

Making Housing Meaningful for Councils

Background Paper for Housing New Zealand Corporation workshops

Presented
by
Peter McKinlay
Director
Local Government Centre
AUT University

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1. Introduction

The purpose of this paper is to provide additional background material in support of the workshop presentations for Housing New Zealand Corporation by the Local Government Centre at AUT University.

Generally, the paper follows the workshop agenda and comprises the following sections:

- Brief history of local government involvement in social housing.
- Community outcomes and long-term Council community plans.
- Role of regional councils and regional policy statements.
- Strategies that work when working with councils.
- Positioning Housing New Zealand so that it is seen by councils as an ally.

2. Brief History of Local Government Involvement in Social Housing

From the 1930s to now

Local government involvement in social housing began in a relatively minor way with urban renewal, particularly in Wellington and Auckland, beginning in the 1930s with Auckland City Council involvement in Freemans Bay.

Activity accelerated in the 1970s when meeting the needs of older persons became the primary focus of a partnership between central government and local government. An informal agreement arrived at in 1972 between central and local government endorsed local government's role as the principal provider of housing for low-income older people but with government acting as the funder through a mix of low interest loans and grants.

This programme was very strictly targeted. The housing built by local government had to meet the government's cost requirements¹ and would-be tenants had to pass quite strict asset and income tests. In addition to central government funding for older persons' housing, it also supported urban renewal under programmes such as CHIP (the Community Housing Improvement Programme), providing low interest finance for the redevelopment of rundown urban areas. Prime examples were the Freemans Bay council housing in Auckland (since sold) and Wellington City Council's Aro Valley/Newtown high rise developments.

As long as central government maintained its low interest and grant-based programmes, local government had a clear understanding of its role. Within the constraints of central government funding, local government had the opportunity of providing housing for low-income groups, particularly older people, with the expectation that this would be done largely on a cost recovery basis (that is, at little or no cost to the ratepayer).

This understanding came to an end with the major shift in government policy in the early 1990s to treating housing (and funding for local authority owned housing) as a market based service, with social needs to be addressed through income support policies. The impact on local government was to break down long held understandings and throw open, authority by authority, the question of whether it should continue to be involved in housing and, if so, on what basis. From a local government perspective, central government's actions were seen both as a breach of faith, and as a reminder of the risk of entering into long-term

¹ The emphasis was very much on providing absolutely basic accommodation, hence the fact that most local authority housing portfolios are dominated by bed sitting room and single bedroom accommodation reflecting ideas from the 1960s and 1970s of what was an acceptable minimum level of accommodation for older people.

arrangements with a central government partner which might later change the rules unilaterally.

A number of local authorities undertook reviews of their housing activity in response both to what was seen as a strong policy signal from the then government and to the financial management provisions for local government introduced in 1996 (the "No. 3 Act"). Those reviews aimed to determine whether and to what extent housing was a core activity. Outcomes varied, and included:

- Sale of all housing stock – a handful of local authorities, mainly with relatively small holdings.
- Sale of part or all of general rental housing, whilst retaining older people's housing (often these authorities have recognised a "community expectation" that they will continue to provide housing for older people, and/or have been influenced by arguments that their housing portfolios were built up by taxpayers' funds with an expectation that they should remain committed to housing purposes rather than be available for the general purposes of the local authority).
- Some making a positive commitment to housing as a core activity and seeing their continuing involvement as part of the process of building a strong community.

The most significant single decision was that of the Auckland City Council under Mayor John Banks to sell its entire housing stock (approximately 1,560 units housing older people and fewer than 200 units of general rental housing) on the basis that housing was not a core activity. The council spoke publicly as though its intention was to sell the housing to the highest bidder, with the strong implication that much of the stock could end up in the hands of private developers with the potential for many tenants to be forced out of their housing. The actual outcome was a sale of the entire portfolio to the Housing New Zealand Corporation. It is generally considered that the Corporation became the purchaser as the government was not prepared to accept the loss of such a significant portfolio of social housing in its strongest support base.²

In July 2003 the Housing New Zealand Corporation undertook a survey of local authorities to determine their level of interest in maintaining a role in social housing provision. From the survey responses, 90% of local government social housing stock is held by councils which are strongly committed or committed to housing and only 6.1% belongs to councils with a decreasing or no commitment (with the balance being neutral).

² Perhaps recognising the potential for other local authorities to try and repeat the Auckland success, the Government has made it very clear that it does not regard the Auckland transaction as a precedent, and is not interested in purchasing any other local authority housing portfolios. Holding the line on its stance has proven difficult with other local authorities arguing they have similar needs for government support to upgrade rundown portfolios with Wellington being a prime example.

Councils responding to the survey (and all but one did) noted a number of challenges to continued social housing provision. Quoting from Housing New Zealand Corporation’s summary of findings, challenges included:

- Change in the nature of housing demand was the major challenge facing councils (24.3%). In particular, councils face:
 - increased demand pressures from non-traditional segments (e.g. people experiencing severe mental illness); and
 - inappropriate configuration of the current portfolio to meet housing need. For instance, bed sits no longer reflect housing preferences and are not appropriate for households with more than one member.

- The other main challenges councils cope with are:
 - the condition of the councils’ physical housing stock;
 - the low demand councils in some rural areas face; and
 - the cost of supply relative to income from rents.

All of these challenges reflect or have as a consequence rising cost in social housing provision. The following table summarises the challenges councils believed they faced in providing social housing.

