

Is there a future for council provided social housing? A background paper.

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Given the urgency of New Zealand's social housing crisis it is difficult to understand why local government, historically our second biggest provider of social housing, is not playing a bigger role. Councils in New Zealand began providing social housing, that is, housing at less than market rents, for almost a century and from the 1940s to 1991 was involved in a highly successful housing partnership with central government. Yet despite its track record they have largely been ignored in the current crisis. Councils are unable to become community housing providers (CHPs) (and therefore offer tenants income related rent subsidies (IRRs)) even though eligibility to receive the subsidy exists for both for-profit and not-for-profit organisations, even international firms.

This paper has been prepared to examine the reasons why support for social housing providers is far from a "level playing field", given that it excludes local authorities, and why councils have found it so hard to argue their case. In doing so the paper considers the historical context, particularly the withdrawal of central government support for council social housing in 1991, and the decision to exclude councils from becoming CHPs in 2013. Of particular interest are the reasons why this exclusion continues, given that the government campaigned to remove it while in opposition.

Despite the goodwill between local and central government councils still cannot understand why they are prevented, by law, from applying to become community housing providers.

Two of the reasons suggested are the tendency of governments to rely on "one size fits all" solutions to public policy issues, and the problem of entrenched narratives, that is, loyalty (unconscious or not) to the policies of the outgoing government influencing the way in which problems and solutions are framed.

The issue from a local government perspective

At their July 2019 conference, faced with a deepening social housing crisis and growing waiting lists for their community and pensioner housing units, New Zealand's 78 councils voted in support of a remit, proposed by Wellington and Napier City Councils, asking that:

Local Government New Zealand, in conjunction with central government, urgently focus on the development and implementation of a broader range of funding and financing tools in respect of community/social housing provision, than those which currently exist in the housing needs space. These should include funding to support the operation, upgrade and growth of council housing portfolios and, where a council chooses, access to Income Related Rents for eligible tenants.¹

The remit highlighted the degree to which councils felt unsupported in their efforts to address growing housing need in their communities – an issue, which for many, began with central government's 1991 decision to abolish the social housing accord, a partnership which had resulted in the growth of a substantial social housing infrastructure designed to meet the needs of older citizens (pensioner housing). With reference to IRRs the remit was specific, the discrimination against local government should be removed and those councils that so chose should be able to access them.

Councils had expected better, and the remit indicated their frustration.

¹<https://www.lgnz.co.nz/assets/b669b814a0/2019-AGM-Remits.pdf>

In 2019 the Labour-led Coalition amended the Local Government Act 2002 (LGA 2002) to re-instate, as the purpose of local government, the promotion of social, economic, cultural, and environmental well-being, reversing a change made by the previous National-led government in 2012, seven years earlier.² It was no surprise that, a year later, in 2013, the National-led government chose to exclude councils from being community housing providers. The election of a new government in 2017, which had taken the step of re-introducing well-being as a purpose of local government, led to high hopes within local governments that their role as social housing providers might once again be recognised and supported. Hope was also based on the fact that housing is an essential aspect of well-being and that removing the discrimination preventing councils from applying to be CHPs requires an order in council.

However, not only are councils still waiting to be allowed to become CHPs (assuming they meet the required conditions) they now face an additional obstacle, the recently passed Residential Tenancies Amendment Act 2020. This legislation, for good reasons, reduces the grounds on which landlords can end a tenancy, however, in so doing it has removed the ability of councils to give notice to tenants whose income may have increased beyond the qualifying threshold. Being able to give such notice is essential to free up accommodation for those in greater need. Adding insult to this injury, the legislation makes an exception for Kāinga Ora and CHPs, both of which can legally end tenancies or increase rents when a tenant's income increases to a point at which they are less than 25 per cent of income.

Background

For much of the 20th Century many older residents shifted to local authority owned pensioner cottages as they became unable to live by themselves. Pensioner cottages were usually complexes that provided a level of collegiality and friendship for residents and where many domestic needs, such as gardening, lawn mowing and utilities, were looked after by the council as owner. Complexes tended to be scattered throughout towns and cities so that older citizens could stay in, or close to, the communities in which they previously lived.

