2. Submission Details

The definition and use of SUIPs to set rates/charges

Background

The Council's 2021-31 Revenue and Financing Policy defines a "separately used or inhabited part of a rating unit" (SUIP) as including "*...any portion inhabited or used by the owner or a person other than the owner who has the right to use or inhabit that portion by virtue of a tenancy, lease, licence, or other agreement. It includes separately used parts, whether or not actually occupied at any particular time, which are used by the owner for rental (or other form of occupation) on an occasional or long term basis by someone other than the owner*".

The problem

Given its purpose, the SUIP definition adopted by Council is fundamentally flawed. Although based on historic legal advice and widely used throughout New Zealand, ***the SUIP definition and its subsequent use to set targeted rates/charges produces highly inappropriate results***. Those results cannot be justified in terms of what the Council is required to consider under section 101(3) of the Local Government Act 2002 (LGA02) when determining appropriate funding sources.

Further explanation of the problem

I have evidence that Council has used the SUIP definition to determine that 2 SUIPs exist where an established single dwelling has habitable spaces without permanent cooking facilities (ie, no oven or cooktop) that can be occupied relatively independently by paying guests (eg, short-term holiday stays through Air BnB) without any consideration whatsoever of:

- the frequency of guest occupancies;
- the proportion of the possible total maximum occupancy they involve (ie, neither temporally nor according to numbers of occupants); or
- the area of total habitable space being used by the paying guests.

It is not appropriate that a single dwelling rating unit should pay double the relevant rates/charges simply because the owner-occupier sells a few nights' accommodation each year in a small part of their house to a small number of guests. Such limited use of the dwelling would create costs for Council many times less than if the entire dwelling were rented permanently to a large household (ie, a rental occupancy that could equate to four or five times that of the owner-occupier/occasional Air BnB use).

The existence of a SUIP is often difficult to establish with absolute precision or certainty. However, more importantly, the use of a SUIP will seldom ever be appropriate because a SUIP will often have little or no relevance in terms of what the Council is required to consider under section 101(3) of the LGA02.

SUIPs cannot account in any way for the highly variable occupancies (uses) of owner-occupied and rented houses of widely varying sizes and configurations. This makes SUIPs entirely ***inappropriate*** as the basis for most rates or charges as those rates/charges should, in most cases, align reasonably well with the outcome of cost/benefit or user/exacerbator assessments. The use of SUIPs results in ridiculously high (or low, depending on your perspective) rates/charges for some rating units.

An illustration of the problem

Compare two otherwise identical 1012m^2 residential rating units in central Blenheim:

- One, with a rateable value of $1 million (value of improvements $600,000), being ***a single dwelling with 240m^2 of habitable spaces***, including 4 bedrooms, 3 bathrooms, and 3 other large rooms that could be used as bedrooms or a living rooms (ie, potentially a total of 6 bedrooms). Assuming at least 2 people could be accommodated in each bedroom, that means the base occupancy of this dwelling could range from 1 person living alone up to 12 people sharing the dwelling (eg, a large family unit or an unrelated group of people who choose to live or rent together as a single household; and

- the other, with a rateable value of 1.4 million (value of improvements $1 million), being ***a single building containing four 1-bedroom flats each with 60m2 of habitable spaces (ie, 240m^2 in total)*** that can only accommodate a total of 8 people (ie, 2 people in each flat).

If both these rating units are used to their full potential (which would be economically efficient) the single dwelling with an occupancy of 12 people would pay relevant rates/charges based on a single SUIP, whereas the four flats with a maximum potential occupancy of just 8 people would pay based on 4 SUIPs (ie, ***quadruple the amount of the relevant rates/charges for the dwelling despite a maximum total potential occupancy that is one-third less*** than the single dwelling).

This simple illustration again highlights the failure to comply with section 101(3) of the LGA02.

Thinking about solutions

Continuing to use SUIPs as they are currently defined will continue to perpetuate rates/charges that are clearly unfair, inequitable and inappropriate. Therefore, ***the SUIP definition for a dwelling could, at least, be amended*** so it only triggers additional SUIP charges where:

- the secondary use or habitation occurs (or is available) for most of the time (ie, greater than 50%); and

- involves a substantial portion (say 40%) of the area of habitable spaces regardless of what facilities those spaces contain (ie, as such space serves as a proxy for maximum total occupancy).

Although not perfect, there are much more appropriate bases (factors) in Schedule 3 of the Local Government (Rating) Act 2002 (LGRA) that may be used in calculating liability for most targeted rates/charges for residential rating units. For example, Schedule 3 provides the options of using the area of floor space of buildings within the rating unit, or the value of improvements to the rating unit.

I contend that both these alternate factors will generally represent a relationship with maximum potential occupancy that is far better than a SUIP. Applying these alternative Schedule 3 factors to the illustrative example above would produce the following results:

- ***Using the area of habitable floor space*** to set the rate/charge would result in both rating units paying the same rate/charge. Although, there is still a discrepancy in relation the maximum potential occupancy (ie, the unit with four flats paying one-third more than it should compared to the unit with a single dwelling, this is nowhere near as bad as the SUIP approach which results in a fourfold difference).

- ***Using the value of improvements*** to set the rate/charge would result in the unit with four flats paying two-thirds more than it should compared to the unit with a single dwelling. Again, this is not ideal, but is still much more appropriate than a SUIP.

Section 19 of the LGRA also provides for a targeted rate for the quantity of water provided by the local authority. Where practicable, this should be used for council water supplies across the entire district in preference to the highly inappropriate SUIP approach. This user-pays approach will be even more important as water demand pressures increase and the costs of the current Three Waters reforms begin to impact the Council.

The decisions I seek from Council are

Firstly:

- ***Stop using SUIPs as the basis for targeted rates*** except in the likely rare instances where a SUIP based rate/charge is demonstrably appropriate by being entirely consistent with what must be considered under section 101(3) of the LGA02; and

- Otherwise, ***use other factors from Schedule 3 of the LGRA as the basis for targeted rates*** to avoid the highly inappropriate outcomes that arise from the use of SUIPs.

Secondly:

- Use the powers Council has under section 19 of the LGRA to set a targeted (metered) water rate.

Alternatively:

- ***At the very least, amend the SUIP definition for a dwelling*** so it only triggers additional SUIP charges where:

    - the secondary use or habitation occurs (or is available) for most of the time (ie, greater than 50% of the time); and

    - involves a substantial portion (say 40%) of the area of habitable spaces regardless of what facilities those spaces contain (ie, as such space serves as a proxy for maximum total occupancy).