

Open Letter via email

May 13, 2021

To: Ms. Virginia West, Chair, Board of Directors, HCRA

and

To: Ms. Wendy Acheson, CEO and Registrar, HCRA

Subject: Home Construction Regulatory Authority Business Plan 2021-2022

Dear Ms. West and Ms. Acheson:

We appreciate that HCRA sent its business plan 2021-2022 to CPBH. Congratulations on completing this plan, and publicly posting it. This is an important and encouraging step related to transparency.

We have conducted an assessment of the business plan and identified the positives features, as well as the concerns that we have with it (Appendix 1). Some of these issues were discussed with Ms. Acheson on May 4, 2021. Where we have concerns, we have provided recommendations.

Overall, the lack of urgency and lack of progress by HCRA are striking. As you know, the legislation to create this Administrative Authority was approved by the Ontario Government in 2017. There have been a board and (interim) CEO in place since at least 2019, with significant start-up funds flowing from Tarion, e.g., almost \$15 million in 2019 - and as yet undisclosed amounts in 2020 and 2021. (These funds primarily came from mandatory monopoly payments from consumers to Tarion as you probably know.) Yet, the state of affairs with HCRA as outlined in this business plan is startling and very concerning. This situation with HCRA continues to leave Ontario purchasers of newly built homes at considerable risk.


Key highlights of our assessment of the HCRA business plan include:

- Serious governance issues given the composition of the board – the same situation that has plagued Tarion for decades;
- The longstanding issue of builders secretly selling newly built homes with used furnaces, that a legal opinion has confirmed is contravening the Consumer Protection Act. Builders are not above the law – and as the industry regulator, HCRA must take swift action to stop this;
- Insufficient focus on efforts and performance measurement of building quality homes at the outset;

- Insufficient focus on investigations and inspections; overreliance on consumer complaints;
- Insufficient focus on monitoring licensees' viability and organizational health once the licence has been issued, and before it comes up for renewal – and taking appropriate swift action to protect consumers. The Urbancorp disaster has been provided as one example, but there are plenty more;
- Insufficient focus on efforts and performance measurement related to increasing consumer confidence. This must include correcting the Ontario Builder Directory. As well, it must include an Ombuds role, which was promised by Minister Thompson;
- No focus on building and maintaining the "right" organizational culture;
- Inappropriate reliance on Tarion, e.g., for employees and basic functions (such as revenue collection) and overall lack of transparency in this regard; and
- Missing key risks in the risk assessment, which, if included, should prompt a significant and immediate revision to this plan.

We hope that you find this feedback helpful. If you have any questions, and/or would like additional information, please let me know. We look forward to your response.

Yours truly,



Karen Somerville, PhD in Management, C.Dir.
President

Encl: Appendix 1 – Assessment of HCRA Business Plan 2021-2022

Cc: Minister MGCS, MPP L. Thompson
Deputy Minister, MGCS, Ms. K. Hughes
NDP Critic for MGCS, MPP T. Kernaghan
Liberal Critic for MGCS, MPP S. Blais
Green Party MPP M. Schreiner
Auditor General of Ontario, Ms. B. Lysyk

Founded in 2004, Canadians for Properly Built Homes (CPBH) is an independent, national, not for profit corporation dedicated to healthy, safe, durable, energy efficient residential housing for Canadians, and is the only organization of its kind in Canada. Working for consumer awareness and protection, CPBH is run by a volunteer Board of Directors and is supported by a volunteer Advisory Council of industry experts and other key stakeholders.

Appendix 1 Assessment of HCRA Business Plan 2021-2022	
Positives	Concerns/Recommendations
<p>The Business Plan was made public.</p>	<p>The mandate (p. 2) includes enhancing consumer confidence but there is no performance measure for this. Obviously given the focus by the Ministry and HCRA itself regarding enhancing consumer confidence, performance measure is essential.</p>
<p>The HCRA leadership team is not overloaded by Vice Presidents as is the case with Tarion (p. 11).</p>	<p>The Mission (p. 2) includes “building better homes” but this is a meaningless statement.</p> <ul style="list-style-type: none"> - What does “Building better homes” mean in the context of HCRA? This must be defined, with appropriate performance measurement. For example, the 1976 Letters Patent for Tarion (Hudak) included the following: “through research programs, to achieve a progressive improvement in the quality of housing in Ontario in all its aspects”.
<p>Complaints Process – it says that “builders and vendors of new homes in Ontario must follow the law” (p. 3). This is good news.</p> <ul style="list-style-type: none"> - HCRA should stop delaying on the used furnace issue that has been raised with Minister Thompson since 2019, Tarion since 2020, and HCRA since Jan. 2021. A legal opinion received indicates that builders are breaking the law (Ontario’s Consumer Protection Act) by secretly selling newly built homes with used furnaces. Addressing this should be a high priority for HCRA. HCRA’s credibility is clearly at stake here. 	<p>Governance (p. 16) remains a serious issue, e.g.,</p> <ul style="list-style-type: none"> - HCRA is supposed to be a consumer protection organization, but there is insufficient consumer representation on the Board of Directors. Research shows a minimum of three from a particular stakeholder group is required to have impact. We note that there are three builder representatives on the HCRA board. - Consumer representatives need to have “lived experience” in relation to newly built home issues. One HCRA board member has some consumer advocacy, but this has been described as minimal and unrelated to HCRA’s mission/mandate.
<p>Offering services in English and French (p. 3)</p>	<p>In the Services section (p. 3) – under Complaints Process</p>