Pensioner housing was a highly successful partnership with central government. Councils built and administered pensioner housing complexes making use of low interest loans provided by central government, in a totally non-partisan context. By taking care of older citizens the Housing Corporation (in its various incarnations) was able to focus on housing poor families and troubled individuals. The partnership came to an abrupt end in 1991 with the “mother of all budgets”, which saw a major reduction in central government spending. Following the removal of the low interest loans most councils questioned their ongoing role as social housing providers, with the result that the number of council-owned social housing units fell from about 15,000 in 1991 to around 12,000 today, despite a significant growth in the number of older citizens in the interim.³

When asked which functions would be better handled by local government than central government, the (then) President of the Municipal Association, Brian Elwood, immediately replied, housing (Bush 1981).

While 59 councils still own social housing portfolios, without support the number is likely to decline, indeed some councils are seriously considering it:⁴

² That amendment literally removed every reference to well-being in the legislation.

³ Almost certainly the number would have been smaller but for community opposition at proposals to exit, creating perhaps a worst-case scenario in which housing complexes were maintained but not renovated or expanded.

⁴ Although councils have gradually expanded eligibility beyond just older citizens, especially in the cities, more than 90 per cent of tenants continue to be 65 or older.

- June 2020, a Newshub article, “Councils say more new-builds not achievable without support”, quoted Kevin Petersen, manager of the Manawatu Community Trust, a council CCO, stating that the trust’s main obstacle to meeting increasing demand was “their inability to access the income-related rent subsidy (IRRS)”⁵.
- June 3, 2020, RNZ reported that “councils are warning (that) their inability to access a key government rent subsidy is stunting their plans for more public housing”⁶.
- Early June, 2020, Stuff described the financial crisis facing Wellington City Council’s social housing unit and highlighted the council’s frustration that their tenants cannot access IRRs unless the council transfers or sells the stock to a community housing provider⁷.

The problem was neatly summed up by Scott Figenshow, the then CEO of Community Housing Aotearoa, who described the funding system for community and local government housing as ineffective. “There’s also a human right to housing aspect. If you’re a resident and you actually meet the eligibility criteria for IRRs, shouldn’t you be able to access the IRRs regardless of who your landlord is?” (ibid).

For tenants to be eligible for IRRs their housing provider needs to be a registered community housing provider (CHP). To be a CHP an organisation must be registered as such by the Community Housing Regulatory Agency (CHRA). There is a catch, however, although the CHRA welcomes applications from both non-governmental organisations and for-profit companies it cannot consider applications from local authorities (unless they transfer their housing stock to an independent organisation, see below).

Being a Community Housing Provider

The designation of community housing provider stems from the Social Housing Reform Act 2013. That Act was designed to encourage the growth of the third sector to complement, if not replace, what was then the Housing New Zealand Corporation (now Kāinga Ora). The legislation gave tenants of CHPs the same access to IRRs as if they were tenants of Kāinga Ora.

Income related rents are a taxpayer funded subsidy that sets rents at 25 per cent of a tenant’s income, allowing CHPs to set rents at the relevant market level. To become registered as a CHP firms and NGOs are assessed against a series of standards which include their governance, management, financial viability, tenancy management and property and asset management expertise. The CHRA also requires its agencies to be “social landlords”, which, in addition to fulfilling their statutory duties as a landlord, includes responsibility to work for the best outcomes for their tenants. Amongst those responsibilities are helping tenants feel settled in their homes, become more connected with their communities and provide stable housing for the duration of their residents’ need.

