

# **Affordable Housing: Enabling Territorial Authorities Bill**

Government Bill

As reported from the Local Government and  
Environment Committee

## **Commentary**

### **Recommendation**

The Local Government and Environment Committee has examined the Affordable Housing: Enabling Territorial Authorities Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

The Affordable Housing: Enabling Territorial Authorities Bill provides territorial authorities who wish to address problems of housing affordability in their districts with the regulatory tools for this purpose. The bill enables territorial authorities to assess the amount of affordable housing in their districts, in order to develop affordable housing policies.

Affordable housing policies are those that promote the provision of housing that can be afforded by low- and moderate-income-earners, taking account of the need for a variety of housing sizes, tenures, and costs. The bill provides for public participation in the development

of affordable housing policies. It includes rights of objection and appeal for affected parties, and, in the case of a conflict between a district plan and an affordable housing policy, allows a wider right of appeal for parties with a public interest.

We recommend a number of changes to the bill as introduced. This commentary addresses the major issues considered and recommended amendments. It does not discuss minor and technical amendments.

### **Submissions received**

We received 78 submissions on the bill representing a range of interests, including councils, developers, and industry stakeholders, health providers, and not-for-profit organisations. The majority of submitters supported the introduction of enabling legislation for territorial authorities that wish to address housing affordability in their districts.

Local Government New Zealand and the 12 territorial authorities that made submissions were broadly in favour of the intent of the bill, but did not support the bill as drafted. Their main concerns were that the bill as introduced was overly complex and prescriptive regarding the processes for undertaking a housing needs assessment or developing an affordable housing policy, and that councils would incur significant costs as a result. As the bill's policy objective is to provide a workable tool for territorial authorities electing to develop affordable housing policies, we have tried to ensure that the concerns of local government are reflected in our suggested amendments to the bill.

Submitters also raised a number of matters regarding technical and logistical aspects of implementing the legislation. In addition, certain issues recurred in many submissions:

- proposals for the amendment of existing Acts to effect the bill's purpose, or ensure closer alignment with existing Acts
- perceived disruption of existing resource consents
- the appropriate court to hear appeals and the right of access to this court
- central Government support for territorial authorities in implementing the bill
- the view that the bill's provisions should be mandatory

- clarification of tax rules.

### **Amendments to the Resource Management Act to provide for affordable housing**

Some submitters proposed that the policy intent of this bill would be better achieved by amending existing legislation, particularly the Resource Management Act 1991 (RMA). The principles of the RMA make reference to enabling people and communities to provide for their well-being. This appears to offer scope for the development of affordable housing initiatives through the Act.

However, we were advised that at present the RMA provides no weighting in favour of social initiatives, and that substantial changes would be required to the mechanisms and philosophy of the Act in order to use it to implement the purposes of this bill. These changes would be likely to cause confusion as to the intended administration of the Act, particularly in relation to district plans and consenting, and would have potentially problematic implications for RMA case law.

Special purpose legislation, such as this bill provides, is considered a preferable way of giving local authorities a clear mandate and direction on the delivery of affordable housing.

### **Alignment with the Local Government Act**

Some submitters argued that the development of affordable housing policies by territorial authorities could be incorporated into the Local Government Act 2002 (LGA).

Again, we were advised that special purpose legislation is the preferred option. The bill provides detailed guidance to councils on the development of an affordable housing policy. While the LGA specifies various policies that local authorities must develop, it does not provide a similar level of detail, meaning that affordable housing would appear disproportionately important if it were included in the Act. Further problems of interpretation might arise because the bill's appeals and objections process is drawn from the RMA, and does not apply to any other policies developed under the LGA; and affordable housing principles would not fit within the structure of the Act, which has been designed to help territorial authorities understand their legal duties.

However, we recognise that the bill as introduced does not align with the LGA as effectively as it could, and recommend a number of changes to improve this alignment.

### **Definition of affordable housing**

“Affordable housing” is defined in clause 4 of the bill in terms of its occupants and price. The bill states that affordable housing is for people on low to moderate incomes, who have no, low, or moderate legal or beneficial interest in property. Such housing is priced so that the occupants can meet their housing costs and other essential living costs.

We received a significant number of submissions on the definition of “affordable housing”, with many submitters proposing changes to add detail to the definition or recommending that it be more specific in terms of income-to-housing-costs ratios. Others were of the view that the definition could be broadened to include matters such as the safety and sustainability of housing, its accessibility, and surrounding amenities.

We recommend that there be no substantial change to the definition of “affordable housing” in the bill. It has been kept deliberately broad to enable territorial authorities to develop their own definitions to respond to the circumstances of their particular housing markets. Specific concerns about affordable housing should be established through the housing needs assessment and incorporated subsequently into an authority’s policy.

We recommend the insertion of a new paragraph (c) in the definition to provide scope for future amendment to the definition. Under new clause 36(1)(aa), an Order in Council may be made to set criteria for determining what constitutes affordable housing, for the purposes of the definition in clause 4. The new paragraph (c) in the definition states that “affordable housing” must be within these regulatory criteria, should relevant regulations exist.

### **Collaboration between local authorities**

Clause 6 establishes what the bill does about affordable housing and social housing. Territorial authorities acting under any provisions in the bill are required to observe all the principles in section 14 of the Local Government Act 2002; but the bill as introduced requires

them to give first priority to section 14(1)(e), which states that a local authority should collaborate and co-operate with others when appropriate to achieve desired outcomes and use resources efficiently.

The bill as introduced gives this priority to section 14(1)(e) to expressly allow territorial authorities to work together on affordable housing if necessary, because housing markets may cut across territorial authority boundaries, and some authorities may wish to develop joint housing needs assessments and housing policies. We believe that giving priority to the collaboration principle in the bill is not necessary and may cause unintended confusion. Accordingly, we recommend that the reference to section 14(1)(e) be deleted.

### **Housing needs assessment**

The bill enables a territorial authority to assess the need for affordable housing in its district at any time. Consistent with the view of a number of submitters that the bill should be less prescriptive, we recommend a number of deletions from clauses 7 and 8, which refer to housing needs assessments. Some submitters argued that the needs assessment should be mandatory.

We recognise that different communities have different housing needs and the criteria employed should be robust and specific for each community. While territorial authorities may incorporate wider criteria into their methods of assessment, we believe that it is important that clause 8 include the following essential principles regarding what should be covered by an authority's method for assessing housing needs:

- a description of the current balance between supply and demand in the housing market generally and, if it is relevant, in different sectors
- the identification of the land available for housing development
- an estimate of the number of households that need more affordable housing and the number that are likely to need it in the reasonably foreseeable future.

We note that Housing New Zealand intends to develop guidance material for territorial authorities intending to carry out a needs assessment and develop an affordable housing policy.

**Matters to be covered in an affordable housing policy**

Clauses 9 to 15 address the matters that a territorial authority should include in its affordable housing policy. We mainly recommend that these clauses be shortened to include only key provisions, making them less prescriptive. The changes we recommend should simplify the process for territorial authorities that decide to use the bill, and offer them more flexibility. In addition, the work they are required to do to establish a policy would be supported by detailed guidance material that central Government intends to develop in support of the bill.

