

***Submission from Wellington City Council on the
Affordable Housing: Enabling Territorial Authorities Bill***

APPENDIX 1

Submission to: **Local Government and Environment Select Committee**

Bill: **Affordable Housing: Enabling Territorial Authorities Bill**

From: **Wellington City Council**

Date: **06 March 2008**

1. Executive Summary

The Council supports the introduction of enabling legislation that will provide it with the mandate to improve the supply of affordable housing. Enabling legislation should permit the Council to develop and enforce local policies to address local issues.

However, the Council does not support the provisions in the Affordable Housing: Enabling Territorial Authorities Bill in its present form. We doubt that the Bill will lead to the development of 1,000 affordable houses per annum as anticipated in the Bill's explanatory note. We also challenge the statement in the Bill's explanatory note that developing an Affordable Housing Policy would require minimal additional staff resources. Furthermore, as is explained in some detail below, the processes contained in the Bill can be expected to discourage the Council from employing the Bill's tool(s).

The Council is concerned about the lack of appropriate consultation with the local government sector during the drafting of the Bill. Early engagement with the sector to determine what legislative changes are needed is more likely to result in a bill that would help achieve the objective. Any new legislation should avoid using complex and onerous processes to encourage councils to address housing affordability issues within their communities.

The Council is aware that Local Government NZ has prepared a submission on this matter that includes an alternative Bill. The Council supports this.

2. Introduction

- 2.1. Wellington City Council welcomes the opportunity to comment on the Affordable Housing: Enabling Territorial Authorities Bill. The issue of affordable housing is a broad and complex area that is influenced by many factors and parties.
- 2.2. The affordability of housing in Wellington City is of concern to the Council. The gap between the cost of housing and incomes is widening in Wellington at a rate comparable to other areas of the country. Wellington has experienced strong growth in house prices and population increases in recent years and the Council is concerned that the city's reputation as a great place to live, work and play should not be undermined by barriers to home ownership. Although home ownership statistics have declined in recent years it remains an important economic and social goal for most Wellingtonians.
- 2.3. Home ownership has social and economic implications; it contributes to residents' sense of place and community values. The Council's goal is for residents to have quality choices about where they live – in apartments, townhouses or traditional stand-alone dwellings. Affordability of housing plays an important role in this regard.
- 2.4. The Council views housing as a critical component of a viable community. A lack of affordable housing can have unfavourable impacts on social cohesion, health, educational attainment, urban amenity, economic development and employment.
- 2.5. The affordability of housing is not just about the purchase price. Affordability also includes property maintenance costs, the costs of transportation to work places, schools, etc, accessibility to facilities and services, and costs related to healthy housing such as heating. Increasing urban expansion can place additional, often hidden, costs on both

the owners and the wider community (e.g. transportation costs, traffic congestion and air pollution).

- 2.6. Barriers for home buyers have existed for decades in the form of substantial minimum deposits, difficulty in obtaining credit and the very high costs of that credit. The barriers today have arisen from the rapid escalation in house prices compared with incomes over the past few years. This has led to increasing number of households who are in housing need¹ and pressure for development of public policy tools to address the problem.
- 2.7. The role of the Council in housing is multi-faceted:
 - Regulator – Council makes rules for zoning of land and developing land
 - Enforcer – Council applies the rules, such as the Building code, District Plan, etc, to new houses and for modifications to existing houses.
 - Provider – Council is one of the largest landlords in NZ due to its substantial portfolio of social housing stock.
 - Services – Council provides core infrastructure, amenities etc. The cost of providing and maintaining these items flows through to homeowners in the form of development contributions (for increasing capacity) and rates (for maintaining service levels).