New Zealand currently has more than 70 CHPs which can be trusts, incorporated societies and for-profit companies, but not local authorities. The local government exclusion states:

Local authorities and council-controlled organisations also cannot register. However, a subsidiary of a local authority or council-controlled organisation may apply to register as a CHP if it is operating at arm’s length. **The subsidiary must be genuinely operating**

⁵ <https://www.newshub.co.nz/home/new-zealand/2021/06/public-housing-councils-say-more-new-builds-not-achievable-without-support.html>

⁶ (<https://www.rnz.co.nz/news/national/443785/public-housing-councils-say-more-new-builds-not-achievable-without-support> 3/6/2021)

⁷ <https://www.stuff.co.nz/national/125318189/wellington-city-council-lobbies-government-for-help-with-social-housing-funding-hole>

independently from the parent as if not part of its corporate structure. This should be evident from its constitution, membership of its governing body, and its governance and financial management structures.⁸

The exclusion provides a back doorway for council tenants to access IRRs, at least those who qualify, although after eight years only one council, Christchurch City, has made use of it (Wellington City has indicated that it intends to explore the option.)⁹ The option requires that councils transfer their stock, by sale or lease, to an entity that is fully independent. Independence is defined in the CHRA's guidelines as "they are not under the control of the local authority, have separate governing bodies and management structures, as well as separate financial accounts, and do not pay dividends back to the LA."¹⁰ It is not an attractive option for local authorities and, as noted, only one council has so far exercised it. The reasons for this lack of interest are both political and operational. Political, as the transfers are ultimately a form of quasi-privatisation and consequently attract community ire, and operational, as establishing and supporting an independent trust is administratively costly and diminishes the ability of councils to respond quickly and innovatively to increased housing need. It is also important to note that becoming a CHP will not automatically solve the financial challenges facing a council's housing portfolio, as existing tenants are not eligible for IRRs, only new tenants, so that ongoing council subsidies are almost certainly required.

Why are councils excluded from becoming CHPs?

Accepting that the Social Housing Reform Act 2013 was intended to promote the growth of third sector housing providers (and arguably to allow central government to exit its role as a social housing provider and primarily focus on funding) it does not necessarily follow that local government should be excluded. And the reasons have never been properly articulated.

As it turned out it was not only local authorities that failed to understand the reason. At the LGNZ social housing forum, held in March 2016, officials explained the that it was because:

- councils had shown themselves to be poor landlords and had left their housing stock of deteriorate,¹¹ and
- councils lacked a long-term commitment to social housing, evidenced, apparently, by the number that had sold their social housing stock.

Both views are rather problematic, as neither is true of local government as a whole and the same could be said about central government's social housing performance. A more recent argument made by officials is that enabling councils to become CHPs creates a financial risk to the Crown because councils would use any surplus from their social housing investments to subsidize other activities (that is other public services) –the cross-subsidisation argument.¹² This argument reflects the CHRA's guidelines which state that for council tenants to qualify for IRRs their CHP must be financially separate and not pay dividends back to the local authority. As an argument for excluding councils from being a CHP this requirement is particularly problematic for the following reasons.

⁸ (<https://chra.hud.govt.nz/i-want-to-apply-for-registration/eligibility-criteria-and-exclusions/>)

⁹ Christchurch City Council established the Ōtautahi Community Housing Trust and transferred its housing to that trust which was then able to become a CHP which meant that new tenants could receive IRRs. Unfortunately for WCC, given the size of its operating deficit, only new tenants can access income related rents.

¹⁰ (<https://www.lgnz.co.nz/assets/In-background/c2c00f31fe/A-Regulatory-Framework-for-Community-Housing-Providers.pdf>)

¹¹ Hard to accept given the awful state of much of central government's social housing stock was in before the 2017 elections.

¹² Expressed in discussions between officials and the author in early 2021.

- as profit-making entities can be CHPs it is accepted that surpluses will be transferred to their owners in the form of dividends, owners who will not necessarily be based in New Zealand. It is not clear why the distribution of profits to shareholders should be more acceptable than use of surpluses to support other public services, like libraries,
- given the transparency governing local government finances, it is difficult to understand why the CHRA would find it difficult to track the path of any potential surplus a council might achieve. The way in which local roads are funded, using tied grants from Te Waka Kōtahi, has resulted in no apparent concerns.