**Criteria for application of policy to development**

Under clause 10, a territorial authority must include in its policy the criteria that determine to which housing developments the policy will apply. Territorial authorities may adopt wider criteria if they wish, but we recommend the deletion of clauses 10(2)(c), 10(2)(d), and 10(2)(e), so that the criteria that must be considered regarding inclusion are as follows:

- the proposed location of the development
- the kind of development proposed
- the potential of the development to generate a need for affordable housing
- the desirability of the community having a variety of housing sizes, tenures, and costs.

We also recommend the deletion of clauses 10(3), 10(4), 10(5), and 10(6). We consider these subclauses unnecessary as the matters they provide for, such as specifying any type of development excluded from the policy, how the policy applies to redevelopments, and what information must be contained in the policy, are likely to occur anyway, and do not need to be included in primary legislation.

**Actions required of persons doing developments**

We recommend that clauses 11(4) and 11(5) be deleted and new clause 11(3)(d) be inserted. The effect of these amendments is that if the affordable housing policy required a person undertaking a development to give the territorial authority an amount of money, the policy would need to state only how the amount is calculated and when it must be paid.

### **Criteria for allocation and methods of retention**

We recommend that clauses 13(2), 13(3), and 13(4) be deleted. The policy would then need to state only the criteria to be applied to decide who is to be allocated affordable housing.

Clause 14 is intended to ensure that an affordable housing policy contains provisions so that affordable housing created under the policy remains affordable. Accordingly, we recommend the insertion of new clauses 14(2)(aa) and 14(2)(ab), so that a person doing a development would have to sell or rent the housing to a person who met the criteria required by clause 13, and a territorial authority, council-controlled organisation, council organisation, or trust that bought the housing could sell it only to a person who met the same criteria.

### **Process for making and updating affordable housing policy**

The bill as introduced contains a large amount of detail on how territorial authorities should develop a draft policy, consult on and adopt it, and amend it. We recommend that these clauses, 16, 17, 18, 19, 32, and 33, be deleted and the requirements to make, review, and amend a policy be consolidated into a single new clause 15A.

As well as simplifying the bill, we believe that these amendments would align the bill more closely to the LGA. Under clause 15A(2) a territorial authority must use the special consultative procedure to adopt an affordable housing policy. Clause 15A(4) requires that the policy be reviewed after the section 91 process of the LGA, which identifies community outcomes. Substantial amendments to the policy must follow the processes set out in clauses 15A(1), 15(A)(2), and 15(A)(3), while minor amendments must follow section 156(2) of the LGA, as if the policy were a bylaw.

### **Informing affected persons about decisions made under policy**

When a territorial authority made a decision under any of the provisions in its policy that reflected clauses 11 to 14, it would be required to give written or electronic notice to a person affected by the decision. We recommend the insertion of new clause 23(4) to clarify the intent of this clause. It provides an example for each of clauses 11

to 14 of the type of decision that would require notifying an affected person.

## **Objections and appeals**

Under clause 24(1) of the bill as introduced, any person could object to a provision in a territorial authority's affordable housing policy on any ground. We recommend that this clause be deleted. Instead we recommend that clause 24 be amended to preserve the right to object to a provision on any grounds, but to specify that the right to object would be held by a narrowly defined group of people. We therefore recommend that only persons who are entitled to object to a decision made under the policy be permitted to object to any provision in the policy on any grounds. This would mean that only a person doing a development, the owner of the land on which a person proposed a development, the owner of land bordering the land on which the person proposed the development, or a person affected by a decision and notified under clause 23, could object to any policy provision.

We recommend amendments to clause 25 to give territorial authorities flexibility in responding to objections. The bill as introduced specifies timeframes within which an authority would have to inform a person making an objection of the time, date, and place of the hearing of the objection, and whether it upheld, partly upheld or dismissed the objection. We recommend that these timeframes be deleted from the bill.

The persons listed in clause 25 as those who may object to a decision could also make an appeal to the Environment Court under clause 26, unless they were affected by decisions of territorial authorities on the authorities' own contributions or on allocation. The Environment Court is also the appropriate court, under clause 34, regarding conflict between a territorial authority's affordable housing policy and its district plan. We recommend the insertion of new clauses 34(2A), (2B), and (2C) to clarify that a person must draw any potential conflict to the attention of the territorial authority and that the authority must take all reasonable steps to resolve the matter, before the conflict is referred to the Environment Court. We recommend that clause 34(5) be amended in order that a person would not be able to appeal to the territorial authority and Environment Court concurrently. Under this clause, a person would have to wait for 90 days after giving notice



to a territorial authority about a conflict before being able to go to the Environment Court. We recommend the insertion of new clause 34(7) to require that if the Environment Court decides that there is a conflict, it must amend the policy, amend the district plan, or both.

Some submitters opposed the Environment Court provisions in the bill and argued that it would be more appropriate to rely on judicial reviews by the High Court. We were advised that using the Environment Court rather than the High Court would result in more expedient decision-making and lower costs for parties making appeals for the following reasons:

- the specialist expertise of the Environment Court
- the fact that judges in the High Court have differing legal experience, which might initially result in differing judgements
- the Environment Court's use of technical expertise on its bench to assist with complex matters
- the Environment Court's capacity to undertake this work and deal with cases more quickly than the High Court.

## **Covenants**

Clause 35 of the bill would void some covenants that are expressly designed to restrict the availability of affordable housing. We recommend that clause 35(1) be amended to read, "A covenant over land is void if one of its purposes is to stop the provision of affordable housing or social housing on the land." We believe this recommendation widens the range of covenants that might be captured by the bill.

We also recommend amendments to clauses 35(2)(a), (b), and (c) to make it clear that covenants would be voided if they prevented land being transferred to a private body that might facilitate the occupation of housing on the land by persons they select, provide housing to tenants on a subsidised basis, or establish public or institutional housing. This amendment would ensure that organisations such as IHC, community housing groups, and the Women's Refuge were covered by the bill.

## **Regulations**

We recommend the insertion of new clauses 36(1A) and (1B) to strengthen the consultation process for proposed regulations. Under

these clauses, the Minister of Housing would be required to consult any persons he or she considered able to give helpful advice on the content of the regulations, and then take the results of this consultation into account when recommending that the regulations be made. Having received advice to this effect from the Regulations Review Committee, we recommend that clauses 36(1)(a) and (b) be deleted, because it is undesirable to allow regulations to be made that could amend the primary legislation.

### **Amendments to Goods and Services Tax Act**

We recommend the insertion of new clause 40A, which would make consequential changes to the Goods and Services Tax Act 1985. There are two main effects of the amendments we recommend. Under new clause 40A(2), when a person undertaking a development made an affordable housing contribution payable to the territorial authority, the authority would be deemed to supply goods and services to the developer. Under 40A(3), when a contribution from a person doing a development was in the form of land, both sides of the arrangement would be charged at a rate of zero percent. These amendments should reduce compliance costs for all parties.

### **Amendment to the Local Government Act 2002**

We recommend an amendment to clause 42 of the Bill which would address concern as to how the affordable housing policy would link to the long term council community plan.

The proposed amendment would allow a high-level summary of the affordable housing policy to be included in the long term council community plan, and would not trigger the requirement of special consultation under the long term council community plan every time a minor amendment was made to the affordable housing policy.

### **National Party Minority view**

National is supportive of initiatives that will clearly result in housing being more affordable, particularly for those on low to moderate incomes.