3. The situation in Wellington

- 3.1. The affordability of housing is a deepening issue in Wellington. Despite comparatively high incomes and a reasonably constant work force, the pressure from house price increases in Wellington is as acute as other areas in New Zealand. As shown in 3.2 below residential property values have appreciated at a significantly faster rate than household incomes.
- 3.2. The average property value in Wellington rose from \$442,000 in April 2006 to \$533,000 in January 2008, a rise of 20.5% over this period. The trend line across the Wellington region shows a rise of 23% over the same period². Over the period 1996 – 2005 residential property values increased at a rate of 8.7% annual compounded. These price increases exclude other essential basic living costs such as transportation, energy, rates and insurance.
- 3.3. Household ownership rates are falling. The rate of home ownership in the wider Wellington region is down 5 percent from ten years ago to 66 percent. This follows the national trend. The decline is even greater in Wellington city (down to 63 percent from 70).
- 3.4. Of the 8,997 housing units created in Wellington city over the last five years 7,929 (88 percent) are rental properties.³

¹ Wellington City Housing Needs Assessment 2006 p140.

² REINZ sale data.

³ Source: Statistics NZ

4. Commerce Select Committee Enquiry

- 4.1. In 2007, the Council contributed to the Commerce Select Committee enquiry on housing affordability. The Council said:
- The Council has a role to play – but cannot, by itself, provide the solution(s).
 - The drivers of housing price inflation are complex and relate to both supply and demand. There is no one clear driver and no one clear response.
 - Housing affordability is a very regional issue. There are specific regions where housing affordability is acknowledged to be an issue, but the housing affordability issues / causes are not the same in all regions.
- 4.2. In our earlier submission we focussed on the three areas of particular relevance to the Council: land supply; planning processes; and levies and charges.
- 4.3. These three areas are consistently raised as having a detrimental impact on the cost of housing. It is our submission that the Council's policies and processes do not adversely impact on housing affordability in the Wellington context because:
- land is available.
 - processes are generally executed proficiently (most costs arise when applicants seek to go beyond permitted policy or planning activities and incur mitigation costs).
 - regulatory fees and charges have increased, reflecting the need to assure quality, but elements of this work remain subsidised by rate payers.

5. Land Supply

- 5.1. We do not accept that land supply constraint is the key driver of housing cost as is often suggested. Nor do we accept that requiring councils to release further land (possibly in contravention of their growth management plans) is the solution to the issue of housing affordability. Research by several councils, including the Auckland Regional Council and Wellington City Council, indicates that there is sufficient land available for residential purposes to accommodate growth. However the Council can do very little to affect the pace in which land is released by owners for development.⁴
- 5.2. The Council has a long established policy of urban containment. The objective of the policy is to limit the negative effects of urban sprawl and reduce the costs associated with providing additional infrastructure.
- 5.3. The city's primary green-field sites (on private land) have been identified in the northern part of the city. The area is developing relatively slowly and is expected to house 10,000 people and 3,500 dwellings over a 20 year period. The majority of this land is in single ownership.
- 5.4. The slow release appears to be a result of vertical integration – landowners are maximising their returns by releasing land selectively and controlling all phases of the development process from land subdivision to the sale of the building. This has resulted in the majority of houses being constructed for the upper-end of the market.

⁴ This concern was echoed by the Queenstown-Lakes District Council on 15 February 2008.

- 5.5. The Council has significant amounts of land that it uses to provide strategic assets. These range from town belts and reserves through to roads and recreational facilities. By definition these assets are an essential component of a modern city. It is not considered appropriate that they be freed for alternate uses (such as housing) while other land options are available.

6. Associated Costs

- 6.1. Someone has to pay for regulatory processes and extending public infrastructure. Fees under the Building Act, Resource Management Act, and Local Government Act are based on the actual cost to the council concerned for providing the service and are generally on a beneficiary pays principle. Infrastructure upgrades caused by growth need to be funded and can impact on the price of new housing. If development contributions are not used, the cost of upgrades falls on ratepayers which also adversely impacts on housing affordability.