Despite their originality, none of the putative reasons given to explain local government's exclusion are sufficient. Underpinning officials' attitudes is the problem of entrenched narratives. Entrenched narratives are those beliefs and assumptions that influence the way in which officials think about issues. They are a particular problem for new governments as their key advisers will have largely learned their trade under a different political leadership and in the case of councils' exclusion from the CHP framework the explanations given are largely *ex post* rationalisation.

A more accurate reading of the situation would be to interpret the exclusion as part of a wider agenda, one that sought to diminish the role of local government, especially in social policy. For example, legislative changes made at the same time included:

- amendments to the Local Government Act 2002 (LGA 2002) in 2010 to introduce a list of "core services". Social housing was not one of those core services. Also missing were social and economic development,
- amendments to the LGA 2002 in 2012 to remove the promotion of social, economic, environmental, and cultural well-being of communities in the present and for the future from the purpose of local government.

It should have been no surprise, given that minister who oversaw the removal of local government's well-being purpose was also the minister responsible for the Social Housing Reform Act 2013, that councils were excluded from being CHPs. It was a government that, at the time, was more focussed on reducing the cost of local government than exploring opportunities for improving community well-being. What is a surprise, however, is that the discrimination against councils being CHPs remains more than four years after the change in government, and the support the exclusion receives from officials.

What councils expected

Leading up to the 2017 parliamentary elections the three major opposition parties were strongly supportive of local government's social housing role. NZ First, for example, promised to increase councils' pensioner housing, while Labour signalled that building up its social housing stock was a "major priority". In a statement that recognised that councils were well-positioned to provide good, affordable public housing in their communities, Labour signalled that, if elected, it would;

work with councils and provide them with finance to do that, including the provision of funding at the "cheapest possible rate (on the condition that) councils committed to building units that they would not on-sell.¹³

In fact, Labour's housing spokesperson, the Hon Phil Twyford, was particularly bullish, explaining to a public meeting in Nelson that Labour was also keen to see councils get access to the income-related rent subsidy. While making it clear that Labour hadn't yet announced it as policy, he stated

¹³ <https://www.stuff.co.nz/national/politics/95385303/pensioner-housing-a-major-priority-for-labour--twyford>

that it was something they were looking seriously at. He also went on to admonish the National Government for the signal it had sent to councils to get out of public housing (“Pensioner housing a major priority for Labour”, 8/3/2017).¹⁴

Not surprisingly, councils, many of which had been doing little more than maintaining their pensioner housing portfolios since government assistance was withdrawn in 1991, saw the change of government as the light at the end of the tunnel. Yet, despite the housing remit and ongoing meetings with Housing ministers, little actual change has occurred, with ministers arguing that the cost of extending IRRs to councils is too costly. As recently as June 1, 2021, the housing minister, the Hon Megan Woods, stated that the government is not looking likely to change its policy regarding the rent subsidy and noted that “in 2018 the Ministry of Housing estimated if all council tenants became eligible for the subsidy, it would cost about \$175m per year”¹⁵. Minister Woods’ comment echoed statements made previously by her predecessors, the Hon Phil Twyford and the Hon Kris Faafoi, yet are they right?

Talking past each other

The advice given to the Minister of Housing, that allowing councils to be community housing providers would cost \$175 million, is based on the assumption that most, if not all, council tenants would receive the IRRs.¹⁶ Putting aside its accuracy, an unknown proportion of council tenants would not qualify because of their income, officials have interpreted local government’s request for support in a way that was not necessarily intended, illustrating central government’s problem when engaging with a sector as diverse as local government.¹⁷ The wording of the AGM remit, that a council, where it chooses, should have “access to Income Related Rents for eligible tenants” is ambiguous and can be interpreted in two ways, namely:

1. That councils want all their tenants to receive IRRs, including existing tenants regardless of eligibility; or
2. That councils should be treated the same as other organisations wishing to become CHPs, meaning that council applications would need to be approved by the CHRA, councils would need to meet the relevant criteria, and IRRs would be limited to new tenants, not existing ones.

