From: I. O'Malley - Foresters ANA [mailto:iomalley@forestersana.com.au]

Sent: Tue 1/07/2008 3:44 PM

To: Swan, Wayne (MP)

Cc: Belinda Drew

Subject: Foresters ANA

Dear Treasurer,

It is almost two years since Belinda Drew and I met with you at Nundah and explained what we were trying to achieve with this organisation.

You may recall that you recently met up briefly with my wife during a short elevator trip at Waterfront Place in Brisbane and you indicated to her that you would be interested in hearing from Belinda and me again.

We would be very grateful to have the opportunity to talk to you again about the progress we have made at Foresters and to explain some of the barriers that are frustrating the furtherance of our work as an Australian Community Development Finance Institution - a term not formally recognised in this country. One only has to look as far as the Nundah Community Living Association to see the value of our activities.

In 2007, Belinda and Ingrid Burkett our Community Education & Innovation Manager visited a number of Community Development Finance Institutions

(CDFI's) and the Community Development Finance Association in the UK.

Ingrid has also just returned from the US where she visited a number of CDFI's. We now know that the Forester's CDFI investment model is unique. While the UK CDFI's depend on millions of pounds of Government investment and the US organisations depend on both Government funds and philanthropy, our model depends on investment alone.

We have recently made a submission to the Disability Investment Group formed by the Parliamentary Secretary for Disabilities and Children's Services, Bill Shorten. The submission outlines a number of barriers to investment in the community sector and provides an example of a project that we are developing with Parent to Parent (a network of parents who have a child with a disability) on the Sunshine Coast. Removal of some of the investment barriers would encourage greater investment by the broader community in community organisations serving all disadvantaged groups.

We believe that the initiative to enable development of the CDFI sector in Australia must come from the Federal level as the State Governments appear to be forever lost and wasting money in a no-man's land between broader policy and its practical application in the community.

I have attached a copy of the Submission for information.

Yours Sincerely,

Ian O'Malley A Fin

Social Investment Manager

Foresters ANA Mutual Society Ltd

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Submission to the Disability Investment Group

Community Economic Development

Foresters and Parent to Parent
June 2008

Contents

Part 1 - Overview and Summary

1 Introduction

We welcome the Australian Government's initiative in establishing the Disability Investment Group and note its Terms of Reference. Our submission touches on a number of these, including:

- International best practice in leveraging greater investment in disability support

- Opportunities to increase private sector involvement and investment in the funding of disability services and related infrastructure, including new innovations to develop alternative funding sources and arrangements for people with disability and their families; identify barriers to this and how they might be overcome

- Current and potential avenues for philanthropic investment in disability support

- Government assistance to encourage family and private investment in the provision of housing, education, employment, equipment and other support for people with a disability

- Avenues for new products and services to assist families plan for the future of their child with a disability

- Options for investment in housing for people with disability through private and shared equity

- Ways to assist people with disability, their families and not-for-profit organisations to engage with the private sector to enable development of accommodation and support options

Our comments in relation to these terms of reference will include:

- Providing an overview of our holistic and innovative approach to establishing secure, long term and affordable housing for people who have a disability;
- Identifying the barriers to such an approach, how we are overcoming those barriers and how their removal could hasten and scale up our work;
- Recommending to the group our view of the strategic way forward.

This is a joint submission by Foresters ANA Mutual Society Ltd (Foresters) and Parent to Parent Association Queensland Inc (P2P), part of an Australia–wide network of parents who have a son or daughter with a disability and with an international reputation for planning activities.

1.1 Our Approach is Unique

We have developed a ground-breaking approach in Australia to meeting the housing and support requirements of people with a disability, connecting them in meaningful ways to the community. Our work is driven by an understanding that to achieve socially innovative outcomes for people with a disability we need to bring ***all*** stakeholders together. These stakeholders include groups from the third sector, public sector, corporate sector and the emergent Fourth Sector[1].

Our model draws on the strength and unique characteristics of integrated government funding, social investment and philanthropy. We utilise government funding to provide support and build community connectedness. We use social investment funds to purchase housing. And, we use philanthropic funds to leverage the value of government funding and investment. In the future we will also explore the application and value of earned income through social business activities.

1.2 Welcome to Key Housing Solutions – a Fourth Sector Company

The goal of Key Housing Solutions model is to provide safe and affordable homes for people who have a disability.

Key Housing Solutions uses a Fourth Sector approach both in process and structure. Our process has engaged people from ***all*** stakeholder groups in the development of a company structure that from a governance and operational perspective will link together housing, community support and connectedness, and social investment to achieve our goals. Key Housing Solutions is a Fourth Sector Company.

1.3 About Key Housing Solutions

Key Housing Solutions is currently led by a working party of community members, stakeholders and parents who have a family member with a disability. The parents have a desire to provide long term, safe and affordable housing solutions for their own sons and daughters and other people who have a disability. The working party is made up of:

- Parent to Parent Association Queensland Inc.
- A Key for Me Ltd - a family driven accommodation support agency;
- The former Deputy Mayor of the Maroochy Shire; and
- Foresters ANA Mutual Society Ltd which is a community development finance institution.

Corrs Chambers Westgarth, a well respected Australian Law firm, is providing high level legal advice to ensure that our activities are robust and effective.

[1] Fourth sector organisations link seemingly irreconcilable, concepts, attitudes and values together (http://www.kaospilot.dk/docs/FourthSector.asp). The role of fourth sector organisations in driving innovation is critical because they act as the catalyst among the other sectors to re-imagine what is possible and unlock solutions to seemingly intractable problems. Foresters ANA Mutual society is a Community Development Finance Institution, and an example of a fourth sector organisation. We are a social business that is self financing - i.e. we generate our own income through business focussed on social objectives. Any surpluses we generate are put back into our future financial sustainability and any non-profit activities

1.4 Making a difference

We believe that every person has the right to live in safe and secure housing that they can call their own. Safe and secure housing is obtained in part from the provision of high quality housing in the right locality, but coupled with the right support and strong community relationships creates a "home". We believe that this is of even greater importance to people who have a disability as they may experience vulnerabilities that those without a disability may not.

We place people who have a disability at the centre of our planning. We consider every aspect of their hopes and aspirations. This may include the personal supports they will need in their homes, a variety of housing types, recreational and community interests and health.

1.5 Innovative thinking = exciting results

We have also created an innovative community economic development (CED) model that will mobilise social investment in a trust structure to secure long term affordable housing. **While unique in Australia; it is tried and tested in the United Kingdom and the United States. The unique contribution of social investment funds to this model delivered by a community development finance institution will be a driver of success.**

The (CED) model has broad application.

Foresters and P2P intend that the Key Housing Solutions structure will be duplicated for people with a disability in Toowoomba and then in other areas.

A similar approach is also being developed by Foresters in conjunction with Wesley Mission and Mindcare a Brisbane incorporated association that provides services to people with psychiatric illness. However, specific reference in this submission will only be made to the Key Housing Solutions initiative.

Foresters and P2P are also in the process of developing training and education material to build the capacity of other communities to replicate this model within their own context.

Parts 2 and 3 provide for your consideration further detail and information in the following areas:

- The methodological approaches underpinning the Key Housing Solutions;
- The institutional barriers to attracting investment into the provision of suitable affordable housing.

1.6 Need for government initiative

We note the Rudd Government's National Rental Affordability Scheme[2] and that there may be opportunities to access some of the benefits that will flow from it.