7. New Legislation

- 7.1. The Council said to the Commerce Select Committee that it would welcome central government initiatives that extend the range of tools that can be used to address housing affordability concerns, **subject to certain provisos**. The Council said it would be interested in initiatives that:
- Offer solutions based on robust analysis including clarification from central government of local authorities powers to act in relation to affordable housing within the current legislative framework
 - Are designed to be enabling, not mandatory.
 - Do not adversely impact on the Council's ability to deliver aspects of the core infrastructure.
 - Provide assistance for councils in implementing any policy framework and clarity on how the implementation costs of any new framework would be funded.
 - Avoid transferring one element of housing affordability (construction / purchase) to another area of household expenditure (rates) - we do not believe it is appropriate for the ratepayer to solely subsidise affordable housing as such an approach would have an impact on all households including low income households.

8. General Comments on the Bill

- 8.1. The Council acknowledges that the Bill is enabling legislation that is intended to provide the Council with a mandate to develop and enforce policies to address local housing affordability issues. The Council believes that enabling legislation is more appropriate than mandatory legislative changes as it allows individual councils to choose whether to use the tools provided. The ability to customise policies to address local issues is also appropriate, because, as noted earlier, the issues are not the same in all regions.
- 8.2. The process for developing Affordable Housing Policies (AHPs) is likely to take significant time and specialist expertise. A rigorous process for policy development is justified in terms of potential impact on developers and the community. However the processes that are currently in the Bill are likely to discourage Councils from making AHPs. The time and processes involved in making AHPs means the sought-after benefits are likely to be subject to considerable delays and impose costs on the Council.

8.3. More detailed comments below identify aspects that need to be addressed if the Bill is to achieve its purpose.

9. Powers contained in the Bill

9.1. AHPs are expected to increase the supply of affordable housing. This will occur by requiring a developer to provide housing at a lower price / cost than would otherwise occur.

Comment

9.2. Any development of multiple residential units is strongly influenced by the developer's assumption of demand, the return on capital and the associated risks. An AHP will mean that a developer will be required to provide some units at a lower cost than others, either through use of cheaper materials (which may have higher life cycle maintenance costs) or by pricing general housing (i.e. housing that is not classified as 'Affordable') in a such a way so as to subsidise 'affordable' housing. The Bill does not, therefore, appear to actually create additional housing supply. Similarly, where a developer negotiates a financial contribution in lieu of land / housing, this contribution is passed on by the developer to the buyers of the new properties (similar to development contributions).

9.3. The cost of these subsidies and transfers has the potential to reduce supply by dampening demand for general housing.

9.4. There is also a risk that by imposing additional costs on developers in a particular locality, development capital could migrate to areas where there is no AHP in force.

9.5. After new affordable housing is created there is an ongoing issue of ensuring that it remains affordable to successive owners. There are a number of issues that arise around administering the allocation of affordable housing and the unfettered use / enjoyment of the property by the owners.

9.6. There is also a question of fairness when someone who experiences improved personal circumstances, so that they rise above the eligibility criteria, continues to enjoy the benefits of lower housing costs to the exclusion of others who are within the eligibility criteria.

Specific Comments on the Bill

10. Interpretation (Clause 4)

10.1. The use of key terms such as 'affordable housing' and 'low to moderate income' and 'essential basic living costs' are too vague and should be clarified as these terms will be central to any Affordable Housing Policy.

10.2. Recommendation

Provide definitions of key terms

11. Housing Assessment (Clauses 7 – 8)

- 11.1. The first step for the Council is to make a decision to assess the need for affordable housing (clause 7). The content of an assessment is prescribed in clause 8:
- 11.2. The Bill initially makes the decision to undertake an assessment⁵ an **LTCCP policy decision**. References to the LTCCP and Funding and Financial Policy provisions in Local Government Act 2002 (LGA), shown in the first three sub clauses of clause 7, are negated by sub clause (d). Sub clause (d) states the Council can undertake an assessment at any time.

Comment

- 11.3. Classifying a decision to undertake a housing study as an LTCCP or Funding Policy matter is unwarranted. The Council needs to be able to undertake an assessment at any time, without constraint.

