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Affordable Housing & The Resource Management Act 1991

Introduction

A wave of housing unaffordability has washed over developed countries in recent decades, increasing interest in providing affordable housing for those who need it most. Aotearoa, New Zealand's largest city, Tamaki Makaurau Auckland, is frequently ranked as one of the least affordable cities in the world; furthermore, as of March 2024, the housing register, the waiting list for public housing within New Zealand has risen to over 25,000 (Ministry of Social Development, 2024) as rising costs of living ravage citizens. This leads to the question, what is holding back the provision of social housing development, and is it the Resource Management Act 1991 (RMA), the country's primary legislation governing environmental protection and urban development? This essay explores the definition of affordable housing under the New Zealand legislative framework and how the development of affordable housing is governed by the RMA, the Local Government Act 2002 (LGA) and the Kainga Ora Homes and Communities Act 2019 (KOHCA) before finally assessing whether it is the RMA that is holding back the provision of affordable housing.

What is Affordable Housing?

Housing Accords and Special Housing Areas Act 2013 (HASHAA)

Section 4 of the Housing Accords and Special Housing Areas Act 2013 sets out the purpose as to "enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts.", furthermore under Part 1, subpart 2 Section 14 (1) (d) it is specified that developments may be required to provide a number of affordable dwellings. The definition of affordable housing set out under this Act is 75% of the median price of a home (Greater Auckland, 2020). Arguably, however, this definition refers more to *housing affordability* rather than affordable housing itself.

Income-Related Rents (IRR)

The other definition for affordable housing within NZ, which this essay utilises, is that of IRRs. An IRR applies to social housing and defines *affordable housing* as 25% of a household's income. Under this scheme, social housing applicants' rents are calculated in relation to income and capped at an affordable level (Ministry of Social Development, n.d.) This definition closely follows the international consensus that housing costs are unaffordable when they make up more than 30% of a household's income (The Department of Communities and Justice, n.d.). Furthermore, this definition provides affordable housing for those who need it most and requires no deposit or set income, as rents scale with income levels.

The Need for Affordable Housing

For the year ending in June 2022, the rents for a quarter of renters in NZ exceeded 40% of their income, exceeding the affordability criteria used by this essay of 25%-30% (Statistics New Zealand, 2023). Furthermore, as previously stated, the waiting list for social housing has grown considerably in recent years and sits at over 25,000 as of March 2024 (Ministry of Social Development, 2024). Moreover, the wait time to be placed into social housing was 344 days as of April 2023 (Shivas, 2023). As market rents outpace wage growth, the need for affordable housing is growing stronger within New Zealand.

Resource Management Act 1991

Context

At the time of its passing, the RMA was a revolutionary piece of legislation, streamlining environmental management by consolidating multiple pieces of legislation under one, creating an integrated management system. The central tenant of the legislation was set out as sustainable management. The reforms leading to the passing of the RMA were fuelled by concerns about inefficiencies in the current system, which led to unnecessarily high development costs and poor environmental outcomes due to fragmentation.

Consolidation of Local Government

To achieve the sustainable management purpose of the legislation and create an integrated management system, local Government was transformed simultaneously through the Local Government Amendment Act 1989, as hundreds of local bodies were consolidated into less than a hundred Regional Councils and Territorial Authorities. The RMA also set out a hierarchical set of plans produced by the Central Government, Regional Councils and Territorial Authorities, which worked together to achieve sustainable management.

Section 5

The sustainable management purpose of the RMA is set in Section 5 and aims to balance the conflicting economic and social development objectives against environmental protection.

1. The purpose of this Act is to promote the sustainable management of natural and physical resources.
2. In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
 - a. sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - b. safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - c. avoiding, remedying, or mitigating any adverse effects of activities on the environment.

The sustainable management of resources under this definition requires enabling people to provide for their social, economic, and cultural well-being.

Simply put, providing affordable housing, in enabling people struggling with high housing costs to provide for their well-being, is an explicit purpose of the most critical legislation governing development in Aotearoa, New Zealand.

Furthermore, the hierarchical nature of the system means that CG and RCs can set a direction to be followed in dealing with resource management issues. However, all plans and policy statements are subservient to achieving the purpose of the Act, which, as set out, creates a basis for the provision of affordable housing.

Moreover, a standard line of thinking is that the central conflict at the heart of the RMA and Section 5 means that compromises must be at the expense of economic, social, and cultural well-being or the environment. However, multiple pieces of case law, including *King Salmon 2014* (New Zealand Supreme Court, 2014), have reinforced that both must be achieved simultaneously to achieve the purpose of the legislation. The question then remains whether the evident lack of affordable housing, as demonstrated by the growing housing register, is due to the RMA or other pieces of legislation.

Sections 30 and 31

S30 (1) (ba) requires "the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to housing and business land to meet the expected demands of the region" by regional councils. S31 (1) (aa) sets out a similar objective for territorial authorities. The requirement by RCs and TAs to implement policies that provide sufficient development capacity in relation to housing is an essential component of answering whether the RMA is holding back the development of affordable housing or other factors. Whilst affordable housing is not referred to explicitly, ensuring sufficient development capacity allows affordable housing providers to develop new housing under the RMA that can be made affordable under a scheme like IRRs.

