URBPLAN 713 - Housing and Shelter
Assignment 2 - Part 2: Affordability Retention Mechanism Report
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Assessing the Affordability Retention Mechanism in the Eastern Corridor Land Readjustment and Value Capture Programme

Introduction

The central challenge for any affordable housing programme is permanence. Affordable dwellings produced today may revert to market pricing within a generation if retention mechanisms fail. Asset sales under financial pressure, changes in subsidy policy, or deliberate divestment by future governments are all possible scenarios that need to be addressed. This report assesses the combined ground lease and covenant-on-title structure proposed as the retention mechanism for the Eastern Corridor Land Readjustment and Value Capture Programme. It examines the mechanism in detail, evaluates its structural strengths, identifies failure modes, and recommends safeguards. The conclusion is that the combination is substantially more durable than subsidy-dependent alternatives, but its long-term viability depends on the independent governance of the holding body and on legislative backing for the covenant instrument.

The Ground Lease Structure

The ground lease model separates land ownership from building ownership. Under the proposed structure, the public delivery agency (Kāinga Ora) permanently retains ownership of land assembled through the land readjustment process. Registered Community Housing Providers (CHPs) receive long-term ground leases at nominal rates and develop and manage housing stock above the ground. Households rent from the CHP at income-related rates.

This structure addresses the primary affordability problem at its root. A CHP providing rental housing in Auckland normally carries debt on both land and construction. Removing land value which can constitute approximately 30–50% of total development cost removes that debt from the CHP's balance sheet entirely. This enables structurally lower rents without depending entirely on the Income Related Rent Subsidy (IRRS). This is the key distinction from simple grant funding. Even if a future government reduces IRRS, a CHP operating under a ground lease can continue to provide sub-market rents because the largest single cost component, land, does not appear on its books.

Precedents confirm this logic. Ngāti Whātua Ōrākei's leasehold housing model in Auckland retains land in permanent iwi ownership while providing residential occupation through long-term leases.

The Banff Housing Corporation in Canada has maintained permanently affordable housing since 1990 through an identical ownership model (Austin, 2026b). Japan's Housing Corporation similarly acquired land within land readjustment areas and built social housing on consolidated parcels, funded by the development margin rather than general taxation (Matsui, 2019). The Social Housing Reform Act 2013 and the Urban Development Act 2020 together provide the legislative framework within which such a ground lease would operate in the New Zealand context.

The Covenant on Title

The ground lease protects against CHPs divesting land by limiting what they hold. It does not, however, prevent a future government directing the delivery agency to sell or reclassify the underlying land to non-affordable-housing uses. A covenant on title registered against the leasehold interest and held by an independent community trust as beneficiary provides a complementary layer of protection operating at the property title level.

The covenant would restrict the permitted use of the land to affordable housing provision meeting defined income criteria, consistent with the Queenstown HOPE methodology for income benchmarking (Austin, 2026a). The Nightingale Housing model in Australia demonstrates this approach in practice. Covenants on title restrict use to qualifying households and maintain affordable character regardless of changes in the originating developer's circumstances. The Wellington Community Housing Trust's 30-year affordability covenant provides a direct New Zealand precedent for binding affordable housing obligations through title instruments held by a community body (Austin, 2026b).

The critical distinction from the ground lease is that the covenant operates against the title itself rather than against the contracting party. If the ground lease holder changes, the covenant transfers with the land. This makes it resilient to institutional turnover in the delivery agency including the scenario, identified in Display 4, where Kāinga Ora's balance sheet constraints require transfer to a UDA Special Purpose Vehicle.

Failure Mode Analysis

An honest assessment of the retention mechanism requires confronting its points of vulnerability, consistent with the weaknesses identified in Display 3.

The first failure mode is independent trust governance failure. The covenant's insulation from Crown policy changes depends on the independent trust maintaining legal capacity and governance integrity across the programme's lifetime. If the trust is underfunded, captured by Crown interests, or dissolved, the covenant could be extinguished or rendered unenforceable.

Mitigation requires constituting the trust under the Charitable Trusts Act with a permanent endowment and constitutional constraints preventing Crown-initiated dissolution.

The second failure mode is covenant enforceability against the Crown. Private-party covenants are well-established in New Zealand property law. However, if Parliament were to direct Kāinga Ora to dispose of land through primary legislation, as occurred during state house sales in the 1990s, a covenant held by a private trust may not withstand Crown override. Mitigation requires an explicit provision in the Urban Development Act 2020 specifying that land acquired for affordable housing under this programme cannot be disposed of except for equivalent affordable housing purposes.

The third failure mode is IRRS reduction without sufficient ground lease buffer. The mechanism reduces but does not eliminate IRRS dependence. For the lowest-income Pacific households, those the programme is specifically designed to serve, even zero land cost may not make rents financially viable without subsidy. If IRRS is substantially reduced while the programme is operational, CHPs may face financial stress forcing renegotiation of lease terms or reduction in housing quality. Mitigation requires the Land Value Capture-generated CHP fund to include a contingency reserve component sized on a stress-test scenario of significant IRRS reduction, consistent with the risk identified under T4 on Display 4.

Conclusion

The combined ground lease and covenant-on-title mechanism provides a substantially more durable retention structure than IRRS-dependence alone. It removes the primary cost driver, land, from CHP financing, enabling structural rather than policy-dependent affordability. Its failure modes are real but manageable through independent trust governance, legislative backing, and Land Value Capture reserve provisioning. The mechanism's effectiveness has been demonstrated in New Zealand through Ngāti Whātua Ōrākei and the Wellington Community Housing Trust, and internationally through Japan, Korea, and Australia. The programme also operationalises the Crown's Treaty obligations as affirmed by the Waitangi Tribunal (2024), Article 2 duties to provide housing as a substitute for Kāinga, and Article 3 duties to achieve equitable outcomes . For Pacific peoples who bear housing deprivation at rates comparable to, and in some measures exceeding, those documented for Māori (Stats NZ, 2024). If the Eastern Corridor Land Readjustment and Value Capture Programme progresses to feasibility investigation under HAP-2, the ground lease and covenant structure is recommended as the preferred retention model, with the three mitigation measures above included as minimum conditions of programme design.

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