Importantly, however, we urge the members of the Disability Investment Group to consider the benefits that new Federal legislation would give to enabling the establishment and regulation of Community Economic Development Finance Institutions under the Financial Services Regulation Act and the registration of Community Economic Development Companies. Such action would contribute significantly to opening up the Fourth Sector as an industry in Australia.

We believe that the Australian Government should define *Community Development Finance Institutions* (CDFI's) in Tax Law and provide taxation incentives for investment in funds managed by these institutions that would offset the investment impediments outlined in Part 2. Such incentives might include tax exemption for investors in respect of interest earned on Community Investment Funds managed by CDFI's up to a specified dollar amount or on a reducing scale, and tax exemptions for these CDFI's.

Community Investment Funds should be established under trust deeds and appropriately regulated.

The Funds' purpose should be to provide both a reasonable financial return and social benefits to the community. Both of the terms "reasonable financial return" and "social benefits to the community" would need to be defined in the legislation.

Tax exemption on investment would increase the return on investment above the cash rate and would result in greater investment interest by APRA regulated superannuation funds and others and increase the number of investment funds in the market.

A 6% return taxed at 45% would return 3.3% return net of tax. However, tax exemption would net 6%.

For individuals on lower tax rates, superannuation funds and for tax exempt institutions investments in CDFI's should receive the equivalent of a franking credit that would benefit them equally with the tax benefit received at the highest marginal rate.

A superannuation fund taxed at 15% should therefore receive a 30% franking credit. A 5.1% return net of tax would become a 7.8% net return.

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[2] The partners have noted the Australian Government's initiative to provide 50,000 affordable rental properties across Australia and will be making a submission to the Department of Families, Housing, Community Services and Indigenous Affairs before the end of this month.

The partners believe that this initiative will increase the stock of affordable housing, but we will be emphasising the need for the provision of housing to take into full consideration the concepts outlined in this submission. We believe that while the cost to the investors in the building of such housing may be reduced by the provision of annual incentives, it is essential that the costs to the tenants and to the broader community of failure to address the community development aspects also be recognised.

The challenge to Foresters and P2P will remain the ability to attract investment into housing that is designed to meet the total needs of disadvantaged people and not just provide affordable shelter for them.

An individual or organisation who is below the tax threshold or tax exempt would receive a 45% tax credit and a net return of 8.7%.

The value of investment in the community sector rather than charity or philanthropy is that there is always an expectation of a return on investment and an emphasis on efficiency and effectiveness of organisations that leads to improved productivity.

As a control, the amount of gross investment return that could be paid by a CDFI could be capped at the average Reserve Bank Cash Target Rate for each financial year or for the period of investment if less than one year.

1.7 Social Investment

Social Investment takes into account both the financial and the social return created by an investment. Investors who make social investments are prepared to forgo the higher rates of return that they may receive through investments in the mainstream financial market because they want to see their money do more than just make more money.

Social investors are interested in the social impact their money makes. Because of this they often desire some connection with the investment being made. Investment is often sourced from within the networks of the person or people that the investment will benefit.

Initial consultation with potential investors in relation to the Key Housing Solutions project indicates that investment interest is strong. Investment interest comes from the clients of ethical Financial Advisors, individuals from within the networks of parents of people with a disability and community organisations who are looking to invest in ways consistent with their objectives.

1.8 Commercial-in-confidence

There is significant intellectual property in the modelling work that the team has done and we would greatly appreciate our interests being protected and fully recognised. Please consider this submission Commercial-in-confidence.

Part 2. The methodological approaches underpinning Key Housing Solutions;

Holistic investment in the disability sector on the Sunshine Coast

1 Initiatives in providing housing solutions for people with a disability

Foresters ANA Mutual Society Ltd (Foresters) has been working with Parent to Parent Association Queensland Inc (P2P), a network of parents who have a son or daughter with a disability on the Sunshine Coast and A Key for Me, an organisation of parents that promotes a system where children can live in regular accommodation in their community, close enough to each other to share supports, and also support one another to provide an affordable solution to the long term security needs of people with a disability when their parents die or become unable to care for them. P2P is funded by Disability Services Queensland. A number of P2P groups are operational throughout Australia.

The partnership recognises that housing that is individualised to specific requirements and that is nearby friends can be a crucial success factor for people with a disability who have low to moderate support requirements.

The partnership brings together P2P's *Person Centred Planning Process* and housing solutions that maximise the cost effectiveness of support to individuals with a disability, and community development activities that enhance their community participation.

We believe that a holistic approach focussed on individualised planning, community strengths and social investment can produce social innovation. The technical terms associated with this work are *Person Centred Planning* (PCP), *Asset Based Community Development (ABCD)* and *Community Economic Development (CED)*. Further we believe that approaches that are not holistic will not provide an effective and efficient solution that meets the needs of all stakeholders, including people who have a disability, families, government and the broader community.

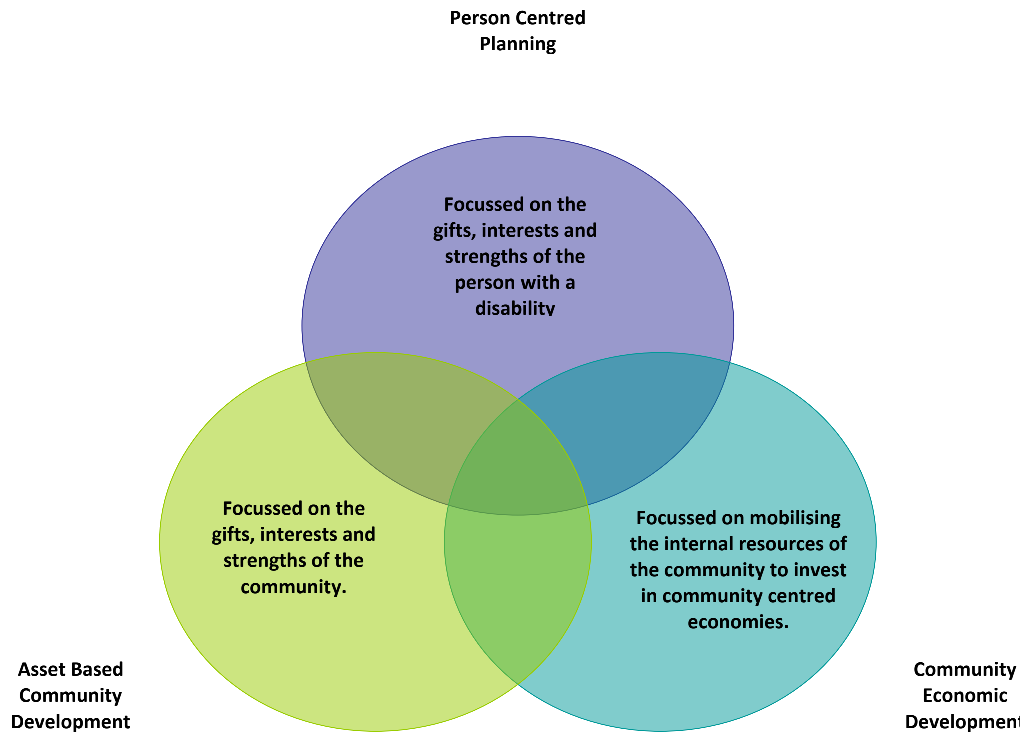
2 The components of holistic investment

The components of holistic investment include:

- Person Centred Planning
- Asset Based Community Development, and
- Community Economic Development

The three components are interconnected and interdependent. When they are successfully brought together under the correct structure and controlled by managers with the right set of skills, individuals and their families, the local community and government all benefit.