Challenges that councils face in providing social housing (a council could identify more than one challenge):

Challenge	Councils:	
Change in demand (i.e. no longer primarily older single people)	33	24.3%
Physical housing stock	26	19.1%
Low demand	23	16.9%
Cost of supply relative to income from rents	22	16.2%
Council financial or management structure	14	10.3%
Community expectations	14	10.3%
Planning or regulatory environment	4	2.9%

Funding issues

It's often not well understood by central government agencies that most local authorities face very serious fiscal constraints. The executive summary of the report of the recent independent rating inquiry made the following comments about the sustainability of local government rates:

6. The Panel has identified affordability problems for rates for some sections of the community, which will increase over the next 10 years. This means that under current practices rates will not be sustainable in 10 years’ time. Rates currently account for around 56% of local authority operating revenues, and the long-term council community plans (LTCCPs) forecast they will rise to 60% by 2016.

7. The Panel considers rates should remain as the major source of local government revenue but need to be reduced to around 50% of total revenues. As a tax rates have many advantages – efficiency, difficulty of

evasion, and low economic deadweight costs – and there is a reasonable relationship between property values and incomes, even though overall rates tend to be somewhat regressive in their impact.

8. The Panel does not recommend any major new tax to replace rates. There is no need for any “magic bullet” to fix the problem, and indeed there is no such bullet available. However, it makes a number of recommendations to make the rating system simpler and more transparent, equitable, and sustainable.

Currently, public pressure on local authorities to keep their rates as low as possible is very strong. It had a major impact in the 2007 local government elections, with the control of a number of councils changing in response to concerns over high spending councils, albeit often driven by exaggerated media coverage.

As the inquiry report says, there is no "magic bullet". People who go looking for one hunt in two different areas. The first is user charges and the second is additional government funding. User charges is proving a difficult strategy in New Zealand at the moment. There is a very strong case on grounds of economic efficiency and environmental sustainability that water should be charged for at least at the full economic cost of provision, if not at full environmental cost (adding on to the economic cost, the cost of the impact on the environment). The Auckland City Council, and other Auckland councils, are heading in the exact opposite direction at the moment as a consequence of public pressure, instead of looking at how they can reconcile issues of social justice (which implies tiered pricing arrangements) with other objectives. The same applies to road charging where the resistance to initiatives such as tolling, congestion pricing etc seems considerable.

Internationally there is a growing body of research evidence which strongly argues the case for quite significant central government funding of major local government infrastructure, largely because of the different and more favourable tax instruments central government has. There is also compelling evidence that central governments do not find the suggestion a particularly attractive one.

A related funding issue is persistent local government concern over the so-called "unfunded mandate", the belief that higher tiers of government consistently pass additional functions to local government without equivalent funding.

In New Zealand, local government will refer to major policy initiatives in areas such as prostitution reform, the Building Act, the Affordable Housing Bill and much besides as evidence that central government expects local government through its ratepayers to pick up the cost of implementing central government's policies.

Central governments generally are reluctant to accept the unfunded mandate argument but, when it has been seriously researched, the evidence is unequivocal - for example the "cost shifting" inquiry undertaken by the Australian Senate (the Hawker Inquiry otherwise Rates and Taxes: a fair share for responsible local

government

<http://www.aph.gov.au/house/committee/efpa/localgovt/report.htm>).

We've gone through this background in some detail to help Housing New Zealand Corporation staff understand the quite deep-seated reasons lying behind local government's reluctance to undertake significant investment in social housing.

Finally, we note that this reluctance has its parallel internationally. Generally, when local government is a significant investor in social housing (as in the United Kingdom and parts of continental Europe) it will be because either central government has been a major funder, or local government has a tax base available to it which generates significantly more revenue than is possible with a rates based system.

There are always exceptions to this rule. In New Zealand as an example the Christchurch City Council has attached a high priority to investment in social housing. This reflects both a relatively unusual consensus of long standing across the Christchurch community and the fact that the city is a very wealthy local authority by New Zealand standards. In Australia the main examples of local government investment in social housing are cities such as Brisbane, the largest and one of the wealthiest local authorities in Australasia, and Port Phillip, a wealthy inner-metropolis city in Melbourne.

A note on CRESA research into the local government role in affordable housing

The research does provide a useful overview of Council practices, and understandings in relation to affordable housing. Of particular value is the finding that Council staff generally believe that their planning and regulatory activities have no or little impact on the availability of affordable housing. This certainly opens up an area for potentially significant gains in efficiency.

The report does seem to understate the impact of local government views on the proper roles of central government and local government respectively, particularly in funding affordable housing. It could also have placed more emphasis on the emerging distinction between social housing and intermediate housing. There is growing evidence that New Zealand local government, whilst maintaining its stance that social housing is essentially a central government responsibility, is beginning to recognise that intermediate housing is in a somewhat different category. Specifically there is a strong linkage between an effective intermediate housing market and ongoing economic development which may justify local government involvement in much the same way as in the provision of other infrastructure necessary to support the local economy (but always subject to the fiscal constraints on local government).

Another matter which needs careful thought is the issue of capability. Many local authorities are finding it extremely difficult to recruit and retain town planners, engineers and other professionals whose expertise is an essential element in any local government housing related housing activity. Competition from the private

sector in New Zealand has been a major factor in the difficulties local government faces. The current slowdown in the property market may reduce that impact, but could be offset by increased demand from Australia as the Rudd government moves to implement its affordable housing strategies.

More weight could also be given to local government concerns over the impact of successive government policies on housing. It is not just current initiatives in increasing compliance requirements and costs. Many local authorities will take the view that a principal contributor to the leaky homes crisis, which sees many of them in the firing line for significant damages claims, was a government decision to open the provision of building inspection services up to the private sector.

