

# **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**

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## 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 stock<sup>1</sup>.

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 apartments<sup>2</sup>.

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?"<sup>3</sup>*

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 Document<sup>4</sup>.

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<sup>1</sup>Census 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%.

<sup>2</sup> 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](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>

<sup>3</sup> Minister Eoghan Murphy's Housing Agency conference speech 28 June 2017

[housing.gov.ie/housing/rebuilding-ireland/minister-eoghan-murphys-housing-agency-conference-speech](http://housing.gov.ie/housing/rebuilding-ireland/minister-eoghan-murphys-housing-agency-conference-speech)

<sup>4</sup> <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 DHPCLG<sup>5</sup>.

We note that we have engaged with the DHPCLG by way of submission on the Pre-Draft Stage of the National Planning Framework<sup>6</sup>.

We have engaged with the Housing Agency on many of the matters contained in this submission<sup>7</sup>.

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.

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<sup>5</sup> 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-dhpclgesri-housing-research-programme/>

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

<sup>7</sup> 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 Australia<sup>8</sup>. 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/flats<sup>9</sup>. 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 dwellers<sup>10</sup>. 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.

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

<sup>9</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Housing\\_statistics#Type\\_of\\_dwelling](http://ec.europa.eu/eurostat/statistics-explained/index.php/Housing_statistics#Type_of_dwelling)

<sup>10</sup> 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](http://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 Ireland<sup>11</sup>. Approximately 500,000 people live in homes in multi-unit developments<sup>12</sup>.

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 2016<sup>13</sup>, 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.

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

<sup>12</sup> 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.)

<sup>13</sup> Census 2016, Chapter 9 "Housing"-  
[www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter\\_9\\_Housing.pdf](http://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 law<sup>14</sup> 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<sup>15</sup>. 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 estate<sup>16</sup>. 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.

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<sup>14</sup>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.

<sup>15</sup>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...”.

<sup>16</sup> 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 directors<sup>17</sup>.

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.

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<sup>17</sup>See Adele McKeown SCSI 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 guidelines<sup>18</sup>.

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.*”<sup>19</sup>.

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 apartments<sup>20</sup>. 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.

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<sup>18</sup> Pages 58 and 62.

<sup>19</sup> Page 73

<sup>20</sup> <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 include<sup>21</sup>:

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

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<sup>21</sup> See research on the matter by Ms. Adele McKeown in her SCSi 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 regard<sup>22</sup>.)
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 funds<sup>23</sup>. The Network agrees with these views.

The *laissez-faire* approach to OMC regulation in the consultations and reports<sup>24</sup> prefacing the formulation of the MUD Act has been proven to be incorrect. Existing remedies in Company Law and other sources have proven inadequate.

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

<sup>23</sup> 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>

<sup>24</sup> 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 PIA<sup>25</sup>. 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.

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

<sup>25</sup> 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 2017<sup>26</sup>
2. Consultation on Potential Changes to the Investment Framework for Credit Unions, submission to Registry of Credit Unions, 27 June 2017<sup>27</sup>
3. Tax and Fiscal Treatment of Landlords Consultation, submission to Tax Policy Division, Department of Finance, 6 April 2017<sup>28</sup>

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 2016<sup>29</sup> 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/tenants<sup>30</sup> 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.

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

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

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

<sup>29</sup> 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/>

<sup>30</sup> 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.