Diagram 1



2.1 Person-Centred Planning process

Person-Centred Planning is a method of focusing effort and attention around one person's (or families) situation to make positive change. It is also used to describe a collection of approaches rather than one single tool.

The two facets of Person-Centred Planning are *Futures Planning*, which gives families a vision of a desirable future and how that can be accomplished; and *Essential Lifestyle Planning*.

2.1.1 Futures Planning

P2P uses two *Futures Planning* models - *Planning Alternative Tomorrows with Hope* (P.A.T.H.) and *Pathways to Possibilities*.

P.A.T.H. is a graphic facilitation process, which captures the vision and goals for a desirable future, for an individual, family, or for a group, together with ways to plan direct action. This process is a very successful tool when planning for an individual and their supporting families.

The participants in this process make choices and articulate goals, objectives and aspirations. People agree to carry out tasks that promote linking to mainstream lifestyle choices.

Pathways to Possibilities is a guided journey to planning for the future. Small groups work together over 5-6 sessions encouraging each other, while exploring future options and building networks and supports. It focuses on outcomes that promote community presence based on choices; valued social roles; the contribution of people with a disability and promoting community capacity to support and welcome people. Each family has the support of an ally – a well networked community member or professional. Their role is to encourage, and action goals set by the family between sessions. Goals emphasise actively building supportive community networks with less reliance on services and a particular focus on age-appropriate mainstream involvement. The course was adapted with permission from the work of John O'Brien and Connie Lyle O'Brien. Based on the personal profile in Framework for Accomplishment©.

2.1.2 Essential Lifestyle Planning

Essential Lifestyle Planning assists an individual on a day to day basis. The planning focuses on:

- The strengths of the individual with a disability, their gifts, capacities and interests and how these can be highlighted to enhance the community's capacity to welcome people.
- Creating a vision of a desirable future and ways to complement the vision
- Building local support networks that encourage participation by the individual and their inclusion in the life of the community
- Developing innovative ways of gaining and using unpaid and paid support that promotes participation and inclusion rather than exclusion
- Linking individuals and their families with mainstream and disability specific support networks
- Giving assistance to implement decisions and take appropriate steps to create better outcomes for individuals

The first step in the process is recording the individual desires and choices, wants and needs. This record enables others to know how to support the individual and to ensure that information is available when their family is no longer there to assist. The plans include details of:

- What people like and admire about the individual
- What is most important to the person, their likes and dislikes and what works for them.
- How to keep the individual healthy and safe.
- What people need to know about the individual in order to assist them
- What are the required attributes, of the people who support the person.

These individual plans provide a step by step process for personnel and families to follow when supporting the individual, in order to provide consistent assistance. *Essential Lifestyle Planning* also articulates a quality of life intention.

The second step involves *Families Planning Together.* This is a workshop format that enables families to plan in a group and support each other, to develop an *Essential*

Lifestyle Plan. Families develop plans to be used in schools, for family support/respite or transition or other purposes.

The third step involves *People Planning Together.* This is a workshop format that enables people who have a disability to work together in small groups and write their own *Essential Lifestyle Plan*.

In summary, ABCD's way of organising brings a community-centred dimension to person centred planning and thinking. A community in which ABCD is active finds person-centred ways to build connections between individuals who are labeled and recognising citizenship roles.[3] It also recognizes that everyone can make a difference, that they have gifts to give and contributions to make – if only they are asked and given the opportunity to do so. Relationships unveil a community's assets, and the possibilities for generating connections that promote the inclusion of people with a disability. Focussing on the whole community, rather than individuals, the conviction that everybody is needed grows. Through ABCD organising, people build networks of connections into community life, and develop meaningful action from those connections.

2.2 Asset Based Community Development (ABCD)

ABCD seeks to understand the gifts and capacities of individuals in the community. Instead of looking at ***what is not there*** in the community and what the community needs, the focus is on the assets - ***what is there*** in the community. By taking this strengths-based approach, people can be enabled to work together to support one another to solve problems and realise solutions.

2.2.1 Community Facilitation

Community Facilitators then use the practice of Community Development[4] to develop relationships and networks through which the gifts and capacities of people with a disability, their families and their communities move towards people-centred solutions.

The role of a *Community Facilitator* includes:

- Profiling the local communities of people with a disability and their families to understand the range of community resources available;
- Proactively building relationships through informal and informal networks and structures;
- Uncover the strengths and gifts of people in community;
- Actively look for opportunities to build relationship with key people in the community, these key people will be identified as Community Links;
- Work within the principles of early intervention to use community inclusion as a way of avoiding crisis in the lives of people with a disability and their families;
- Provide a range of information and resources to the person with a disability and their family that increases the options available to them in the community.

[3] ABCD in Action When People Care Enough To Act: Mike Green with Henry Moore and John O'Brien 2006 Inclusion Press

2.2.2 Community Development

Community Development is the practice of working alongside people to develop solutions to the problems and issues that people face as they define them. *Community Development* involves:

- Building an analysis of the facts as people see them, not on the facts as experts see them;
- Doing "with" not doing "for";
- Creating and developing new resources in communities including new skills, knowledge, financial resources, relationships etc.

Relationships are central to Community Development practice. The role of a community worker will therefore focus heavily on building relationships and then connecting people via those relationships.

Relationships reveal a community's assets, and the possibilities for generating connections that promote the inclusion of people with a disability. Focussing on the whole community, rather than individuals, the goal is to grow the conviction that there is nobody we don't need. Asset Based Community Development (ABCD) is an approach that captures this in practice.

2.3 Community Economic Development (CED)

Community Economic Development (CED) offers an opportunity to construct pathways toward self-determination and building sustainable communities. The CED approach recognises the inherent resources, gifts and abilities of communities – including underinvested ones: people, their skills, the natural environment and culture.

By its very nature, CED builds strength into ABCD by focussing on ways to mobilise the assets and economic resources of communities. CED focuses on investment in community structures that have sound governance and community objectives. These community structures in turn build local people's capacity to create new opportunities and strengthen locally-owned economies.

2.3.1 Community Economic Development Companies

A *Community Economic Development Company* (CEDC) is a new concept in Australia. CEDC's are companies formed to lead community economic development processes in local communities. They focus primarily on revitalising underinvested communities of people by engaging in community economic development activities such as social enterprise generation, community asset building, individual asset building. They partner with *Community Development Finance Institutions* (CDFI's), that are detailed below, and other mainstream finance providers and investors to overcome underinvestment in communities. "Communities" may be considered a geographic and/or a social descriptor.

A CEDC has the following critical roles:

- Providing local leadership and education in relation to CED;
- Working with local people to identify CED projects;
- Supporting local people to build the skills and capacity necessary to move from project idea to outcome;

- Working with a *Community Development Finance* provider and other mainstream providers of finance and investment to ensure that investment flows into projects at the appropriate time;
- Working proactively with government, the corporate sector and other key stakeholders to build partnerships that support successful CED outcomes in local communities.

In the United States an estimated 3,600 CEDC's have produced 247,000 jobs and generated 550,000 units of housing since their inception in the early 1970s (National Congress for Community Economic Development, www.ncced.org).