We recognise that New Zealand has become one of the least affordable places in the world to buy, build, or rent a home. Even as house

prices begin to stabilise nationally, in most centres they are settling at values well over and above the servicing ability of the average household income. The pressures for those seeking quality housing continue to mount, with increasing mortgage repayments and rents leading to difficult trade-offs for families.

We acknowledge that it is the supply of housing that has driven up property prices just as it has driven up rents. National is concerned that the Affordable Housing: Enabling Territorial Authorities Bill does not meet this supply-side concern and will, in fact, provide disincentives for the provision of affordable housing.

Local authorities, particularly smaller ones, have told us that they are already struggling with their current statutory responsibilities and do not have the capacity or resources to undertake a housing needs assessment. Such a process imposes yet another layer of expectation and responsibility on them, another compliance cost, and another opportunity for delay in processing positive housing development opportunities. Council costs will simply flow through to ratepayers.

Builders and developers will inevitably recover any costs from being forced to provide a percentage of cheaper houses in their developments, or cash or land in lieu, from the other houses in the development. There will be no overall benefit to average housing costs. Worse still, this will add another area of dispute and contention in progressing subdivision approval. One way or another, costs will be passed right back to the first-home buyer.

National does support the intent in the legislation to void covenants that restrict the provision of affordable, public or institutional housing within a residential development. We do note, however, that exceptionally large-scale or high-density social housing developments require local community support to succeed. Therefore, community consultation and buy-in is essential.

This legislation does not address the real cost drivers of housing supply. Better meeting residential land needs, beating back over-regulation and compliance costs faced by builders, improving infrastructure provision, and streamlining the planning and consenting process are key. Attention also needs to be given to the high cost of borrowing money and the improvement of take-home pay which services mortgages and rents.

## **Appendix**

### **Committee process**

The Affordable Housing: Enabling Territorial Authorities Bill was referred to the committee on 11 December 2007. The closing date for submissions was 29 February 2008. We received and considered 78 submissions from interested groups and individuals. We heard 33 submissions, which included holding hearings in Auckland.

We received advice from The Housing New Zealand Corporation. The Regulations Review Committee reported to the committee on the powers contained in clauses 36(a) and 36(b).

### **Committee membership**

Moana Mackey (Chairperson)

John Carter (Deputy Chairperson)

Hon David Benson-Pope

Mark Blumsky

Hon Mark Burton (until 2 April 2008)

Jacqui Dean

Hon Marian Hobbs

Dr Russel Norman (from 1 July 2008)

Su'a William Sio (from 2 April 2008)

Hon Dr Nick Smith

Mētīria Turei (until 1 July 2008)

---

**Affordable Housing: Enabling Territorial  
Authorities Bill**

---

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

text deleted unanimously

---

*Hon Maryan Street*

# **Affordable Housing: Enabling Territorial Authorities Bill**

Government Bill

## **Contents**

		Page
1	Title	3
2	Commencement	3
<b>Part 1</b>		
<b>Meeting housing needs</b>		
3A	Act binds the Crown	3
4	Interpretation	3
5	Purposes	5
6	What this Act does about affordable housing and social housing	5
	<i>Territorial authority may assess need for affordable housing</i>	
7	Decision to assess	6
8	Method of assessment	7
	<i>What must be covered in affordable housing policy</i>	
9	Outcomes and objectives	8
10	Criteria for application of policy to development	8
11	Actions required of persons doing developments	9
12	Actions required of territorial authorities	10
13	Criteria for allocation	11
14	Methods of retention	11
15	Objections and appeals	12

**Affordable Housing: Enabling Territorial  
Authorities Bill**

---

	<i>How affordable housing policy is made and updated</i>	
15A	Making, reviewing, and amending policy	14
	<i>Territorial authority must communicate policy</i>	
20	Telling public about adoption of policy	15
21	Telling applicants for consents about policy	15
22	Telling affected persons about decision that policy applies	15
23	Telling affected persons about decisions on sections 11 to 14 matters	16
	<i>Objections and appeals</i>	
24	Who may object to what	17
25	Objections made to territorial authority	17
26	Appeals made to Environment Court	18
27	Effect on affordable housing policy of objections and appeals	19
	<i>Implementing affordable housing policy</i>	
28	Binding commitments may be required	21
29	No payment of compensation	22
30	Use of land and money	23
31	Policies must be aligned	23
	<i>Relationship with Resource Management Act 1991</i>	
34	Environment Court to decide	24
	<i>Covenants</i>	
35	Some are void	26
	<i>Regulations</i>	
36	Regulations	27
	<i>Transitional provisions</i>	
37	Building consents	28
38	Resource consents	28
39	Covenants	29
	<b>Part 2</b>	
	<b>Amendments to other enactments</b>	
40	Amendments to Building Act 2004	29
40A	Amendments to Goods and Services Tax Act 1985	29
41	Amendments to Housing Corporation Act 1974	30
42	Amendments to Local Government Act 2002	30

---

7A	Affordable housing policy	30
----	---------------------------	----

---

**The Parliament of New Zealand enacts as follows:**

**1 Title**  
This Act is the Affordable Housing: Enabling Territorial Authorities Act **2007**.

**2 Commencement** 5  
This Act comes into force on the day after the date on which it receives the Royal assent.

**3 Act binds the Crown**  
This Act binds the Crown.

**Part 1** 10  
**Meeting housing needs**

**3A Act binds the Crown**  
This Act binds the Crown.

**4 Interpretation** 15  
In this Act, unless the context requires ~~otherwise~~ another meaning,—

**affordable housing** means housing that—

- (a) is for persons living in households that—
  - (i) have low to moderate income; and
  - (ii) have no, low, or moderate legal or beneficial 20 interests in property; and
- (b) is priced so that the persons are able to meet—
  - (i) their housing costs; and
  - (ii) their other essential basic living costs; and
- (c) is within the regulatory criteria for determining what 25 affordable housing is, if regulations setting criteria exist

**affordable housing policy** means a policy that—

- (a) covers the matters described in **sections 9 to 15**; and
- (b) is adopted by a territorial authority



- building consent** has the meaning given to it by section 7 of the Building Act 2004
- building consent authority** has the meaning given to it by section 7 of the Building Act 2004
- consent authority** has the meaning given to it by section 2 of the Resource Management Act 1991 5
- council-controlled organisation** has the meaning given to it by section 6 of the Local Government Act 2002
- council organisation** has the meaning given to it by section 6 of the Local Government Act 2002 10
- covenant** includes a contract
- development contribution** has the meaning given to it by section 197 of the Local Government Act 2002
- district** has the meaning given to it by section 5 of the Local Government Act 2002 15
- district plan** has the meaning given to it by section 2 of the Resource Management Act 1991
- land** has the meaning given to it by section 2 of the Land Transfer Act 1952
- Minister** means the Minister of the Crown who is responsible for administering this Act under— 20
- (a) the authority of a warrant; or
- (b) the authority of the Prime Minister
- public notice** has the meaning given to it by section 5 of the Local Government Act 2002 25
- resource consent** has the meaning given to it by section 2 of the Resource Management Act 1991
- social housing** means housing for—
- (a) persons on low incomes:
- (b) persons with special housing needs: 30
- (c) persons whose disabilities mean that they need support or supervision in their housing
- special consultative procedure** has the meaning given to it by section 5 of the Local Government Act 2002
- territorial authority** has the meaning given to it by section 5 of the Local Government Act 2002. 35

## 5 Purposes

The purposes of this Act are to—

- (a) enable a territorial authority, in consultation with its community, to require persons doing developments to facilitate the provision of affordable housing— 5
  - (i) for the purpose of meeting a need for it that the authority has identified by doing a housing needs assessment:
  - (ii) in a manner that takes account of the desirability of the community having a variety of housing sizes, tenures, and costs: 10
- (b) void covenants ~~whose principal purpose is to stop that have, as one of their purposes, stopping~~ the provision of affordable housing or social housing.

