

## **GAUTENG- NEGOTIATE MANDATE**

### **Responses:**

#### 1. CHAPTER I (Definitions)

1.1 The definition of a home should also include the student accommodation. The owner of the property should be able to convert the accommodation for any other purpose should they wish to sell in future.

**Response: The concept of student accommodation is a recent development the normal reference to it is boarding house or hostels which is covered under the definition of a home. Exclusions from a home are covered under clause 2(2) of the Bill. Student accommodations/hostels are not excluded in terms of clause 2(2). The conversion of a home is covered in terms of clause (2)(4) of the Bill.**

#### 2. CHAPTER II (Requirements for registration)

2.1 The previous Act allowed owner-builders to request exemption through the Council. In terms of the current Bill only the applicable Minister can grant exemption "in exceptional circumstances and in the national interest". This function should be retained by the Council and should be less strict. For example, an application by a "casual" homebuilder who only wants to build a carport cannot possibly require the Ministers attention and it cannot possibly be denied because it is not "in the national interest".

This may place an additional compliance and administrative burden on consumers and could be a red tape.

**Response: Noted it will be considered.**

2.2 Before passing this Bill the NHBRC should perform an extensive and convincing "proof of concept" exercise to verify that creation and management of the registers can be sustained and also offer meaningful and cost-effective results.

**Response: The NHBRC is already undertaking various projects to ensure it will be ready comply with the provisions of the Bill. The Bill requires that the two registers for home builders/developers and enrolments should be integrated.**

2.3 Would there be a need to register structures or shelters made of wood commonly referred to as “wendy houses” as the market has been increasing for these type of structures.

**Response: There has to be a distinction between permanent structure or non-permanent structure, if is a permanent structure it must have the necessary approvals from the necessary authorities, including plan approved by Municipality. The housing structure that is permanent (not temporary in nature), enrolled and approved by municipalities will therefore be covered in terms of this Bill and that include the types of Wendy houses.**

2.4 There needs to be more clarity on what “enrolment” implies, what will be required for the registration and what assistance will be offered for registration.

**Response: Clarity will be provided for in the Regulations, as it is currently covered in the current Act.**

2.5 Add – (1) First phase Enrolment Notice.

(Conditional Enrolment of home)

The NHBRC may not fully enrol a home unless— (a) the NHBRC is satisfied that the homebuilder has completed construction and complied with any issued technical non-compliances and the Inspector has certified the work. The NHBRC may only issue the Enrolment Certificate once the above condition has been met.

A home builder must submit home enrolment to the NHBRC 15 days prior to commencement of construction and confirm that the home is available for inspection by the NHBRC inspectorate throughout the construction process” In terms of the Regulation 1408, Rule 3(a) of the enrolment process.

It should be an offence by the homebuilder if they fail to inform the NHBRC and book an inspection for all stages before commencing with that stage.

**Response: The enrolment process will be set out in the Regulations in terms of clause 87(1)(c) and failure to enrol attracts administrative non-compliance in terms of clause 63.**

### 3. CHAPTER V (Fees)

3.1 The NHBRC may differentiate between the categories of fees in relation to different categories of homebuilders and developers based on grading status.

3.2 The homebuilder with higher grades should pay higher renewal fees, the fees to be used for the purpose of developmental programmes of lower grade builders.

**Response: Grading is informed by a home builder's performance and conduct. Clause 87 (1) (h) of the Bill empowers the Board to make Rules that prescribe grading categories and criteria with a view to encourage good building practice and discourage bad building practice.**

### 4. Chapter VI (Duties of inspectors and employees) and (Powers of inspectors)

4.1 Add: an inspector may issue a certificate of noncompliance during the inspection of a home and report it to the Council within reasonable time frames.

**Response: Non-compliances notice are issued by inspectors which have time frames (to be provided for in the regulations).**

4.2 Add: an inspector has a duty to issue a completion or compliance certificate after inspecting a home.

**Response: Clause 40(7) provides that if the outcome of the final inspection contemplated in subclause (6) identifies an instance of non-compliance with the Technical Requirements, the periods**

**contemplated in that subsection are calculated 90 days from the date on which the inspector has certified compliance with the Technical Requirements. The concern is therefore covered.**

4.3Add: May require the tests of any materials to be conducted by an independent lab or institution appointed by the homebuilder at their own cost. The Council should reimburse the homebuilder if the results prove compliance with the set standards.