2.3.2 Formation of CEDC on Sunshine Coast

Foresters and P2P are arranging the formation a CEDC in the form of a company limited by guarantee for the purposes of realising the objective of providing an holistic service to people with a disability on the Sunshine Coast. The company will be supported by administration services provided by Foresters.

The CEDC will be governed by up to seven directors selected on the basis of their management skills and experience and operating under a Corporate Governance Charter. The objectives of the company will be to:

- enable the self-direction of people with a disability by providing and promoting housing and support solutions
- provide direct support to people with a disability to live in a home of their choice within their own community
- harness financial and human resources to secure housing options for people with a disability
- engage in Community Economic Development to provide leadership, community education and community assets
- publish and disseminate the knowledge and understanding gained from the operation of the company

It will have objects that enable it to:

- obtain Deductible Gift Recipient (DGR) status
- receive gifts and donations, and otherwise raise funds or participate in fundraising for the development of the Company's services and maintenance of the Company's programs
- enter into collaborative arrangements with, or act as agent for, other organisations for the purposes of supporting the objects of the Company, and
- provide any other service, activity or project for relief of people with a disability and their families. gifts, donations and bequests, and
- continue to facilitate the provision of suitable affordable accommodation and other support to people with a disability in perpetuity

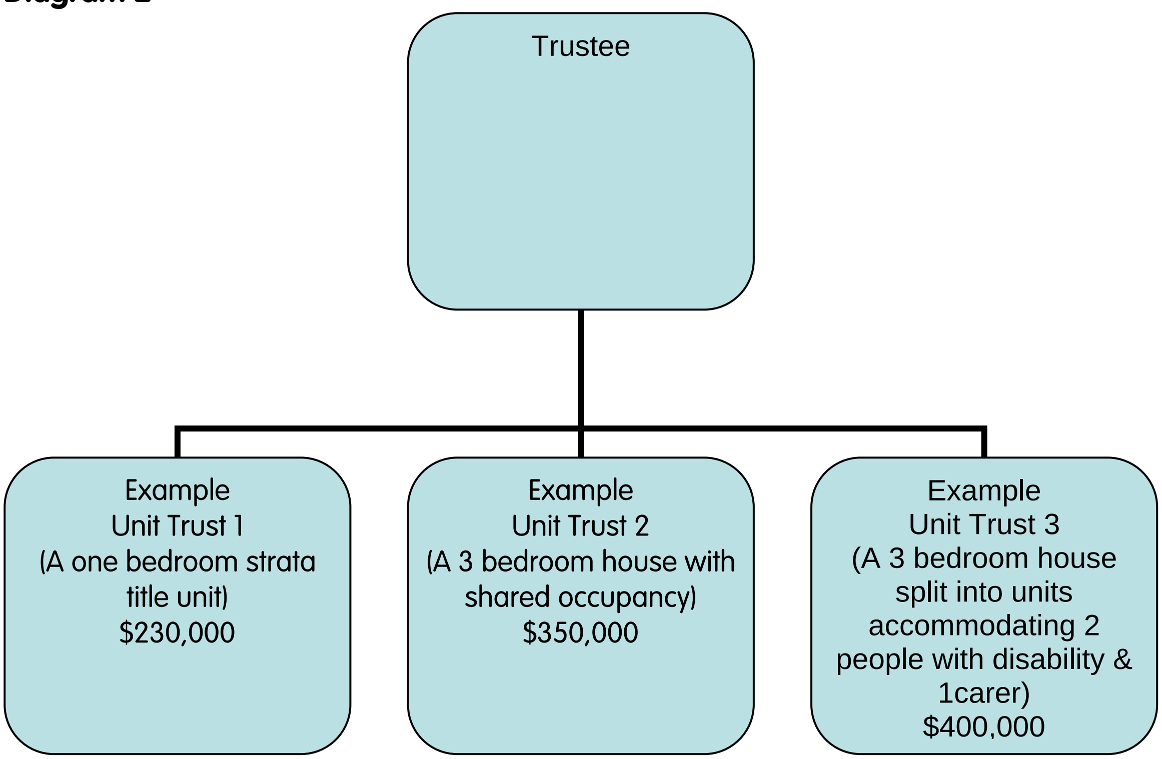
3. Formation of structure

3.1 Trust structure

Part of the process of providing affordable housing for the group involves the raising of capital from investors on the Sunshine Coast. Some capital will be invested in the Foresters Community Investment Fund and other capital will be invested directly in unit trusts that will be created in respect of individual properties. The trustee of the unit trusts will be an associate company of Foresters with an AFSL. The basic structure is set out below.

In addition to being the trustee of unit trusts, the trustee will also provide services for Special Disability Trusts.

Diagram 2



A separate unit trust will be established for each property. If the property meets the requirements of the National Rental Affordability Scheme (NRAS)[5], it will be rented to the person/s with a disability at a rate that is 20% below market rate determined by valuation. If it does not meet NRAS requirements the appropriate rental level will be determined. A formal rental agreement will then be put in place with the trustee providing security of tenure for the tenant.

Investors in each property will include the parents, relations and friends of the disabled person and may also include investment by the Foresters Community Investment Fund.

[5] The NRAS is intended to provide funding to increase the supply of affordable rental dwellings; reduce rental costs for low to moderate income households and encourage large scale investment and innovative delivery of affordable housing.

(CIF) In cases where the person with a disability is lacking investment support from family or friends, the majority of the investment money will come from the CIF.

The rental return will provide income to investors in the unit trust after the cost of rates, administration fees and maintenance has been deducted. Investors may also receive a capital return on investment when their units in the unit trust are sold.

4. Provision of funds via Community Development Finance Institutions (CDFI's)

4.1 Definition of CDFI

A Community Development Finance Institution (CDFI) is a not-for-profit entity established to channel investment into underinvested communities or groups within communities. The formation of CDFI's is a structural response to market failure of the banking and finance industry to adequately service marginalised communities. They provide alternative financial products which are designed specifically to lend to individuals, businesses or organisations to which a mainstream bank (or credit union) could not or would not lend money.

4.2 Overseas situation

Governments in the United Kingdom, Europe and the United States have facilitated the development of a CDFI Industry. They play an important role in correcting market failures in contexts where social disadvantage is significant. The benefits of this include:

- Reduction of social disadvantage;
- A reduced burden on the tax payer dollar;
- Attraction of private and corporate investment;
- Ability to invest public money alongside private money;
- Stimulation of local economies in previously underdeveloped and marginalised communities; and
- Enabling people in underinvested communities to access the resources and systems the mainstream population takes for granted.

CDFI's recognise that individuals, organisations and communities often need to undergo a process of developing their investment readiness before an investment by the CDFI can take place. This process builds the capacity and capability of often previously welfare or funding-dependent people, organisations and communities towards self-determination. CDFI's provide specialised expertise and offer safe and affordable alternatives toward the end goal of accessing the mainstream financial markets.

CDFI's play a critical role in constructing pathways out of economic isolation and balance the risk of lending or investing against the social or community outcomes that can be achieved.

CDFI's are common in the United Kingdom, Europe and the United States. In each of these contexts, Governments have put in place a set of positive policy and legislative mechanisms conducive to the development of an industry with enough scale to have real and lasting impact.

In the United Kingdom this commitment came from the Treasury and involved a taskforce with the express purpose of finding how to build a CDFI industry in the UK.

