
REPORT 3
(1215/11/IM)

**COUNCIL COMMENTS ON LOCAL GOVERNMENT NEW
ZEALAND'S ALTERNATIVE AFFORDABLE HOUSING BILL**

1. Purpose of Report

To seek Council approval for the attached comments on Local Government New Zealand's (LGNZ) alternative Affordable Housing: Enabling Territorial Authorities Bill. Council received the alternative Bill on the 10th April 2008. LGNZ have requested comments from Council by the 30th April 2008.

2. Recommendations

It is recommended that Council:

1. *Receive the information.*
2. *Agree to the comments on Local Government New Zealand's alternative Affordable Housing: Enabling Territorial Authorities Bill attached as Appendix 1.*
3. *Authorise the Chief Executive and the Urban Development and Transport Portfolio Leader to make any minor editorial changes to the submission required as a result of Council discussion.*

3. Background

- 3.1 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.
- 3.2 In the earlier submission Council focussed on three areas of particular relevance to the Council: land supply; planning processes; and levies and charges.

- 3.3 These three areas have been consistently raised as having a detrimental impact on the cost of housing. It was Council's submission that our 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.
- 3.4 In late 2007 Government released the Affordable Housing (Enabling Territorial Authorities) Bill for submission. The Bill is intended to provide local government with a set of tools to address issues of affordable housing. The Bill is enabling rather than mandatory, and local authorities can choose whether to use the tools provided.
- 3.5 The basic components of the Bill are:
- The first stage in the process requires Council to undertake a needs assessment regarding housing affordability for its area.
 - If the needs assessment indicates a significant issue, Council may prepare an Affordable Housing Policy (AHP). Among other things the policy must cover:
 - When affordable housing will be required to be provided.
 - The proportion of any development that must comprise affordable housing
 - When Council will accept land or money in lieu of affordable housing
 - How Council will dispose of land and money taken as a contribution towards affordable housing
 - How affordable housing will be allocated
 - Who will be eligible for affordable housing
 - The needs assessment and AHP must be prepared in accordance with the Special Consultative Procedures (SCP) and Long Term Council Community Plan (LTCCP) processes outlined in the Local Government Act.
 - The content of the AHP may be appealed to the Environment Court
 - The AHP would be applied via the building consent process. The decision to require affordable housing (or to provide a contribution of money or land in lieu) would be made when a building consent was lodged with Council.
 - Decisions taken by Council when applying the AHP may be appealed to the Environment Court. This could create uncertainty and potential delay in the building consent process.
 - The Bill would allow Councils to void covenants that had the effect of excluding affordable housing.

- 3.6 In its submission on the Bill (approved by Strategy and Policy Committee on 6 March 2008), the Council supported the Bill's intent of facilitating the development of affordable housing. Council acknowledged that the Bill was enabling legislation that was intended to provide the Council with a mandate to develop and enforce policies to address local housing affordability issues. This was supported as being 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.
- 3.7 However, the Council was concerned that the 'needs assessment' and AHP processes contained within the Bill were complex, time consuming and open to significant risk. The process for developing AHPs was likely to take significant time and specialist expertise. While a rigorous process for policy development was justified in terms of potential impact on developers and the community, the processes that were included in the Bill were likely to discourage Councils from preparing AHPs. The time and processes involved in making AHPs means the sought-after benefits are likely to be subject to considerable delays and will impose costs on the Council.
- 3.8 LGNZ has subsequently prepared an alternative Bill that it thinks will reconcile many of the flaws in the original Bill. LGNZ have requested comments from Local Authorities regarding the alternative Bill.

4. Discussion

LGNZ Alternative Affordable Housing Bill

- 4.1 LGNZ shared many of Council's concerns regarding the time and cost required to implement the proposed Bill. LGNZ's submission on the Bill made the following points:
- LGNZ supported the intent to provide more affordable housing
 - LGNZ opposed the provisions in the Bill, because it
 - had excessively complex requirements
 - involved unacceptable risks and costs
 - was unlikely to produce additional affordable housing
 - had potential to undermine housing initiatives
 - failed to provide the tools needed / sought by local government
- 4.2 Local Government New Zealand also expressed concern that despite the Bill being targeted at local government there had been very limited engagement with the sector, and the introduction of the Bill has been detrimental to existing policies and work programmes related to affordable housing.

- 4.3 LGNZ has subsequently prepared an alternative Bill that it thinks will reconcile many of the flaws in the original Bill. LGNZ have requested comments from Local Authorities regarding the alternative Bill.
- 4.4 Like the original Bill, the LGNZ alternative Bill is enabling rather than mandatory. Unlike the original Bill, the LGNZ Bill provides for affordable housing principally through the Resource Management Act (RMA) and District Plan processes.
- 4.5 The LGNZ Bill would add 'the need for affordable housing' to the matters that a local authority may have regard to under section 7 of the RMA. Local authorities could then develop and implement policy relating to affordable housing through the District Plan and resource consent processes.
- 4.6 The LGNZ Bill contains draft controls for the types of conditions that Councils could attach to resource consent involving affordable housing. These include:
- A requirement to provide affordable housing;
 - A requirement to make a contribution of land or money in lieu of providing affordable housing;
 - Installation of a covenant in respect of the performance of any condition;
 - A condition requiring a bond securing the performance of any condition;
 - Any condition must be in accordance with the purposes specified in the plan.
- 4.7 The LGNZ Bill would add a reference to affordable housing to the definition of community infrastructure in the Local Government Act. This would provide Local Authorities with the option of taking development contributions in relation to affordable housing. Any proposal to charge development contributions would be subject to the LTCCP consultation process.
- 4.8 The LGNZ Bill retains, almost intact, the provisions from the original Bill relating to the voiding of covenants that have the effect of excluding affordable housing.

