



# **DIFFERENT PLACES, DIFFERENT MEANS**

**WHY SOME COUNTRIES  
BUILD MORE THAN OTHERS**

**MICHAEL BASSETT  
LUKE MALPASS**

**THE  
NEW ZEALAND  
INITIATIVE**



# Different Places, Different Means

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Michael Bassett and Luke Malpass

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## **THE NEW ZEALAND INITIATIVE**

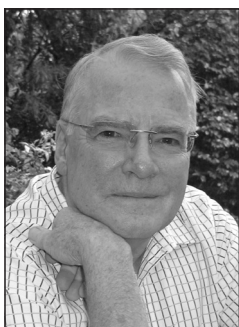
The New Zealand Initiative is an independent public policy think tank supported by chief executives of major New Zealand businesses. We believe in evidence-based policy and are committed to developing policies that work for all New Zealanders.

Our mission is to help build a better, stronger New Zealand. We are taking the initiative to promote a prosperous, free and fair society with a competitive, open and dynamic economy. We develop and contribute bold ideas that will have a profound, positive, long-term impact.

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## About the Authors



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## Executive Summary

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This report is a summary of international fieldwork examining different property markets and systems of local government. It examines how they interact with local regulators, how the incentives at local government level affect how houses are built, and how their planning culture has an impact upon development.

### Switzerland

*A renting nation with competitive councils*

- Switzerland's system of competitive cantons and competitive municipalities means services provided to citizens are competitive and price sensitive.
- It has a planning culture where planners come from different backgrounds, and must be cognisant of the political realities, and the costs policies impose on current and prospective residents.
- Competitive taxes at a cantonal and municipal level keeps pressure on localities to deliver quality services at a competitive level of tax.
- Switzerland has low, but rising, rates of home ownership: 40% up from 20% in the 1980s. This rise is most likely influenced by expectations of future higher prices and a rush to more secure investments after the GFC.
- Switzerland's low home ownership rates, and relatively stable prices are the result of three factors:
  1. houses are expensive to start with, fluctuating between 7 - 8.5 times the median income and
  2. extensive rent controls and tax treatment of home ownership means renting is a more cost

effective option for many and  
3. a comparatively high building rate.

- There is a 'right to build' if a building is within the local plan. Private property rights are respected, but they have a broad definition.

### Germany

*Local communities feel obliged to attract people and businesses*

- Real house prices in Germany have remained stable since at least the 1970s.
- Germany's local government system relies on capitation grants from state governments, based on businesses and people in their area: more people and more business mean greater income for local authorities.
- Areas being regenerated are constantly changing the local real estate market. Particularly the cleaning up and remediation of polluted areas and heavy industry, where use is now changing. Government influences the market to a large extent in this manner.
- *Bauträger* developments are the preferred method of developing new houses: these are specialist developers who work with local authorities when new housing is needed.
- Germans traditionally buy one house in a lifetime. The concept of a 'starter home' is foreign. Home ownership is not culturally important.
- An ageing, shrinking population

is the biggest strategic challenge that German planners and communities will face over the coming decades.

## Britain

### *A housing quagmire*

- Britain's Town and Country Planning Act has led to an inexorable rise in NIMBYs. This is an entrenched anti-development culture, where 'greenbelts' around the country are considered sacrosanct.
- Supply of houses has fallen well short of demand since World War Two and in particular since the early 1990s advent of 'plan-led development.'
- While Margaret Thatcher may have liberalised many parts of the economy, there were heavy centralising tendencies with regard to local government. As a result, local councils today get little benefit but much cost and angst from new developments.
- The Cameron government is taking on the Campaign to Protect Rural England (CPRE) and councils in an attempt to liberalise planning. The last big push to address supply, the Barker Inquiry, resulted in central government mandating housing targets that have been largely ineffective.
- Land auctions are being attempted by the current government to try to escape from this policy quagmire.
- The right to develop in Britain has been virtually nationalised.

## Texas

### *Property Rights, Sprawl and*

### *Municipal Utility Districts*

- Texas has grown rapidly since the Second World War. Local municipalities had to find a way to fund new infrastructure.
- There is no zoning outside cities. This means that, subject to environmental compliance and the provision of one's own infrastructure, a new development can take place anywhere. This creates immense competition in land since it renders town boundaries redundant, and allows virtually any land to be brought to market by developers.
- The Municipal Utility District (MUD) was formed as a new way for paying for this infrastructure. A MUD allows for debt-financed water infrastructure through a tax free bond. The bond is issued off the back of value already present in the development.
- MUDs are statutory taxing authorities, with elected resident boards. They have the power to charge an ad valorem tax for water infrastructure up to a limit of \$1.50 per \$100 of value.
- More broadly, planners in Houston see themselves as regulators rather than interested parties in town design. Property rights are strong in nature and limited in scope: they cover little more than the land itself.
- Texas house prices have remained relatively flat for a long period and currently stand at about US\$180,000 for a typical house in Austin. Low house prices help explain some of the state's recent economic success.



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# Introduction

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In the first NZI report on housing, *Priced out: How New Zealand lost its housing affordability* (2013), we studied a broad sweep of the historical, political and economic factors that contrived to make houses so expensive in New Zealand. Not all parts of the developed world are the same, and not all parts have seen the same magnitude of house price inflation as New Zealand. This second report on housing is the culmination of fieldwork and research into selected housing markets in the developed world, examining the incentives under which their local authorities operate, how they build new houses, and how supply meets demand generally. The jurisdictions concentrated on are; the United Kingdom, Switzerland, Germany, and Texas. The United Kingdom has an acute and a well-documented problem with house prices, and a long-standing shortage of homes. Switzerland and Germany have had relatively stable prices since at least the 1970s, and Texas is well known for consistently low house prices and rents, and a massive and flexible expansion in building.

The purpose in visiting some of these areas was to get a sense, at the ground level, of what arrangements facilitate a healthy supply of houses coming on to the market. The findings of the research were telling: every jurisdiction thinks itself protective of property rights and does its best to protect such rights – however, local thinking about what constitutes a property right differs. For example, in Britain, the concept of property rights seems to have been largely abandoned.

This report has turned out to be a case study in the incentives that encourage consumers, local politicians, bureaucrats

and developers to deliver the goods. To what extent can differences be explained by a lack of incentives, or by cultural or historical factors? The lessons learned from these different areas need to be considered in applying them to New Zealand. Democratic cultures are seldom importable commodities. So the extent to which institutional arrangements can be copied are matters for analysis and subjective judgment. In the end, incentives matter, and how different jurisdictions use incentives to achieve their objectives is well worth examining.





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# 1.

## Switzerland: a renting nation with competitive councils

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Switzerland is a small country in the middle of Europe with a population of almost 8 million and a GDP per capita of US\$79,000. It is experiencing substantial population growth. Working out how to reconcile the traditionally high standard of Swiss living with its growing population, changing demography, and a desire to protect its picturesque vistas and mountains for the important tourism industry is a challenge.<sup>1</sup>

Traditionally, Swiss house prices have remained relatively stable ever since the post-War period. This is the result of a mixture of rent controls, competitive local cantons and municipalities, and the concept of home ownership stripped of the urgency that comes from rapidly rising prices.

As can be seen from the graph in our first report<sup>2</sup>, Switzerland has had stable prices overall since the 1970s. However, the country did experience a house price bubble in the early 1990s, which brought down several regional banks when it burst. Over the past five years house prices have trended upwards, in part because of the perception of Switzerland as a haven amidst the Eurozone crisis.<sup>3</sup>

Swiss banks have traditionally been conservative lenders. A 20% deposit on a house is basically the mandatory minimum. Houses in Switzerland have always been relatively expensive<sup>4</sup>. They have fluctuated between 7.0 and 8.5 times<sup>5</sup> the median income since the early 1990s, partly

because they are of such good quality. As would be expected in such a cold country, double glazing is a minimum requirement, and triple glazing is becoming increasingly common. Central heating is also a basic requirement.<sup>6 7</sup> Much of Switzerland is suburban development sprawling along train lines and roads leading out of towns – what New Zealanders call ‘ribbon development’. Big cities tend to be built up but are low rise, with rules governing how high a building can be, how much shade it can give, and what it can look like.

As in much of the Western world, the concept of ‘sustainability’ is becoming increasingly important in Swiss thinking, and affects their approach to planning. This is particularly relevant to Switzerland’s changing social profile. Switzerland is undergoing a long-term demographic change towards older and smaller households, and a low birth rate. The Swiss planning profession sees its major challenge as how to house an ageing population that will wish to be close to amenities and services such as doctors and transport. However, despite being a rationale for rethinking planning law, the average Swiss household size of 2.1 people<sup>8</sup> has remained stable for the past 10 years.

Given this background, Switzerland is worthy of closer inspection. Its system of local government offers fascinating insights. It is arguably the most highly devolved system of government in

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<sup>1</sup> Interview with Ueli Strauss-Gallman. Amtsleiter, Kantonsplaner. Department of Planning Offices, Canton of St Gallen. 5 March, 2013.

<sup>2</sup> Bassett, Michael and Luke Malpass. *Priced Out: How New Zealand lost its Housing Affordability*. Wellington: The New Zealand Initiative, 2013. p.8.

<sup>3</sup> Haviv, Julie. “Swiss Franc seen falling further as safe haven appeal fades.” *Reuters*, 23 May, 2013. <http://www.reuters.com/article/2013/05/23/markets-forex-swissfranc-idUSL2N0E416E20130523>

<sup>4</sup> According to [www.homes.ch](http://www.homes.ch), a Swiss detached house costs about 8 times the median income. [http://www.homes.ch/swiss\\_property\\_prices.htm](http://www.homes.ch/swiss_property_prices.htm)

<sup>5</sup> Bourassa, Steven and Martin Hoesli. “Why Do the Swiss Rent?” *Swiss Finance Institute Research Paper Series No. 07-04*. Zurich: Swiss Finance Institute, 2006. p.12.

<sup>6</sup> Interview with Michael Landolt, Economist, HEV Schweiz (Swiss Home Owners federation). Seefeldstrasse 60, Zurich, 4 March 2013.

<sup>7</sup> Much information about Swiss building regulations (in English) can be found at <http://www.building-law.ch/building-procedure>

the Western world, and this structure contributes to a nation that consistently performs well on economic indicators.

### Competitive federalism, competitive localism

At the heart of the Swiss system of government are notions of democracy and competitiveness. Citizen-initiated referendums are commonplace and binding on whatever level of government they are targeted at. The three levels of Swiss government have specific roles delegated to them by Switzerland's constitution. There have recently been important referendums on the future of house building and planning.

There are three tiers of Swiss government: the federal, cantons (or states) and municipalities (also called 'communes' or 'communities'). The central government has seven ministers; a revolving prime ministership has responsibility for foreign affairs, some limited taxation powers, and control over other nationally coordinated policies such as railways and motorways.

There are 26 cantons responsible for education policy, health policy, road planning and other functions. They levy, on average, 40% of the average person's tax liability. Municipalities also tax about 40%, with the federal level accounting for the final 20% of an average person's tax liability. The closest equivalents to cantons in New Zealand are regional councils. Cantons are basic local level administrators. They devise policies for municipalities to comply with and operate as states do in some countries. Each provides its own sets of services and governance akin to the central government in New Zealand. There are some tax equalisation arrangements between cantons.

Below the cantons are 2551 municipalities<sup>9</sup>. These municipalities are the basis of Swiss citizenship; they too have powers of direct taxation and charge an income tax, within a framework set by the cantons. Cantons set planning principles and guidelines for the creation of local land use plans, while the municipalities enforce them. Municipalities have their own sets of rules but must comply with the 10-year governance plans devised by the cantons. There are also some revenue smoothing measures between municipalities.

Switzerland is unique by international standards. Its devolved and largely autonomous structures mean that governance arrangements are vastly different to just about any other country. It also makes definitive statements about 'the Swiss system' difficult.

The Swiss themselves have been debating this structure for a long time. Some argue that the competitive aspects of Swiss federalism are harmful because they represent a 'race to the bottom' with taxes and service provision because each municipality and canton is expected to provide competitive levels of service from an ever dwindling tax base. Others argue this is a positive outcome of competition. However, although there is competition, there is a downside. This local autonomy means there is constant debate over whether the Swiss system of local government is too slow, whether the cantons are insufficiently responsive, and whether the large number of local government entities merely translates into bureaucratic duplication of services<sup>10</sup>. Finally, there are the administrative costs of doing business over different cantonal and municipal borders.

The Zurich-based think tank Avenir Suisse is an organisation critical of the status quo. Avenir Suisse's report *Baustelle Föderalismus*<sup>11</sup> provoked a mixed reaction in the Swiss media. The report argued that

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<sup>8</sup> Swiss Government. *Size and composition of households: 2010 Household size virtually stable for past ten years*. Bern, 11 April 2013.

<sup>9</sup> <http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/22/press.html?pressID=8681> Federal Department of Foreign Affairs Presence Switzerland. *Communes*. [http://www.swissworld.org/en/politics/general\\_information/communes/](http://www.swissworld.org/en/politics/general_information/communes/)

<sup>10</sup> Interview with Dr Marco Salvi, Project Manager, Avenir Suisse think tank. Avenir Suisse offices, Zurich, Wednesday 6 March, 2013. Dr Salvi also noted that an unfortunate side effect of competition was cantons providing often difficult to trace subsidies to attract tax residents and businesses.

<sup>11</sup> Hansjörg Blöchliger. *Constructive Federalism: Metropolitan regions versus cantons: investigations and proposals for revitalization of Switzerland*. Zurich: Avenir Suisse; 2005. (English Translation of title)

the high level of devolution simply means slow response times for business, plus high administrative costs<sup>12</sup>. It may well be that competitive federalism in Switzerland, along with recourse to referendums has kept the Swiss state apparatus to a smaller size, while simultaneously making it less prone to wild swings when different political parties are elected.

Radical changes, at any political level, will almost certainly lead to a referendum, which in turn will lead to that initiative being voted against, rendering politicians impotent because of constant exposure to the cool winds of public opinion. There is no doubt Swiss laws are backed by the majority of the Swiss public. It is an ultra-democratic model where change is slow, but when change does occur, it represents the views of the people and results from social consensus.

The Swiss housing situation, land use planning, and development systems need to be seen against this federal backdrop. It creates complexities but it also creates different dynamics around the construction of new housing from those that New Zealanders are used to.