Seven years on, there are hundreds of CDFI"s operating across the United Kingdom, focussing on personal finance, social enterprise and on building the strength of community organisations.

The practice of these CDFI's is well-established and the case examples and outcomes well documented. Unfortunately the model pursued by the UK Government relies on grant funding to the tune of millions of pounds which has resulted in its compromised sustainability.

Although CDFI investment returns may be lower than a commercial bank might expect, we believe that the social and community returns on investment more than compensate. However, development of validated metrics to demonstrate and quantify the social and community return is urgently needed.

4.3 Foresters, an Australian CDFI

Foresters is an Australian institution that straddles both the community and finance sectors. It has a specific aim of addressing the market failure that restricts many community organisations and groups from securing finance and investment for community economic development.

While there is no formal recognition of the term in Australia, Foresters is by definition a CDFI having many things in common with the CDFI sector in the UK and other countries (for more information see www.cdfa.org.uk).

4.4 Regulatory restrictions in Australia

In contrast to the UK and US, the highly regulated Australian financial sector creates an almost impenetrable barrier to regulated investment in the community sector[6]. Regulation both restricts lending to community organisations and creates costs that are unsustainable for smaller financial organisations.

Foresters has worked for 15 years in this restrictive environment with projects and processes aimed at addressing individual financial hardship, starting social enterprises and strengthening community organisations through asset building. It has done this by using its own capital and, until the impact of superannuation regulation made it unsustainable, an ethical superannuation fund[7] that included a number of loans to community organisations. It has also used funds invested in a gift fund and an

[6] See Part 3 – Barriers to investment in the community sector in Australia

[7] The $14 m ANA Ethical Superannuation Fund was wound up on 30 June 2006 and members were transferred to the Superannuation Trust of Australia (now AustralianSuper). Prior to the wind-up APRA had stopped the Trustee from investing in new loans to community organisations because APRA assessed the risk as being too high, even though they were secured by first registered mortgage and were consistent with an APRA approved Credit Risk Policy. When the Fund was transferred to STA, the STA trustee insisted, because of the nature and small size of the investments, that all assets be sold and cash only be transferred. Some loans to community organisations were transferred to the Foresters ANA Charitable Trust. However, in some cases as a result of effective asset building, organisations that had originally been unable to obtain loans from banks or credit unions were now able to obtain loans on the open market– an illustration of the effectiveness of Forester's Community Asset Building approach.

investment fund forming part of its Charitable Trust[8] to provide loans usually at commercial rates.

In contrast with the UK, Foresters does not receive any grant funding and relies on income generated through a set of core activities which include:

- Funds Management and Administration of trusts;
- Provision of Community Education and Training;
- Provision of Community Development Finance and Capacity Building Consultancy.

Foresters' discussions with some of the more ethical Australian banks and credit unions about their capacity for lending to the community sector indicates severe regulatory restrictions on making commercial loans to the community sector. The major limitations relate to risk assessment, the financial organisations' concerns about the uncertainty of government grant funding, the inability of organisations to provide a deposit from unrestricted income, management concerns and loan serviceability. While these financial institutions are generally successful in attracting funds for the purpose of community investment, they find it difficult to "get money on the ground". In some cases, in order to provide the loans, it would appear that "housing", rather than "commercial" loans may have been provided.

4.5 Foresters currently lends to community organisations

Foresters manages loan and credit risk by working closely with community organisations to help them develop their management and planning capacity, identify unrestricted income in their accounts and develop strategies for building unrestricted income. It also looks at alternatives for asset building through the creation of unit trusts that enable community organisations to own part of the building that they lease and increase their share in a property over time.

4.6 Foresters Community Investment Fund

While Foresters has been able to attract around $2m into its Community Investment Fund from individuals, community organisations and some ethically-oriented self-managed superannuation funds, discussions with financial planners and asset consultants have been unrewarding. The clear message from the financial sector is that investment by the broader investment community in the Community Investment Fund is not likely because the fund is only lightly regulated[9], the returns are too low, the package is too small and the properties are not overly attractive.

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[8] Foresters currently provides loans to community organisations from its own capital and from the Investment Fund and Gift Fund that form the Foresters ANA Charitable Trust. In 15 years of lending over $6m to over 50 community organisations there has never been a default. All loans are currently up to date and the overall LVR is less than 40%. The current loan portfolio is $2m but could be much higher if broader investment could be attracted. However, the Charitable Trust's investment return, while low in volatility, is only comparable with cash rates and has a higher risk than cash. Loans are generally small and for properties that are adequate for their purpose but not at the higher end of the market.

[9] The Community Trust Investment Fund has an "individual charities" exemption under Class Order 02/184 Charitable Investment Schemes – fundraising and normal financial product protection under the Corporations Act do not apply.

The purpose of most of the loans to community organisations is to provide suitable accommodation for offices and services but a small number has been for the provision of affordable housing for people with a disability.

Due to the difficulty in attracting investments into the Charitable Trust Investment Fund, the Foresters Board decided to create a new subsidiary company (Social Investment Australia Ltd) to obtain an AFSL and register an MIS named the Social Investment Fund. While the challenge of regulatory compliance and cost for such a small organisation is large[10], the need to attract broader investment into the sector is critical to that sector's health. For small organisations, the cost of audit and custodial services is proportionately very significant and another significant market barrier[11] to new entrants.

4.7 Foresters investment in disability service organisations

Over 15 years, Foresters and its other related entities has provided loans to a number of disability service organisations for offices and for affordable housing. For example

- A current loan with a community association assists people with a learning difficulty to determine and achieve what is important for them. The loan enabled the association to purchase a property that allows them to deliver services supporting self advocacy, assisting them to improve their social and economic conditions, and to feel safe and secure and to develop family, friend and community relationships. The property has doubled in value in 6 years to over $600,000 and the outstanding loan is now less than $50,000.

- A current loan with a community organisation enables it to work with the local indigenous community, people with disabilities, migrant women and women who have experienced domestic violence. The property is now worth over $500,000 and the outstanding loan is less than $60,000.

- A current loan to a youth housing group enabled the purchase of a ground floor unit for a severely disabled young woman who cannot climb stairs unaided. She can now leave her house unaided and travel independently to her part-time voluntary work. The property was valued at $215,000 in March 2007 and the outstanding loan is $106,000. In addition, this housing group fully owns another unit and partly owns another 9 properties with the Queensland Department of Housing. Loans are repaid from the lease income of tenants receiving Centrelink benefits.

5. Raising Investment Funds through Community Capital Raising

Community Capital Raising is the process whereby investment capital for each unit trust will be secured. The process is thorough and disciplined and draws on the practice of mainstream capital raising and fundraising.

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[10] The minimum cost of financial and compliance audits and custodial services will exceed $50,000 in the first year. The costs become less significant as funds grow in size but are a significant barrier to new entrants.
[11] Part three contains a listing of barriers to investment in the community sector

In each case where capital raising is required for a unit trust a disclosure document will be developed to provide potential investors with information to assist them to make the decision to invest. Each disclosure document will include information on the property and on the:

- charitable nature of investment;
- level of regulation of the investment;
- social objectives to be achieved by the investment;
- potential level of investment return; and
- expected term of investment.

6. Need for validated research

To validate this approach the partners will engage in action research. They will use data from the research to build a package of material that will provide the training and skills to groups in other communities and to replicate the model. The partners will continue to push beyond housing to look at other community solutions including social enterprise initiatives.