## 6 What this Act does about affordable housing and social housing 15

- (1) Territorial authorities that want to find out whether there is enough affordable housing in their districts may do housing needs assessments. **Sections 7 and 8** provide for an assessment. 20
- (2) If the housing needs assessments show the territorial authorities that there is not enough affordable housing in their districts, they may make affordable housing policies. **Sections 9 to 15** describe the content of a policy.
- (3) The steps that the territorial authorities must take in making and communicating affordable housing policies are in **sections 16 15A to 23**. The steps are— 25
  - (a) ~~consulting the community on a draft:~~
  - (b) ~~considering the results of the consultation and other matters that affect the draft:~~ 30
  - (c) ~~adopting the policy:~~
  - (d) ~~communicating the policy:~~
- (4) Persons affected by the ~~policy, or its application in a particular case, application of the policy~~ may want to object or appeal. **Sections 24 to 27** deal with objection and appeal rights. 35
- (5) Territorial authorities need powers to implement their affordable housing policies. **Sections 28 to 31** state the powers.

- (6) Territorial authorities review and amend their affordable housing policies using processes that link into the Local Government Act 2002. **Sections 32 and 33** record this fact.
- (7) Territorial authorities have powers under the Resource Management Act 1991 as well as under this Act. **Section 34** deals with the relationship between the Acts. 5
- (8) Covenants ~~whose principal purpose is to stop~~ are void if one of their purposes is to stop the provision of affordable housing or social housing ~~are void~~. **Section 35** provides for this.
- (8A) Territorial authorities may include their affordable housing policies in their long-term council community plans, if they want to, but this Act requires them to include only a summary of the policy. 10
- (9) Territorial authorities doing actions referred to in **subsections (1) to (3), (5), and (6)** under this Act must observe all the principles in section 14 of the Local Government Act 2002 but ~~must give first priority to the principle in section 14(1)(e).~~ 15

*Territorial authority may assess need for  
affordable housing*

- 7 **Decision to assess** 20
- (+) A territorial authority may decide to assess the need for affordable housing in its district at any time.
- (2) The authority may decide to do the assessment—
- (a) in conjunction with its use of the special consultative procedure under section 93(2) of the Local Government Act 2002 to adopt a long-term council community plan: 25
- (b) in conjunction with its use of the special consultative procedure under section 93(5) of the Local Government Act 2002 to amend its long-term council community plan: 30
- (c) in conjunction with its use of the special consultative procedure under section 102(2) of the Local Government Act 2002 to adopt a funding or financial policy:
- (d) at any other time that suits it.

## 8 Method of assessment

- (1) A territorial authority that decides to assess the need for affordable housing in its district must choose the method by which it does the assessment.
- (2) In choosing the method, the authority must have regard to— 5
- (a) the significance of the information it will obtain from the assessment:
  - (b) the costs of obtaining the information:
  - (c) the difficulty of obtaining the information:
  - (d) the extent of the authority's resources: 10
- (3) The authority must choose a method that gives the following results for the authority's district: that include—
- (a) a description of current housing market trends:
  - (b) a description of the key drivers underpinning the housing market trends: 15
  - (c) a description of the current balance between price and affordability in the housing market:
  - (d) a description of the current balance between supply and demand in the housing market generally and, if relevant, in different sectors: 20
  - (e) a description of current housing in terms of size, tenure, and costs:
  - (f) the identification of land available for housing development:
  - (g) an estimate of the number of households that currently need affordable housing and the number that are likely to need it in the reasonably foreseeable future. 25
  - (h) an estimate of the number of households that currently have particular housing requirements and the number that are likely to have them in the reasonably foreseeable future: 30
  - (i) a description of the geographical areas in which a need for affordable housing has arisen and is likely to arise in the reasonably foreseeable future.
- (4) The authority must use its best endeavours to make a full and balanced assessment and, for that purpose, may choose a method that gives a result that— 35
- (a) is additional to those listed in **subsection (3)**:

(b) is reasonable in the circumstances of the authority.

Compare: 2002 No 84 s 129(1); (3)

*What must be covered in affordable housing  
policy*

- 9 Outcomes and objectives** 5
- An affordable housing policy must state clearly the outcomes and objectives that the territorial authority wants to achieve by way of the policy.
- 10 Criteria for application of policy to development**
- (1) An affordable housing policy must state the criteria that the territorial authority uses to determine the developments to which it applies the policy determine which developments the policy applies to. 10
- (2) The criteria that the authority must consider for inclusion in its affordable housing policy are include— 15
- (a) the proposed location of the development:
- (b) the kind of development proposed, whether commercial, industrial, or residential, or a sub-group of commercial or industrial:
- (c) ~~the number of commercial, industrial, or residential sites proposed for the development:~~ 20
- (d) ~~the proposed residential floor area per dwelling in the development:~~
- (e) ~~the proposed floor area of a commercial or industrial building in the development:~~ 25
- (f) the potential of the development to generate a need for affordable housing:
- (g) the desirability of the community having a variety of housing sizes, tenures, and costs.
- (3) A policy may state a criterion that— 30
- (a) is not listed in **subsection (2)**:
- (b) is reasonable in the circumstances of the territorial authority.
- (4) The policy must also state whether any kind of development is excluded from the policy. 35

- (5) The policy must also state how the policy applies to redevelopments.
- (6) The policy must state enough details about each criterion, and the matters referred to in **subsections (4) and (5)**, to give a person doing a development a reasonable idea of whether or not the policy applies to the development. 5

### 11 Actions required of persons doing developments

- (1) An affordable housing policy must state what the territorial authority requires a person doing a development to which the policy applies to do to facilitate the provision of affordable housing, if the person is doing a development to which the policy applies. 10
- (2) Without limiting what the policy may state, things that the authority must consider requiring the person to do are policy may state that the person must do include— 15
- (a) including a proportion of affordable housing in the development:
  - (b) including a proportion of affordable housing in another development that the person is doing or is to do:
  - (c) including in the proportion of affordable housing a particular kind of housing: 20
  - (d) giving the territorial authority some land in its district:
  - (e) giving the territorial authority an amount of money.
- (3) If the policy states that the person may be required to do any of the things listed in **subsection (2)(a) to (d)**, the policy must also state the following:— 25
- (a) for **subsection (2)(a) and (b)**, details of how the proportion is calculated:
  - (b) for **subsection (2)(c)**, details of the particular kinds of housing that may be required: 30
  - (c) for **subsection (2)(d)**, details of how the amount and location of the land are determined:
  - (d) for **subsection (2)(e)**, details of how the amount is calculated and when the amount must be paid.
- (4) If the policy states that the person may be required to give the territorial authority an amount of money, the policy must also— 35
- (a) state details of how the amount is calculated:

- (b) state when the amount must be paid, which may be—
- (i) when a consent authority grants the person a resource consent for a development in the territorial authority's district:
  - (ii) when a building consent authority or the territorial authority grants the person a building consent for a development in the territorial authority's district: 5
  - (iii) any other time:
- (5) If the policy states that the person may be required to give the territorial authority land or money, it must also state how the authority— 10
- (a) ensures that the land or money is used to provide affordable housing:
  - (b) demonstrates that the land or money is used to provide affordable housing: 15
- 12 Actions required of territorial authorities**
- (1) An affordable housing policy must state what the territorial authority may do to help a person ~~doing a development to which the policy applies~~ to facilitate the provision of affordable housing, if the person is doing a development to which the policy applies. 20
- (2) Without limiting what the policy may state, things that the ~~authority may consider doing are~~ policy may state that the territorial authority may do include— 25
- (a) excusing the person from paying some or all of the person's development contribution under its policy on development contributions:
  - (b) giving the person a density bonus:
  - (c) giving the person financial assistance under an applicable funding or financial policy: 30
  - (d) giving the person rates remission under its rates remission policy:
  - (e) giving the person rates postponement under its rates postponement policy. 35
- (3) If the policy states that the authority may do any of the things listed in **subsection (2)**, the policy must also state details of—
- (a) the nature of the thing:

- (b) the circumstances in which the authority may do the thing;
- (c) the conditions subject to which the authority may do the thing.
- 13 Criteria for allocation** 5
- (+) An affordable housing policy must state the criteria to be applied to decide who is to be allocated affordable housing.
- (2) The policy must state the following criteria:
- (a) that the income of a person's household is low to moderate: 10
- (b) that, if a person were allocated affordable housing, the person's household would be able to meet—
- (i) their housing costs:
- (ii) their other essential basic living costs:
- (c) that a person does not have a legal or beneficial interest in property of such value as to make it inappropriate for the person to be allocated affordable housing: 15
- (d) that, if another person in a person's household has a legal or beneficial interest in property, the combination of the relationship of the persons and the value of the property does not make it inappropriate for the person to be allocated affordable housing: 20
- (3) The policy must also state the method by which the authority determines whether the criteria listed in **subsection (2)** apply to a person: 25
- (4) An affordable housing policy may state a criterion that—
- (a) is not listed in **subsection (2)**:
- (b) is reasonable in the circumstances of the authority.
- 14 Methods of retention**
- (1) An affordable housing policy must state how affordable housing is to remain affordable in the event of resale or transfer subject to the affordable housing policy. 30
- (2) Without limiting what the policy referred to in **subsection (1)** may state, things that the policy may state are that—include the following: 35



- (aa) the person doing the development must sell or rent the housing to a person who meets the criteria specified in the provisions of the policy that reflect **section 13**:
- (a) the person to whom the housing is allocated must offer it first to the territorial authority or a council-controlled organisation, a council organisation, or a trust if the person decides to sell it: 5
- (ab) the territorial authority or a council-controlled organisation, a council organisation, or a trust that buys the housing must sell it to a person who meets the criteria specified in the provisions of the policy that reflect **section 13**: 10
- (b) the territorial authority or a council-controlled organisation, a council organisation, or a trust ~~owns~~ must own the housing subject to an occupation right agreement with the person to whom the housing is allocated: 15
- (c) the territorial authority or a council-controlled organisation, a council organisation, or a trust ~~owns~~ must own the housing jointly with the person to whom the housing is allocated. 20
- 15 Objections and appeals**
- (+) An affordable housing policy must state that persons affected by the application of the policy have rights to object and appeal.
- (2) The policy must set out **sections 20 to 26** for the information of readers: 25
- Territorial authority may prepare draft affordable housing policy*
- 16 Preparation of draft**
- (+) A territorial authority may prepare a draft affordable housing policy if— 30
- (a) it has assessed the need for affordable housing in its district under **sections 7 and 8**; and
- (b) its assessment shows that there is not enough affordable housing in its district. 35

- (2) The authority must use the information obtained from the assessment to prepare the draft policy.
- (3) The authority must work out the implications of the draft policy for—
- (a) the policies it has adopted under the Local Government Act 2002: 5
  - (b) its district plan.
- (4) The authority must set out in the draft policy—
- (a) provisions that reflect **sections 9 to 15**:
  - (b) the implications it has worked out under **subsection (3)**: 10
  - (b) a summary of the way in which the draft policy affects—
    - (i) the policies it has adopted under the Local Government Act 2002; and 15
    - (ii) its district plan.

**17 Consultation on draft**

- (1) A territorial authority that has prepared a draft affordable housing policy must use the special consultative procedure to consult on it. 20
- (2) The authority may use the special consultative procedure—
- (a) in conjunction with its use of the special consultative procedure under section 93(2) of the Local Government Act 2002 to adopt a long-term council community plan:
  - (b) in conjunction with its use of the special consultative procedure under section 93(5) of the Local Government Act 2002 to amend its long-term council community plan: 25
  - (c) in conjunction with its use of the special consultative procedure under section 102(2) of the Local Government Act 2002 to adopt a funding or financial policy: 30
  - (d) at any other time that suits it.

**18 Consideration of draft**

- (1) A territorial authority that has complied with **section 17** must consider the results of the consultation. 35

- (2) The authority may alter the draft policy to reflect its consideration of the results.

*Territorial authority may adopt affordable housing policy*

**19 Decision on adoption of policy** 5

A territorial authority that has applied **section 18** must—

- (a) adopt the affordable housing policy that emerges from applying the section:
- (b) decide not to adopt an affordable housing policy.

*How affordable housing policy is made and updated* 10

**15A Making, reviewing, and amending policy**

- (1) A territorial authority may start on the process of adopting an affordable housing policy if—
  - (a) it has assessed the need for affordable housing in its district under **sections 7 and 8**; and 15
  - (b) its assessment shows that there is not enough affordable housing in its district.
- (2) The territorial authority must use the special consultative procedure to adopt an affordable housing policy. 20
- (3) The statement of proposal required by the special consultative procedure must include—
  - (a) a draft of the policy containing provisions that reflect **sections 9 to 15**; and
  - (b) a summary of the way in which the draft policy affects— 25
    - (i) the policies the authority has adopted under the Local Government Act 2002; and
    - (ii) the authority's district plan.
- (4) An authority that adopts an affordable housing policy must review it after identifying community outcomes under section 91 of the Local Government Act 2002. 30
- (5) An authority that wants to amend its affordable housing policy in a substantial way may follow **subsection (1)** and must follow **subsections (2) and (3)**, but must not amend its policy in such a way as to stop it being an affordable housing policy. 35

- (6) An authority that wants to amend its affordable housing policy in a minor way must follow section 156(2) of the Local Government Act 2002 as if the policy were a bylaw.
- (7) An affordable housing policy may provide that an action described in the policy must or may be done by the territorial authority, a committee or other subordinate decision-making body of the territorial authority, or a member or officer of the territorial authority and may specify conditions applying to the doing of the action. This subsection does not limit or affect anything in the Local Government Act 2002.