### The Swiss property market

Compared to New Zealand, Switzerland has had relatively stable house prices until quite recently. As can be seen in a graph in our previous report<sup>13</sup> (Figure 5B, Page 8), the Swiss median house price has been largely unchanged since the 1970s, compared with most Anglo countries that have experienced inflation. There was a small price bubble in the early 1990s leading to the collapse of a number of regional banks, followed by a period of stability. Prices have recently tilted upwards again, although this appears to have more to do with the Eurozone crisis than local

policy prescriptions. All over Europe, there has been a drift away from investing in shares and into material investments that are likely to retain value regardless of the monetary policies pursued within the wider entity called Europe.<sup>14</sup>

Switzerland is also facing a large amount of inward migration. With a population nearing 8 million, net migration into Switzerland is around 80,000 per year.<sup>15 16</sup> This is a substantial influx and it is having some impact on prices, a phenomenon that is well understood in New Zealand.

Although the housing market has been mostly stable, where Switzerland's swings in prices have occurred, these swings are likely to be the result of the very low rate of unoccupied Swiss housing stock, particularly in the large cities.<sup>17</sup> Because of the tight nature of the market (no excess supply), even a modest increase in the demand for housing can lead to rapid price increases. However, the price swings have not been of the same magnitude as the Irish or Spanish experiences where a boom was followed by a collapse.

Despite these recent swings, the Swiss have, by and large, been able to keep housing supply relatively close to demand; even now the house property market seems to be responding to increasing demand. According to a recent Credit Suisse report, some 75,000 dwellings will be constructed in 2013 alone. New houses hit a low point of around 35,000 in the early 2000s.<sup>18</sup> That shortage of housing led to price increases, but after a short lag, construction rates have now increased, and the housing stock is expanding rapidly. However, concerns remain about overheating of the market.

The Swiss housing market is also culturally a very different beast to most Anglo housing markets. In the Swiss tradition, because prices have nearly always been relatively stable, there is no great pressure to get on the housing

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<sup>12</sup> Dr Marco Salvi Interview. 6 March, 2013.

<sup>13</sup> Bassett and Malpass. p.8.

<sup>14</sup> Hartwich, Oliver 'Marc. "Draghi's threat to Europe's middle class." *Business Spectator*, 2 August, 2012. <http://www.oliver-marc-hartwich.com/publications/draghis-threat-to-europe-s-middle-class> Also: Hartwich, Oliver Marc. "Germany's ironic mini bubble." *Business Spectator*, 7 February, 2013. <http://www.oliver-marc-hartwich.com/publications/germany-s-ironic-mini-bubble>

<sup>15</sup> Global Property Guide.com. *Is the Swiss Property Market Overheating?* <http://www.globalpropertyguide.com/Europe/Switzerland/Price-History>

<sup>16</sup> Swiss Government. *Provisional findings on population growth in Switzerland in 2012 Demographic growth continues*. Bern, Switzerland. 25 April, 2013 <http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/22/press.html?pressID=8698>

<sup>17</sup> Interview with Marco Salvi. 6 March, 2013.

ladder. Indeed, the average buyer of a Swiss home has traditionally been in their 40s or even their 50s and is looking for a place to raise teenage children and live until retirement.<sup>19</sup> Average homeowners own one house in their life and buy exactly what they want, once they can afford it. The concept of a 'first home' in the New Zealand sense, where one buys something affordable and then trades up to something better, is foreign to the Swiss way of thinking. This is because houses are expensive to begin with. It also seems likely that people don't buy until later because they are so expensive, and this helps keep prices stable.

There is also capital gains tax (CGT), which varies but tends to reduce over time. In Geneva, for instance, the CGT is 50% if a house is sold within two years, and the rate drops by 10 percentage points every two years. For 8 to 10 years of ownership it is 15%; for 10 to 25 years of ownership, it is 10%; and from 25 years on, it is nothing. The tax usually does not apply if the proceeds are being used to purchase another house.<sup>20</sup>

Another important factor that has influenced the Swiss way of interacting with property is rent controls. For many decades, Switzerland has had rent controls that prescribe by how much, and in what circumstances, a landlord can raise the rent. Indeed, in Zurich, a referendum was recently passed compelling landlords to disclose their previous tenants' rents to potential new tenants.

The controls are as wide reaching as they are institutionalised, and are widely credited by many Swiss with keeping rental prices down.<sup>21</sup> For a city such as Zurich, where approximately 90% of the population lives in rental accommodation, this is an important policy issue as the price of rents affects most residents. It is a system called 'second generation control', meaning it doesn't apply to newly

built dwellings.<sup>22</sup> What this has meant is that over a period of 25 years, average rents of new or renovated dwellings are approximately twice that of older dwellings of the same size.<sup>23</sup>

Rent controls are very complex but they basically limit rent increases to below the rate inflation for current tenants. The landlord, for example, can only pass on 40% of 'cost of living' increases to a tenant.<sup>24</sup> For new tenants, rent can be raised as much as 10%. This is still a relatively modest increase. There are exceptions to this, however; a refitted house or apartment can have the rent raised to a level considered near market rental (although quite where that market price is has been distorted). But there is a rigorous process to be negotiated with authorities; the house or apartment has to have been substantially refitted: a new kitchen, for example, will not suffice.<sup>25</sup>

The upshot of this is that the Swiss have some of the best quality rental accommodation in the world; central heating, insulation, double or triple glazing, gas cooking and instant hot water are all standard. The downside is that supply is severely limited.

One side effect of this rent control system is a reduction in tenant mobility. Because the cost of rent falls in real terms, year on year, there is every incentive to try and rent the same apartment for as long as possible. As soon as a tenant moves house and the rent automatically increases, one often ends up paying more for less. This, coupled with the tight supply of dwellings, means that for many urban renters, moving house is something done only if absolutely necessary. Elia Werczberger argues:

The main function of rent control in Switzerland seems to have been the reduction of housing costs for long term tenant, and prevention of abuse through arbitrary eviction

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<sup>18</sup> Credit Suisse. *What could curb the Swiss Real Estate Market?* Credit Suisse, Zurich, March, 2013. pp.13-14. <https://marketdataresearch.credit-suisse.com/cs/mdr/p/d/qrr/research/files/getfiles.do?fileName=F130306000018.pdf>

<sup>19</sup> Interview with Michael Landolt. 4 March, 2013.

<sup>20</sup> Bourassa and Hoesli. p.12.

<sup>21</sup> Interview with Jacqueline Schweizer, Wuest & Partner. Wuest and Partner Offices, Zurich, 7 March, 2013.

<sup>22</sup> Werczberger, Elia. "Home ownership and rent control in Switzerland." *Housing Studies*. Vol. 12, No. 3, 1997. p.339.

<sup>23</sup> *Ibid*, p.348.

<sup>24</sup> *Ibid*.

<sup>25</sup> Interview with Jacqueline Schweizer. 7 March, 2013.



and exploitation of temporary shortages.<sup>26</sup>

This cheaper housing for long term tenants, coupled with strict lending practices and the high price of houses means that as households save to buy a house, their rent is likely to become far more attractive by comparison. The market rental rate for new rental dwellings is also high to compensate for reducing rental returns over time.<sup>27</sup>

Switzerland still enjoys a reasonably well functioning private rental market, despite rent controls. However, the structure of this market clearly reduces demand for owner occupied housing, and demand comes from older citizens. Increasingly, big pension funds and institutional investors are involved in housing for prudential reasons. Swiss funds tend to be conservative, and new development is perceived to represent good investment value.<sup>28</sup>

The most fascinating trend is that the home ownership rate in Switzerland has increased in recent years. From the 1980s to today, the home ownership rate has jumped from 20% to roughly 40% across the country.<sup>29</sup> In part, particularly over the past five years, this is believed to have been a factor in rising home prices. Michael Landolt from HEV Schweiz, the Swiss home owners' association, believes this increase in the number of people wishing to own their own home is a direct result of price rises, or at least the perception of them, a similar situation to New Zealand.<sup>30</sup> Because people can no longer count on house prices being the same in the future, many more are deciding to buy houses sooner. There is also a widely held view, as in New Zealand, that rich foreigners who move to Switzerland are buying a lot of property, perhaps leaving it empty, and that this is responsible for some price rises – but this theory is very difficult to

prove. It may be true at the margins, but it is unlikely to have had any great effect on house prices.

### The politics of Swiss planning

The planning system works on the same basis as the Swiss system of federation, which means it occurs at all levels of Swiss government. Central government sets general principles, while the cantons draw up regional plans according to these principles and overlay them with their own principles according to the political desires of their residents. The municipality then draws up its plans according to its, and the canton's, wishes and finalises them. The final local municipal plans, while not drawn up by the canton, need to be signed off by it. So if a municipality begins to act in a manner contrary to the cantonal plans or intentions, they can be reined in by the canton. In reality, however, the canton works with municipalities where disagreements emerge or where the local community's preferences are at odds with the tenor of the cantonal plan. Eventually a compromise is reached.

The federal land use law is drawn up as follows:

The federal constitution of Switzerland adopted the following land use framework in 1979, in Article 75. It is this which devolves responsibility:

1. The Federation lays down the principles of land use planning which is the responsibility of the cantons and serves the expedient and economical use of land and the ordered settlement of the country.
2. The Federation supports and coordinates the efforts of the cantons and works together with the cantons.
3. The Federation and the cantons

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<sup>26</sup> Werczberger, Elia. p.351.

<sup>27</sup> Thalmann, Philippe. *The link between rent regulation and urban sprawl*. Swiss Federal Institute of Technology, preliminary, 01/10/2009. p.3.

<sup>28</sup> Interview with Marco Salvi. 6 March, 2013.

<sup>29</sup> Swissinfo.ch. *Boost for home ownership gets a second chance*. May 12, 2012. [http://www.swissinfo.ch/eng/swiss\\_news/Boost\\_for\\_home\\_ownership\\_gets\\_second\\_chance.html?cid=32594092](http://www.swissinfo.ch/eng/swiss_news/Boost_for_home_ownership_gets_second_chance.html?cid=32594092)

<sup>30</sup> Interview with Marco Salvi. 6 March, 2013.

have to take into consideration the requirements of land-use planning as far as the fulfilment of their tasks is concerned.<sup>31</sup>

The central government's role is to state principles while the cantons ensure transforming those principles into a plan.

*The Land Use Planning Act* continues:

The Federation, cantons and municipalities ensure that land will be used in an economical way. They coordinate their land use planning activities with each other and realize an order of settlement which supports the desirable development of the country. They pay attention to the natural environment and the needs of the population and the economy.

The key requirement is to ensure balance in developing the country, although 'balance' is obviously a matter for political argument. While the central government retains limited powers, it can become involved in arbitration when developments do not proceed to plan, the different tiers of government disagree, or the cantons differ over direction.

Article 6 of the *Land Use Planning Act* continues:

1. By drawing up guiding plans the cantons determine the principles according to which area shall develop.
2. They (cantons) determine which areas a) are suitable for agriculture; b) are particularly beautiful or suitable as areas of recreation or important as a natural base of life; c) are threatened by natural disasters or detrimental influences.
3. They (cantons) give information on the state of the targeted development a) of settlement; b) of traffic, the utilities and public

buildings and facilities.

4. They (cantons) consider the concepts and special affairs plans of the Federation, the guiding plans of the neighbouring cantons as well as regional development concepts and plans.<sup>32</sup>

The main tool to realise this plan is the Richtplan, which is the 10-year plan laid down by cantons for use by local municipalities within their area. As with many different areas of Swiss law and development, the canton operates by making laws or guidelines for local authorities rather than the population at large. It is legally binding to the extent that municipalities have to accept the plan to guide their own planning activities. Different local authorities effect such a plan by the councils or by referendum.

Below the canton level of planning are the 'municipality use plans', often referred to as a Zonenplan. Crucially, these use plans prescribe precisely what the owner of a section or property can do on, or with their holding, and these rights are constitutionally protected. The owner is left in no doubt about what he or she can and cannot do. The great advantage of this system is that it is minutely planned, right down to plot size, location, shop frontage façade and so on. Once the plan is finalised, provided an owner or a buyer works within the rules, the development can proceed and there can be no legal challenge against the development or building. The clarity such plans bring to much development and house-building is apparent. According to Swiss real estate consultancy Wuest and Partners, the maximum time for a zoned house approval is around six months; however, this reduces to four months if cantonal approval is not needed.<sup>33</sup>

Of course proposed developments outside the set plan can proceed by

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<sup>31</sup> Switzerland. *Federal Constitution of the Swiss Confederation*. 18 April 1999 (Status as of 3 March 2013). <http://www.admin.ch/ch/e/rs/1/101.en.pdf>

<sup>32</sup> Ibid.

<sup>33</sup> Interview with Jacqueline Schweizer. 4 March, 2013.

negotiation between developers, cantons and communities, but these have to pass through the usual rough and tumble of community approval, and if the decisions are made by the council, they are often overturned by local referenda.

An important point to note about municipal councils is that many locals who sit on them also have full-time jobs, including in the building and construction industry. Because of the localised nature of Swiss democracy, most are members of the community and involved in the usual array of occupations and backgrounds, not just local council members. Local governance is not about an abstract set of principles but the practical work of providing service to citizens. Obviously this could lead to conflicts of interest, but not to any greater extent than local councils all around the world.

### Tax rates

One of the key dynamics in the Swiss system is that tax rates are localised and competitive. This has been described in a 2012 publication on European tax systems as follows:

The fiscal and financial sovereignty of the Swiss federated states has been one of the best kept secrets of the relative quality of public governance in Switzerland for decades.<sup>34</sup>

Because 80% of taxes are paid to the local canton or municipality, most taxes are quite localised. They are also highly competitive between cantons and competitive between municipalities. Each canton and municipality has the right to set its own taxes, and does so with an eye to attracting people and businesses to their area.

This system helps keep some limited

downward pressure on house prices in a given area. Cantons such as Zug or Schweiz have tax rates nearly half that of some other cantons. These differentiated tax arrangements mean cantons can have their own strategy for attracting particular kinds of taxpayers. Zug is known as the canton where Formula One racing drivers and tennis star Roger Federer live. Zug's low tax rate attracts wealthy people, and so fewer taxpayers are needed to get taxes to provide the amenities that Zug residents expect. Consequently the high price of a house in Zug is of little concern to its authorities. Other cantons, such as the mountainous St Gallen, have higher tax rates but aim to attract a greater number of middle class people with lower salaries. Each canton has its own strategy of what mix of taxpayers it wishes to attract.