Part 3 Barriers to investment in the community sector

There are many impediments on both the supply and demand side to raising private investment in the community sector. Developing suitable solutions depends in part on understanding the nature and cause of these impediments.

One way of looking at this question is to consider:

- the community sector's internal organisational impediments to attracting investment;
- the range external environmental factors that constrain investment, and
- the shared impediments to investment.

1 The community sector's internal impediments

In commenting on the sector we will use the broad view that community sector organisations are formed to achieve a common goal or benefit, are member or public serving in nature, are based on voluntary membership and are prohibited from collecting or distributing profit. The sector is a significant part of the Australian economy generally considered to contribute around 5% of GDP. A more effective and efficient community sector would therefore have a measurable impact on productivity.

The sector's wage rates are relatively low and it also supported by voluntary workers both in service delivery and on management committees.

1.1 Structural considerations

Most community organisations are associations incorporated under a state or territory government Associations Incorporations Act. In Queensland they are bound by the Rules of the association and the provisions of the Associations Incorporation Act 1981.

These acts provide a cost-effective means for incorporation of small, not-for-profit organisations. However, unless an organisation's senior management and management committee have the skills, experience and drive to develop their governance, quality controls, planning and management policies and procedures, or the organisation has been required to do so in order to obtain or retain government funding, the regulatory environment generally provides an inadequate stimulus to ensure that organisations are effectively managed.

The risk of lending to such organisations that are aiming to build their assets or commence some form of trading must therefore be assessed and effectively managed. Foresters manages this risk by conducting meetings with the organisation's management staff and committees and assessing their level of management skills and abilities and their future plans. Using this interactive process and by assessing audited financials over at least two full years Foresters satisfies itself of the borrowing capacity of the organisation or provides advice and assistance to the organisation about how to become "loan ready". Contact with organisations is maintained over the period of the loan as the organisation becomes more sustainable[12].

[12] .In some cases the assets have increased many times in value, and the organisations faces a challenge in respect of the effective use of substantially increased equity.

1.2 Lack of clear plans

Unlike major infrastructure projects, or business in general, community sector organisations have generally not developed detailed plans about the uses to which their money will be put or their target outcomes. This in part is a reflection of the control mechanisms imposed by the funding body/ies and the method and level of funding provided to organisations. However, factors such as the dependency relationship with government, the structure and operation of incorporated associations, the small size of most organisations and lack of management and planning skills are also significant. Lack of planning results in lack of action and direction.

Most community organisations are unable to recognise and effectively market the range of skills and experience that they have developed in their areas of expertise. For example, if the development of affordable housing is going to be successful, developers need to understand the diverse needs of their prospective tenants and of the broader community. Community organisations involved in community housing have the knowledge and skills to advise both the developers and government institutions about their housing needs but do not know that they have skills the developers need.

1.3 Financial accounts structure

Most community organisations have Deductible Gift Recipient (DGR) Status. This means people are able to make gifts and donations to the organisation and claim a tax deduction.

Organisations may also accumulate small amounts of unrestricted cash through membership fees (which are usually a nominal amount) and/or through conducting special events, sub-letting premises etc.

However, these valuable unrestricted funds which may be used for any purpose by the organisations, are often not differentiated in financial accounts and therefore cannot be identified and utilised to strengthen organisational sustainability.

1.4 Lack of skilled staff

Many organisations do not employ skilled staff in the accounting area and they lack understanding of standard charts of accounts, balance sheets, profit and loss , cash flow and investment. Foresters provides training to community organisation staff in areas such as "Understanding Financial Statements" through the Health and Community Workforce Council and by other means, and is aware of gross skill and knowledge deficiencies in many areas.

Lack of continuity on the management committees of some organisations is also a problem. The association rules generally provide that the management committee is dissolved each year and must reapply for appointment. For example, the committees of community kindergartens often change completely each year so there is no continuity of knowledge and a risk that those appointed will not have the necessary skill to perform their roles.

1.5 Low rates of return on investment

Under-funded community organisations are generally not able to consider purchasing quality real estate. Many organisations are very small, generally operate independently of others and do not have the opportunity, resources or the skills to develop more substantial co-location projects.

Where organisations are able to purchase property, it is generally of mediocre standard, in small parcels located in areas with residential or industrial zoning and at the lower end of the market where return on capital is likely to be lower. Moreover, transaction, legal, management, valuation and other costs are proportionately higher for smaller packages making property purchase relatively more expensive.

The cost of administering small loans to organisations is relatively high.

1.6 A culture of dependency

A dependency culture has developed in the community sector that is apparent at all levels. Organisations are discouraged from building assets and are sometimes threatened with confiscation of assets by funding departments when they succeed in building such assets. For example an organisation that used government funding receipts to obtain a loan from Foresters to purchase an office building was considered to have misused funds and was threatened that the asset purchased by utilisation of those receipts would need to be transferred to the Government. Interestingly, if the money had remained invested in cash or term deposits at a bank rather than invested in the Foresters Community Trust no question would have arisen. The loan was secured through an agreement with Foresters to retain a certain level of investment in its Community Trust Investment Fund

Funding agreements usually provide that interest earned on government receipts is restricted income and must be used for the provision of services. Even though organisations are strapped for funding, they frequently do not see the value of investing receipts in an effective way believing that to do so is simply relieving the government of part of their funding obligations.

A Queensland Government Minister has recently been reported as stating that organisations that take out loans are considered to be in financial difficulty and would place their future funding in jeopardy if they did so. This defies logic. No Australian financial organisation, including Foresters, would provide a loan to an organisation unless it were satisfied that the organisation was financially viable.

1.7 Underfunding

Organisations are generally funded to provide programs but not to fund the resources and infrastructure to deliver funded services. As lease costs continue to rise, funding does not keep pace and organisations are faced with ever contracting resources.

1.8 Dependency on gambling funds

To help overcome funding deficiency, organisations often seek grants from the Queensland government's gambling fund. Four times each year community organisations spend thousands of hours preparing submissions for gambling fund grants. Every time they seek grants from the fund, community organisations are faced with a moral dilemma. However, if they do not seek funding to meet their needs they know that the funds will go somewhere else.

2 External environmental factors

2.1 Perceived high risk

The community sector is not well understood by the banking and finance sectors. In contrast to routine business investments, investments in this sector are often viewed as having greater uncertainties being largely dependent on short-term government funding. However, this is inconsistent with the fact that the vast majority of community organisations have been continuously funded for twenty years or more.

The banking sector has little experience with commercial projects in the community sector and potential investors find it hard to comprehend the nature and range of possible and likely outcomes as there is very little data available in Australia. Information that is available tends to be of a general nature and without validated metrics.

2.2 Lack of metrics for Social return on investment

Unlike most other investment areas, investors need to understand and accept a combined social and financial return on investment the social component of which may not be measurable in economic terms.

The cost of establishing valid economic measures of social outcomes for small diverse projects puts this objective out of reach of investment managers. Economic validation of social return on investment will only be possible where quantifiable data is collected from project beginning through to completion through valid research. The variability of the individual circumstances can create further challenges in applying research outcomes to other projects.

2.3 Patient capital not understood

In contrast with investors in other areas, investors in the community sector are likely to find themselves invested in an area that will provide both a social and financial return only in the longer term.

