed	Change of form of encumbrance to be by agreement of both parties.	Bell Gully to update Services Agreement.	
21.	Schedule 10 Paragraph 2	Agreed	Incorrect Schedule reference to be amended.	Bell Gully to update Services Agreement.	
22.	Schedule 10 Paragraph 3	Agreed	This paragraph needs to include an obligation on MSD to seek to remove the security protection within a reasonable time period.	Bell Gully to update Services Agreement.	
23.	Schedule 10 Attachment to Schedule 10: clause 15	Agreed	The clause which requires MSD to always be first ranking is to be deleted (as it is not always possible). Note this does not change other obligations which will be contained in the relevant Services Agreement and the FDD.	Bell Gully to update Services Agreement.	
24.	Certification of Milestone payments (in drawdown for Milestone 2)	Agreed	CEO to be added to the list.	Bell Gully to update Services Agreement.	
Transitional Housing Services Agreement					
25.	Key Terms – Services Description	Agreed	Clarification regarding Excluded Cohorts to be added to this Key Term.	Bell Gully to update Services Agreement.	
26.	Key Terms – Data provided by Providers	Agreed	The second bullet point does not appear to be complete – is to be an average over the relevant period.	Bell Gully to update Services Agreement.	
27.	Key Terms – Data outcomes following specified periods	Agreed	To clarify that the RMG is to meet after the second 6 month Data set during the Term.	Bell Gully to update Services Agreement.	

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28.	Key Terms – Services Payment: Accommodation Subsidy	Agreed	To be clarified so that the payment is for the weekly amount “for the full quarterly Payment Period”.	Bell Gully to update Services Agreement.	
29.	Schedule 1 Clause 8(c)(iii)	Agreed	This should be clause 8(d) rather than 8(c)(iii).	Bell Gully to update Services Agreement.	
30.	Schedule 1 Clause 13	Agreed	MSD to amend the reference so that it is to Level 3 MSD Accreditation.	Bell Gully to update Services Agreements generally.	
31.	Schedule 4 Clause 1 – Accommodation Subsidy Adjustment	Agreed	To be amended so that it is clear this is a deduction as opposed to an amount due.	Bell Gully to update Services Agreement.	
32.	Schedule 4 Clause 1 – Conditions Precedent	Agreed	There is a misspelt defined term.	Bell Gully to update Services Agreement.	
33.	Self-referral	Raised	Providers have raised with CHA that they are uncomfortable with the proposed limited self-referral system. MSD requires that the priority system is followed and therefore needs to limit the ability of self-referral.	No action proposed.	
Reasons for exit					
34.	Circulated lists	Tabled	Two lists were circulated, being: (i) Andrew Wilson’s list which sought to simplify the proposal MSD circulated; and (ii) HNZ’s list to provide context and information to the Providers.	No action required.	
35.	Andrew Wilson’s list	Agreed	This list is to be utilised in place of the current framework, however: A new (iv) to (d) is to be included as a new general; category so as to capture other instances (e.g., Mental Health Act).	Bell Gully to update Services Agreements generally.	
36.	Future amendments	Agreed	It was discussed that the proposed list is a starting point and may need to be amended in the future.	No action required.	
Relationship with the Regulator					
37.	Relationship Agreement Clause 3.3	Proposed	Proposed new wording was shown in the Workshop which reflects the proposed relationship with the Regulator and adds context to the Relationship Agreement. This wording will be amended to remove the specific references to Class 1 Social Landlords.	Bell Gully to update Services Agreements generally.	
38.	Certainty of information sharing between Regulator and MSD	Discussed	Providers are concerned that there is little visibility about what information the Regulator receives that it will share with MSD. MSD cannot finalise the position as	MSD to circulate proposed categories of information once agreed (ideally	

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			<p>the MOU will not be agreed in time, however, MSD will:</p> <ul style="list-style-type: none"> • circulate the proposed description of information sharing by email (once it is agreed); and • include a provision in the Relationship Agreement that will require variations to the MOU to be discussed with the industry. 	<p>this week).</p> <p>No further actions proposed.</p>	