Both cantons and municipalities compete on services and tax rates. From a competition point of view, this appears to be desirable: tax rates are kept down, while increased house prices are not in the interests of the canton or municipality. But delving a little deeper, the picture becomes more complicated.

As we have already seen, there is a tight market in housing, so renters, although facing cheaper tax rates, might find these rates offset by higher rents in some areas such as Zurich.

There is also the matter of how tax is calculated in Switzerland. All of one's assets, including the house, are bundled into one's assessable tax base. Under Swiss tax law, one's own home is considered a potential revenue generating asset and is treated as such under the law. In practice, this means an occupant pays tax on what would have been the rental income from that home (imputed rental taxation). The overriding consideration in determining the rate is the value of the property – the higher the value of the property the higher yearly tax burden it attracts. There

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<sup>34</sup> Pierre Garelo (Ed). *Taxation in Europe 2012*. Paris: Institute for Research of Economic and Fiscal Issues, 2012. p.159.

is no equivalent of New Zealand local government rates, but rather ‘property taxes’ which are a wealth tax on a person’s total wealth.

In particular, the tax arrangements have resulted in a significant movement of people away from big cities, which provide more amenities with higher taxes, into surrounding areas. This has resulted in a housing and population expansion in cantons such as Aargau and Thurgau near Zurich. Property prices are cheaper, and local politicians and their planning departments have every incentive to keep them that way: more people mean more taxpayers and bigger cantonal and municipal budgets, which in turn are used to make local communities more desirable places in which to live.<sup>35</sup>

Swiss planners, while mindful of environmental concerns, are also aware of the need to balance those considerations with that of local living standards. Importantly, urban planners come from an array of different backgrounds. Aargau planners alone come from backgrounds as diverse as law, engineering and banking. The diversity reflects an understanding that planning does not and cannot take place in a vacuum. The local planners take a far broader view of the role of planning in the community than just how they would like the city to look, or expect people to live. Economic realities must be considered, and they certainly appear to be.

Of course, there is ambivalence about the desirability of this system. Some planners are critical, saying it creates budget uncertainty; others don’t like it because new plans that might be created have to dovetail to political or fiscal realities. The bottom line is that the Swiss planning fraternity basically have to find a way to deliver a steady supply of houses in their areas at competitive prices. Otherwise tax revenue drops off, people

will move elsewhere, and an unpleasant cycle of less people, taxes and employment opportunities will appear.<sup>36</sup>

One problem that this system has thrown up has been the hollowing out of small cantons and cities that have substantial costs, but fewer residents. Cantons such as Zurich have many tourist sites, concert chambers, museums and cultural attractions, from which the surrounding areas benefit but do not pay for. To address this, a subsidisation charge is agreed upon by neighbouring municipalities to contribute to the upkeep of facilities that are used by far more people than just the residents of Zurich.

### Case Study: the cantons of Aargau and St Gallen

The cantons of Aargau and St Gallen are both about an hour’s ride by train from Zurich. Many people from each canton commute to Zurich, yet the two areas are in quite different situations. St Gallen is widely perceived to be a sleepy canton that offers beautiful views, good skiing, an excellent university, but little else. Like many other cantons, it has an active ‘Foreign Direct Investment attraction’ unit to lure foreign investment, with jobs, and growth opportunities into St Gallen. Canton planners in St Gallen work with local municipalities to identify places to build new factories, office blocks, and technology campuses. The aim is to present a range of ready-to-go options for any factories or firms looking to build or relocate.<sup>37</sup> This is the result of the need to find methods of finding revenue that don’t include taxing households too heavily and therefore discouraging people from moving into that area.

St Gallen is typical of an area trying to regenerate and attract people, while still retaining its mountain charm. Its house

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<sup>35</sup> Interview with Ueli Strauss Gallman, Amtsleiter, Kantonsplaner. Department of Planning offices, Canton of St Gallen offices. 5 March, 2013.

<sup>36</sup> Interview with Claudio Hagen, Projektleiter, Departement Bau, Verkehr und Umwelt, Abteilung Raumentwicklung (Regional Planner, Aargau, Switzerland) Canton of Aargau offices, Aarau, 7 March 2013.

<sup>37</sup> Interview with Ueli Strauss-Gallmann. 5 March, 2013.

prices are cheaper than in Zurich, and the tax system tries to encourage jobs in the region, with mixed success so far.

Aargau is a very different proposition. During the 1990s and 2000s, Aargau grew quickly due to its proximity to Zurich; cheaper houses and the short, direct train ride attracted people to its wide open spaces. Its economic growth and housing opportunities have been impressive. Through a mixture of business and residential growth, taxes have remained low enough to be attractive; due to forward planning by the canton and municipalities, house prices have remained relatively stable.

One of the key responsibilities in the planning department in Aargau is to ensure house availability keeps up with demand. They have developed different tools to achieve this. The chief regional planner in Aargau, Claudio Hagen, an economist by training, explains: “If we come up with ideas which we like but that the public don’t buy, or which do not meet demand, our local politicians will tell us to come up with something else.” The incentives created by the local tax system have ensured that over a long period, with the exception of the past few years, the planning system has delivered stable house prices.

### The changing face of Switzerland: challenges for the future

All of the above helps illustrate how the Swiss have maintained reasonably stable, albeit high, house prices over a long period (remarkably so compared to Anglo nations). While the field work for this report was being conducted, a national referendum on spatial planning was passed by the large margin of 62–38, effectively putting a moratorium

on all new greenfield development in Switzerland.<sup>38</sup> There will be exceptions to this (such as if there is a massive increase in population or spikes in prices), but it is a big policy change. Prior to this, although use of greenfield was sparing, the Swiss reasoning was that in such a small country, where an estimated 20% of buildable land has been constructed upon<sup>39</sup>, new land should be expanded with caution. They have been able to do so. This will now stop, the effects of which will be seen over the next 20 years.

As a part of this referendum, a ‘planning gain uplift’ was also approved. ‘Planning gain uplift’ is essentially a new tax. It gives cantons the right to tax a certain amount of the calculated increase in property price for land rezoned for development. If rezoning by a local authority increases land value, the authority will take a share of the increase. For example, hypothetically, if a parcel of land gets rezoned from non-development to residential use and the value rises from 50,000 to 100,000 Swiss francs per hectare, the local authority might claim a right to 40% of that increase: 20,000 Swiss Francs.

The money the local authority gains will then have to be set aside for one of three designated purposes: 1) buying existing low rise owners out of properties to open up land for new high density developments; 2) remediating land that is toxic, polluted or unsuitable in other ways to prepare it for development; and 3) purchasing strategic tracts of already developed or underdeveloped land in cities near amenities to change use and develop new high density living spaces. There is a concern that with Switzerland’s low birth-rate, the current housing stock will not be adequate for the older population in the coming decades. This ‘planning gain uplift’ has been designed to give local authorities specific tools to deliver more density more quickly since reliance on

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<sup>38</sup> This is a good summary of the issues at hand prior to the referendum going ahead. There is little information in English since the referendum. [http://www.swissinfo.ch/eng/swiss\\_news/Tug\\_of\\_war\\_over\\_scarce\\_building\\_areas.html?cid=34680302](http://www.swissinfo.ch/eng/swiss_news/Tug_of_war_over_scarce_building_areas.html?cid=34680302)

<sup>39</sup> Interview with Cornelia Sutter, planner. Department of Planning offices, Canton of St Gallen. 5 March, 2013.

greenfield development must now come to an end. Despite the large support at the referendum, it is too soon to say what this will mean, but the next decade will present a fascinating case study of how this works in practice.

### Conclusion

Overall, the Swiss experience is complicated but informative. Several factors about Switzerland limit the extent to which any lessons might be applicable to New Zealand. Readers will appreciate that there is no comparable cult of home ownership in Switzerland. In some parts, as we have seen, the ratio of rented to owned housing can be as high as 80-20. This suggests a degree of contentment with renting that a New Zealand landlord could only dream about. Complex rent controls are clearly a factor in this, leading one to be surprised that landlords still exist in sufficient numbers to satisfy demand.

However, it would also seem that a system of highly devolved local government helps induce competitive pressures, particular within the planning system. Because of its great level of devolution, cantons and municipalities must compete for citizens and businesses. The incentive effect is clear: each locality must be tax and service competitive. Part of this competitiveness requires keeping house prices stable lest potential buyers look to another area.

Second, because of these positive incentives, cantonal and municipal planning departments must consider the wider economic impact of their plans very carefully. Failure to keep up with demand and subsequent price rises will affect an area negatively. This is also true when it comes to approving houses people do not want.

Third, the planning system, although

highly prescriptive, includes a protected 'right to build' for complying with those plans. This produces certainty to the process of building new houses.

Taken in isolation, it is clear that these taxation and regulatory arrangements would have a positive incentive effect on house prices. However, the role of rent controls in keeping rents relatively low compared to expensive house prices makes it difficult to assess the overall effect on housing. It is also worth noting that despite relative house price stability, Swiss houses are very expensive, fluctuating between 7 and 8.5 times<sup>40</sup> the median income since the early 1990s – much higher even than in New Zealand.

Rent controls make renting attractive compared to owning a home, and secondary rent controls encourage prudential investment practices by institutional investors encourage just enough supply of new dwellings to keep up with demand. However, the extent to which this system can continue to cope is under question with prices consistently rising over the past 5 years. The effect of a new moratorium on greenfield development is yet to be seen, but it would be expected have a negative impact on housing affordability. It could create a situation similar to that of the Auckland Metropolitan Limit.

Those disclaimers aside, the Swiss incentives, created by competitive taxation at a local level, do play a clear role in creating a pro-development, pro-housing consumer outlook at the local level.

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<sup>40</sup> Bourassa, Steven and Martin Hoesli. p.12.

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# 2.

## Germany: local communities attracting people and businesses

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Over a long period, the German planning system has delivered a large quantity of high quality housing at a reasonable price. Because of the devastation caused by World War II, the Germans had to build a lot of houses, and quickly. In fact, the post-war German planning system has delivered 72% of the total housing stock. Not only that, it has done so at a stable price since at least the 1970s. According to a recent Deutsche Bank report, house prices have remained flat compared to incomes.<sup>41</sup>

Like any country there are desirable pockets, and these areas experience upwards price pressures. In Germany, high prices are primarily confined to the central areas of six major cities.

Like the Swiss system, German houses are high quality. However, you pay for what you get, and for their quality and size German houses are good value. The median house price is €250,000<sup>42</sup> (approximately NZ\$412,000) for a detached house that is insulated, relatively large, and well-appointed with central heating, double glazing, and often under-floor heating. German house prices have also been dropping relative to average incomes.<sup>43</sup>

However, as with many things German, the planning system is complex and difficult to understand. The substantial cultural differences between Germany and New Zealand might also help explain why the Germans are effective at providing

housing regulation at the lower levels that is conducive to adequate supply. However, it is complex. The federal government produces some guidelines for the states (Länder) which pass them down, but different states work differently in managing this devolution. Where a whole area is concerned, such as the Ruhr region in Western Germany, several different authorities may band together to form a 'regional authority' responsible for regional planning.

### Incentives to develop

According to Hartwich and Evans<sup>44</sup>, who conducted comparative research several years ago, the Germans have three essential properties in their planning and legal systems to make them favourable to development.

First is protection of property rights, guaranteed by the Basic Law, Germany's federal constitutional law. This constitution enshrines the owner's property rights in a way that does not apply in New Zealand or the United Kingdom. The state guarantees your right to build on your property, particularly if it is zoned for that specific purpose, say, residential. If the house fits the plan for the type of building allowed by the local municipal plan, the owner can go ahead and build. However, this right is not as clear cut as it seems. The house may have to comply with local requirements for character, spacing on the section, and

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<sup>41</sup> Tom Mayer. *Euro area property prices: Germany versus the rest*. DB Research, Frankfurt, June 29, 2012. [https://www.dbresearch.com/PROD/DBR\\_INTERNET\\_EN-PROD/PROD/0000000000290566.pdf;jsessionid=BEB89B6FE7DA62B5AA965C7D8F45C4B8.srv-net-dbr.com](https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD/0000000000290566.pdf;jsessionid=BEB89B6FE7DA62B5AA965C7D8F45C4B8.srv-net-dbr.com)

<sup>42</sup> Delmendo, Lalaine C. *House Prices in Germany are picking up*. Global Property Guide.com. 17 June, 2013 <http://www.globalpropertyguide.com/Europe/germany/Price-History>

<sup>43</sup> Graphic Detail. "The Economist House Price Index." *The Economist*. 16 May, 2013. <http://www.economist.com/blogs/dailychart/2011/11/global-house-prices>

<sup>44</sup> Hartwich, Oliver Marc and Alan Evans. *Bigger, better, faster, more. Why some countries plan better than others*. London: Policy Exchange, 2005.

so forth, but that aside, the right to build is guaranteed.

The right is protected, provided there is not an explicit rule against it (say on public health or environmental grounds). It is a sort of 'protection with limits' prescribed in Germany's Basic Law: "Property and the right of inheritance shall be guaranteed" but "their contents and limits shall be prescribed by the law".<sup>45</sup> In other words, courts have to balance property rights with the laws and judgements local authorities might enact.

In practice, everyone has a right to build, provided the intended building is within the plan. In fact, the courts will enforce the right to build if a local municipality or interest group chooses to intervene. The right to build on one's land is constitutionally defined and is not a right that can be granted (or taken away) by public law.<sup>46</sup>

As Hartwich and Evans noted in 2005, a land use planning system such as the British Town and Country Planning Act 1947 (and most likely, New Zealand's Resource Management Act) could be struck down by German courts as unconstitutional because it impinged on the Basic Law.