In order to understand the nature of patient investment, investors require education and time to develop an understanding of community capacities being built as a direct result of investment and of the processes structures and outcomes that are to be achieved over time. Participation in on-site field trips where investors can talk directly to service providers and their clients can facilitate this understanding.

2.4 Small unit size

Institutions are generally keen to invest in larger rather than smaller packets in order to spread transaction costs and facilitate monitoring and evaluation. With the growth of larger institutions, the minimum acceptable size of packets continues to increase. For example the number of APRA regulated funds had reduced to 560 at end September 2007 with average assets of $1.5bn. If an average fund decided to invest just 0.1% of its assets in the community sector a minimum package of $1.5m would be necessary. In these very early stages of community sector investment, only small investment packets exist.

The general manager of one of Australia's largest asset consultants advised us that she could not recommend the Community Investment Fund product to any of her clients because it was "too small and the return on investment was no higher than cash, which was a lower risk." Moreover, she suggested that investment in the product would be in breach of the sole purpose test and of the trustees' fiduciary responsibility to maximise investment returns. However, this general industry view has never been legally tested.

2.5 Protection offered by licensed products

Superannuation and other trustees, financial advisers and asset consultants look for the security of fully licensed products.

2.6 Regulation and compliance costs

The cost of regulation and compliance is a major barrier to investment in the sector. Smaller players are driven out of the market or are unable to enter it due to substantial regulatory and cost barriers. For example, in 2006 APRA advised the market that it did not expect any regulated superannuation funds with assets of less than $30m to remain after the introduction of new regulations and expected the number of funds to fall by over 1,000 to about 350.

Also, banks and credit unions must have at least $5m NTA in order to become licensed as a custodian and in many cases the Responsible Entity for a Managed Investment Scheme must also have at least $5m NTA. Moreover, there are few Custodians that will provide services to small investment managers, and where they do offer such services, the minimum cost for services is more than $30,000 per annum. Larger Custodians will not accept new business from "small" managers with less than $3 billion under investment.

The skill and capacity to audit financials and compliance plans rests with the medium to larger accounting and compliance firms that have a higher cost base for their services. Audit costs are also relatively higher for smaller organisations as the amount of work required to be done is not directly proportional to the size or complexity of the organisation to be audited.

These costs reduce the level of investment return.

2.7 Sole purpose test and fiduciary responsibility

A long-held held view in the investment community is that the application of sole purpose test and fiduciary responsibility requires trustees to maximise the financial return to members without regard to environmental, good governance or social returns. Thankfully, this view is changing, but there remains little emphasis on the "social" component and there is precious little money available to undertake the essential research or investment education. A more detailed paper on this issue is attached.

2.8 Few existing institutions

Unlike investment in mining, manufacturing, listed property etc, investors find that there are few obvious ways to invest in the community. Moreover, there is a tendency in Australia to confuse philanthropy with investment.

We are not aware of any other organisation other than Foresters whose primary purpose is community sector investment. While a number of credit unions do invest some of their capital in the community sector, they are constrained by regulation in the amount that they can lend commercially to individual organisations and in the total amount they can lend. There is some indication that some credit unions may be avoiding this constraint by labelling some loans as "housing" rather than "commercial". Banks also find it extremely difficult to get money "on the ground" because they do not have the community development skills or adequate knowledge of the community sector. When they do invest, it tends to be in very specific areas with money raised from their private foundations.

2.9 Limited government support

There is no record of state or federal governments working together with commercial investors in community sector development. In contrast to other areas such as education, health, housing and infrastructure, there is no existing framework for large-scale non-government involvement and the ground rules have not been defined.

2.10 Complexity, diversity and numbers

The community sector is complex and diverse with over 1,800 registered non-profit entities in Queensland alone. Political systems and structures are also complex addressing issues that span local, state and national jurisdictions.

Foresters is able to understand and manage this complexity by working closely with individual Community Organisation Management Committees, educating them in community asset building, financial management, business planning and marketing and by developing models that fit their individual circumstances and business potential. This is time consuming work which must be tailored to each organisation's needs.

2.11 Little information about investment opportunities

The mainstream investment sector is characterised by extensive and detailed information about opportunities, performance, regulatory requirements etc. In contrast, there is very little information available about investment opportunities in the community sector. This situation is unlikely to change due to the prohibitive cost of marketing poorly understood, complex products that generally have lower financial returns.

2.12 Market distortions and imperfections

The commercial potential of community organisations may be severely distorted by government action and policies that perpetuate a dependency attitude. In some circumstances the provision of subsidised and peppercorn rents to community organisations leads to a view that community organisations are not viable and cannot pay their way. It undervalues the organisations and discourages them from building financial independence and from involving their communities in building and sustaining community services. Charity delivered to charities inhibits assessment of organisational capacity and restricts and distorts the property markets. Unaware, tax and rate payers meet the costs of building and maintaining community services through their rates and taxes with no appreciation of underutilised potential of community facilities.

2.13 Banks and credit unions only consider an organisation's financials

Bank, credit unions and other traditional financial institutions consider loan applications from community organisations on the basis of financial data alone, and either accept or reject them. There is no process for assisting community organisations to increase their capacity. A number of these organisations have then sought and obtained capacity building assistance from Foresters and subsequently taken out loans.

2.14 No taxation support

Given these extensive impediments to investment in the sector, and the desire from government to reduce dependency on their funding, it is surprising that there has been little attention given to encouraging investment into the community sector particularly when so much investment into the private sector in Australia and overseas has been delivered through superannuation policy.

2.15 Changes to superannuation work test policy not communicated

In 2004, the Federal government changed the work test in respect of contributions to superannuation. As a result, generally all people under the age of 65 are now able to contribute to superannuation whether they are employed or not. The Treasurer's Media Release of 25th February 2004 included the statement:

> *"Every Australian should be able to save for their retirement in a prudentially supervised and concessionally taxed environment. Therefore, from 1 July 2004, the work test on who can contribute to superannuation will be removed for anyone under the age of 65. This also will simplify an important part of the superannuation system."*

Moreover, part 2.11 of the Explanatory Memorandum relating to the change states

> *"The measures also have other policy objectives, including equity of access to the superannuation system."*

However, the change in policy was not communicated effectively to those with a disability. Government publications such as the ATO's "Super, What you need to know" and the government APRA, ASIC and ATO websites make no mention of the ability of people under the age of 65 with a disability and who cannot work in paid employment being able to contribute to superannuation. In fact, there is an underlying assumption in both that superannuation is for the employed or for those who have at some been employed. A survey of a number of superannuation fund PDS's also showed no mention of ability for those who have not been employed or who are disabled being able to contribute to superannuation.

To overcome this communication shortcoming and ensure equity in the system, action should be taken now by the Australian Government to effectively communicate the work test change to people with a disability and to superannuation funds and improve the quality of information in their publications and on the websites. This would enable people with a disability to save into a superannuation environment and enjoy the same opportunities as other Australians who have the advantage of being able to work. It would also enable others to contribute to the superannuation savings of those with a disability.

The partners note that contributions to superannuation can be made for children under 18 years of age who are not in the workforce but such deductions are not deductible.

We suggest that providing the ability for parents and others who make contributions into a superannuation fund for people with a disability at any age up to 65 years to claim a tax deduction, would reflect the charitable nature of their contributions and assist the person with a disability, and their parents to plan for their future security.