Finally, there is a need to consider the context behind the CRESA report's description of overseas initiatives. First, structure and funding arrangements are often quite significantly different from what applies in New Zealand. Secondly, "success" needs to be defined not just in terms of the apparent number of additional housing units created as the consequence of a policy, but of the impact on the broader housing market.

The English experience with 'planning gain'

The use of so-called section 106 agreements in England is often referred to as a good example of how planning gain can be used to fund the provision of affordable housing. *Planning Gain and Affordable Housing: Making it Count*, a report prepared by the University of Cambridge in 2002 with support from the Joseph Rowntree Foundation, described the policy background as follows:

"Local authorities had been experimenting with ways of using the planning system to secure affordable housing in a number of areas in England in the 1970s, but official government endorsement first came in 1979 when the rural exceptions policy was announced. This enables rural planning authorities to grant planning consent for housing on sites that would not otherwise receive permission, provided that only affordable housing is developed on them.

"The approach was more widely sanctioned to enable affordable housing to be secured on all larger housing developments in 1981 and subsequently included in all Planning Policy Guidance on housing (PPG3) issued since then (DETR, 2000). Provided that local planning authorities have policies in their adopted statutory development plans that assess the need for new affordable housing in their districts, they may require private developers to contribute to meeting this need. They may also set specific targets to be achieved on sites allocated for new housing in adopted plans. When developers agree to make contributions these are made legally binding contracts, where they enter into agreements with the relevant planning

authority under section 106 of the 1990 Town and Country Planning Act as part of the process of securing planning permission.”³

The purpose of that report, in a context in which “almost everyone agrees that we need more affordable housing in England – and that there is an overall shortage of housing in many parts of the country”, was to assess the effectiveness of the way in which planning policy had been used to encourage additional provision.

The issue is an important one as, superficially at least, the use of the planning system to encourage (or require) the provision of affordable housing appears to be an approach that could increase supply without calling on either the taxpayer or the ratepayer to meet the cost.

The report sought to assess effectiveness by:

- Clarifying the numbers of additional affordable houses secured in England through the planning system, and regional and other variations in these numbers.
- Assessing the effectiveness of the processes by which affordable housing is secured.
- Looking at the costs involved and who pays for the affordable housing provided.
- Evaluating how much the use of a planning obligation approach is helping to achieve the objectives of housing policies.

The report’s conclusions are somewhat equivocal, partly because of the extraordinary complexity associated with determining final costs and where they fall. It concludes that approximately 12,000 units of affordable housing are produced annually within the framework of section 106 planning agreements, the majority within London and the South East. What the researchers were unable to make a final judgment on is:

- Who bears the actual cost?
- Whether the units are genuinely additional.

Their difficulties in assessing the impact of the planning contributions policy follows from the fact that, at least in London and the South East, virtually all of the additional housing goes into the rental stock owned by Registered Social Landlords. There is at least a suggestion that the main consequence of the discount negotiated through the planning contributions process is to bring the cost of the additional units within the limits set by the Housing Corporation for properties that attract a social housing grant. There is thus an implication that rather than the developer’s contribution producing more units of affordable housing than would otherwise have been produced, a social housing grant is being diverted to higher cost properties with the assistance of a discount from the developer.

³ Crook, T et al (2002) p1

The report also makes the point that additional provision is concentrated in areas where the cost of land is high driven by a buoyant housing market and limited supply. In addition, although the developer's contribution may appear to be relatively high as a percentage of the cost of the units that go into affordable housing, as a percentage of the total cost of the development of which they form part, the cost is normally in the range of 2%-4%.

Nor is it clear who actually bears this cost. Interviews with landowners and developers suggested that, in the majority of cases, it is the landowner who bears the cost rather than the developer (but the developer can often be both the landowner and the developer).

All in all, the report carries with it an implication that the major source of the cost of planning contribution is the premium associated with development land because of shortage of supply – so that both landowners and developers are prepared to pay some of this away as part of the process of obtaining development approval.

Taken generally, the report is not a compelling argument that there are genuine gains to be had from the use of planning tools.

Inclusion zoning

Another tool often regarded as a useful means of improving housing affordability is inclusionary zoning: the practice of requiring developers to set aside a portion of any development for affordable housing, often on the basis that sections and/or completed houses are transferred to a third sector housing provider at a significant discount.

Whether or not inclusionary zoning is an effective way to produce affordable housing is quite controversial. At the micro level there is considerable evidence that inclusionary zoning rules have resulted in the production of a number of units of affordable housing within individual developments. At the macro level, however, there is considerable evidence that the main factor enabling the success of inclusionary zoning initiatives is the presence of planning restrictions which seriously restrict supply. The impact is to push up the price of land and housing generally, creating a windfall gain for developers and others, some of which they are perfectly content to share to create the appearance of an acceptable affordable housing strategy.

3. Community Outcomes and Long Term Council Community Plans

The new provisions

The provisions for identifying community outcomes, and for the preparation of long-term Council community plans based on those outcomes, were both loosely based on changes that had taken place in England two years previously, when the English Local Government Act 2000 introduced the requirement for councils to prepare community plans. Associated with this requirement was the separate obligation on councils to create local strategic partnerships. These would combine together councils, relevant central government agencies, business, faith communities, the voluntary and community sector ... in a partnership approach to implementing the community plan.