*Territorial authority must communicate policy*

- 20 Telling public about adoption of policy**  
A territorial authority that adopts an affordable housing policy must give public notice of the adoption of the policy.
- 21 Telling applicants for consents about policy**  
(1) A territorial authority that adopts an affordable housing policy must ensure that the information described in **subsection (2)** is given to a person applying for—  
(a) a building consent:  
(b) a resource consent.  
(2) The information is—  
(a) where the person can obtain a written or electronic copy of the policy:  
(b) how the person can find out whether the policy applies to the person’s development.
- 22 Telling affected persons about decision to apply policy that policy applies**  
(1) This section applies to a territorial authority that decides to apply its affordable housing policy when a territorial authority decides that its affordable housing policy applies to a development under the provisions of its policy that reflect **section 10**.  
(2) The authority must give written or electronic notice to the following persons:  
(a) the person doing the development:

- (b) the owner of the land on which the person proposes to do the development:
- (c) the owners of land bordering the land on which the person proposes to do the development.
- (3) The notice must tell the persons about— 5
- (a) the decision:
- (b) how the persons can object to the decision.
- 23 Telling affected persons about other decisions under policy on sections 11 to 14 matters**
- (1) This section applies to a territorial authority that when a territorial authority makes a decision under any of the provisions of its affordable housing policy that reflect **sections 11 to 14**. 10
- (2) The authority must give written or electronic notice to the person to whom the decision applies affected by the decision. 15
- (3) The notice must tell the person about—
- (a) the decision:
- (b) how the person can object to the decision.
- (4) Examples of decisions to which this section applies are—
- (a) a decision about the amount of money that a person doing a development must give the territorial authority (a decision like this would be made under the provisions of the policy that reflect **section 11**): 20
- (b) a decision not to give rates remission to a person doing a development (a decision like this would be made under the provisions of the policy that reflect **section 12**): 25
- (c) a decision not to allocate affordable housing to a person (a decision like this would be made under the provisions of the policy that reflect **section 13**):
- (d) a decision that the person to whom affordable housing is allocated must offer it first to the territorial authority (a decision like this would be made under the provisions of the policy that reflect **section 14**): 30

*Objections and appeals*

**24 Who may object to what**

- (1) Any person may object to a provision in a territorial authority's affordable housing policy on any ground.
- (2) A person to whom notice is given under **section 22(2)(a)**, ie, a person doing a development, may object to the decision on any ground:—
- (a) may object to the decision on any ground; and
- (b) may object to a provision in the territorial authority's affordable housing policy on any ground.
- (3) A person to whom notice is given under **section 22(2)(b) or (c)**, ie, the owner of the land on which a person proposes to do a development or the owner of land bordering the land on which the person proposes to do the development, may object to the decision—
- (a) may object to the decision on the ground that the decision—
- (i) renders the land incapable of reasonable use; and
- (ii) places an unfair and unreasonable burden on the person; and
- (b) may object to the decision on any other ground; and
- (c) may object to a provision in the territorial authority's affordable housing policy on any ground.
- (4) A person to whom notice is given under **section 23**, ie, a person affected by a decision on a **section 11 to 14** matter,— may object to the decision on any ground:
- (a) may object to the decision on any ground; and
- (b) may object to a provision in the territorial authority's affordable housing policy on any ground.
- (5) No person may object under **section 25** to the existence of the policy.

Compare: 1991 No 69 s 85(2), (3)

**25 Objections made to territorial authority**

- (1) A person objecting under **section 24** makes the objection to the territorial authority.
- (2) The person must give the territorial authority a statement of the objection that—

- (a) contains reasons for the objection:
  - (b) is written or electronic:
  - (c) is given within the time described in **subsection (3)**—
    - (i) 15 working days after the date on which the person receives the notice given under **section 22** or **23**; or 5
    - (ii) a longer time that the authority allows.
- (3) The times are,—
- (a) for an objection under **section 24(1)**, within ~~15~~ working days after the date of the public notice under **section 20** or a longer time that the authority allows: 10
  - (b) for an objection under **section 24(2) or (3)**, within ~~15~~ working days after the date of the notice under **section 22** or a longer time that the authority allows:
  - (c) for an objection under **section 24(4)**, within ~~15~~ working days after the date of the notice under **section 23** or a longer time that the authority allows: 15
- (4) An authority that receives an objection must—
- (a) give ~~at least 5 working days~~<sup>2</sup> written or electronic notice to the person of the date, time, and place for the hearing of the objection: 20
  - (b) do 1 of the following within ~~20~~ working days after receiving the objection:
    - (i) dismiss it:
    - (ii) partly uphold it: 25
    - (iii) wholly uphold it:
  - (c) give written or electronic notice of its decision and the reasons for it within ~~15~~ working days after making it to—
    - (i) the person: 30
    - (ii) any other person the authority considers appropriate.

## 26 Appeals made to Environment Court

- (1) ~~A person who has objected under **section 24(1), (2), or (3)**~~  
The following persons who objected to the territorial authority under **section 25** may appeal to the Environment Court against the territorial authority's decision under **section 25**: 35
- (a) a person doing a development:

- (b) the owner of the land on which a person proposes to do a development:
  - (c) the owner of land bordering the land on which a person proposes to do a development:
  - (d) a person affected by a decision on a **section 11 or 14** matter. 5
- (2) The person must—
- (a) lodge a notice of appeal with the Environment Court in form 34 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003: 10
  - (b) lodge the notice within 15 working days after the date of the notice under **section 25(4)(c)** or a longer time that the court allows:
  - (ba) lodge the notice within—
    - (i) 15 working days after the date on which the person receives the notice given under **section 25(4)(c)**; or 15
    - (ii) a longer time that the court allows:
  - (c) serve a copy of the notice on the territorial authority.
- (3) The court must— 20
- (a) hear the appeal on the merits of the case:
  - (b) have regard to the decision that is the subject of the appeal:
  - (c) do 1 of the following:
    - (i) dismiss the objection: 25
    - (ii) partly uphold the objection:
    - (iii) wholly uphold the objection.
- (4) Part 11 of the Resource Management Act 1991 and regulations under the Resource Management Act 1991 apply to an appeal under this section. 30

**27 Effect on affordable housing policy of objections and appeals**

- (1) This section applies to an objection to a provision in a territorial authority's affordable housing policy under **section 24(1)**.
- (2) **Subsection (3)** applies if— 35
  - (a) a territorial authority dismisses or partly upholds an objection; and
  - (b) the person who objected does not appeal.



- (3) The territorial authority must,—
- (a) if it dismissed the objection, keep applying the policy:
  - (b) if it partly upheld the objection,—
    - (i) keep applying the policy, but in a way that reflects its decision: 5
    - (ii) follow sections 102(6), 93(4) and (5), 83, and 84(2) of the Local Government Act 2002 **section 15A(5)** as soon as is practicable to amend the policy to reflect its decision.
- (4) **Subsection (5)** applies if— 10
- (a) a territorial authority dismisses or partly upholds an objection; and
  - (b) the person who objected appeals.
- (5) The territorial authority must,—
- (a) if the objection and appeal are about part of the policy,— 15
    - (i) stop applying that part:
    - (ii) implement the court's decision on the appeal:
  - (b) if the objection and appeal are about the whole policy,—
    - (i) stop applying the policy: 20
    - (ii) implement the court's decision on the appeal:
- (5) The territorial authority must—
- (a) stop applying the provision:
  - (b) implement the court's decision on the appeal.
- (6) **Subsection (7)** applies if a territorial authority wholly upholds an objection. 25
- (7) The territorial authority must,—
- (a) if the objection was to part of the policy,—
    - (i) stop applying that part:
    - (ii) follow sections 102(6), 93(4) and (5), 83, and 84(2) of the Local Government Act 2002 **section 15A(5)** as soon as is practicable to amend the policy to reflect its decision: 30
  - (b) if the objection was to the whole policy,—
    - (i) stop applying the policy: 35
    - (ii) make a decision under **section 7:**
- (7) The territorial authority—
- (a) stop applying the provision:

(b) follow **section 15A(5)** as soon as is practicable to amend the policy to reflect its decision.