**Response: The matter is covered in Clause 71 (3). The home builder is the one who will have to reimburse Council (i.e Council will pay for the tests and recover costs from the home builder who failed to comply with the Technical Requirements).**

5. CHAPTER VIII (Duty of financial institution)

5.1 Add: the financial institution should before approving any progress, payment claim for the construction, alteration, or additions of a home, satisfy itself that there are no quality related queries against the home builder from the Council. Including the final enrolment certificate issued by the Council.

**Response: The responsibility of quality assurance is the responsibility of the NHBRC to ensure compliance with the technical standards and the Municipality ensure compliance in terms of Act 103 of 1977. Financial Institution do their own assessment before approving progress payments.**

5.2 Should a home builder or a developer not comply with the requirement of registration at the NHBRC or enrol the homes that they are building, such a home builder or developer, would be guilty of an offence or a fine not exceeding R1.5 million or imprisonment. The current Act sets that fine at R25 000. Is this amount fair, just, and equitable or would it be up to the courts to determine the fine or would the Act prescribe thresholds. The penalty might unintentionally adversely affect a small builder, who might not be conscious of the legislation.

**Response: Clause 78 that covers penalties for criminal offences limits courts to issue a fine not exceeding R1.5 Million. Clause 65(2) (b) and (c) provides for the administrative fine that can be imposed by Compliance and Enforcement Committee. The fine that may be imposed is up to an amount of R1. Million. Both the court and CEC may impose any fine and it does not necessarily have to be the threshold amount, in addition different circumstances are taken into account when imposing the fine (such as damages suffered by any person as a result of the contravention, behaviour of respondent, market value of home, and level of profit derived from the instance of non-compliance). The Bill is therefore providing a balance.**

5.3A conveyancer now has additional duty to report non-compliance to the registrar of deeds, and estate agents had an additional duty to notify prospective buyers that the home had not been enrolled. If the parties did not comply with this duty, they could be reported to various oversight bodies such as the PPRA (Property Practitioner Regulatory Authority), the Financial Services Board, the Law Society, or the Auditor-General. This is extending the watchdog function over homebuilders and developers to further include external parties who also had obligations to confirm compliance with the Bill. This may create laborious bureaucratic red tape burdens that could potentially delay building disputes significantly.

**Response: The purpose of the Bill is to extent protection to housing consumers and the responsible parties (stakeholders) must assist the NHBRC to ensure compliance with the Bill (Clause 81, 82 and 83 of the Bill).**

## 6. General

6.1 How will the Bill accommodate or cater for people with disabilities?

**Response: All housing consumers irrespective of whether they are people with disabilities or not they are covered in the Bill. Social Housing Norms and Standards include specifications for people living with disabilities and this is taken into consideration when social and subsidy houses are constructed.**

6.2 How will the Bill assist emerging contractors and what role will the community play in effective implementation of the Bill.

**Response:** Clause 34 (3) provides that surplus warranty fund may be applied in relation to developmental programmes for the home building industry and NHBRC provides training to home builders.

6.3 What protection will be provided in this Bill for Housing Consumers of RDP houses.

**Response:** The appointment of registered home builders and enrolment of homes by the Municipalities or Provincial Departments will ensure that the housing consumer are offered the protection in terms of the Bill. The Board will also make Rules regarding the application of Technical Requirements to homes financed by a State Housing Subsidy in terms of clause 87(1)(d) of the Bill. Further clause 32 and 33 imposes duties on MEC's and MMC to ensure compliance with the Bill when state (subsidy or social housing project) housing subsidy are constructed and that no funds can be released if the home builder or developer has not enrolled the project. Section 83 imposes a duty to Conveyancers before transferring any property to ensure that it is enrolled with the NHBRC.