Following what has become very much established practice in England, the requirement to establish local strategic partnerships was accompanied by a multipage memorandum of instructions from the Secretary of State for Local Government telling councils what was expected of them with community strategies and local strategic partnerships, and how they were to go about implementing the government's intentions. No similar instructions or guidance was provided for New Zealand local government on how to implement community outcomes and LTCCP process.

Even a cursory look at the legislation makes it clear that the new process was intended to be a quantum shift from conventional local government practice. Previously legislation, to the extent that it required local authorities to undertake planning and related activity (other than RMA related planning), was concerned solely with the activities which the local authority itself would undertake.

Community outcomes cover the entire spectrum of life and activity within the community. They are concerned with activities which may be central to the future of the community but which the local authority may have little or nothing to do with. This is explicitly recognized in schedule 10 of the Local Government Act 2002 which sets out the information to be included in long-term Council community plans. For example, it requires that the LTCCP outline how the local authority will, to further community outcomes, work with a wide range of organisations. There is an obvious expectation that the council itself will be responsible for some activity contributing to community outcomes but for other activities will be primarily a facilitator, recording what it expects will be the contribution of other actors.

The legislation is also very clear that the outcomes are not the council's outcomes, not only in the sense of who has the obligation for delivering on them, but who is responsible for shaping and determining them. It is not for the council to sit around the table and decide what the community's outcomes should be. It

is for the council to facilitate the process for identifying community outcomes (section 91).

A key part of the legislation is the following provision:

A local authority may decide for itself the process that it is to use to facilitate the identification of community outcomes under subsection (1), but the local authority—

- (a) must, before finally deciding on that process, take steps—
 - (i) to identify, so far as practicable, other organisations and groups capable of influencing either the identification or the promotion of community outcomes; and
 - (ii) to secure, if practicable, the agreement of those organisations and groups to the process and to the relationship of the process to any existing and related plans; and
- (b) must ensure that the process encourages the public to contribute to the identification of community outcomes.

Results

Many local authorities fell far short of what the legislation clearly expected. As an example, it was quite common for local authorities simply to write to "other organisations and groups..." setting out the process the local authority intended to follow and either inviting their written comments, or inviting them to a combined meeting to endorse the proposed process. Anyone familiar with strategic planning processes will understand that this type of approach, far from being a means of getting effective engagement, would simply result in a "tick the box" agreement to whatever the council had proposed.

With hindsight, it is clear that many councils⁴ confused the facilitative requirements of the new legislation with their standard approaches to consultation, the very thing which the new legislation was trying to move beyond.

One consequence is that community outcomes, from council to council across the country, have a remarkable degree of similarity. They are more like a statement of values shared by all New Zealanders across the country than they are a statement of strategic priorities for individual communities.

Another issue, which flows directly from the legislation, is that both the outcomes process and the LTCCP are required to address the full range of issues confronting the community. Experience of community planning, in jurisdictions where this is undertaken as a voluntary activity rather than as a response to a

⁴ There were some exceptions. The Taranaki and Southland regions both stood out for the endeavours which they made to ensure the processes were community driven, got a high level of community engagement, and genuinely reflected community views.

regulatory or legislative requirement, is that at any one time there will be a relative handful of priorities which are significant across a community. For most of the time, and in most areas, people are relatively content to let responsible agencies, at a has is as Austria Graham organisations etc get on with the job while they focus on a few things which, at the moment, really matter.

Finally, LTCCPs themselves have been severely criticised, from a community engagement perspective, for the very high level of detail they include, and the very real difficulty for most people of getting to grips with it. In this respect there is a clear conflict between the objectives of creating user-friendly strategic planning documents for the community, and complying with the detailed prospective financial accountability requirements which international accounting standards, as applied by the Auditor-General, require. The chair of the recent independent rating inquiry, in a presentation to last year's Local Government New Zealand conference, said:

- "Current consultation with the community doesn't work - better, not more consultation is required.
- "The LTCCP concept is sound - but the process is constipated?"

The potential for Housing New Zealand Corporation

Under the legislation, community outcomes are reviewed every six years, but LTCCPs every three years. All councils will be preparing a complete new LTCCP for the 2009/2010 year. The work on this will start getting under way, in earnest, in the second half of 2008.

The new LTCCPs will be based on current statements of community outcomes. Not all of them will necessarily emphasise affordable housing as a community outcome, but all of them will contain general statements consistent with the promotion of affordable housing.

The rewrite of LTCCPs provides a very real opportunity for Housing New Zealand Corporation to engage with local government. The issue is to choose the means of engagement.

The corporation will already be part of a number of collaborative arrangements, across the country, for consultation between local authorities and government agencies on community outcomes and LTCCPs. These are a useful but not sufficient means for effective engagement.

For Housing New Zealand Corporation to make a real difference, it will need to work territorial local authority by territorial local authority, getting alongside the key decision makers within the authority who deal with housing issues and doing so on the basis of a "does housing matter - how can we help?" approach rather than a "what we would like to see in your LTCCP is...". It should be based on demonstrating that Housing New Zealand Corporation has expertise and

resources (information experience etc, and statistics of housing need) which could assist the local authority.

It may also provide an opportunity for the Corporation to suggest to the local authority that the LTCCP could include initiatives to encourage action by third parties, perhaps developers, perhaps third sector providers, where the corporation itself could play a role in helping achieve the desired outcome.

4. Different Ways Councils Can Facilitate the Delivery of Social Housing

In this section we look at four different structural approaches which local government may use in the delivery of affordable or social housing services.

They are:

- Core Council delivery.
- Stand-alone business units.
- Council controlled organisations and council controlled trading organisations.
- Community-based housing providers.