The second part of the German planning system that facilitates development are the rules to be considered by local municipalities when drawing up plans:

Land-use plans shall safeguard sustainable urban development and a socially just utilisation of land for the public good of the community, and they shall contribute to securing a humane environment and protect and develop the basic conditions for natural life. In the preparation of land-use plans, attention shall be paid in particular to the following:

1. The general requirement for living and working conditions which are conducive to good health, and the safety of the population at home and at work.
2. The housing requirements of the population whilst avoiding unbalanced population structures, increasing property ownership among broader sections of the population, especially by supporting economical housing, and population development.
3. The social and cultural needs of the population, in particular those of families, the young and the elderly and those with handicaps, as well as to the requirements of the education system and the need for sports, leisure and recreational facilities.
4. The preservation, renewal and development of existing local centres and to the shaping of the town and landscape.
5. The requirements relating to the preservation and maintenance of historic monuments and to local centres, streets and public spaces of historical, artistic or architectural importance which warrant preservation.
6. The requirements of churches and religious organisations under public law for worship and pastoral care.
7. The requirements of environmental protection pursuant to section 1a and through the use of renewable energy sources, nature protection and the preservation of the countryside, in particular of the ecological balance in nature, and of water, the air, the ground including its mineral

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<sup>45</sup> Basic Law for the Republic of Germany. [http://www.gesetze-im-internet.de/englisch\\_gg/](http://www.gesetze-im-internet.de/englisch_gg/)

<sup>46</sup> Professor Michael Hauth, in Hartwich and Evans. p.16.



- deposits, and the climate.
8. Economic requirements, including maintaining the structural role of medium-sized companies, in the interests of local, close-to-the-consumer supply to the population, the requirements of agriculture\ and forestry, of transport including local public transport, of the postal and telecommunications services, public utilities – in particular power supply and water, waste disposal and sewerage, and the protection of natural resources and the preservation, protection and creation of employment.
  9. Defence and civil defence requirements.
  10. The results of other urban planning measures adopted by the municipality.<sup>47</sup>

The above criteria are vague and sometimes contradictory. What does it mean to protect the environment? What constitutes ‘the interests of local, close-to-consumer supply to the population’? Ultimately, the main clash comes down to whether municipalities have the right to regulate, or whether private property rights to development and economic activity are protected.<sup>48</sup> However, German courts have made it clear over a number of years that private property rights are special and must be protected<sup>49</sup> – in the hierarchy of rights, they still sit aloft. After that, it is really a question of process at the local government level. Disputes and resolutions can be entered into, not on the basis that the decision was right or wrong, but whether the council duly and properly considered all the different facts of a given case and due diligence was undertaken. Essentially, a case can be made that the local authority did not follow the law

closely enough in its deliberations and therefore those deliberations can be revisited.<sup>50</sup> If it is found that a council has considered all aspects required and arrived at a reasoned decision, the courts have no power to intervene over the content of that decision. However, if for whatever reason, the local authority has not taken into consideration all relevant aspects of this case, then the court will strike down the council’s decisions, and any development plan that has sprung from it will be made void.<sup>51</sup>

The importance of this is not that it is process driven per se but that, in accordance with the statutes, if a local authority does not take into consideration the housing needs of the population, or the private property rights of owners, it is likely to be struck down. Any jurisdiction that seeks artificially to hold down the supply of houses will find their plans open to challenge in the courts. As will be obvious, this is an important consideration relevant to enhancing the supply of houses.

### German taxes

The third main factor cited by Hartwich and Evans is the German taxation system, which, while complex, gives revenue streams to local authorities that encourage development.

German tax law is incredibly complex, not least because it is a federation with three levels of government. What tax belongs to what level is more the result of time and expediency than any particular principled constitutional development. The German constitution allows municipalities a guarantee to self-government and this self-government extends to its revenue bases. However, over time, there has been little clarity about what this means, and forms of revenue for local government

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<sup>47</sup> Germany. Federal Ministry for transport construction and Housing. *Federal Building Code*. Section 1(5). <http://www.iuscomp.org/gla/statutes/BauGB.htm#1>

<sup>48</sup> Hartwich and Evans. p.18.

<sup>49</sup> Ibid.

<sup>50</sup> Interview with Dr Michael Landolt, General Manager and Dr Alexandra Hill, Research Coordinator, The InWIS Institute for Housing, Real Estate, Urban and Regional Development (INWIS), Bochum. EBZ Business School campus, Bochum. 26 February, 2013.

<sup>51</sup> Interview with Hans-Jürgen Best, Stadtplaner, City of Essen, Germany. City of Essen offices. 27 February, 2013.

in Germany are limited. They pull in some smaller rates and duties, a trade tax, an insignificant 2.2% share of VAT (equivalent of GST). More substantially, they receive a 15% share of income tax (the other 85% being shared between the state (Länder) and federal governments) and grants from the state governments. The crucial point is that both the local income tax share and the state grants are directly based on the number of inhabitants in a region: more people mean a bigger slice of the revenue pie. It is a capitation grant.

Most localities receive about 40% of their tax from local sources: it is tied closely to the number of inhabitants, the economic performance of the region, or both. The state pays municipalities for the number of people and businesses they have through a capitation grant. This clearly creates an incentive to have more people, and a faster growing economy. It also means that low, or at least stable, property prices are crucial to local government revenue.

Because of the limited ways to raise taxes at the local level, and because the local demands on authorities are always increasing, the only way to create forward-looking cities and regions is to adopt people and business-friendly policies.<sup>52</sup> It is part of a naturally positive reinforcing cycle: more business attracts more people to live and work, and attracts more income into the municipality to provide goods and services that people want and expect. The flipside of this is that when an area is contracting, those same cycles can be reinforced in a negative sense: less business means fewer people and less tax to make an area exciting or desirable. This is of course the case in any jurisdiction regardless of its tax system.

From a New Zealand perspective, one might expect that such competitiveness and reliance on people and business might shrink local government, or see

them do little else beyond the three Rs: roads, rubbish and rates. However, the opposite is true in Germany. It is true that under these rules, an environment friendly towards developing business and reasonably priced housing is what the focus of local government will be. But of course the decision to live in an area is not dictated only by a good job or by housing affordability. The reasons people choose to live where they do are broader and can include the availability of leisure activities, access to parks and recreations areas, and cultural activities. Good shopping and a pleasantly built environment also play a part. The local economy is not the only deciding factor. What the German system does is compel municipalities to weigh their choices and think hard about how different parts of their local communities interact: good quality public amenities, parks and reserves cost money, which require local taxpayers and vibrant local businesses.

So despite the complexities, German incentives are relatively simple and powerful. Many senior staff in local municipalities also have strong incentives – their remuneration is directly tied to the number of people living in an area: the more people, the better their salary. So both at an abstract political level, and at a nuts-and-bolts administrative level, council pay structures are linked to attracting people to the area. This also applies in New Zealand with higher pay structures for large councils; however, in some German jurisdictions remuneration is directly related to population change, rather than a more general salary band system.

This has led to another aspect of competition, in which municipalities at the fringes of cities or larger conurbations have an advantage over their core city rivals. As it is often easier and cheaper for fringe cities and settlements to release land

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<sup>52</sup> Interview with Hans-Jürgen Best. 27 February, 2013.

for development, they can get a leg up on their more centrally located rivals and the tax revenue that flows from this.<sup>53</sup> In fact, it is a double win for the fringe councils because much of the social and physical infrastructure that residents continue to use will be provided by the central municipalities. Growing fringe cities can see new residents as relatively cheap dates: they get the taxes but without having to pay the outlay of infrastructure such as train lines, autobahn, town halls and so on.

New residents of a fringe city also receive other tax advantages: a series of tax breaks claimed from the government for buying a new house and moving to these areas; subsidies for new building activity; and rebates for commuting to and from work.

There are of course the obvious, non-cash advantages that people moving out of the city clearly consider: living in greener, more spacious, and quieter neighbourhoods. It is often overlooked that many people clearly see benefits of not living in the middle of a city.

This system gives some municipalities at the edge of growing metropolitan areas an advantage over their neighbouring jurisdictions that might be more built up. Older municipalities are encouraged to seek new and innovative ways for housing and service provision that tilt the balance back in favour of living in a city. However, on balance these incentives do not create a level playing field; rather they encourage growth outwards at the expense of the concept of ‘compact cities’. Regional development economists call this ‘negative regional externalities’.

The German system puts in place a set of incentives for local government to release more land and encourage more growth over time. This uses more green space than it would otherwise, but it clearly indicates the preferences of the population. Where Germans can, the

majority still prefer to live further out of the city, with some green space and a more spacious house.

### An example: planning in the Ruhr

Broadly speaking, there are two different ways to build a new house in the Ruhr region. One is to buy a plot of land, retain an architect, submit a plan to the local council, and receive approval. The price of a house going through this process can be up to €400,000 for a basic three- to four-bedroom home. The other way is through a *Bauträger*, which is a process more familiar to New Zealanders. A *Bauträger* is similar to what we would call a housing development; a small one can be five to six houses, while a large one can be 500 to 600 houses.<sup>54</sup>

As a legal entity, a *Bauträger* puts together a contract with the local municipality for a particular number of houses, their visual quality, low cost housing components, and so on. It then has the power to contract to build the agreed development and supervise a building company, or companies, to construct the development. Conversely, development companies sometimes design a plan along with the local council and sell it to a *Bauträger* which manages the plan and supervises the construction. Planning costs are usually insignificant, less than 2% according to Dr Michael Neitzel of the Institute for Housing, Real Estate, Urban and Regional Development (INWIS), and they are rarely listed in overall costing of a new project.<sup>55</sup>

According to Dr Neitzel, whose research consultancy in the University of Applied Sciences in Bochum deals with building, real estate and urban planning, it used to be the case that Germans could not work out why Dutch houses were as much as 20% cheaper than their own. They tried importing Dutch building techniques but

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<sup>53</sup> Interview with Dr Klaus Von Zahn, Head of Urban Planning (Now head of Environmental) City of Dusseldorf. City of Dusseldorf Planning Department Offices, Dusseldorf, Germany. 28 February, 2013.

<sup>54</sup> Interview with Dr Michael Neitzel and Dr Alexandra Hill. 27 February, 2013.

<sup>55</sup> Ibid.

found the houses to be widely regarded as ugly and of lesser quality (indeed, for many Germans, Dutch housing seems to be a byword for poor quality – one doesn't like to think about what the Germans might think of New Zealand homes!).

Because of the set ground rules, a *Bauträger* knows roughly what it can and can't do and works with the local authority to expedite the development.<sup>56</sup> The similarities with New Zealand so far are evident.

This *Bauträger* is a relatively new phenomenon. There were few of them in the 1990s and their job is to combine architecture with building and planning expertise and design new developments that can be brought to market in accordance with the wishes of its community. In part, the *Bauträger* was prompted in the 1990s by the perception of Dutch neighbours having cheaper homes, and initiating ways of achieving economies of scale to take advantage of pre-fabricated production techniques and off-site building.

According to Dr Neitzel, getting land for these new *Bauträger* (and single plots) is 'not a problem'. Local authorities in Germany generally, and the Ruhr particularly, have been actively involved in buying new land and purchasing land from farmers as it becomes available. The municipalities are also active in purchasing former industrial land. Currently, an estimated 30% to 40% of the land being built upon in the Ruhr for residential purposes is industrial. The price ratio of land to building is approximately 30% to 70%. The rest is from rezoned greenfields. Buying land is not a problem and the council is keen for land to be made available to *Bauträger* or developers to build new houses. The view of INWIS is that *Bauträger* provide the most competition in the market because they are a large and growing part of the new construction market. This is once again revealed in German preferences for

land outside core cities, particularly in the Ruhr, a very spread out area with three to four cities within a half hour drive.

Interestingly, when people take out a mortgage on a house, that information gets lodged with the local authority. At any point in time, a local city or municipality knows just how much debt is held over its land, and what borrowing ratios are financing new house growth.<sup>57</sup> Given that the German system is highly prescriptive and planned by government, this is presumably to prevent perceived over-investment in housing, or council spending in infrastructure. Loose lending practices could leave councils with empty houses or under-utilised infrastructure that they did not bargain for.

Dr Neitzel and Dr Alexandra Hill, also from INWIS, cite the different cases of Bochum and Dortmund, two cities right next to each other. They argue that Bochum is underperforming when it comes to making provision for new houses: previously 120 hectares per year was made available for new houses if required, but this has reduced to 30 hectares. They then cite the example of Dortmund, which they believe has a more proactive council. Dortmund owns a public development company of its own. It enters into the land market to secure land where orderly development can occur from offices to single family homes. However, due to deficits generally, and a post global financial crisis environment particularly, Bochum and Dortmund have been entering the property market much less, and the local market has changed quite substantially as a result, with less land able to be brought to the market for development.

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<sup>56</sup> Interview with Dr Michael Neitzel and Dr Alexandra Hill. 27 February, 2013. Interview with Dr Klaus Von Zahn. 28 February, 2013.

<sup>57</sup> Interview with Dr Michael Neitzel and Dr Alexandra Hill. 27 February, 2013.

### Loss of value on the periphery and changing cities

As can be seen in our previous report, Germany has enjoyed relatively constant house prices, in real terms, since at least the 1970s. In the past five years or so, prices have actually been falling on average largely because of demographic change. Germans don't reproduce as they once did and the population growth rate is down to 1.39 per woman<sup>58</sup> compared with 2.1 in New Zealand.<sup>59</sup> At the same time, Germans live much longer than they once did. The result is a demographic change that is going to alter the shape of Germany significantly over the next 50 to 60 years.

In the short term, this has meant that far more single people wish to live in cities than was previously the case. Many older Germans, who wish to be close to facilities and who do not have grandchildren to entertain, also wish to move to cities. The result is that several metropolitan areas are growing, while the peripheries of many settlements are shrinking in value. The cities of Dusseldorf, Frankfurt, Berlin, Cologne, Hamburg and Munich are thriving and even have substantial upward pressure on house prices, while prices are starting to fall at the edges. This is seen as a substantial issue for German planners and politicians.

Professor Alexander Schmidt of the University of Duisburg in Essen points to the precipitous decline in population in Essen: from 750,000 in 1970 to 550,000 today. Unlike many downsizing cities, the desirable parts of the city are still growing, while less desirable parts are shrinking. He also explains how, because of its former industrial power and rich resource sector (it had so much coal that the French went there and mined it in lieu of post-World

War I reparations), the Essen experience saw 12 cities grow from three cities and a bunch of little villages.

Professor Schmidt<sup>60</sup> argues that social changes that are underway in Germany will shape cities very differently from how they have grown to date. One is the population demographic. Another, he argues, is a decline in former status symbols for younger voters: cars and big houses are not as socially important as they once were. Moreover, subsidised public transport can often work better for people than car commuting. This point is possibly true, but difficult to prove without detailed surveys. Schmidt also points out that local and state government policies and regeneration projects can change the shape of cities.