2.16 Superannuation education and communication plans for the disabled

Foresters ANA Mutual Society Ltd and P2P would be happy to work with superannuation funds to develop suitable education and communication plans to ensure that people with a disability and their parents and carers are fully informed about superannuation. Appropriate government funding should be provided for this.

It should be noted that under current regulations, many people with a severe disability would be immediately able to meet the superannuation conditions of release and some would be able to receive their benefits at a reduced taxation rate.

2.17 Need for community sector to monitor changes to financial legislation

The partners suggest that there may also be other areas where government policy changes have not been effectively implemented for people with a disability because there is no effective mechanism in the community sector for monitoring such changes. Consideration should be given to the question of how effective monitoring systems could be put in place.

2.18 Local government fees and regulation

Discussions with property developers indicate that the cost of property development continues to rise due to the exponential growth of local government fees and regulations. Accommodation solutions such as physically dividing larger houses into liveable parts or dividing larger blocks into affordable lots are severely constrained by process, regulation and fees. The social and environmental impact of such policies should be assessed by the Australian Government to establish whether they are consistent with its overall social and economic objectives.

There are indications that both a reduction in Federal Government grants to local governments and increasing demand for local government services is forcing local governments to obtain necessary income by increasing rates, development charges, parking and other fees etc. The cost of increasing development charges in turn forces up the cost of housing to unaffordable levels.

Attachment Corporate Social Responsibility and the sole purpose test

1. Parliamentary Joint Committee on Corporations and Financial Services

The Parliamentary Joint Committee on Corporations and Financial Services June 2006 report "*Corporate responsibility: Managing risk and creating value"* is an important contribution to the emerging Corporate Social Responsibility (CSR) debate in Australia. Although not explicitly stated in its report, the Joint Committee appears to believe that Australia already has some legislative tools that are not being effectively utilised in respect of CSR. We base this on the fact that the Committee when considering the duties of institutional investors was "not persuaded by a restrictive view of the sole purpose test" and restated that "the very nature of superannuation investment is long term". Its strongest comment was "In the committee's view, consideration of social and environmental responsibility is in fact so bound up in long term financial success that a trustee would be closer to breaching the sole purpose test[13] by ignoring corporate responsibility."

2. Corporations and Markets Advisory Committee

It is clear from the recommendations of the Australian Government's Corporations and Markets Advisory Committee 12 December, 2006 report *"The Social Responsibility of Corporations"* that there is no support for revising the laws relating to directors' duties to take into account the interests of stakeholders or the broader community. That Committee said that the existing law allows directors sufficient flexibility to consider these interests. It did not support amending the Corporations Act to require companies to report on the social and environmental impact of their activities. In answer to the question whether Australian companies should be encouraged to adopt socially and environmentally responsible business practices, the Committee saw the government's role as providing the policy settings and using "light touch" methods to encourage companies to recognise the benefits of appropriate engagement within the social and environmental context in which they operate. Given this advice to government, we cannot therefore expect that there will be any significant changes to the Corporations Law that would see companies obligated to change their approach.

3. Labor Members' supplementary report

However, the supplementary report by Labor Members appended to the Joint Committee's report went somewhat further stating "If the sole purpose test is broad enough to allow consideration of [Environment, Social and Governance] ESG risks, it ought to permit considerations of these risks in the context of all mainstream investment decisions considered appropriate by the trustee or fund manager. Consideration of non-financial risk is fundamentally relevant to the execution of fiduciary duty." The report went on to say, "linking the sole purpose test solely with the allocation of funds to [Sustainable Responsible Investments] SRI's represents a fundamental misunderstanding of the need for investment

[13] The "sole purpose test" requires superannuation funds to be maintained for the sole purpose of providing benefits to members on their retirement or on their reaching the age for payment of preserved benefits, or to a member's dependants or estate on the death of the member before retirement.

managers to consider sustainability factors in **all** investment decisions." Its recommendation 5 was that:

" the Australian Prudential Regulation Authority issue detailed guidelines on the sole purpose test to clarify the ability of superannuation trustees and fund managers to evaluate non-financial risk and return in all investment decisions."

4. International Reports with reference to Australia

In "*A legal framework for the integration of environmental, social and governance issues into international investment"* produced for the Asset Management Working Group (AMWG) of the United Nations Environment Program (UNEP) Finance Initiative in October 2005, the legal jurisdictions of nine countries, including Australia, were examined.

Amongst other things, the AMWG wished to understand "whether the commonly held view that fiduciary duties require a portfolio manager solely to pursue profit maximisation is a correct interpretation of the law or whether acting in the interests of beneficiaries can also incorporate other objectives." It pointed out that such risks associated with environmental damage, will be more relevant for long-term investors, and sought answers to what extent the law recognises this.

As the report says, Australia operates in a common law jurisdiction, and under such jurisdictions some 'rules' are more flexible and open to re-interpretation over time or when applied to new facts. The report discusses fiduciary duty and observes that "Fiduciary duties are largely a product of case law" in common law jurisdictions.

5. Cowan v Scargill

The limitations and relevance of the *Cowan v Scargill* case, which has been the basis of much of Australia's past teaching around superannuation fiduciary obligations, are also discussed in that report. The conclusions are interesting. Megarry, the UK judge in that case, has explained that his decision "has been distorted by commentators over time to support the view that it is unlawful for pension fund trustees to do anything but seek to maximise profits for their beneficiaries." However, the AMWG points out that the decision confirms "that fiduciary powers must be exercised in the interests of beneficiaries; as such, the interests of beneficiaries beyond financial return should be considered in arriving at investment decisions in certain circumstances." The AMWG concluded that "fiduciary duties also impose important requirements on decision-makers regarding the process that they must follow in reaching their decisions" and that integrating ESG considerations into an investment analysis so as to more reliably predict financial performance is clearly permissible and is arguably required in all jurisdictions.

3 Responsibility clearly lies with Responsible Superannuation Entities

An important question is whether there is any indication that a trustee's responsibility to address sustainability and longer term security of investments has been addressed under the Superannuation Industry operating standards? These standards cover the fitness and propriety of the trustee, their management of risk, outsourcing of tasks, adequacy of resources and capital requirements. While the standards in themselves have no direct focus on the long-term benefit of beneficiaries, the Australian Government has clearly been interested in ensuring that when something goes wrong, the Government's moral obligations in respect of security of superannuation have been met. Under the standards, responsibility and risk management is squarely laid with the Responsible Superannuation Entity (RSE) Licensees not with the politicians.

4 Corporations Law

Clearly the activities of some of the corporations in which some superannuation trustees are currently directly or indirectly investing superannuation fund money are be harming some fund beneficiaries e.g. cigarette manufacture. However, to our knowledge no provision exists under the Corporations Law to stop unethical or non-SRI companies operating and being listed on stock markets or to stop superannuation trustees investing in such companies.

5 Index funds

Index funds by their nature cannot avoid listed companies in the chosen index that harm some fund beneficiaries.

6 Conclusions

One might therefore reasonably conclude that not having a CSR or Sustainable Responsible Investment (SRI) policy is a material risk that has up to this point been overlooked by some trustees.

It is possible that, even in the absence of the guidelines recommended by the Labor members of the Corporations and Markets Advisory Committee, APRA might in due course consider that the need for trustees having and applying such a policy is in fact already covered by the SIS legislation.

It might also be reasonably argued that using short-term financial profitability as a means of measuring whether a trustee is acting in the best interests of beneficiaries falls well short of their legal obligations.