It is not unreasonable for ministers to have baulked at the cost of option one, or be concerned about accountability, given that not all council tenants would or should qualify. While it is true that many councils would be overjoyed at the prospect of the housing minister opening their cheque book and providing the equivalent of a blank cheque, the advice officials gave to ministers offered the most expensive and clearly unacceptable interpretation (option 1). It failed altogether to inform ministers about the discrimination that has prevented councils from becoming CHPs on the same conditions as other organisations (option 2). In fact, removing the discrimination creates no additional costs to the government, as each application for registration should be considered on its merits, in the context of

¹⁴ <https://www.stuff.co.nz/national/politics/95385303/Pensioner-housing-a-major-priority-for-Labour-Twyford-1/2>.

¹⁵ <https://www.rnz.co.nz/news/national/443785/public-housing-councils-say-more-new-builds-not-achievable-without-support>.

¹⁶ In placing people in their social housing complexes local authorities set their own criteria which will not be the same as the criteria used to assess eligibility for IRRs. It is likely that the estimate cost of \$175m is too high.

¹⁷ Although LGNZ has argued for the removal of the restriction stopping councils from applying directly to the CHRA a number of councils, most notably Wellington City Council, have publicly argued that, for their housing portfolio to be sustainable, IRRs needs to be extended to all tenants. It is not easy for ministers to isolate themselves from the “background noise”, particularly when pressed by the media for immediate comment. In such situations the nuance tends to get lost.

housing need and the CHRA's annual budget. What it would do is give the CHRA a greater range of potential providers to choose from.

A problem appears to be that the question of whether councils should be able to apply to become CHPs has become dominated by the very real funding issues facing Wellington City Council's social housing portfolio. Wellington City's issues are very different to those faced by the majority of councils due to the nature of its social housing investment, the profile of the majority of its tenants, and its history (much of which originates from urban regeneration projects undertaken in partnership with central government).¹⁸ As a result, council tenants are paying materially more for rent than Kāinga Ora tenants in similar economic circumstances (the horizontal equity issues) and without being able to set market level rents the social housing activity faces ongoing deficits.¹⁹ Without central government assistance Wellington City Council is in an impossible situation, its options include:

- Continue to provide below market rents as at present (typically at 75 – 80 per cent of market rates) leading to increasing deficits – which will have to be paid by general council revenue at some point;
- Transfer the housing assets, and tenants, to an independent housing trust of some sort which will mean that new tenants who qualify will be eligible for IRRs. Apart from additional transaction costs, the council will have to subsidise the trust until the number of tenants on IIRs is sufficient to balance the budget;
- Reduce tenant's rents to what they would be if they received IIRs. This would address both the hardship and horizontal equity issues but the support of Wellingtonians would be required, and even if achieved it would ultimately let central government off the hook and risk and explosion of demand.

While ministers have been very willing to engage directly with local government leaders on affordable housing initiatives, more needs to be done to unpack the diverse nature of the issues surrounding social housing in order for appropriate policy solutions can be found. At the very least Wellington City's issues will need a bespoke solution.

Should councils be providers of social housing?

The simple answer is yes, but the nature and extent should vary according to local context, particularly the nature of housing demand and the role of other providers. It is essential, however, that any framework to support council involvement ensure that councils have the discretion to respond to the local circumstances, as social housing priorities will vary from place to place.

Removing the discrimination preventing councils from applying to be CHPs should create no additional cost to the government, as the Community Housing Regulatory Authority can be expected to assess each application for registration on its merits,

Yet it is not easy for central government, as working with councils involves considerable transaction costs. This is because there is no "one size fits all". Not only do local circumstances vary, so do local politics. In some districts, where Kāinga Ora and community housing providers are largely absent, the council might be the major provider, by itself or along with Iwi/Māori. Other councils may have

¹⁸ Only a minority of council tenants are "pensioners".