Core Council delivery

This is still the predominant means by which councils deliver affordable or social housing services. The principal reason is historical - when first councils became involved with housing, the idea of using different organisational structures had not yet become part of local government practice.

It has some apparent advantages, including direct public accountability, but a number of disadvantages from both a public and the Council perspective. First, the assets and liabilities appear directly on the balance sheet of the Council. Typically, the assets are included on the basis of a "bricks and mortar" valuation. Even allowing for the relatively rundown condition of much of council housing stock, this can produce quite high valuations. In reality, the true value is more likely the net present value of the portfolio's free cash flow because of the sense of the long-term commitment to keeping the assets in social housing. On this basis, most local government housing portfolios would have a valuation much closer to zero, making it much easier for the council to take policy decisions about the future ownership.

Continued funding is also problematic, both because of competing demands on council resources (and usually very tight borrowing constraints on borrowing policies), and because of the impact of depreciation which councils are required to fund.

Next, council decision-making structures and processes can make it extremely difficult to manage portfolios. In many councils any decision to buy or sell one or more units of social housing may have to go through a council committee and then be confirmed by full council. This is not only time-consuming; it can also prejudice commercial negotiations, and opens up the opportunity for politically

motivated intervention - for example outright opposition to the sale of any council assets.

For many councils, their housing portfolios are only a very small part of the overall business. This can make it extremely difficult to get room in the council's decision-making "space" for a serious strategic consideration of what should be done with housing. It also makes it extremely easy for one or two councillors to make a cause celebre out of housing, playing to the public gallery. Other councillors, and senior management, may not be prepared to invest the time to counter that kind of opposition, and so will simply run with whatever the minority wants.

There are also issues with efficiency in portfolio management. First, most portfolios are well beneath the critical mass needed for "best practice" management, including career development for staff. Next, public sector financial management rules, such as those governing procurement processes, may prove costly. Standard requirements, such as the issue of purchase orders before work is undertaken, can make the process of maintenance significantly costlier in compliance and other terms than the non-public alternative which may often simply be to pick up the phone and ring a preferred provider.

Stand-alone business units (SABUs)

These are still part of the council itself (for example, staff are still council employees) but can have some very real advantages over the core Council approach. These include:

- The ability to "quarantine" costs and revenues thus making the actual impact on the Council transparent, something which can very much assist quality decision-making.
- The opportunity to bring in outside expertise. SABUs will normally have an external advisory board. This provides an opportunity to bring in people with specific property/housing experience, both from a business and from a social services perspective.
- It can promote better decision-making, but the critical issue here is the extent to which the SABU has effective delegation. This is not just a matter of formal authority being delegated; it is also a matter of the council itself respecting those delegations so that decisions are not second-guessed – through the media, by individual councillors or the council itself.

Council controlled organisations (CCOs) and Council controlled trading organisations (CCTOs)

These are usually either companies or trusts and, if trusts, are normally incorporated charitable trusts (non-charitable trusts cannot be incorporated, thus increasing trustees' exposure to liability).

The Local Government Act sets out the basic rules. The definition of control is that one or more local authorities appoint at least 50% of the members of the governing body and/or exercise at least 50% of the votes at any general meeting. A Council controlled body is deemed to be a CCTO if it is carrying on business with the intention or purpose of making a profit. The Inland Revenue Department will assume that a body established for the purpose of managing and developing housing is a trading organisation.

This has an important consequence. Under tax legislation a charitable trust which is also a CCTO is not entitled to any of the tax benefits available for charities. This provides a very strong incentive for local authorities to set up trading organisations which are not council controlled (see below). Another factor is that councils may not lend money or provide other financial accommodation to CCTOs on terms more favourable than if the council itself were the borrower but without securing it against rates. This is intended to ensure that CCTOs must borrow at private sector market rates. The same restriction does not apply to council support for community-based organisations it does not control.

CCOs and CCTOs are both required to complete statements of intent. If the council owner(s) disagree with the contents of the statement, these can be amended by an owner resolution. There is a requirement to consult with the board of the CCO or CCTO but no requirement that the board agree with any proposed changes. From the perspective of an intending director or board member, this is a potentially serious interference with the principles of good corporate governance, and threatens the whole basis of accountability - if boards are not free to govern, then boards cannot be held accountable for performance.

Another important consideration is that the accounts of CCOs and CCTOs must be consolidated with the accounts of the parent authority. This means, for example, that any borrowing appears on the balance sheet of the local authority as well as on that of the CCO or CCTO.

Although there are reservations over the use of CCOs or CCTOs they do have some advantages, including the ability to establish an activity which, in many respects, is at arm's length from the Council despite the ability to intervene through the statement of intent. The main disadvantages include the tax status of CCTOs, the requirement for consolidation of accounts, and the uncertainty associated with the power to intervene in the statement of intent. This power, though, may be seen by a council as an advantage in the sense that it can still exercise a measure of control despite the arm's-length nature of the structure.

To put the balance of advantage and disadvantage in context, many advisers would now recommend against the use of a CCO or CCTO for any activities which have a major commercial element, for reasons including ensuring the stability of the governance structure, and preserving the tax benefits where a charitable entity could be used.

Community based housing providers

In contrast to a number of developed countries, New Zealand has never developed a significant third sector in the provision of social or affordable housing. Reasons suggested for this include:

- New Zealand has not had significant philanthropic benefactors equivalent to the businessmen who backed a number of 19th-century housing associations in England, nor has it had the strong trade union commitment to cooperative housing found in some European countries, and nor has it had its own "retail" cooperative tradition as compared with say Sweden or Canada (New Zealand has a strong cooperative tradition but more in what is usually referred to as "second-tier cooperatives").
- The "crowding out" effect of the fact that for many years the only entity which had access to government provided housing subsidy was the government's own housing provider (with the relatively minor exception of funding for local government housing).