Professor Schmidt's last point is compelling; he explains that in older cities where there may be regeneration projects, local municipalities can alter the property market entirely by turning once undesirable areas into popular spots which encourage gentrification. In the former industrial heartland of the Ruhr, he provides a concrete example: the Emscher River. The Emscher was turned into a canal in the early twentieth century. Rather than have any water treatment plant, all waste from houses and factories went into the Emscher. As a result, it became an open industrial drainpipe, weaving its way through the Ruhr with its poisonous and putrid flow. The river is biologically dead. However, a few years ago a decision was made to clean up the Emscher by designing proper wastewater infrastructure. Before this, continued mining activity in the region meant that underground infrastructure was at risk of subsidence.

The result is that for two years the governments of the Ruhr have been building an enormous underground pipe, 30 metres in diameter to run underground,

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<sup>58</sup> Spiegel Staff. "A 200-Billion-Euro Waste: Why Germany Is Failing to Boost Its Birth Rate." *Der Spiegel Online* 5 February 2013. <http://www.spiegel.de/international/germany/study-shows-germany-wasting-billions-on-failed-family-policy-a-881637.html>

<sup>59</sup> Moore, Tristan. "Baby gap: Germany's birth rate hits historic low." *Time Magazine*. May 23, 2010. <http://www.time.com/time/world/article/0,8599,1991216,00.html>

<sup>60</sup> Interview with Professor Dr J. Alexander Schmidt, Head of the Institute of City Planning and Urban Design, University of Duisburg-Essen. University of Duisburg-Essen. 26 February, 2013.

below the Emscher and to take all the waste water to a new water treatment plant. This will cost several billion euros and leave the existing Emscher to be cleaned up. The estimated time for recovery is about 20 years, with the pipe to be completed in 2020. Evidently, this is a fantastic environmental project, but why is it important for housing?

For much of the past century, the collective backs of Ruhr houses have been turned against the river, which winds its way through the (formerly) picturesque heart of the region. No houses have been built near it, and efforts have been made to avoid it, rather than interact with it. This new development will, in all likelihood, change all that. Once the Emscher is regenerated, Professor Schmidt believes it will be a highly desirable place to live near and will change the planning balance of the region. His wider point is that when governments need to get involved to clean up an area or modernise it, or when the economic structure of a region changes, this inevitably has flow-on effects for the housing market, land values, and where people wish to live.

Professor Schmidt also points out the importance of building cities for the market and not for the urban poor. As a planner, he argues that it might be unfortunate that when gentrification occurs, poorer people have to move or find new places to live, but he asks: where else is the money going to come from? If cities are to be regenerated, urban planning needs to consider these social trends in a market context, not through the lens of providing for the poorest. Of course, thought and provision need to be made about how to house the poor, he argues, but this cannot be the driver of urban regeneration and development.

But, there is a puzzling question: why do Germans usually only buy one house in their lifetime? It is true that with largely

stable prices there is nothing obvious to be gained by getting into a lot of debt at a young age, when a house will be worth roughly the same in real terms, in 10 years' time. Professor Schmidt simply offers the view that once someone in Germany buys a home, they wish to stay there – the concept of 'feeling at home' is very important for Germans, he believes. He also points to the very high proportion of Germans who live and die within 25 kilometres of where they were born and grew up. The Germans, he believes, are not a particularly mobile people, and although mobility tends to increase with education, due to the improved job prospects, it is still rather low compared to the English-speaking world. In short, it seems to be a mixture of factors: unchanging prices mean there is no hurry to get onto the property ladder, no concept of a 'first home' so people save to buy exactly what they want, which means a culture of buying a house once, at a later stage of life.

### We can get politicians the money

Over at city hall, Hans-Jürgen Best, chief planner in the city of Essen, is lively when he explains the challenges faced by his region. The obvious one is maintaining the city's revenue, when last year Essen had 4,000 births but 7,500 deaths. This means his city is facing an uphill battle for revenue. He explains that people are essential to the city since the state government gives the city a grant for every person, and there's a loading for younger residents. There is also a local business profit tax and thus a very high interest in attracting profitable companies to the region. As chief planner, companies are his first concern; the second is the profitability in people. A big part of this

is creating employment opportunities in the region, and stimulating competitively priced housing in areas where people wish to live. He bluntly explains: “I say to the politicians: get me new land for settlement and I’ll get you more money.”<sup>61</sup>

Mr Best, a Social Democrat, believes the major political parties in Essen and elsewhere are becoming scared of the Greens, which in turn is creating political pressure not to release land. Up until the global financial crisis, his arguments won the day, but not so much now, he explains. He then explains the process by which new plans are drawn up in Essen:

- 1) Local politicians decide which land should be explored for new settlement, and give the council executive direction.
- 2) The city produces designs that remain confidential until the consultation phase.
- 3) These designs are shown to the community through a meeting or series of meetings.
- 4) Recommendations are then made to the local politicians based on feedback from locals.
- 5) After about one and a half years from the beginning of the process, a decision is taken and it becomes law. It is subject to all the private property or development protections mentioned above. Appeals can then be lodged only on the grounds of process. Any rezoning or land use decision that might have occurred is given to owners who can do whatever they wish with their land. There is no compulsion to sell or develop it. If the owner makes clear that he/she has no intention of developing, then alternative avenues have to be found and different plans made.

It might be pointed out that this sort of system, particularly at the stage of plans being drawn up, lent itself to land speculation, and presented opportunities for gain to be made by exiting owners of land. Mr Best believes that in Germany, this was largely not the case. He observed that in his experience, Germans do not really buy and sell land very much. That sort of speculation and private pressure for new and controversial developments only happen in high pressure cities, and such behaviour would be considered rude and inappropriate. He also points out that the confidential nature of the drawing up of plans militates against political pressure or speculation. Under this system, someone stands to gain from rezoning, but no one knows in advance who it might be, or when it might occur. The growth of towns is considered more of a technical pursuit for local authorities than a political one. However, these processes are necessarily political, and there is now less land being made available for development in Essen as a result of political pressure.

‘Urban sprawl’ per se is not a political problem. Evidently, Mr Best is concerned that Essen politicians are not brave enough to explain to their constituents that more business and people are necessary for the city’s future fiscal well-being.

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<sup>61</sup> Interview with Hans-Jürgen Best. 27 February, 2013.

### Conclusion

Germany's system of local taxation and capitation grants by states to localities on a population basis has its advantages. Money follows people who are more mobile than land. Because the localities cannot really raise revenue themselves through taxes or rates, there is a great incentive to attract new businesses and people. However, given the shrinking nature of many German areas, this pressure is far greater than in places that are growing as a result of migration and new job opportunities.

As with Switzerland, there seems to be little in German planning law that, taken on its own, is more obviously conducive to development than in New Zealand law. However, the incentives created by tax grants that follow people can create a helpful dynamic. The pro-growth dynamic created by the necessity for business opportunities and competitively priced housing in a region is an institutional advantage in the planning for new houses and more people. All people in the area benefit. Under a rates system such as New Zealand possesses, the effect of rising house values can be positive for councils. Under the German system, higher house prices are not advantageous to local authorities, particularly if there are competing municipalities nearby where housing is cheaper. However, under both rates and capitation grants systems, there is still a similar incentive for councils to attract more businesses and more people.

One is left with the creeping suspicion that the German system might have a slightly superior institutional design, but that it works because Germans hold different cultural values and behave differently in certain circumstances.

This is not a particularly satisfactory explanation, but the behaviour of the German banking sector during the financial crisis, and the modest salaries

paid to their employees compared with Britain and the United States, does show significant cultural differences.

Germany also has slightly different incentives with local government finance. Taxes that follow population rather than land have definite merit. The German constitutionally protected right to build, like in Switzerland, is also a very useful right that can counter regulatory restrictions.





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# 3.

## The United Kingdom: a housing quagmire

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The United Kingdom is a telling case study of what not to do in housing policy. While the British market underwent a major correction during the global financial crisis, it is still a stubbornly expensive place to buy small, even pokey, houses.

British central and local government affect most aspects of housing and have contributed substantially to house price inflation. British housing has been influenced by the great and increasing level of inward migration (particularly in London) and by a lobby of NIMBYs (not in my back yard) led by the Campaign to Protect Rural England (CPRE).

Local government is heavily involved in the housing market. An estimated 25% of all housing in Britain is publicly owned<sup>62</sup> and provided through council houses. Whereas in New Zealand most government provided accommodation is administered by central government, councils have always done so in Britain. Indeed, this reflects the historical strength and devolution of Britain's social structure, a devolution that has been rapidly eroded since World War II by governments of both stripes.

### A New Jerusalem

In many ways, the current housing crisis is a result of the planning mentality inherited post World War II. Many British

cities had been seriously damaged by Hitler's Luftwaffe. Work began under Clement Attlee's government and continued under Winston Churchill's in the early 1950s. This included government planning and control of many parts of the economy. One of the reasons offered for Britain's victory in the war was planning. The attitude at the time was that planning won the war, now planning will win the peace.<sup>63</sup> In William Blake's words, quoted by Attlee, the aim was to 'build a new Jerusalem'.

As our previous report noted, state-provided and subsidised housing in New Zealand was a key plank of our welfare state. New Zealand's Labour government expanded several state enterprises and protected existing New Zealand companies. The United Kingdom had a different approach. Some private sectors were nationalised, and the state, rather than helping people buy houses, decided to provide them and allow them to be rented through councils.

Over time, many areas of the British economy have been deregulated or privatised and there is more reliance on the market. However, this has not occurred in planning and housing. British planner Chris Webster has written about the battle for ideas that shaped British planning and continues to do so to this day.<sup>64</sup> If the twentieth century can be seen as a battle of the ideas of Keynes versus Hayek, Keynes won in town planning.<sup>65</sup>

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<sup>62</sup> Interview with Brian Horton, Strategic Housing Advisor, Kent County Council, England. Kent County Council. 18 February, 2013.

<sup>63</sup> Evans, Alan W. *Economics and Land Use Planning*. London: Blackwell, 2004. p.4

<sup>64</sup> Webster, Chris. *The Battle for Ideas that shaped British planning*. Paper presented at an International Seminar on Epistemological Understandings of Spatial Policy and Rural (Regional) Change, held at Seoul National University, Seoul, Korea. 25 May, 2006.

<sup>65</sup> Ibid.

Even Margaret Thatcher's government was a centralising force that did little to change the planning system. In fact in 1990, the Planning Minister, Michael Heseltine, introduced what is known as 'plan-led development'. The problem with this was that most councils didn't have, and still don't have, plans. The one great advantage of having a plan-led system – certainty – was absent from the planning regime.<sup>66</sup> Councils and local authorities could, and still can, turn anything down saying it wasn't in the plan, when the plan didn't exist in any meaningful sense! The Thatcher government was suspicious of local councils, viewing them as Labour Party strongholds. It was also under political pressure from Tory shires to keep development out of their area, thus keeping Britain's countryside in pristine condition (or at the very least, unchanged).

Some 85% of local councils' money in Britain comes from central government, filtered down from Whitehall in 'silos' and with strings attached, along with the latest policy decisions that affect how local councils conduct their affairs.<sup>67</sup> Mrs Thatcher favoured centralism because she suspected that, left to their own devices, councils would pursue socialist agendas. As a result, Britain now has the most centralised and controlled local government in Europe, more than even the French. For a nation that has traditionally prided itself for so long on its local democracy, this is surprising.

### A Soviet system?

Britain's housing market has many of the hallmarks of a Soviet planning system. As explained in detail by Hartwich and Evans in 2005, the British planning system was conceived as part of a new socialist future where benevolent planners would 'efficiently' decide where people could live. In the event, the Town and Country

Planning Act 1947 essentially nationalised the right of the British to develop and vested that right in the state.<sup>68</sup> It is a right the state has been increasingly intent upon using. It is difficult to develop, and very difficult to propose any sort of new private development in Britain, especially if it involves greenfields. Local councils hold the whip hand over development. And even where councils are pro development, they are often scared of the CPRE and other campaigners intent on maintaining the greenbelt. The result is a lack of new land for development, and a religious commitment to developing brownfields. There is a commitment to density, even when it does not make much sense, such as in the outer suburbs.<sup>69</sup> Development also includes 'key worker housing', where homes are specially built for nurses, teachers and police officers. It also includes an affordable housing quota ('inclusionary zoning') in most developments, whereby 25% of new houses in a new development must have an 'affordable' price or rent attached to them.

The English housing market is a tale of many decades of planning-led development and indicates the effects of the state being too closely involved in the provision of housing. This has been well documented in Hartwich and Evans' report on the British housing market in 2005. This section will draw on that report and on follow up fieldwork and research investigating the many efforts to remedy Britain's huge housing shortage.

Like New Zealand, Britain's basic problem is a lack of supply. Although this has been outlined in Hartwich and Evans, and in more recent publications, there are few genuinely robust numbers associated with these. John Stewart, a New Zealand economist working for the British Home Builders' Association, says the problem has become so bad that no one wants to keep reliable numbers anymore.<sup>70</sup>

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<sup>66</sup> Interview with Professor Alan Evans, Director, Centre for Spatial and Real Estate Economics, University of Reading. Harrow, England. 20 February, 2013. Also: Morton, Alex. *A Right to Build: Local Homes for Local People*. London: Policy Exchange, 2013. pp. 14-17.

<sup>67</sup> Interview with Ivor Wells, Programme Advisor, Local Government Association, United Kingdom. Local Government Association offices, London. 19 February 2013.

<sup>68</sup> Evans, Alan. *Economics and Land use Planning*. London: Blackwell press 2004.

<sup>69</sup> Interview with Professor Alan Evans. 20 February, 2013.

<sup>70</sup> Interview with John Stewart, Economist, British Home Builders Association. British Home Builder's Association, London. 22 February, 2013.

## The Barker Report

In 2004, amid concerns about housing affordability and a lack of new housing in Great Britain, Chancellor of the Exchequer Gordon Brown commissioned Bank of England Monetary Policy Committee member, Kate Barker, to review British housing supply. When Barker's report was released, it faced trenchant criticism from special interests and ideologues. Barker argued that inadequate housing construction contributed to macroeconomic instability,<sup>71</sup> and that the housing market was important because it indicated people's preferences over time as incomes increased. As incomes rose, preferences for greater size and space became evident. Barker argued that the increase in house prices was caused by an inadequate supply of houses that people wanted to buy. In effect, she noted that wealth was being transferred to existing property owners at the expense of those who would have preferred buying something in a new development. She also noted that this had to be balanced against the perceived benefits of maintaining greenfield land and minimizing urban sprawl.