National Policy Statement on Urban Development 2020

The National Policy Statement on Urban Development is a piece of legislation aimed at enabling the densification of urban cores centred around town centres and rapid transit stations, effectively increasing development capacity. Further policies, such as removing parking minimums, were set out, making the provision of affordable housing in denser forms possible. Due to the hierarchical nature of the planning systems, Auckland Council was required to implement these policies, increasing development capacity. (New Zealand Government, 2022)

Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (RMA-EHS)

The RMA-EHS 2021 set out the medium-density residential standard (MDRS). The MDRS was introduced around the same time as the NPSUD and went hand in hand with it, helping to increase development capacity. This was done by requiring a new residential zone, where up to three dwellings were permitted on a site; this new zone must be applied to most residential zones unless there was a qualifying matter. The new MDRS again made it easier for social housing providers to develop affordable housing under the RMA as it significantly increased development capacity.

Local Government

Community-well-being Purpose

The LGA 2002 sets out the framework for democratic and effective local Government. In Section 3, the Act initially set out the purpose of local Government as providing "for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach." This strongly aligned with the sustainable management purpose of the RMA in Section 5 and further laid the groundwork for local Government to play an essential role in providing affordable housing.

Local Government Act 2002 Amendment Act 2012

The Local Government Act 2002 Amendment Act 2012 replaced Section 3 (d) of the LGA and the promotion of social, economic, environmental, and cultural well-being by providing "for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions." This was a substantial legislative blowback to the possibility of local Government being involved in providing affordable housing.

Local Government (Community Well-being) Amendment Act 2019

The Local Government (Community Well-being) Amendment Act 2019 replaced section 3 (d) with the original writing, once again promoting sustainable development, opening the door to affordable housing and implementing policies to enable affordable housing.

Case Studies

Ōtautahi Community Housing Trust

Social Housing Reform Act 2013

Though in 2019, the LGA's community well-being purpose was reintroduced, and the door for affordable housing by local authorities was opened, the Social Housing Reform Act 2013 poses a significant challenge to such a prospect. The Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act 2013 sets out a framework for providing affordable housing not just by the central Government. Registered community housing providers can provide tenants with IRRs. However, local authorities are prevented from registering as a CHP (Reid, 2022).

Establishment of the Trust

In 2016, the Christchurch City Council established the Ōtautahi Community Housing Trust and transferred \$50 million of land and buildings to the trust (Ōtautahi Community Housing Trust, n.d.). In 2018, the trust received a 30-million-dollar loan to accelerate affordable housing development (Christchurch City Council, n.d.). The trust is a registered CPH and charity. All profits are reinvested into providing affordable housing for the community. The trust has delivered 143 homes, many of which used to provide IRRs (Edwards, n.d.).

The trust is an example of what could be possible if local authorities could play a more significant role in providing affordable housing. Once again, the RMA was not the limiting factor in this case study; instead, it excluded local authorities from being CHP, requiring establishing a separate body.

Queenstown Lakes District Council High Court Case

In 2010, the Queenstown Lakes District Council plan change 24, aiming to address the affordable housing crisis within the district, was appealed to the High Court. The High Court rejected the appeal and held that affordable housing falls under the provisions of the RMA (The High Court of New Zealand, 2011).

Auckland Unitary Plan Section 32 Report

A Section 32 report for the proposed Auckland unitary plan also examined the issue of affordable housing under the RMA and decided that increases in a development capacity, alongside the implementation of an inclusionary zoning scheme under the RMA, would help to increase the number of affordable units developed (Auckland Council, n.d.).

Queenstown Lakes Community Housing Trust

Sections 140 and 141 of the LGA

Sections 140 and 141 of the LGA 2002 restrict the local Government's sale of properties and estates, requiring retainment for the original purpose. However, the Minister of Local Government can approve a change where sales proceeds are consistent with the original purpose.

Transfer of land to the Queenstown Lakes Community Housing Trust

Arrowtown utilised this tool, and council land was transferred to Queenstown Lakes Community Housing Trust for a development comprising 20 affordable homes. In this case, the RMA was not the limiting factor in whether the development could proceed; instead, the LGA restricted the use of Council-owned land unless approved by a minister. (Cooper, 2019)

Is the RMA holding us back?

As has been demonstrated, a central conflict lies at the heart of the RMA in Section 5; setting out the sustainable development purpose as enabling communities to provide for their economic, social, and cultural well-being gives solid legislative backing for affordable housing. Furthermore, Sections 30 and 31 and subsequent reforms such as the NPS-US and MDRS require and have enabled sufficient development capacity for affordable housing development. Though the community well-being purpose of the LGA has been reintroduced into law, barriers such as Sections 140 and 141 of the LGA and the Social Housing Reform Act 2013 strongly limit the local Government's role in providing affordable homes. The provision of affordable housing is possible under the RMA, as demonstrated by the Tewa Banks development and the Ōtautahi Community Housing Trust. However, other legislation poses significant challenges to the development of affordable housing.

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