The legacy of that history remains today. The CHRANZ Report Affordable Housing: the Community Housing Sector in New Zealand reports the findings of a survey of community housing providers as revealing:

30.6% of the organisations that responded to the survey owned housing, with a combined total of 1616 housing units. The average holding was 124 units, and the median number of houses owned was 21 units. Excluding 3 organisations that owned more than 100 units brings the average down to 21 units (median 9 units). A number of respondents to the survey managed housing units rather than owning them.

The picture is of a large number of organisations of very small scale. In the main, organisations of any significant size appeared to be religious and welfare organisations, or social service organisations such as the former IHC, which built up quite considerable housing stocks in the days when government provided "bricks and mortar" subsidy for organisations providing care in the community.

Although the Local Government Centre has not undertaken any formal surveys of capability, performance, approach etc of the new wave of community-based housing organisations, they generally appear to involve people who have a very strong commitment to the social mission which drives them, coupled with a varying level of capability at both the operational and strategic levels. From a local government perspective, it seems unlikely they would be regarded as credible partners for undertaking any significant affordable housing initiative.

This could change if there were a serious government backed initiative to build a credible third sector. So far, notwithstanding the Housing Innovation Fund, that does not appear to be the case. Such an initiative would need to set quite significant targets for the growth of provision in the third sector and would need

to be backed not just by funding but through provision for capability building and measures to enable quick stock buildup, such as stock transfer.

Council backed community-based housing providers

The likelier source of development of a credible third sector is through council backed community-based housing providers. A recent example is the Queenstown Lakes Community Housing Trust which is clearly intended to be a major player in the Queenstown Lakes housing market, concentrating on increasing the supply of affordable housing. At least one other council is currently in the process of establishing an affordable housing trust.

Common factors include:

- Appointing trustees with a wide range of community and business experience and a high level of capability.
- Selecting trustees on the basis of "fitness for purpose" and against a clear expectation of what is required.
- Ensuring that the trust will have access to a significant level of resources, not necessarily from the council itself but as the result of Council intervention.

Design of the structure for this type of community-based initiative requires a great deal of care. The entity being created is intended to be in existence for many years. The design of key elements such as trustee appointment and reappointment processes, public accountability and the like cannot simply rely on the integrity of current trustees etc as a means of ensuring long-term viability. Fortunately, there are precedents which handle this quite well.

Another question is the nature of the ongoing relationship with the council. This will normally be significant as most councils will be unwilling to provide substantial long-term support for an entity over which it cannot exercise any control. Again, there are now well settled means for achieving this without compromising the governance responsibilities of trustees or board members.

Finally, performance matters. Although community-based housing trusts will not have a statement of intent obligation to the Council, the constitutional arrangements should include adequate provision for prospective accountability - telling their community what they intend to do, and ensuring that performance is appropriately measured and reported.

5. Regional Councils and the Regional Policy Statement

Prior to the Local Government Act 2002, regional councils were generally restricted to catchment management and resource management activities (some, such as Auckland, had other functions such as regional parks). There was even doubt as to whether regional councils could play any part in regional economic development activity. Some thought they could, and did. Others thought they couldn't, and didn't.

The new Act gave regional councils the same range of legal powers as territorial local authorities with the proviso that, if the regional council wanted to undertake an activity which a territorial local authority in its region already undertook, or was planning to undertake, it had to go through a process of negotiation/mediation to secure the right.

One consequence of the new legislation is that regional councils are now feeling much more confident in taking the lead on matters which have a clear regionwide impact. This includes regional level economic development (where the government itself has helped set the scene by restructuring its economic development policy generally so that it will only deal with local government regions, rather than the smaller "regions" which previously applied).

The Resource Management Act originally provided that both regional and district plans not be inconsistent with the provisions of the regional policy statement. This has changed so that both regional and district plans must now "give effect" to the regional policy statement. In appearance, this is a much more directive requirement with the apparent potential for a regional council to exercise quite close control over the planning decisions of territorial authorities within its region.

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Applying the new "give effect" obligation is not likely to be feasible unless there is a close working relationship amongst the different councils. Attempting to force a regional view on a reluctant territorial authority through the "give effect" provision would almost certainly result in a stand off and an inability to make any kind of progress.

⁵ This power is constrained by a provision in Schedule 1 of the RMA which requires that the triennial agreement must include an agreement on the consultation process to be used by the affected local authorities in the course of preparing a proposed policy statement or a variation or change to a policy statement or in reviewing a policy statement. In the absence of agreement, there is provision for mediation and, finally, for the Minister of Local Government to make a binding determination (the way the legislation was drafted implies that this requirement does not come into effect until after the next local body elections. Good practice would suggest observing it prior to that date).

Regional councils already have a strong interest in issues which impact on affordable housing, including responsibilities for air and water quality, regional land transport policy, sustainability and environmental management generally including, through the regional policy statement, setting the parameters for the territorial local authorities' district plans.

In a number of regions, the regional council will be the logical leader in the development of affordable housing strategies. One reason is the spillover effect across territorial local authority boundaries. If one territorial local authority develops an affordable housing strategy which is significantly different from that developed by a neighbour (or significantly different because the neighbour has not developed one), there is a very real risk of market distortion as developers and intending homeowners choose amongst different but adjacent jurisdictions.