In Britain, today's new housing stock accounts for barely 1% of the annual supply.<sup>72</sup> New Zealand's figure is roughly the same at present.<sup>73</sup> But the problem is not only the lack of houses being produced, but where they are located. Restrictions on construction in areas where people would prefer to live, often near their employment, are as much a difficulty to address as the total supply.

Ms Barker argued that to keep prices in check, an extra 70,000 new homes (in addition to the 125,000 gross completions at that time) would have to be built, and ideally that number would be up to 120,000 – an effective doubling of the rate of new building.<sup>74</sup>

To achieve this, it was broadly argued that more certainty was required from the planning regime: where you can and cannot build would need to be clarified and made more flexible, and more land would be required for new houses to reflect preferences for more spacious dwellings. Barker also argued that the incentives for local government needed to be better aligned to assist with funding new infrastructure and development.<sup>75</sup> Key to these recommendations was the notion that houses should be allowed to be built in many more places, and that areas of environmental sensitivity and importance would have to be identified early in the planning stage so as not to roadblock development whenever some new development was proposed.

It was also recommended that government should indulge in so called 'development gain' whereby the state would seek to share in the gains in the value conferred by the state's decisions. So if an area were to be rezoned for housing development, the council would take a portion of any increase in value caused by that decision. This funding could then be used to help finance new development and infrastructure, and fund some of the local amenities provided by the local authorities.

Unfortunately, many of Barker's recommendations were criticised or rejected. Chancellor Brown announced a series of centrally mandated and controlled building targets for councils that were not, and have still not, been met. The reticence of councils, and the political strength of various NIMBY organisations, the CPRE in particular, were simply too strong to be confronted in any concerted manner.

When interviewed about the Barker report almost 10 years later<sup>76</sup>, Ms Barker indicated that today she would not recommend much that was different, but that a major frustration of hers was

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<sup>71</sup> Barker, Kate. *Review of Housing Supply: Final report: recommendations*. London, HM Treasury, 2004. p.1. <http://image.guardian.co.uk/sys-files/Guardian/documents/2004/03/17/Barker.pdf>

<sup>72</sup> *Ibid*, p.4.

<sup>73</sup> Based on current build rate and a total housing stock figure of 1,605,000 used in Bassett and Malpass. p.17.

<sup>74</sup> Barker, Kate. pp. 11-12.

<sup>75</sup> *Ibid*, pp 11-12, p.66.

<sup>76</sup> Interview with Kate Barker. Caffè Nero, Kingsway, London. 21 February 2013.

the attitude of people who were against further building on greenfields land or on the greenbelt. Although she could understand people's concerns and the need for sensible policies regarding greenbelts, she also believed that most arguments against further development weren't good arguments. After all, only 10% of the land in the United Kingdom is built upon. Ms Barker suggested that the fears about using up farmland, both in Britain and in New Zealand, are overplayed and untrue. Instead, it is a form of political rent seeking where those who are currently housed do their best to stop new residents moving in, or building in their areas.

Because the right to develop property has been nationalised,<sup>77</sup> and remains nationalised in the United Kingdom, it still is difficult to change the planning law. The Town and Country Planning Act, similar to the Resource Management Act in New Zealand, has had a whole industry grow around it, and is seen by anti-development advocates to have Biblical significance, a key piece of legislation that 'protects' the countryside. British culture is also unhelpful: from William Blake's 'dark Satanic mills' to J.R.R. Tolkien's celebration of an older England through the Shire and Hobbiton, the countryside has been glorified. Indeed, in a documentary on Tolkien, the reason the Tolkien Society gave for Lord of the Rings not being filmed in the United Kingdom was that there was no country in the United Kingdom that was undeveloped and didn't have houses! Common views like this leave an impression of widespread development in Britain that we know not to be correct.

## The current government

The current British government came to power armed with a plan to get more houses built based on better incentives for local government. Planning Minister Nick Boles sees incentives as key to new development. He argues that local communities now not only have no incentive to support new development; they also have every incentive to oppose it.<sup>78</sup> This is because new development doesn't bring sufficient obvious benefits but a lot of immediate drawbacks: people might consider the houses and buildings ugly, and there will be more traffic and stress on civic and social services and so on. There are few reasons for locals to favour new development.

To facilitate new development, Mr Boles has introduced a new community infrastructure levy (CIL), paid for by the builder of a new house, of which 25% will go straight to a neighbourhood group that approves new development in its area.<sup>79</sup> Any neighbourhood groups such as a town council or parish council can fund community infrastructure upgrades by agreeing to a new development.<sup>80</sup>

Not only is the local community given money if they respond positively to a new plan, but a neighbourhood can also bring a plan forward for new development. The amount of the CIL money that will go to community groups if they respond to a plan will be just 15%; if they are proactive in bringing forward a plan of their own to the appropriate regional authority, they will be able to uplift the full 25% of the new levy. The aim of the plan is to create a dynamic where communities bring forward proposals that align with local interests. Not only will they get a percentage of the new CIL fee, but they will also be in the driver's seat in managing the new development – getting any new buildings into a shape where the locals

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<sup>77</sup> Interview with Professor Alan Evans. 20 February, 2013. Also see: Evans, Alan. *Economics and Land use Planning*. London: Blackwell Press, 2004.

<sup>78</sup> Interview with the Hon Nicholas Boles MP, Minister for Planning. Portcullis House, London. 18 February, 2013.

<sup>79</sup> United Kingdom Government. *Community infrastructure Levy*. <https://www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development/supporting-pages/community-infrastructure-levy>

<sup>80</sup> United Kingdom Government. *Communities will receive cash boost for choosing development*. Departments for Community and Local Government. 10 January, 2013. <https://www.gov.uk/government/news/communities-to-receive-cash-boost-for-choosing-development>

are less likely to oppose them. The CIL works on a charge per square metre basis set by the local planning authority; the community group gets the percentage of the charge, often known as a ‘roof tax’ or ‘Boles bung’. Obviously the incentive is to build a lot of roofs to keep the cash flowing for local authorities.

The Minister is cautiously optimistic about the potential success of his scheme. However, the CPRE shows the Minister being attacked with frightening regularity on its website, and is campaigning to ‘save our countryside’ by imploring readers to ‘help us stop a building free-for-all’. On a recent television panel, Sir Simon Jenkins of the National Trust badgered the Minister with assertions that there was no need to further build on greenfields: there were ample brownfields available for development.<sup>81</sup>

## The right to self-build

One of the leading institutions for change in the building and planning industry has been Policy Exchange, a British think tank aligned to the British Conservative Party. Since its affordable housing programme was rebooted in 2010, Policy Exchange has produced a series of reports exploring innovative ways to address the housing shortage in Britain. Its latest proposal is to introduce a right to self-build homes. Large builders are often blamed for high house prices in the United Kingdom. This is the opposite of New Zealand where a lack of large-scale builders, expensive material, and a preference for bespoke homes are often blamed for insufficient affordable homes.

The most recent Policy Exchange report continues the work of trying to understand both the incentives and the political economy of building in Britain. The director of Policy Exchange’s housing programme, Alex Morton, believes there

is a “weird alliance of planners, architects, developers and builders, who all support the status quo”.<sup>82</sup> Policy Exchange’s argument is that there is a pseudo-monopoly in land supply. Because land supply is limited by planning regulations, NIMBY types, speculators and land bankers (seen and invisible), it is hard to come by new land in the market, making it very expensive. Further, because councils’ planning costs are so high, and the fees and the difficulties with getting new housing built, an ever smaller proportion of a new house cost is spent on its design and build: meaning down market, unattractive and cookie-cutter homes.

This is one reason why many in existing homes in the United Kingdom do not favour new developments; they tend to be ugly and characterless. Mr Morton also says houses loved by the British public and romanticised in the public mind are no longer allowed to be built.<sup>83</sup> In doing so, he highlights the absurdities of Britain’s planning regime. You are not allowed to build a home without a toilet on the ground floor (presumably in case someone with a disability visits or wishes to buy it down the track); the house has to be within an ‘appropriate’ walking distance of where the rubbish is put out; and so forth.<sup>84</sup>

As the new British system is predicated on councils meeting house building targets, Morton’s recommendations are framed with this in mind. The basic premise is that any given council has to release, for self-build, sufficient land to meet any shortfall in its housing target in any given year. Sadly these targets are rarely met.

Under Morton’s recommendations, land would be made available by tender. The council would identify areas for town growth and invite sealed (confidential) tenders by land owners: the council would then buy the cheapest land and pass it on at cost to people who are willing to build. Waiting lists for these plots would

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<sup>81</sup> Groves, Jason. “‘How many houses do you own?’ Planning minister challenges National Trust boss in furious row over house building plans.” *Daily Mail*, 10 January, 2013. <http://www.dailymail.co.uk/news/article-2260332/Planning-minister-challenges-National-Trust-boss-furious-row-housebuilding-plans.html>

<sup>82</sup> Interview with Alex Morton, Head of Housing, planning and urban public policy, Policy Exchange, London. Policy Exchange offices. London. 22 February, 2013.

<sup>83</sup> Morton, Alex. *A Right to Build: Local homes for local people*. London: Policy Exchange 2013. p.15

<sup>84</sup> *Ibid*, chapter 1.

be rationed through a lottery, where time spent during the lottery process would increase one's chance of winning a ballot. For every year in the lottery, the chance of winning would double.

To stop this system being gamed, the council would also have a stand-down period for those who do not wish to make their land available for development. If you refuse to put your land out to tender for development, the report *A Right to Build: Local homes for local people*<sup>85</sup>, suggests that the imposition of a moratorium of 15 years on development of that land would probably concentrate the owner's mind. Any potential owner would have to weigh carefully the best course of action. The report also suggested that any landowners tendering to sell who have not come in at the lowest price in the sealed tender would have the opportunity to bring forward their land to council at any time for a process of self-build only.

Under this scheme, the idea is that the council would get low cost land; bespoke homes could be built; and neighbourhood groups could add character additions to the homes and allow different rules for different neighbourhoods. 'Planning gain' (the practice by which councils appropriate a portion of any increase in land value as a result of rezoning) would be abolished so that councils would not be tempted to raise land prices to increase their planning gain. The CIL would be maintained, but capped at £10,000 per section, to be banked for infrastructure.<sup>86</sup>

There are several potential downsides with this particular scheme. First, it is designed with the politics of development in mind: how to gain and lock in political support for further housing development? The scheme is expected to create a larger waiting list for self-build plots, thereby locking in a vested interest in favour of more building, while simultaneously increasing pressure on councils to hold

large, regular auctions for plots. This would add to the desired stock and prove a political winner for local politicians. The new proposals are predicted by Mr Morton to ride roughshod of property development rights, but that is not an obvious disadvantage since they have already been largely nationalised.

Second, the proposed system is a classic high Tory example of bespoke homes, determined in local communities where the quintessential Britishness of small town, city limits, and the countryside can shine through and be embraced by all. The plan is not as unrealistic as some argue and the Cameron government has already committed to plot auctions, although the programme in its entirety has not got off the ground yet.

So the key tenets of the proposed scheme are the following. Councils must zone enough land to fulfil centrally mandated targets that are based on perceived needs in an area. Landowners can tender for their land to be used through a sealed auction – the lowest tender wins the auction. Landowners do not have to offer their land for auction, but they will face a 15-year moratorium on that land being used for development. The council buys land at auction and passes it on at cost to people who wish to self-build. The house must be lived in for a set period, five years for example. There is no 'planning gain' uplifted, but the CIL remains, and is capped at £10,000. The local community gets a say in what the new house must look like, including character requirements. Other state mandated requirements for houses get dropped, bar building safety permits and compliance.

Under Policy Exchange's calculations, this would build public support, bypass council objections, empower communities, rid planning of its pseudo monopoly on land provision, and finally, get a lot more houses built. It estimates 100,000 houses

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid, p.34

would be built in the self-build scheme's first year of operation.

While this scheme has some merit, it is framed in the British way of doing things: its trigger is reliance on targets (although this is not greatly different to the *Auckland Housing Accord*<sup>87</sup> signed between central government and the Auckland Council). The British idea is to get rid of land speculation and developer profits, and find a way in which community-approved housing can be built.

On the face of it, this looks like an innovative solution, but it is a second-best solution because it tries to second guess political incentives rather than look purely at what a proper market might provide. But the best-case scenario of a free housing market in Britain is unlikely to be politically feasible. From a New Zealand perspective, however, it seems to be a complex scheme that seeks to tackle land supply and infrastructure shortages in a complicated, roundabout manner.

## Conclusion

As things stand, a new housing market scarcely exists in Britain. The status quo leaves most of the cards in the hands of those who currently own land, and the councils and planners who since World War II have constructed an almost impregnable wall of regulations that favour those who control the green spaces against those who want to access small portions of them for new houses. The nationalisation of development rights, coupled with the more recent British fetishes regarding health and safety, and sacred views of greenfields, have created a powerful constituency hostile to development.

There are definitely lessons to be taken from Britain. First, a centralised plan-led planning law is undesirable. Having the

state play such an active role in planning and land use is always going to be sub-optimal. This is because bureaucratic and planning incentives seldom align with consumer preferences. Second, British councils having little reason to want more people in their area – they cost money and are therefore electorally unpopular. Councils raise little funds themselves, and have no financial stake in an influx of new people. The CIL goes some way to redressing this, but there are doubts whether it will be seen as substantial enough, or whether anti-development attitudes are too heavily ingrained to change without further changes to the incentive structure. Third, the mandated 'affordable housing' in a new private development raises costs for developers and ultimately house buyers.

Unpicking all this will be difficult anytime in the foreseeable future, although some credible policies have been developed that need to be implemented before the next election when, if current polling is to be believed, efforts might well be mounted to return to the anti-development regime that has been in force for so many years. If that occurs, young couples and the houses they wish to inhabit will remain as far apart as they are today. There is something approaching a political consensus that more houses need to be built, but agreeing on the practicalities is proving extremely difficult. The lessons for New Zealand aren't clear, although it has to be conceded that some of the anti-development attitudes of councils and planners have already firmly established themselves in New Zealand, especially in Auckland. It might yet prove necessary to develop an incentive regime to encourage faster development in New Zealand, and in that context, keeping an eye on British policies could be worthwhile.