¹⁹ With more than 2,200 tenants Wellington City's housing portfolio stems from urban renewal projects undertaken with central government in the 1980s and involving housing blocks that involve significant capital investments, and consequently a major subsidy from the council, whereas as almost all other councils tend to focus on older citizens. Wellington City has asked for all its tenants to be given access to IRRs – an option that ministers consider too costly to extend to all councils.

taken the view that social housing is a central government responsibility, sold their social housing portfolios and prefer to take a land use planning and facilitation approach. And, of course, political priorities can change. Ultimately central government/Kāinga ora needs a housing protocol with each district that specified their relative roles and responsibilities.

At the very least there is no excuse for continuing with the discrimination that prevents those councils that wish from applying to become CHPs. Not only does the discrimination lack policy rationale it also undermines central government's own housing objectives by narrowing the pool of housing providers available to the CHRA. New Zealand has plenty of towns and villages with unmet social housing needs, and no CHP or Kāinga Ora presence, where local council, if able to access IRRs, could fill the gap. Removing the discrimination would also address the issue of horizontal equity and ensure that tenants in similar circumstances would pay similar levels of rent, regardless of their landlord. Abolition of the Order in Council that creates the discrimination should be a priority.

Elder housing

Elder housing, which constitutes more than 90 per cent of councils' social housing investment, requires a different funding approach to that available through the CHRA, which targets people with urgent housing need and often multiple disadvantages. Older citizens don't need the same wrap-around services that a typical CHP tenant would require; they tend to be long term; their well-being is enhanced by staying in the communities in which they previously lived; the private rental market is poorly suited to addressing their needs, and many of them will fail to meet the asset, if not income, thresholds required by the CHRA.

There is also a rapidly growing cohort of older renters reaching retirement age who, without the capital to access retirement villages, lack adequate housing options.

To address the needs of older citizens, councils need a form of support that will enable them to set rents and services, and local eligibility requirements, at levels appropriate to their particular housing contexts. One option is to re-introduce the type of assistance that which existed prior to 1991, which saw central government provide low interest loans to councils so that they could construct "pensioner cottages" throughout their districts. The need for a bespoke approach was recognised by the Hon. Phil Twyford, when Minister of Housing, who stated in correspondence to LGNZ:

I have directed officials to take a broader look at how local and central government can work together on public and affordable housing provision. I agree that opportunities between central and local government may exist beyond IRRs and the CHP model. Funding options other than IRRs are being considered as part of the work underway, including a potential capital fund for developing new housing supply (Hon P Twyford 27 September 2018).

Unfortunately, not a lot has occurred with officials still apparently working on options. Meanwhile, the pressure to address the supply of social housing, and in particularly the emerging problem of renters becoming older, is such that action is needed urgently.

Conclusion

In late April 2021 the Government launched its ministerial review into the Future for Local Government (FFLG). The scope of the review takes in local government's role and functions, partnership with Iwi/Māori, representation and governance, and funding and financing. The review panel is expected to report back to the Minister of Local Government in April 2023 with its recommendations. The triggers for the review include the proposed reforms of New Zealand's water services and resource management law – both traditional local government services. The

question of councils current and potential role in social housing is likely to be one that the panel will want to consider.

Some form of local government involvement, whether as provider or funder, is essential, as housing is not an issue central government can solve on its own. Also important is the need to both engage and align with Kāinga Ora and the increasing involvement of Iwi/Māori, and it is encouraging to see the emergence of innovative and collaborative models, such as in the Hawkes Bay. A recent survey undertaken by LGNZ looked at the degree to which councils are planning to increase their stock of social (and other) housing. In answer to the question, "how committed are you to expand your social housing investment", the survey found that about 30 per cent of councils are planning to increase supply, despite uncertainty over funding. The majority of councils, however, appear happy to maintain existing stock numbers with only a few intending to reduce their portfolios or privatise them (ideally to an existing community housing provider). Yet when asked how they would behave if they had access to support, such as IRRs, virtually all councils indicated a willingness to grow their social housing portfolios.

It is time for a proper dialogue between central and local government about finding the best ways of addressing the multiple social housing needs of our communities, as they are not all the same. For that dialogue to succeed central government must treat councils as an effective partner as opposed to a delinquent child to be listened to but not heard.

References

Bush, G (1981) *Local Government and Politics in New Zealand*, George Allen