5. Strategies that Work When Working with Councils

First, understand your partner's sensitivities and history. Three years ago Housing New Zealand Corporation was involved in a series of workshops presenting the Housing Innovation Fund to local government. At one meeting which included mayors, chief executives and senior managers, the Housing New Zealand presenter was asked to explain "why the difference between the local government and community streams?". The answer? "Local government has ratepayers". Decades of local government suspicion of central government's intentions was confirmed - the audience had just been told that the Housing Innovation Fund was really just another device for offloading costs onto local government!

Next, understand local government's issues. The constraints councils currently face because of public resistance to rates increases is very real. So is the range of competing demands on local authority budgets, especially for major infrastructure. A current issue in local government funding is the likely downturn in the property market as many local authorities have committed to infrastructure programmes based on optimistic projections of the expected revenue from development contributions.

Work with them to understand what they might be able to do with a minimum impact on their ratepayers. What can be done to streamline consent processes? How can Housing New Zealand Corporation's expertise assist in dealing with other government agencies such as the Department of Building and Housing? Can you identify possibilities amongst current council assets which could be freed up in support of affordable housing at relatively minimal cost to the ratepayer?

Be a respected source of expertise. Like anyone else, local governments are much more responsive to people who can help them solve a problem than to people who will create a problem for them. Some examples:

- A number of councils are considering the development of affordable housing strategies, but reluctant to commit (partly because of the provisions in the current Affordable Housing Bill). Find out how Housing New Zealand Corporation could make it easier - how can your resources, knowledge and experience assist?
- As already signalled, the likely growth area in community-based housing provision will be through local government enabled community or affordable housing trusts. Getting these "right" is a highly complex task. Few, if any, local authorities have the mix of experience and expertise required to put in place a well designed and well structured community housing trust. Should Housing New Zealand Corporation be developing a template to assist local authorities?

The older persons housing time-bomb

Most older persons housing currently in council ownership was built some 30 or 40 years ago. This not only means that much of it is overdue for major refit, it raises other issues as well including:

- It was built to acceptable minimum standards in a world which had different and lower expectations (for example about whether it should be possible for an older person to have a grandchild to stay). It is likely that the acceptable current minimum standard for accommodation would at the very least be a large one-bedroom unit and more likely a two-bedroom unit (consider the standards which the Corporation itself is applying in the refit of the housing purchased from the Auckland City Council).
- The original tenants probably had a life expectancy of five years or so. Today that is likelier to be 15-20 years - what provision should be made for someone facing that duration of tenancy?

Generally, councils are very aware of the problems which exist within their older persons housing portfolios but very unsure about what should be done. Disposal to a third party does not provide a solution - no purchaser will take over a non-viable portfolio except with adequate financial arrangements to deal with problems at the time of takeover (there is an argument for transferring most portfolios into a community-based management and possibly ownership arrangement, but not without sorting out the current problems first). Many appear to be operating on a "business as usual" basis spending what they think they can afford on a degree of upgrading, and hoping that the problem will go away.

Understand the creative potential within local government

New Zealand local government has a very wide and flexible range of funding powers, as compared with their equivalents elsewhere. Despite the current concerns over rates and local government expenditure, there is room for some quite creative use of those funding powers to help address housing issues.

As an example, the Energy Efficiency and Conservation Authority is currently introducing a loan-based subsidy scheme targeted at improving the energy efficiency of New Zealand homes. In broad terms, EECA will meet the first three years interest cost, but expect the home owner to repay the capital (and the individual providers of energy efficiency packages to organise the loan finance).

It notes that there will be a very real difficulty for a number of its priority households. Many will not be able to afford the cost of repaying the capital, especially as it is likely to be over a relatively short term. EECA wants a home equity release option. It has been made very clear that referring older people to a private sector reverse mortgage provider is totally unacceptable.

Local government is providing an option. A group of councils, linked together through what is known as the rates postponement consortium, already offer older ratepayers the opportunity of postponing their rates indefinitely (in practice till sale or death) on a very cost-effective basis. Those councils have developed an option, using a targeted rate and rates postponement, which will provide the capital component of the loan package (within the district of councils that currently belong to or in future will join the rates postponement scheme).

This is being welcomed by EECA, and those advocacy groups for older people who have been involved in consultation, as a very effective solution for older homeowners whose houses do need retrofitting, more energy-efficient heating etc.

The same approach could be put in place to facilitate ongoing maintenance and minor alterations to older people's homes as a means of making it easier for them to "age in place". The benefits should include maintaining New Zealand's housing stock, and taking pressure off other parts of the housing market. Councils themselves will not want to get actively involved in facilitating the maintenance and minor alteration activity - that role more properly belongs with an agency such as the Corporation - but have technical capabilities needed to handle the funding side. Could there be a partnership in the making?

6. Housing New Zealand as a Council Ally

Internationally, especially in England, there has been considerable experience of partnership working between central government agencies and local authorities. A number of themes come through which are almost certainly relevant in New Zealand also.

First, the language of partnership is often misused. Partnership carries with it implications of mutuality, shared decision-making, shared responsibility, and each partner bringing to the partnership a mandate enabling it to make decisions. Too often central government agencies have used "partnership" to mean "we want to work with you on our terms", have failed to ensure that their representatives have a decision-making mandate, and have not always sorted out their side of the resourcing issues.

The lesson? If you want a positive response from councils be very clear about what you are proposing, the commitments this requires from you, and your ability and willingness to make those commitments.