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<sup>87</sup> Auckland Council and New Zealand Government. *Auckland Housing Accord*. Auckland, 10 May, 2013. <http://www.aucklandcouncil.govt.nz/SiteCollection/Documents/aboutcouncil/planspolicies/publications/aucklandhousingaccord.pdf>





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# 4.

## Texas and municipal utility districts

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Flying over Texas, two things stand out: space and sprawl. It is a bustling state, with record rates of economic growth, barely touched by the global financial crisis, and with one of the highest standards of living in the United States. Annual per capita income is \$NZ70,000 and the cost of living is low. One of the key reasons for the growth of Texas is its low-cost housing.<sup>88</sup> The average price of a house in Austin, regularly rated one of the top five most desirable cities in the United States, is \$US187,000. In Houston it is lower. Overall, the average house price to household income ratio (the so-called median multiple) has remained around three. In other words, the average home costs three times the average income. There are several reasons for this, and different cities in the state organise themselves in their own ways; however, what they have in common is a liberal land use law at the edges of cities. There is also a very clever model, becoming more widely adopted, by which new infrastructure can be funded and growth allowed.

Houston is a city with a metropolitan region (greater Houston) of about 6.1 million.<sup>89</sup> The strict city boundary itself contains only 2.1 million people. Harris County in greater Houston alone grew by 88,000 people in the year to March 2011–12.<sup>90</sup> The city took off only after the introduction of air conditioning in the 1950s. Before that, it was a hot outpost with some oil and a space centre. Today, Houston is one of the economic growth stories in the United States; high-tech

medical research and manufacturing is the biggest employer<sup>91</sup>; and housing is one of the key drivers of this prosperity. The high standard of living, which includes the ability to buy a house on a modest wage or salary, has been one of the hidden factors behind Texan prosperity over the past decades.

### How does Texan planning work?

Each city in Texas is different. Some cities such as Dallas and Austin have planned development, zoning, and development attitudes and zoning rules similar to many places in New Zealand. Houston is the only city without any zoning.

Rapid growth stretches the ability of municipal authorities to pay for infrastructure. So Houston and other cities such as Austin have had to look for innovative ways to finance infrastructure. The other important factor in development in Texas in general, and Houston in particular, is that land outside the cities cannot be zoned. It also has a narrow definition and a robust defence of property rights, and a view that the market, by and large, is best placed to deliver housing outcomes.<sup>92</sup> Following these principles, the key legislative development has been the invention and growth of the Municipal Utility District (MUD).

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<sup>88</sup> Wendell Cox. "The Texas Growth Machine." *City Journal Online*. Vol.23, No. 1, Winter 2013.

<sup>89</sup> *Ibid.*

<sup>90</sup> United States Census Bureau. *Census estimates show new patterns of Growth nationwide*. April 5, 2012. <http://www.census.gov/newsroom/releases/archives/population/cb12-55.html>

<sup>91</sup> Wendell Cox. "The Texas Growth Machine." *City Journal Online*. Vol.23, No. 1, Winter 2013. [http://www.city-journal.org/2013/23\\_1\\_texas-growth.html](http://www.city-journal.org/2013/23_1_texas-growth.html)

<sup>92</sup> Interview with Brian Crimmins, Chief-of-Staff, City of Houston Planning Department. City of Houston Offices. 13 March, 2013.

### Municipal Utility Districts

A Municipal Utility District (MUD) is a water district set up to provide water services to a defined geographical district. It is a statutory authority with the power to tax its residents for the infrastructure and water services it provides. These services are most often water services: freshwater, wastewater and storm water management.

### History of MUDs

In various forms, the right to set up a MUD has existed in Texas since the turn of the twentieth century; in its current form, it dates back to around the 1970s and was developed to finance new infrastructure in Texas, particularly the growing city of Houston. MUDs have been more widely used there, because the City of Houston and Harris County could see they would have been unable to finance the infrastructure required for substantial city growth. Some 2.2 million people in the wider Houston area live within a MUD.<sup>93</sup>

The MUD is created by law to provide water-related services within a defined district. Around 50% of MUDs are formed through an administrative process, where a proposal is put forward with ownership, financial, engineering, and legal plans. This is typically a rigorous process that might take up to 18 months, and is not unlike extensive new proposals for developments that are put up to councils in New Zealand.

The other half of the MUDs are created by legislation. If the proposal is supported by a local congressman and senator, it can be attached to a bill in the Texas state legislature. Essentially, this is an American-style earmark whereby the MUD is created by an act of the legislature. The due diligence of these

MUDs is less rigorous than the ones created by the administrative route, but these MUDs reflect the will of the local community as expressed through elected representatives. The MUD still needs to undergo due diligence: and its engineering and financial standards still need to meet the legal requirements set by the state of Texas.<sup>94</sup> Specifically, financial feasibility rules are set, but regulations of the Texas Commission on Environmental Quality (TECQ) need to be adhered to.<sup>95</sup>

A MUD has taxing powers, and is run by the elected representatives of its residents who must contract out development services to a developer to manage and build. A MUD can issue bonds off the back of existing value, once some value has been created. Typically, the bonds are issued for a period of 20 to 30 years.

### How does it work?

Since land in Texas counties cannot be zoned by law, anyone can propose to set up a new development on his or her own land, but they have to provide the infrastructure. The cities provide most infrastructure within city limits to which residents must hook up, but it is a different story outside the city. All manner of infrastructure needs to be provided in a new development: roads, footpaths, streetlights and water. However, most MUDs are only empowered to provide, and tax for, water infrastructure. In some cases this also means other amenities can be voted on by the resident owners, which are a kind of body corporate.

The process is roughly as follows: a developer or group of landowners go through the process of turning some land into a MUD as described above (note: not all MUDs end up being developed). However, before that can happen some other steps need to be taken. To qualify

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<sup>93</sup> Cohen, Howard M. *Municipal Utility Districts in the Houston Metropolitan Area*. Presentation for the Houston Bar Association Real Estate Law Section. May 16, 2012.

<sup>94</sup> Much of the basic technical information on MUDs can be found in this paper: Cohen, Howard M. *Municipal Utility Districts in the Houston Metropolitan Area*. Presentation for the Houston Bar Association Real Estate Law Section. May 16, 2012.

<sup>95</sup> Joe. B. Allen and David M. Oliver, Jr. *Texas Municipal Utility Districts: An Infrastructure Financing System*. Houston: Allen Boone Humphreys Robinson LLP. p.4. <http://performanceurbanplanning.org/files/MUDInfrastructureFinancingSystem.pdf>

to be a MUD, land has to have resident owners, so the owner/developer of the land will sell sections to what is known as a 'developer board'.<sup>96</sup> The land can be sold at a peppercorn rate to get the development off the ground. The developer board will typically be a group of people with useful expertise (an engineer, a lawyer, an accountant, a banker, and so on) that the developer knows. The board is paid on a per-meeting-plus-costs basis, and must be re-elected by the residents of the MUD every two years on a rotating basis.

The resident board (at this point, it is the developer board) votes to form a MUD, creates rules for the development community, decides on what MUD tax they will charge, and contracts a developer to undertake the development. As the development grows, the board may change or stay the same depending on residents' wishes. In some cases, developer boards stay in charge for decades; in other cases, there is a quick turnover and new residents moving into the community might take over within a short period.

The infrastructure is provided by the developer who may build a first stage, 100 homes for example. Sufficient water and a sewage plant will be built for that, with the option of increasing the capacity.<sup>97</sup> The developer builds the roads, footpaths and other non-water infrastructure. These are included in the price of the house.

Once sufficient value has been created, and say 100 homes are sold, there will be enough value in the development and the future residential tax stream for the MUD to issue a tax-exempt bond to pay for the rest of the construction, which proceeds in stages. The common minimum example given is a 500-house development, with 100 new houses built at a time.

Any bond issue must be signed off by a State-appointed officer once due diligence has been undertaken to make sure that the bond is robust.<sup>98</sup> An assessment is

then made that the amount being raised is reasonable based on the construction work that needs to be done. The audit also considers the ability of the current and projected size of the MUD to pay off the bond in time. MUD administrations have developed over time, and one of the key attributes is the high level of trust in a MUD. The State is never expected to act as a backstop for one that has gone awry.<sup>99</sup> MUDs are, in essence, local authorities with limited taxing powers empowered to service water infrastructure.

### Tax

Of course infrastructure must be paid for. But instead of paying by way of a greater general tax, or the cost of the new construction being front loaded into the house, a MUD, as a statutory taxing authority is empowered to levy a tax to pay for this infrastructure. Here is one of the great advantages of the MUD. Instead of all the water infrastructure costs being loaded into the front price of the house, to be passed on at the point of occupation, a MUD tax involves low payment over time. This has the effect of keeping the price of the new house lower at the point of entry for a young couple. Specifically, by law, a MUD can charge an ad valorem tax of up to 1.5% per \$100 of value per year.<sup>100</sup> The amount of this tax reduces over time as the debt is retired. Some MUDs have a tax as low as 16 cents per \$100 and a typical tax seems to be around 30 cents per \$100 of value, a rate of 0.3% tax on the value of the property.

The tax typically begins at around \$1.30–\$1.40 of which perhaps \$1.10 is debt, which funds the capital; the remainder is the operating cost of the utilities. Those charges are typically run with a modest surplus in mind to pay for utility upgrades, a MUD manager, servicing, repairs, and

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<sup>96</sup> Interview with Clayton Black, Jones and Carter Engineering. Jones and Carter Offices, Houston, Texas. 11 March 2013.

<sup>97</sup> Interview with Clayton Black. 11 March, 2013.

<sup>98</sup> Allen and Oliver. p.4.

<sup>99</sup> Cohen. p.2.

<sup>100</sup> Cohelbid. p.6. Interview with Clayton Black. 11 March, 2013. Interview with David Hale, Vice-President, David Weekly Homes. David Weekly Homes, Houston, Texas. 13 March, 2013.

so on. Over time, if operating surpluses accrue, MUD residents usually vote for some new amenity to be built, often a swimming pool, a park development, or some other public amenity. In theory, the residents could vote to get a MUD operating a surplus to make a refund, but this rarely happens in practice.

A MUD tax is paid on top of other taxes that may be levied by the county or city. Since democratic processes are devolved, there are many MUDs inside the city of Houston, for example, so moving into one of these MUDs makes the owner liable for extra taxes.<sup>101</sup> Outside the city limits, obviously the commute is further, but the overall tax burden is often lower.

The water infrastructure paid for by the MUD also has to be signed off if it is in the city's extra territorial jurisdiction, since it needs to be able to be connected to the city's water infrastructure sometime down the line if the city chooses to annex it.

### Annexation

When MUDs were conceived, the idea was eventually to fold them into the City of Houston. They were formed because of Houston's inability to fund the new infrastructure for housing that the city needed. Post-War Houston grew by a million people per decade from a small rump outpost to a large petrochemical and an even larger medical technology centre.

As part of the MUD concept, the residents pay for it and the city takes it over at a time of its choosing. A MUD was a sort of user-pays system applicable until such time as it is deemed desirable to pull the development into the wider supply network. If there was any outstanding debt on the bond issue, it would be taken over by the city. The residents would no longer be liable for the MUD tax or plant when it needed upgrading or replacing. In

the event, however, there have not been any annexations for at least 15 years. The last one, a development called Kingswood, was so unpopular with the residents that the political damage and the fight were too difficult for the city to contemplate another one.<sup>102</sup>

The long-term outcome of non-annexation is still uncertain and will remain so until such time as another one is attempted. However, there are none on the horizon. One of the reasons MUDs were considered affordable and viable long-term options is that residents would have to pay for the infrastructure only once before it was folded into the wider system, thus rationalising costs, maintenance and replacement. With fewer MUDs being annexed, the question is how attractive MUDs will be in the long term if waste water treatment facilities need replacing or seriously upgrading. Will a bond have to be reissued and those who thought they had finished paying off their infrastructure realise that the user-pays capital costs were not one-off but had only a limited lifespan? Whether this will make MUDs less attractive in the long run is being debated, but new ones are being formed all the time.

### Land

The prioritisation of property rights, their absolute nature, but limited scope in Texas, affects land use. Property rights tend to cover only land; zoning in counties is against the law. Provided a development gets water approval (a technical process but more difficult to get now that much of the easy water in Harris County has been tapped), it can be started wherever and whenever a person or group wishes to start one.<sup>103</sup> There are environmental protections, but these are prescribed every few years and are generally known

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<sup>101</sup> Interview with Brian Crimmins and City of Houston Public Works Department officials. 13 March, 2013.

<sup>102</sup> Interview with Brian Crimmins. 13 March, 2013.

<sup>103</sup> Interview with Brian Crimmins and City of Houston Public Works Department officials. 13 March 2013. Interview with Mrs Martha Bersch, Schwartz, Page & Harding. Schwartz Page & Harding offices, Houston, Texas. 12 March, 2013.

before proposals for development are filed. There are few avenues for appeals because it is expected that any areas of environmental sensitivity have already been earmarked and have gone through a separate process of protection. If they have not been, private property rights simply take precedence. It is a continuation of the narrow view of property rights that seems to be held in Texas in general and the Houston area in particular. A property right covers the land on which a house is built, but very little else.

The burden of providing water infrastructure is thus taken off the City/State, as is the job of working out where new developments should go and where people should live. This leaves the State to concentrate on providing public goods, or generally agreed goods and services such as highways and access to residential areas, and working how to connect them to the different parts of the City and State. All these factors substantially lower the cost of land. There is a variety of developments built in various natural environments aimed at different markets and sold at individual prices. They are held relatively stable by the ability to debt finance infrastructure through tax-free bonds. To give a sense of scale, the Texas legislature in March 2013 (it sits once every two months) enacted 17 MUDs, all of them ready to be developed and started.

This process always keeps the price of land low, with a great deal of competition in land for development and no artificial scarcity. It also keeps the purchase price of a house or section low since the expensive water infrastructure is paid for over time through the MUD tax, not in the upfront cost of a new house. Because a subdivision can be developed virtually anywhere on the fringes of a city, or further out, there is no artificially created scarcity value of land. Instead there is a competitive market in subdivisible land because no

landowners have an incentive to 'land bank' or speculate against possible future zoning or land use decisions. The contrast between developing in Texas compared with Auckland is stark: the Metropolitan Urban Limit creates scarcities in land and Watercare provides a monopoly water service, the costs of which are charged upfront. In Texas there is no land scarcity, and each development pays for and provides its own water infrastructure, the costs for which are debt funded over time.