	<ul style="list-style-type: none"> - "The HCRA relies on the information and feedback provided by the public as one important way to identify and address violations of the rules...". HCRA must take a much more proactive approach rather than to sit and wait for complaints from consumers. By the time complaints are made, homeowners are often in serious trouble, that they may never recover from financially, and health-wise (physical health and mental health). HCRA must place a much higher emphasis on investigations, inspections, and effective monitoring of the licensees. Once a license has been issued and before it comes up for renewal consumers must be protected. Sadly, there are plenty of examples of the disasters in Ontario in recent years to illustrate this point and the dismal job that Tarion did as the industry regulator, e.g., Urbancorp featured in this 2017 Toronto Life article <i>"Screwed...Urbancorp was one of Toronto's most prolific and respected developers. When the company filed for bankruptcy protection last April, nearly 200 pre-construction buyers lost their future homes and their best chance to break into the market"</i>: https://torontolife.com/life/anatomy-real-estate-disaster/ - What about complaints about HCRA's services? Minister Thompson committed that there would be an Ombuds role, but this has not been included. This is a key function that needs to be promptly established.
	<p>Related to the Priority Objective "Consumer Protection" (p. 7 - 8)</p> <ul style="list-style-type: none"> - "we protect the public interest by

	<p>regulating a fair, safe and informed new home construction sector” - this should say “we protect <u>consumers</u> by regulating a fair, safe and informed new home construction sector”.</p> <ul style="list-style-type: none"> - “Enable buyers to make informed decisions when purchasing a new home” – There needs to be a high priority activity to <u>correct</u> the data supplied by Tarion concerning the Builder Directory as it continues to report inaccurate/incomplete information. Page 6 refers to “consultations with consumers and industry” related to the builder directory. This has been done repeatedly over the years, but the stalling by Tarion and now HCRA has continued. HCRA should quickly consider the information and data already available, (e.g., Toronto Star 2013 investigative report, the 2016 Tarion Review by Justice Cunningham, the Auditor General of ON, recommendations submitted by CPBH, e.g., including Ontario Building Code violations, Tarion customer service gestures, payments related to non-disclosure agreements, and LAT/court “wins” for new home purchasers). Then quickly complete the necessary changes to provide accurate information that reflects the actual history with the builder including all payments made by Tarion over the past 10 years. As it stands now, with the current very misleading Builder Directory, the only stakeholder that benefits is the builder community- and consumers obviously continue to have the potential to be harmed. When CPBH recently discussed this situation
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	<p>with Ms. Acheson, she responded that consumers should report issues with the builder directory to HCRA. CPBH discussed this with a number of consumers and that was quickly rejected by most, and served to erode trust in HCRA, instead of building confidence.</p> <ul style="list-style-type: none"> - There needs to be an objective about minimum qualification for builders, as well as ongoing professional development requirements for builders.
	<p>Related to the Priority Objective "Enhanced accountability and engagement" that includes transparency (p. 9):</p> <ul style="list-style-type: none"> - HCRA's relationship with Tarion must be fully disclosed. Currently, there is a troubling lack of independence between HCRA and Tarion. For example, Tarion has advised that it is collecting HCRA's revenue, but this is not disclosed in this plan. Revenue collection is an obvious basic function for any organization and HCRA itself must be able to do that for itself. Further examples of the lack of independence from Tarion include HCRA's board including a former Tarion board member, HCRA hiring 12 former Tarion employees, Tarion financing the start-up costs of the HCRA, information sharing between HCRA and Tarion, etc. These relationships, events and activities must all be disclosed now, and going forward. - Disclosure of costs related to the regulator role and the warranty role is insufficient, e.g., there needs to be full



	<p>disclosure of costs for HCRA and Tarion compared to Tarion's costs when it handled both regulator and warranty. Ultimately all of these costs are passed on to the consumer, so it is imperative that this is disclosed. Currently there are serious concerns about the estimated overall increased costs of Tarion and HCRA now that HCRA's doors are open. There are fundamental questions regarding the overall value for money, impact on affordable housing, etc. There are also concerns about possible duplication of roles between Tarion and HCRA that need to be identified and addressed.</p> <ul style="list-style-type: none">- The financial information on page 12 needs to be more detailed. For example, oversight fees paid to MGCS need to be disclosed; HR/Board expenses need to be separated, and more detail needs to be provided related to "operating" expenses.
	<p>Specific In-Year Initiatives – Page 6 under "Construction site supervisors" - Refers to working with MGCS. MGCS provides oversight to HCRA; it should not be "working with" HCRA.</p>
	<p>The Key Risk section (p. 14) is incomplete, e.g.,</p> <ul style="list-style-type: none">- There needs to be a key risk that increasing consumer confidence may not be achieved.- There needs to be a key risk that "building better homes", whatever that means, will not be achieved.- There needs to be a key risk that the existing organizational culture may prevent HCRA from obtaining its Mandate, Mission and Business Plan Objectives. Creating and maintaining the "right" organizational culture is

	<p>well recognized as a critical success factor. But it appears that Tarion's very problematic culture may have already been transferred to HCRA. Although not disclosed in this business plan, HCRA has advised CPBH that 23% of HCRA's staff are former Tarion employees and a former Tarion board member is on the HCRA board. As well, as noted previously, builders have a strong foothold on the HCRA board, with little to no consumer advocacy presence on the HCRA board, which ironically is the same situation that has existed at Tarion all of these years. These factors combine to pose significant organizational culture issues, yet HCRA has not identified any initiatives related to addressing its organizational culture. Further, COVID-19 poses challenges from a remote-work perspective related to organizational culture that must be recognized and proactively managed. Establishing the "right" organizational culture and then actively managing it will take a concerted effort and considerable resources. This needs be a high priority in the plan.</p> <ul style="list-style-type: none">- There is a key risk that "transitioning to steady-state" (p. 5) is taking far too long, and is putting Ontario's purchasers of newly built homes at considerable risk.
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