Next, there is a very real but often un-recognised attitudinal issue which can get in the way of effective working relationships between central government agencies and local government. This is the organisational arrogance which all too often is a feature of the attitude of higher tiers of government to lower tiers. New Zealand is not alone in this; indeed New Zealand is far from being the worst offender. It is, though, a very real issue and one which can quite effectively derail any potential of building an effective working relationship.

The better approach is to respect your potential partners for the skills and experience which they have - it may be different from your own but that makes it all the more important. Remember, if you want to be an effective ally, it is hard to beat starting a relationship on a basis of mutual respect.

Look for ways to be helpful, but don't impose your help. There could be a whole range of reasons for a council's reluctance to engage with your great idea at the time you put it forward. For example:

- The council simply does not have the capability/capacity to give it the commitment it requires.
- It may conclude that there are political risks which it is not prepared to take on at the present time, perhaps because of apparently unrelated political issues it is already dealing with.
- It may come at the wrong time in the council's own planning and accountability cycle - councils will often feel quite constrained about their ability to act depending on whether appropriate provision has been made in the current LTCCP/annual plan.

The Affordable Housing Bill

Local government seems generally sympathetic to the objectives which the government is trying to achieve - most councils recognise that housing affordability is a serious social and economic issue for them and their communities. They do, however, have some concerns with the Bill itself:

- The possibility it will raise public expectations that local government can and should mitigate problems of affordability.
- Problems of compliance and complexity in the development of strategies.
- Compliance costs/cost shifting.
- The viability of some of the proposed initiatives.

Raising public expectations

The Bill has attracted considerable public attention. This can be expected to continue as it passes into legislation, especially during an election year. From a local government perspective there is a very real risk that the public will expect to see council-based initiatives to improve housing affordability. The risk for local government is being caught between a rock and a hard place - between a public which expects an increase in housing affordability as the result of local government action, and a public which is already demanding that local government restrict its own expenditure.

Problems of compliance and complexity in the development of strategies

A number of councils have already developed or are considering the development of affordable housing strategies. The provisions in the Bill would effectively require them to comply with a process which looks compliance cost intensive. To quote from the submission of one council to the select committee:

There is nothing in this Bill that states that a Territorial Authority has to develop an affordable housing policy, but if a Territorial Authority does choose to explore one, then the Bill is *very* prescriptive as to the form that this must take.

Rather than promoting the development of effective affordable housing policies, the prescriptive nature of this Bill may actually delay their development. Territorial Authorities who are considering developing an affordable housing policy may be tempted (or even advised) to delay starting this until the Bill has been passed so that they will know exactly what form their research and policy development will "have to" take before they start. Territorial Authorities who have already started developing a policy may find that they have to re-start the whole process in order to meet the requirements of this Bill. And most significantly, it may even render existing housing research and policies (which may not have followed the exact process outline in this legislation) as void.

The Bill should seek to encourage Territorial Authorities to develop Affordable Housing policies, not create situations that disadvantage those who have already taken the initiative in this area.

Compliance costs/cost shifting

The local authority already quoted has identified a number of compliance costs and cost shifting issues which cause a very real concern. It has this to say in its submission:

There are costs to Territorial Authorities associated with the implementation of this Bill. These include costs both in the initial development of the policy, including:

- the costs of commissioning a detailed assessment of local housing needs in accordance with section 8,
- the cost of carrying out an analysis of the various options that must be considered in accordance with sections 10 and 11,
- the costs of developing the draft policy in accordance with section 16,
- the costs of consultation on the draft document in accordance with section 17, and
- the cost of publicly notifying the final policy in accordance with sections 20,

and in the ongoing implementation of it, including:

- the additional consenting and monitoring costs, (associated with sections 11 and 28-30),
- the costs associated with additional consultation, (associated with sections 22),
- the costs of potential legal challenges (associated with sections 24-27),
- the cost of ongoing monitoring, amending and reviewing the policy, (associated with sections 27 & 32-33),
- the cost of retaining, developing and/or monitoring the affordable housing stock, (associated with sections 13-14 & 30), and
- the potential loss of revenue to fund other essential infrastructural service (associated with section 12.)

The costs to Territorial Authorities associated with developing and implementing an affordable housing policy under this bill seem to be severely under-estimated in the explanatory notes and there is no attempt made to explore the impact that carrying this cost would have.

Rates remission, financial assistance and excusing part or all of a development contribution payment are all very real costs to a local authority. In practice, it would necessarily mean an equivalent increase in the authority's general rate. It is also likely to impact, most heavily, on those local authorities which are facing the greatest development pressures - and these are typically the local authorities which are also facing the strongest pressure from their publics on rating matters.

Viability

There is also quite widespread scepticism about whether initiatives such as inclusionary zoning, or other planning interventions, will do anything to alleviate the overall difficulties of affordability. A number of councils are aware of the equivocal nature of the overseas experience, with success often claimed in terms of number of units developed, rather than the impact on affordability within the local housing market, or who finally bears the cost (recognising that the immediate financial impact and the ultimate economic impact are often quite different things).

General

There are other concerns coming through as well. They include:

- The fact that the Bill appears to do nothing to encourage the emergence of a robust third sector in housing provision, other than the very limited provisions in clauses 30 (5) and 30 (6).
- The relatively narrow focus of the Bill could lead local authorities to take a similarly narrow focus to the housing policies they subsequently develop.

Local government understands the political constraints within which legislation of this kind is developed. However, when looking at it from the perspective of encouraging a closer relationship between Housing New Zealand Corporation and local government, the immediate question that springs to mind is, why is legislation of this kind not jointly developed between government agencies and local government, especially given Housing New Zealand Corporation's clear interest in working more closely with the local government sector?