11.4. Recommendation

That Clause 7 be deleted

12. Developing the Affordable Housing Policy (Clauses 9 – 12, 30 and 42)

- 12.1. The Council drafts an AHP that has regard for the findings of the Housing Assessment and contains the disclosures prescribed in clauses 9, 10, 11, 12, 30. It must also consider the implications for the District Plan and other policies adopted under LGA. Clause 42 amends the LGA so as to make an AHP a revenue policy⁶. This means the AHP can only be made (or amended) by making / amending the LTCCP⁷.

Comment

- 12.2. These requirements add complexity to the policy making process without necessarily improving the public engagement requirements. An alternative is to make reference to, s 87 (*Other use of the SCP*) instead of s 93 and s 102 and provide further time for public consultation in a similar way to that found in s 148 (*Bylaws relating to trade wastes*).
- 12.3. The binding relationship of an AHP to the District Plan and the LTCCP should be reconsidered as this also makes preparing the policy too complex.
- 12.4. These requirements and the recourse to the optional incentives / remissions indicated in clause 12 are likely to impose costs on the Council. As noted above, the Council had earlier expressed concern about the cost of subsidies and transfers in its provisional support for legislation.

⁵ WCC, in conjunction with Housing NZ, completed a Housing Needs Assessment in 2006.

⁶ LGA, s 102.

⁷ LGA, s 93 and s 102 (6).

12.5. Recommendations

- Reconsider the provisions relating to processes for developing an AHP and the extent of any binding relationship to the District Plan and Long Term Council Community Plan.
- That clause 42 be deleted.

13. Objections and Appeals (Clauses 24 – 27)

- 13.1. The Bill provides for objections from people who are affected by the application / administration / enforcement of an AHP. This includes developers, the owner of the land and owners of land adjoining the development. Clause 25 states the minimum period of time (15 days) for objections to be made and requires that the Council resolve the objection within 20 days.
- 13.2. Clause 24 (1) allows for objections from anyone, on any grounds, within 15 days of notifying the newly adopted AHP. Such objections must also be resolved by the Council within 20 days.
- 13.3. After the Council resolves the objection, the objector may appeal to the Environment Court against the Council's decision on the objection.

Comment

- 13.4. Allowing any person to object, on any grounds (clause 21 (1)) seems likely to invite / promote litigation. If, upon consideration of any objection, the Council **upholds** the objection in whole or part, it is required to amend the AHP. This gives rise to opportunities for new objections, the outcomes of which could generate further objections or appeals.
- 13.5. Alternatively, if the Council **does not uphold** the objection, the objector can appeal to the Environment Court and the AHP is suspended while the Environment Court considers the appeal. The commercial implications of an AHP are likely to incentivise objections and appeals pursuant to clause 24 (1). As noted above, upholding objections in whole, or in part will necessitate consequential LTCCP amendment processes.
- 13.6. In summary, the appeal and objection provisions are likely to mean that developing an AHP will take considerable time, thereby adding to the compliance costs for developing and implementing the AHP.
- 13.7. The most appropriate legal framework and jurisdiction for appeals and objections should be guided by the extent to which an AHP is connected to the LTCCP or District Plan.

13.8. Recommendations

- Appropriate timelines should be provided for consideration of appeals and objections.
- The Bill should have separate processes for appeals relating to the development of Affordable Housing Policies and objections against the application of requirements pursuant to operative Affordable Housing Policies.
- The applicable legal frameworks (relationship to LGA 2002 and RMA) should be reconsidered.

14. Implementing Affordable Housing Policy (Clause 28)

- 14.1. The Council can require a binding commitment from a developer. The Council must be satisfied that the developer is able to honour the binding commitment. Any actions / controls employed by the Council to support the binding commitment must be reasonable.
- 14.2. Consents under the Building Act 2004 or the RMA can be stopped / withheld while the Council seeks a binding commitment and satisfaction that the developer will adhere to the binding commitment.