### The state as regulator

A striking feature of the Texas approach is the role of the state as regulator. This may seem unremarkable at first glance, given that all local government units and states carry out regulatory functions, but it is important.

In New Zealand, the state (through councils) also plays the roles of planner and adjudicator, cleaving a line between competing interests and views on development. In Texas, the role of planner is largely stripped back, particularly outside the City: the State sets the rules and through various agencies, and ensures they will be followed. In most cases, the rules are relatively clear and the State of Texas/County just sees that they are enforced.

In Texas, rules on water usage and environmental protection are prescribed, and enforcement is largely a technical matter. It is generally assumed that unless there is a compelling argument for a development not to go ahead, which itself is an oddity given the commitment to local property rights, it will be given the green light. The state views itself as regulator, not stakeholder.<sup>104</sup> It simply sees that the laws of the land are complied with. And if not, it helps parties comply with them in order to get their project given the

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<sup>104</sup> Interview with Brian Crimmins. 13 March, 2013.

necessary approval. For most applications, there is also a one fee policy: applicants pay once for the consent. If they don't get it the first time around, they do not need to continue paying council for each subsequent application. This minimizes incentives for officials to decline an application.

### Deed titles and covenants

Of course there must be some way to protect private property rights that owners can buy into when they get a property, and there is. It is called a deed title and is often called a covenant in New Zealand. Each MUD has its own set of deed restrictions that prescribe how big a house can be, its features, its colour, its location on the section, and so on. These deed titles make more sense in an area like Texas where property rights are far more stringently enforced: by buying into a development with a deed title, people are buying extra protections for their property from being built out or having big trees or a pile of smashed-up cars located next door. In a country like New Zealand or Britain, where the State sets down rules and zones for usage, covenants make less sense: they are more a market differentiation tool than a protection of property rights that the Texas housing model implies. Over time, deed restrictions have become more rigorous and they apply to more aspects of the house, governing all manner of designs. However, in New Zealand covenants are decided by the developer and enforced thereafter by the developer or council, whereas in most developments around Houston the deed title is decided on by a MUD, including how it might be changed – by majority vote of the members, for example. The deed title restrictions might reflect the developer's wishes through the developer's board. But

once residents join the board, anecdotal evidence suggests that the deed restrictions get more restrictive, not less.<sup>105</sup>

### NIMBYs and MUDs

Most people in the planning or construction community in Houston have never heard of NIMBYs, or if they have, they are more a theoretical concept than a day-to-day aspect of life. One theory for this is that wide open spaces in Texas tend to reduce neighbourhood anxieties; another theory is that the MUD model removes any ambiguity about who is paying for what. In countries such as New Zealand, there seems to be a latent fear (founded in evidence or not) on the part of many locals that 'we' are paying for 'their' infrastructure. The MUD model clears up any confusion on this issue. People in a MUD pay whatever local taxes they might owe plus their MUD tax for the water infrastructure. A MUD is a good way to mitigate concerns about the public cost of infrastructure.

This leads on to a larger advantage in the MUD model. Because the entire water infrastructure in any new development is paid for by residents moving in they have a great incentive to do two things: 1) keep costs as low as possible, and 2) attract businesses or large employers to set up within the MUD to help pay down its debt. Of course local governments around the world would argue exactly the same, and would be right. However, a MUD is different because it decouples the provision of core services from the other roles that local government play. The difference between a local body and a MUD is that the latter can only tax to a certain level (\$1.50 per \$100 of value) to pay for certain prescribed things (water infrastructure and provision). Everyone inside the MUD is a part owner of this

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<sup>105</sup> Interview with Clayton Black. 11 March, 2013.

infrastructure and has every incentive to keep the cost and price down for the customer – themselves. They also have every incentive to welcome developments that might see the price reduce as quickly as possible and stay low, such as permission for businesses to set up in the MUD. There is no question of new developments cross-subsidising other activities that might not be core to a MUD’s purposes or that are contrary to the residents’ wishes.

This means councils cannot blame murky infrastructure financing arrangements for lifting rates or taxes, and can be relieved of providing essential infrastructure services and focusing on civic services such as libraries, parks, museums and so on.

## Advantages of MUDs

- They finance water and related infrastructure on a voluntary basis as required.
- They allay wider community concerns that ‘we’ are paying for ‘their’ water infrastructure.
- They decouple the financing of key water services from rates, and prevent opaque cross-subsidisation.
- Their bond issue allows payment over time.
- The cost of infrastructure is not front-loaded into prices and then passed on.
- They uncouple local government from any sort of hands-on planning for developments.
- They keep infrastructure and land costs down through competition.

## Austin

In Austin, Texas, the MUD is used in different forms, and given different acronyms by other jurisdictions, but they all have the same basic premise. In Austin, there are MUD-like jurisdictions at the edge of town. The Austin chief planner uses the phrase ‘drive to qualify’ – that is, for every mile travelled from the centre of the City, houses get a little bit more affordable: the lower a person’s income, the further is the drive.<sup>106</sup> This neat phrase works precisely because there are no limits on growth at the edge of Austin. While there may be procedures and rules that take precedence within the official City limits, residents who live outside these limits also effectively live in the city of Austin. For example, 20 miles south of Austin CBD is the city of Red Rock. On the drive to Red Rock one would assume that it is the same city, just a different suburb. It is, however, a different city (and, as Democrats in the City of Austin complain, overwhelmingly Republican). It is also much cheaper than living in the middle of Austin, and the price range can be drawn in an almost direct line away from the CBD on the I35s freeway.

Compared to Houston, Austin has high prices in the middle of the City and its surrounds. This is because Austin has zoning, whereas Houston has none. A senior planner in Austin says the city is looking to move away from the sort of zoning it has inherited, arguing that zoning is ‘a very 1970s idea.’<sup>107</sup> The zoning covers similar rules to that in New Zealand: zoned areas for different purposes, densities and historical protection. Although deeply critical of Houston, as are all Austin locals, the head planner argues that in some ways he is quite jealous of the lack of zoning that Houston enjoys.

The Austin experience shows that intensification in the middle of a city

<sup>106</sup> Interview with Carol Hayward and Mark Walters, Planning and Development Review Department, City of Austin. City Hall, Austin, Texas. 15 March, 2013.

<sup>107</sup> Interview with Carol Hayward and Mark Walters. 15 March, 2013.

is very difficult with the current set of zoning regulations and the associated political pressures that accompany such regulation.

As it is, the median house price in Austin is still very low – US\$187,000<sup>108</sup>. In fact, when recently discussing affordable housing, a figure of some US\$300,000 was given as the level under which a house was considered affordable. In the view of the Austin planning community, this was a very expensive affordable house indeed!<sup>109</sup>

In the end, the Austin experience can probably act as more of an immediate guide to some of the issues New Zealand cities face than the Houston experience. This is primarily because Austin has zoning structures and restrictions similar to those in New Zealand cities.

### Houston

The development of Houston has occurred organically during the age of the automobile. There is not a city centre as such but several different centres; at first glance, it seems like a city of motorways and mismatched buildings.

Brian Crimmins, the Planning Chief of Staff in the City of Houston, says this is what makes the city great. Mr Crimmins is not from Texas; indeed, when he first moved to Houston, he thought its planning system (or lack of it) was not a sensible idea. However, as he explained, he has come around and now is one of Houston's greatest supporters: "We are pretty strong on property rights and the free market around here." He suggests that a few basic rules mean developers have to behave responsibly, because everyone wants to see more building to keep houses affordable. While he accepts that Houston looks like a mess, he offers the following observations:

Other places are great to visit but not very good to live in. Houston is the opposite. It's not a particularly pretty city, but the cost of living is low, it's easy to get around, and once you know where to go, it's a fantastic place.<sup>110</sup>

Driving around Houston this becomes obvious. Inasmuch as there is a middle of the city, the amount of natural densification that has occurred is remarkable. Small plots of land and single dwellings have progressively been bought and turned into (usually) six storey-apartment blocks. Land has been put to its best use, driven by market demand. An obvious example of just how free and strong property rights are in this area is the 'tower of traffic', a new 30- storey apartment building being built in the equivalent of New Zealand's Fendalton, Kelburn or Herne Bay. This development has been fought by locals for years but is going ahead because there is no zoning, and even well-heeled and politically connected neighbourhoods cannot stop developments. The result of this lack of zoning, coupled with the MUDs, means that housing is cheap throughout Houston and people have choice over what sort of place they live in at a reasonable price. A quality three-bedroom apartment in the middle of Houston costs around US\$350,000. That same amount buys a lot of house at the edge of the city. On the other hand, the lack of zones can provide people with some nasty surprises if someone decides to build a monstrosity next door.

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<sup>108</sup> Macrander, Emily. *Moving to Austin: the cost of living*. Austin.about.com [http://austin.about.com/od/governmentcivics/p/cost\\_of\\_living\\_austin.htm](http://austin.about.com/od/governmentcivics/p/cost_of_living_austin.htm)

<sup>109</sup> Interview with Carol Hayward and Mark Walters. 15 March, 2013.

<sup>110</sup> Interview with Brian Crimmins. 13 March, 2013.



### Conclusion

Texas provides a counter balance to the planning systems of the other jurisdictions we have studied. It sees the state as a regulator rather than an interested party, and has experimented with new models to finance infrastructure because its planners know how important house price stability is to economic growth. The competition in land, and competition in infrastructure that the MUD model has created, is very important and should be closely examined to see if a similar scheme could be instituted in New Zealand. It was developed, after all, as a system to help finance infrastructure because the City of Houston could not afford to. It would relieve councils in New Zealand of water infrastructure responsibilities, making the line between payment and use indisputable. Indeed, the MUD could be expanded to cover several of the other expensive infrastructural charges that councils levy up-front with new developments: roads, footpaths, street lighting, reserves for example. This would mean that councils are not involved in planning such infrastructure, but merely regulating it. It could help counter anti-development attitudes: people would know the costs of new development infrastructure were not being borne by current residents or out of general taxation, but by new residents, paying a MUD tax. The overall Texan approach has some useful lessons for New Zealand.





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# 5.

## Overall conclusions

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As can be seen, there are very different sets of arrangements and incentives operating in the various jurisdictions that we have examined. However, what if anything can be learned from these differences and the way they set up their affairs?

First, Britain and the British example can be seen as a case of how not to do things. The British have a nominally localised, but practically centralised, system of government that does not lend itself easily to housing reform. *The Town and Country Planning Act 1947* envisaged a plan-led environment but, and this is crucial, where the public authorities provided many dwellings. As Britain's welfare state eroded and private builders were expected to fill the gaps, the poor performance of the planning system has come into sharp focus. There is also a certain Britishness about attitudes to new houses and new developments, which can also be seen to some extent in New Zealand: people who own homes and live in picturesque British settlements or on the outskirts of settlements often fight tooth and claw to protect what they have at the expense of those who do not.

Precisely the sort of settlement that Britain allowed for most of its history, which produced the iconic British villages and countryside vistas, is no longer legal. There is more than a little irony in this. The villages that organisations like the Campaign to Protect Rural England wish to protect are actually the ancient remnants of a free market housing system

that existed in former times which they now find anathema for future generations. Those organisations frighten people into thinking that England's green and pleasant land is being built on, or concreted over (with the ever-present subtext that it might be the wrong type of people doing the concreting).

The latest major policy initiative is the 'Boles bung,' a Community Infrastructure Levy (CIL) where the roof tax development contribution goes directly to the local neighbourhood board or parish council to spend on local amenities where it sees fit. This is little more than a bribe that seeks to overcome local opposition to development. Even with this new initiative, so ingrained are anti-development attitudes and planning nostrums that a common view is that any local payment will have to substantially outweigh perceived negative benefits and therefore be costly. Its success is far from assured.

The Germans and the Swiss provide a counter balance to these views, which have shown very little upward movement of house prices until recent times. However, unpicking the Swiss and German systems is a complex task and working out where the incentives lie is even more difficult. On the face of it, the Swiss system of localism seems conducive to low taxes and competition. Certainly the cantonal system means that competition for people is fierce. Planners within cantons and local municipalities must consider how to respond to demands for new

houses. It is also pertinent that many planners come from other backgrounds before entering the planning professions, giving them a broader view of economic imperatives, rather than being starry-eyed romantics. Undoubtedly the pressure for new residents and businesses is an incentive to attract people to a region. However, other factors keep rents down: heavy involvement of superannuation fund investment in property and rigid rent controls provides attractive alternatives and competition with home ownership. The fact that so many people rent means there is obviously less social status attached to owning a home where people purchase only once in a lifetime. Infrastructure is provided incrementally and primarily by the state governments.

Germany's local capitation grants seem to be a sensible way to finance local government. They tie municipal funding to people and business success within a region. There is definite competitive pressure on German local authorities to attract people because they are seen to be assisting with budget income.

However, the Germans and the Swiss have a right to build within their various plans: if an area is zoned for housing, no one can stop anyone going ahead, and the period involved in gaining consent is short – a few months at best. However, this is all still a bit like German or Swiss sausage – it is unclear exactly how all the ingredients make the finished product. The institutional conditions of the two nations are worthy of study, but they are not sufficiently different from New Zealand's to be successfully imported without the local democratic impulses and political cultures of those countries.

Texans on the other hand have gone in a very different direction. In opposition to the other systems examined, the State views its role as a regulator rather than an interested party, except in limited

circumstances. Further, a growing young, new world jurisdiction like Texas probably has more in common with New Zealand than the European systems and demographics. The Municipal Utility District is a model that could be closely examined in New Zealand: as a way a bond financing infrastructure, getting councils out of the immediate provision of infrastructure services, and confining them to being the providers of civic services makes for a tidier system. To some extent this already occurs in New Zealand through developer contributions and the cost of infrastructure being front loaded on to the initial price of a house. At the very least, it makes it more difficult for existing citizens to link new developments with higher rates, thereby placing a black mark on the whole idea of further development. The notion of being able to set up a new housing development outside of town limits as long as all infrastructure can be provided by the residents/developer is certainly worth exploring.

In the end all these cases have been interesting to consider, not because any of them provided a silver bullet for New Zealand's housing shortage, but because some aspects of each might be valuable within the New Zealand context.









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