Council comments on LGNZ Bill

- 4.9 Council's proposed feedback to LGNZ is attached as Appendix 1. Generally it is considered that the alternative Bill is a significant step forward from the original Bill. It would be less disruptive to existing Council processes, impose fewer constraints in terms of time and risk, and would therefore be more likely to be implemented by Local Authorities.
- 4.10 Implementation of the original Bill would have been hampered by a number of poorly defined terms and vague concepts. Terms such as

‘affordable housing’, “low to moderate income” and “essential basic living costs” are vague and provide too much room for discretion. The lack of clarity on some of these key terms would make it difficult to consistently apply the Bill across different jurisdictions. The LGNZ Bill proposes to use ‘Orders in Council’ issued by central government to define the key characteristics and thresholds of affordable housing, and to specify income and equity levels used to calculate affordability. It is considered that this approach is likely to be more effective.

- 4.11 It is considered that the policy development and consultation mechanisms contained within the RMA are sufficiently robust to allow for detailed and balanced debate of issues relating to affordable housing. Similarly, it is considered that the LTTCP process is sufficient to allow for appropriate debate of policies regarding development contributions for affordable housing. Councils around the country currently use these tools quite effectively to develop policy for a range of issues, indicating that specific legislative tools such as those put forward in the original Bill are not required. Examples include the development of policy regarding renewable energy, protection of historic heritage, protection of outstanding landscapes, and the provision of public reserves.
- 4.12 The proposal to develop policy and methods relating to affordable housing under the RMA (via the District Plan) is likely to be a far simpler approach than that contained in the original Bill. In referring to the RMA, the LGNZ Bill makes use of existing processes and mechanisms with which all Local Authorities are familiar. In terms of process, the LGNZ Bill removes much of the additional time, cost and uncertainty contained in the original Bill.
- 4.13 Developing housing affordability policy under the RMA will allow Councils to address these issues as part of a wider discussion concerning resource management. In Wellington’s case this will allow Council to balance the need for affordable housing with other significant urban policies such as urban containment and residential intensification.
- 4.14 Implementing affordable housing controls through the District Plan and resource consent process (rather than the building consent process) is likely to be more effective, and will require fewer changes to Council’s internal structures and processes. Using the building consent process would place the onus of implementation on an area of Council not experienced in the day-to-day interpretation of Council policy. Using the resource consent process would also make it easier for external parties who would be spared the need to adapt to a new process.
- 4.15 However, some of the Council’s concerns with the original Bill also apply to the LGNZ alternative. These include:
 - A lack of clarity around what is affordable housing and how is it measured? How would housing affordability be calculated? Would it simply be the purchase price, or would on-going life-cycle costs (such as maintenance costs, running costs, and social costs) be included in the evaluation? Wellington City Council is

very much of the opinion that housing affordability must consider the full range of costs associated with different housing options and locations.

- A lack of clarity or guidance on how Councils will allocate affordable housing and manage the on-going affordability of these properties.

5. Conclusion

- 5.1 LGNZ have requested comments on their proposed alternative Affordable Housing Bill, by 30 April 2008. These comments are attached for consideration by Council.
- 5.2 In summary, Wellington City Council is supportive of LGNZ's alternative Affordable Housing Bill. The alternative Bill is more concise, and utilises existing tools and processes with which all local authorities are currently familiar. It is considered that the LGNZ Bill removes many of the cost and time delays inherent in the procedures contained in the original Bill, and is therefore more likely to result in local authorities developing policy on affordable housing.

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Supporting Information

1) Strategic Fit / Strategic Outcome

This paper supports Council's outcomes:

'1.1A More Liveable – Wellington will be a great place to be, offering a variety of places to live, work and play within a high quality public environment'

'6.1 More Liveable – Wellington will be a great place to live, work and play, offering a stimulating and high quality range of community amenities and services, including affordable housing'

2) LTCCP/Annual Plan reference and long term financial impact

The policies that are made under the enabling powers provided in the Bill will align with the LTCCP and District Plan. No long term financial impacts have been identified.

3) Treaty of Waitangi considerations

No Treaty of Waitangi implications have been identified.

4) Decision-Making

A proposed submission to the Local Government and Environment Select Committee is attached for consideration and approval by the Committee.

5) Consultation

The proposed submission has been drafted by Council Officers.

6) Legal Implications

No legal implications have been identified.

7) Consistency with existing policy

The proposed submission is consistent with the Council's existing policy and earlier comments to the Commerce Select Committee.