Comment

- 14.3. The Council supports these provisions so as to give effect to an AHP.

15. Reviewing and Amending the Affordable Housing Policy (Clause 32 – 33)

- 15.1. The Bill is unclear about the expected frequency of periodic reviews of an AHP. Clause 32 states that a review must be in conjunction with the process to identify community outcomes, which must be undertaken not less than once every six years⁸. However, as clause 42 amends the LGA so as to make an AHP a s102 revenue policy, the Council is likely to revisit the AHP every three years when it adopts an LTCCP. This in turn could result in councils, with AHPs, undertaking the Community Outcomes Process every three years.
- 15.2. Sub clause 33 (c) states that a Council must not amend its AHP so as to stop it being an AHP. This implies that a Council cannot revoke its AHP.

Comment

- 15.3. The relevance to the Community Outcomes process is unclear. It adds further compliance complexities (and costs) because a Housing Assessment (Clause 7) is a prerequisite of any such review.
- 15.4. These process requirements are excessively onerous and have potential to cause confusion. When a council reviews / amends its AHP it will create opportunities for objections (see comments above). A simplification of the process to make, review and amend an AHP is more likely to encourage councils to employ the tool(s) that the Bill provides which will advance its stated aim. Conversely, onerous processes to make, review and amend an AHP will discourage councils from employing the Bill's tool(s). It is likely that such a result will generate conflict and frustration - councils that hold back from making an AHP could be criticised the Government and by groups in their communities who fail to appreciate the difficulties of operating within the Bill's framework.
- 15.5. Sub clause 33 (c) is contrary to the discretionary nature of the Bill's enabling powers. The Bill should not make the decision to adopt an AHP irreversible, as this would bind all future councils to maintaining the policy and associated assets acquired through operating the policy. Any process to revoke an AHP should not be more onerous than that required to cease a significant activity or abandon a strategic asset⁹.

⁸ S 91 LGA 2002

⁹ LGA 2002, s 84 and s 97.

15.6. The Council objects to any statutory provisions that constrain it from revoking a discretionary policy and activity, especially where the legal compliance and funding implications are as onerous as found in this Bill.

15.7. Recommendations

- The procedural requirements in relation to reviewing and amending an AHP should be reconsidered.
- That clause 32 be deleted.
- Clause 33 should include a process for revocation.

16. The actions (requirements) of developers and controls (Clauses 11, 30 and 31)

- 16.1. Clause 11 offers a range of options, which would be required actions / contributions from developers. In summary, a developer could be required to:
- provide affordable housing, or
 - give the Council some land and / or money.
- 16.2. The AHP is required to specify how contributions from developers in the form of affordable housing / land / money are calculated, and the kinds of housing required. The AHP is also required to disclose when financial contributions are required to be paid.
- 16.3. Sub clause 11 (5) states that the AHP must demonstrate how land and money that Council receives is used for affordable housing. Further provisions in relation to the use of land and money are found in clauses 30 and 31.
- 16.4. Where the Council receives land or money pursuant to its AHP, it is able to give or sell cheaply land to another person / body, and give money to a body (but not a person), for the provision of affordable housing. It may also collaborate with other authorities by pooling land or money received from their respective AHPs.
- 16.5. Sub clause 30 (8) is not an enabling clause – it repeats the existing provisions in the LGA. This arises because clause 30 (8), through clause 31 (3), is connected to s 97 LGA, which classifies affordable housing as a strategic asset¹⁰.

Comment

- 16.6. The effect of clauses 30 and 31 is to distinguish land the Council receives from a developer by effect of the AHP, from any other land and buildings it holds for affordable housing, which is subject to its social policy. It would be simpler to allow the Council to treat disposal of any land and buildings held for affordable housing purposes in the same way, irrespective of its source.
- 16.7. The purpose of clause 31 is unclear because a comprehensive AHP should disclose how the Council will utilise land and money it receives. The policy making process is clearly prescribed in other clauses (e.g. clause 17). The Bill would be improved by bringing the

¹⁰ the definition of **strategic asset** in s 5 LGA includes ‘any land or building owned by the local authority to maintain (its) capacity to provide affordable housing as part of its social policy.’

requirements of the AHP together (for example clauses 10, 11 and 30). It is likely that an AHP that is unclear on these details would face delays from objections and appeals.