Compare: 1991 No 69 s 85(3)

*Implementing affordable housing policy*

- 28 Binding commitments may be required** 5
- (1) This section applies when—
- (a) a person—
- (i) applies for a building consent for a development in a territorial authority’s district; or
- (ii) has been granted a resource consent for a development in a territorial authority’s district; or 10
- (iii) both applies for a building consent and has been granted a resource consent for a development in a territorial authority’s district; and
- (b) the person is required by the territorial authority to do an action under its affordable housing policy. 15
- (2) The territorial authority may require the person to make a binding commitment to it that the person will take all practicable steps to ensure that the action is done.
- (3) The territorial authority may require only 1 binding commitment from a person who needs more than 1 consent for a development. 20
- (4) If the territorial authority requires the person to make a binding commitment to it, the territorial authority must be satisfied that the person is able to keep the binding commitment. 25
- (5) If the territorial authority requires the person to satisfy it of the person’s ability to keep the binding commitment, the means by which the authority requires the person to satisfy it must be reasonable.
- (6) The territorial authority must notify the building consent authority to which the person applied for a building consent and the consent authority that granted the resource consent of 1 of the following: 30
- (a) that the person is not required to make a binding commitment to the territorial authority; or 35
- (b) that—

- (i) the person was required to make a binding commitment to the territorial authority; and
  - (ii) the person has done so; and
  - (iii) the territorial authority is satisfied that the person is able to keep the commitment. 5
- (7) The territorial authority must not notify the building consent authority or the consent authority of **subsection (6)(b)(ii) and (iii)** until—
  - (a) the person has made the binding commitment; and
  - (b) the territorial authority is satisfied that the person is able to keep the commitment. 10
- (8) The building consent authority must not grant the consent, and the consent authority must prevent the commencement of the consent under the Resource Management Act 1991, until it receives notification from the territorial authority under **subsection (6)**. 15
- (9) Without limiting the form a binding commitment under this section may take, a binding commitment may take the form of a contract or deed, which could be supported by, for example, a bond, guarantee, indemnity, mortgage, or security interest under the Personal Property Securities Act 1999. 20

## 29 No payment of compensation

- (1) Land is not taken or injuriously affected only because an affordable housing policy exists. Consequently, the territorial authority is not liable to pay compensation only for that reason. 25
- (2) Land is not taken or injuriously affected only because of a provision in a territorial authority's affordable housing policy. Consequently, the territorial authority is not liable to pay compensation only for that reason. 30
- (3) Land is not taken or injuriously affected only because a territorial authority requires a person doing a development to do an action under the authority's affordable housing policy. Consequently, the territorial authority is not liable to pay compensation only for that reason. 35

Compare: 1991 No 69 s 85 heading; s 85(1)

**30 Use of land and money**

- (1) A territorial authority has the powers in **subsections (3) to (7)**, and no other powers, to deal with land or money given to it under its affordable housing policy by a person doing a development. 5
- (2) The powers in this section apply to all or some of the land or money.
- (2A) The authority may use the land or money to provide affordable housing.
- (3) The authority may use the land or money to offset the loss of the development contributions of other persons doing developments to which the policy applies. 10
- (4) The authority may give the land, or sell it cheaply, to a person who agrees to build affordable housing on it.
- (5) The authority may give the land, or sell it cheaply, to a body to use to provide affordable housing. 15
- (6) The authority may give the money to a body to use to provide affordable housing.
- (7) Territorial authorities may pool the land or money to use it to provide affordable housing in the district or districts of one, some, or all of the authorities. 20
- (8) A territorial authority that owns land ~~or a building~~ to provide affordable housing as part of its social policy may give the land ~~or building~~, or sell it cheaply, to a body to use to provide affordable housing. 25

**31 Policies must be aligned**

- (1) This section applies to a territorial authority that wants to use a power described in **section 30**.
- (2) The authority must follow sections 102(6), 93(4) and (5), 83, and 84(2) of the Local Government Act 2002 to amend its policies under section 102(4) or (5) of the Local Government Act 2002 to allow the use of the power. 30
- ~~(3) An authority that wants to use the power in **section 30(8)** must comply with section 97 of the Local Government Act 2002 because section 97(1)(b) applies to a decision to use the power. 35~~

*Review and amendment of affordable housing  
policy***32 Review: requirement and process**

- (1) A territorial authority that adopts an affordable housing policy must review it in conjunction with the process it carries out under section 91 of the Local Government Act 2002 to identify community outcomes: 5
- (2) The territorial authority must—
- (a) start the review with a decision under **section 7**;
  - (b) follow the process in **sections 8 and 16 to 23**. 10

**33 Amendment: process**

A territorial authority that adopts an affordable housing policy—

- (a) may decide to amend its policy;
- (b) must implement its decision by following sections 102(6), 93(4) and (5), 83, and 84(2) of the Local Government Act 2002: 15
- (c) must not amend its policy in such a way as to stop it being an affordable housing policy.

*Relationship with Resource Management Act  
1991* 20**34 Environment Court to decide**

- (1) This section applies to a person described in **subsection (2)** if the person considers that there is a conflict between—
- (a) a territorial authority's affordable housing policy and its district plan: 25
  - (b) a territorial authority's affordable housing policy and the matters described in section 74 of the Resource Management Act 1991 that affect the preparation or change of its district plan: 30
- (1A) This section applies to a person described in **subsection (2)** if the person considers that there is a conflict between a territorial authority's affordable housing policy and its district plan.
- (2) The persons are—
- (a) the territorial authority: 35
  - (b) a person who has made a submission on—

- (i) the district plan:
- (ii) the preparation or change of the district plan:
- (c) a person representing a relevant aspect of the public interest:
- (d) a person who has an interest in the conflict that is greater than the interest that the general public has: 5
- (e) the Minister for the Environment:
- (f) the Minister of Housing.
- (2A) If the person is not the territorial authority, the person must give the territorial authority a written or electronic notice describing the conflict. 10
- (2B) As soon as is practicable after receiving a notice under **subsection (2A)**, the territorial authority must consider whether or not there is a conflict and, if it considers that there is, must make every reasonable effort to resolve it. 15
- (2C) The territorial authority must, within 90 days of receiving a notice under **subsection (2A)**, give the person a written or electronic notice stating whether the territorial authority considers that there is a conflict and, if so, the efforts it has made or will make to resolve the conflict. 20
- (3) This section also applies to a person described in **subsection (4)** if the person considers that there is a conflict between—
  - (a) a territorial authority’s affordable housing policy and a resource consent:
  - (b) a territorial authority’s affordable housing policy and the matters described in section 104 of the Resource Management Act 1991 that affect an application for a resource consent: 25
- (4) The persons are—
  - (a) the territorial authority: 30
  - (b) the person—
    - (i) granted the resource consent:
    - (ii) applying for the resource consent:
  - (c) a person who made a submission on the application for the resource consent: 35
  - (d) a person representing a relevant aspect of the public interest:
  - (e) a person who has an interest in the conflict that is greater than the interest that the general public has:

- (f) the Minister for the Environment;  
 (g) the Minister of Housing.
- (5) A person to whom this section applies ~~Whether or not the territorial authority considers that there is a conflict, the person may apply to the Environment Court to resolve the conflict.~~ 5
- (5) The person may apply to the Environment Court to resolve the conflict, except that a person who is required to give a notice under **subsection (2A)** may not apply under this subsection earlier than the 90th day after the day on which that notice was received by the territorial authority. 10
- (6) In resolving the conflict, the court must take into account—
- (a) ~~Part 2 (Purpose and principles) of the Resource Management Act 1991:~~
- (aa) the following provisions of the Resource Management Act 1991: 15
- (i) Part 2 (Purpose and principles):
- (ii) section 74 (Matters to be considered by territorial authority):
- (b) the following sections of the Local Government Act 2002: 20
- (i) section 10 (Purpose of local government):
- (ii) section 14 (Principles relating to local authorities):
- (iii) sections 76 to 81 (which are about decision-making). 25
- (7) If the court decides that there is a conflict, it must do 1 or both of the following to resolve the conflict:
- (a) amend the policy:
- (b) amend the plan.
- (8) Part 11 of the Resource Management Act 1991 and regulations under the Resource Management Act 1991 apply to proceedings under this section. 30

### *Covenants*

#### **35 Some are void**

- (1) A covenant over land is void if one of its principal purposes is to stop the provision of affordable housing or social housing on the land. 35

- (2) Without limiting the covenants that are void under **subsection (1)**, covenants to the following effect are void:
- (a) a covenant that the transferee will not directly or indirectly convey the land to Housing New Zealand Corporation, any other central or local government body, or a private body that may facilitate the occupation of housing on the land by persons selected by the corporation or the body: 5
  - (b) a covenant that the transferee will not directly or indirectly convey the land to Housing New Zealand Corporation, or a subsidiary company of Housing New Zealand Corporation, or any other central or local government body, or a private body that provides housing to tenants on a subsidised basis: 10
  - (c) a covenant that the transferee will not directly or indirectly convey the land to a central or local government body or a private body for the purposes of public or institutional housing. 15

### *Regulations*

- 36 Regulations** 20
- (1A) The Minister must consult persons who the Minister considers are able to give helpful advice on the content of proposed regulations.
- (1B) When the Minister has consulted on proposed regulations, the Minister must take the results of the consultation into account and then may recommend to the Governor-General that the regulations be made. 25
- (1) The Governor-General may, on the recommendation of the Minister, by Order in Council, make regulations for all or any of the following purposes: 30
- (aa) setting criteria for determining what affordable housing is, for the purposes of the definition in **section 4**:
  - (a) prescribing results additional to those in **section 8(3)** that must be given by a method of assessing the need for affordable housing: 35



- (b) ~~prescribing criteria additional to those in **section 13(2)** for the allocation of affordable housing that must be stated in an affordable housing policy:~~
- (c) providing a template that a territorial authority may use or adapt for— 5
  - (i) a method of assessing the need for affordable housing:
  - (ii) an affordable housing policy:
- (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 10

*Transitional provisions*

**37 Building consents**

- (1) This section applies to a building consent that— 15
  - (a) has been granted:
  - (b) has been applied for.
- (2) The territorial authority referred to in **subsection (3)** is the territorial authority for the district in which the building consent operates or will operate if it is granted.
- (3) This Act does not apply to the building consent if the granting or applying was done before— 20
  - (a) the date on which the territorial authority adopts an affordable housing policy:
  - (b) the date on which the territorial authority amends its affordable housing policy in a way that would affect the consent if the amendment were to apply to it. 25

**38 Resource consents**

- (1) This section applies to a resource consent that—
  - (a) has been granted:
  - (b) has been applied for: 30
  - (c) is the subject of a lodged application for review of its conditions.
- (2) The territorial authority referred to in **subsection (3)** is the territorial authority for the district in which the resource consent operates or will operate if it is granted. 35

- (3) This Act does not apply to the resource consent if the granting, applying, or lodging was done before—
- (a) the date on which the territorial authority adopts an affordable housing policy;
  - (b) the date on which the territorial authority amends its affordable housing policy in a way that would affect—
    - (i) the consent if the amendment were to apply to it;
    - (ii) the consent’s conditions if the amendment were to apply to them.

- 39 Covenants** 10  
**Section 35** applies only to a covenant entered into on or after the day on which this Act commences.

## Part 2

### Amendments to other enactments

- 40 Amendments to Building Act 2004** 15
- (1) This section amends the Building Act 2004.
  - (2) Section 49(2)(b) is amended by adding “; and”.
  - (3) Section 49(2) is amended by adding the following paragraph:  
“(c) if **section 28** of the Affordable Housing: Enabling Territorial Authorities Act **2007** applies, notification under **section 28(6)** of that Act.” 20

**40A Amendments to Goods and Services Tax Act 1985**

- (1) This section amends the Goods and Services Tax Act 1985.
- (2) Section 5 is amended by inserting the following subsections after subsection (7C): 25
- “(7D) For the purposes of this Act, a territorial authority is treated as supplying goods and services to a person if the territorial authority requires the person to give it land or money under the provisions of its affordable housing policy that reflect **section 11** of the Affordable Housing: Enabling Territorial Authorities Act **2007**. 30
- “(7E) For the purposes of this Act, a person who gives a territorial authority land under the provisions of the authority’s affordable housing policy that reflect **section 11** of the Affordable

- Housing: Enabling Territorial Authorities Act 2007 is treated as supplying goods and services to the territorial authority.”
- (3) Section 11B is amended by inserting the following subsections after subsection (1C):
- “(1D) If a supply under **section 5(7D)** of goods and services by a territorial authority to a registered person is chargeable with tax under section 8, the supply must be charged at the rate of 0% to the extent that the contribution made by the registered person to the territorial authority consists of land. 5
- “(1E) If a supply under **section 5(7E)** of goods and services by a person to a territorial authority is chargeable with tax under section 8, the supply must be charged at the rate of 0% if the territorial authority is a registered person.” 10
- 41 Amendments to Housing Corporation Act 1974**
- (1) This section amends the Housing Corporation Act 1974. 15
- (2) Section 3B(b) is amended by adding “; and”.
- (3) Section 3B is amended by adding the following paragraph:  
“(c) to arrange for territorial authorities applying the Affordable Housing: Enabling Territorial Authorities Act **2007** to receive appropriate advice and information, of a policy or other nature, about housing and services related to housing.” 20
- 42 Amendments to Local Government Act 2002**
- (1) This section amends the Local Government Act 2002.
- (2) ~~Section 102(5) is amended by adding the following paragraph:~~ 25  
“(c) ~~an affordable housing policy, under the Affordable Housing: Enabling Territorial Authorities Act **2007**.”~~
- (2) Schedule 10 is amended by inserting the following clause after clause 7:
- “**7A Affordable housing policy** 30  
A long-term council community plan must contain a summary of the local authority’s affordable housing policy, if it has adopted one under the Affordable Housing: Enabling Territorial Authorities Act **2007**.”
-

**Affordable Housing: Enabling Territorial  
Authorities Bill**

---

**Legislative history**

4 December 2007  
11 December 2007

Introduction (Bill 189-1)  
First reading and referral to Local Government and  
Environment Committee

---