- 16.8. The relationship between the powers in clause 30 needs to be aligned so as to be consistent with, and support, methods of retention (clause 14). This will provide the Council with sufficient controls to ensure properties that are classified as affordable housing, remain affordable following resale and transfer.
- 16.9. The development of an AHP, its ongoing administration, periodic reviews, and allocation, etc can be expected to require resources. However, clause 30 states this cannot come from money and assets that are received from developers pursuant to the AHP. These costs would either need to be borne by a Council - presumably rates funded or funded from income derived from rents from affordable housing, or external subsidies (e.g. Government). It is possible that some costs could be avoided by outsourcing certain functions, such as unit allocations, but most actions that stem from the Bill will be core Council functions that cannot be devolved.
- 16.10. Where a council enters into arrangements with either individuals or organisations that creates a partnership, union of interest, joint venture or sharing of profits, it may be caught in the definition of a council controlled organisation¹¹. For each such agreement, the Council is bound to initiate the Special Consultative Procedure¹².
- 16.11. The gifting provisions in clause 30 may create a taxation liability.

17. Allocating and Retaining Affordable Housing (Clauses 13 – 14)

- 17.1. Clause 13 requires that an AHP disclose allocation criteria.
- 17.2. The AHP must ensure that affordable housing remains affordable following resale or transfer. Clause 14 specifically considers:
 - buy back (the person must offer it first to the Council or some other entity)
 - the property continuing to be owned by the Council or some other entity, not by the occupier
 - joint ownership (shared equity between the occupier and the Council or some other entity).

Comment

- 17.3. Although the Bill does not limit the retention methods to the ones that are listed, this part of AHP administration is likely to be challenging. Inevitably, someone will present a case that was not considered in the policy and amending the policy is procedurally difficult.
- 17.4. Clause 14 does not consider that the need for affordable housing can be alleviated by a change in personal circumstances, nor does it consider the potential for owners of affordable housing to rent to third parties (enabling the owner to derive financial advantage of fully commercial rent yields).
- 17.5. It is unclear how affordable housing that is owned and controlled by third parties will be controlled by / subject to the allocation criteria.

¹¹ s 6 LGA 02

¹² s 56 LGA 02

17.6. Recommendations

- Revise the powers available to Council in clause 30 to enable it to meet obligations under clause 14.
- Remove the source-distinction for affordable housing. Delete clause 30 (8) and 31 (3), reconsider the remainder of clause 31 and amend the LGA to enable Councils to manage all affordable housing assets in accordance with the powers outlined in clause 30.
- Consider the implications of Council Controlled Organisation provisions in LGA 02 on clauses 14 and 30.
- Consider the taxation liability implications in the gifting provisions in clause 30.

18. Other matters

18.1. The Bill voids covenants where the purpose is to stop the provision of affordable / social housing (cl 35).

18.2. Clause 35 is limited by clause 39, which states that existing covenants are not voided.

18.3. In the first reading the Minister said:

The Bill will also prevent the use of covenants on land titles that aim to exclude social and affordable housing. These covenants unfairly discriminate against some of our most vulnerable people, such as older people, children and people who require assisted living such as IHC. The use of such covenants is a small but growing issue.

Comment

18.4. The Council supports clause 35. An alternative to clause 39 would be to void all covenants in so far as the proportion of affordable / social housing in a covenanted area could be limited in the same way as would apply to new developments, pursuant to the AHP (see clause 11 (2)).

The Council would like the opportunity to present to the select committee.

On behalf of Wellington City Council:

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