

**IN THE MATTER** of the Resource Management Act 1991 (“RMA” or “the Act”)

**AND**

**IN THE MATTER** of the Inclusionary Housing Plan Change by **QUEENSTOWN LAKES DISTRICT COUNCIL** to the Proposed Queenstown Lakes District Plan

**STATEMENT OF EVIDENCE OF DANIEL IAN THORNE ON BEHALF OF FULTON HOGAN LAND DEVELOPMENT LIMITED**

**PLANNING**

**1. INTRODUCTION**

1.1 My full name is Daniel Ian Thorne. I am a Senior Planner and Director of Town Planning Group (NZ) Limited, a planning consultancy that provides planning and resource management advice to local authorities, government agencies and private clients throughout New Zealand.

**Qualifications and experience**

1.2 I hold a Bachelor of Environmental Management and a Post Graduate Diploma in Resource Studies from Lincoln University. I am an Associate Member of the New Zealand Planning Institute and have over sixteen years of experience in the resource management field.

1.3 My experience is particularly focused on land development, resource consenting, designations, and plan change requests. I have prepared and advised on applications and plan change requests for a variety of activities and developments across New Zealand and regularly give expert planning evidence in respect of the same.

**Involvement with the Inclusionary Housing Variation**

1.4 I have resided in Queenstown since 2016 and am familiar with the planning environment and local issues (including housing affordability). My particular and recent experience in the local market has included comprehensive site evaluations and designations for multiple new school developments across the Queenstown Lakes District (**District**) (including Wanaka, Hawea,

Queenstown, and Kingston). The nature of this work requires detailed assessments of urban growth pressures, land conditions, valuations, policy and planning matters, and development constraints, along with close engagement between developers, local authorities, mana whenua, and the Ministry of Education.

- 1.5 In addition to the above, I have been involved in a range of residential subdivision development proposals throughout the South Island. Of particular note, I am presently providing planning advice and assistance to WFH Properties Limited (a joint venture development with Fulton Hogan Land Development (**FHLD**)) regarding the urban development of Allenby Farm in Wanaka, comprising over 350 residential allotments within the Northlake Special Zone of the Operative Queenstown Lakes District Plan (**ODP**).

#### **Expert Witness Code of Conduct**

- 1.6 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

#### **Additional Resources referred to in my Evidence**

- 1.7 In preparing my evidence, I refer to and rely on the following evidence:
- (a) Mr Gregory Dewe, Operations Manager for FHLD, dated 21 December 2023; and
  - (b) Mr Fraser Colegrave, Founder and Managing Director of Insight Economics, dated 21 December 2023.
- 1.8 The Key Documents I have used, or referred to, in forming my view while preparing this statement of evidence is:
- (a) The Queenstown Lakes District Council's (**Council** or **QLDC**) Section 32 Report, appendices, technical reports and other supporting information available on the Council's web resource in relation to Inclusionary Zoning (**IZ**);
  - (b) The Proposed Queenstown Lakes District Plan (**PDP**) and in particular Chapter 3 Strategic Direction, Chapter 4 Urban Development, and Chapter 27 Subdivision and Development;

- (c) The National Policy Statement on Urban Development 2020 (as amended in 2022) (**NPS-UD**) and the Resource Management Act 1991 (**RMA**);
- (d) FHLD's submission on the IZ variation; and
- (e) The Council's urban intensification variation (**UI variation**) and Ladies Mile Te Putahi variation (**LM variation**) to the PDP.

1.9 I have read the following:

- (a) The evidence filed on behalf of the Council (Section 42A Reports), including the evidence of:
  - (i) Ms Bowbyes (Strategic Planning);
  - (ii) Mr Mead (Planning);
  - (iii) Ms Lee (Social); and
  - (iv) Mr Eaqub (Economics).
- (b) Directions and Memoranda from the Hearings Panel and counsel for other submitters, and counsel for QLDC.

#### **Purpose and scope of evidence**

1.10 The purpose of my evidence is to provide a planning evaluation of the IZ variation against the relevant statutory framework, focusing on the costs and benefits of the proposal and the extent to which alternatives have been considered. I also evaluate methods to achieve the objectives, and notwithstanding FHLD's relief that the variation be rejected, recommend amendments to the IZ provisions.

1.11 My evidence addresses FHLD's submission on the IZ variation (which was a submission in opposition to the IZ variation seeking that it be rejected), evaluating the variation in terms of section 32 of the RMA and the relevant statutory context, and is structured as follows:

- (a) The statutory framework, in particular section 32 and the NPS-UD (Section 3);
- (b) Evaluation of reasonably practicable options and alternatives (Section 4);
- (c) The most appropriate methods to achieve the objectives (Section 5);

- (d) The Council's evidence including recommended amendments to the IZ provisions (Section 6); and
- (e) Recommendations comprising an evaluation in terms of section 32AA of the RMA, and revised IZ provisions (Section 7).

1.12 A summary of my evidence is contained in Section 2.

1.13 I note my understanding that WFH's Allenby Farm development is exempt from the IZ variation financial contribution rules, reflecting its location within the Northlake Special Zone under the ODP, and the prior agreement on affordable housing contribution, as detailed in the evidence of Mr Dewe. Notwithstanding this, FHLD has a particular interest in the IZ variation, as an experienced developer working across New Zealand, as noted by Mr Dewe.

## 2. **SUMMARY OF EVIDENCE**

2.1 I do not consider the IZ variation to be the most appropriate way to achieve the objectives of the PDP and the NPS-UD. The costs of the IZ variation are such that the proposal does not meet the purpose of the RMA.

2.2 I consider that the Section 32 Report and associated supporting information, including the evidence filed by the Council, has not adequately taken into account the costs of the proposal, and I consider that the costs of the IZ provisions to residential development (both subdivision and home construction) will be higher than estimated by the Council. These reasons are summarised as follows:

- (a) The purported planning windfall gains cited by Mr Eaqub are associated with private plan changes under the ODP and resource consent opportunities under the now expired Housing Accords and Special Housing Area Act 2013 (**HASHA**) (often referred to as SHA legislation) and are not a like-for-like comparison with plan enabled residential land. The former scenarios typically involved the rezoning of rural land to urban, however the IZ rules will affect the subdividers and homebuilders of land that is plan enabled and zoned for its anticipated use, with this use reflected in the market price.
- (b) For this reason, I do not have confidence in the assurances made by the Council<sup>1</sup> that the costs of affordable housing financial

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<sup>1</sup> Evidence Of Shamubeel Eaqub for QLDC on Inclusionary Housing Variation, 14 November 2023 at [6.6] and Section 42a Report of David Mead for QLDC on Inclusionary Housing Variation, 14 November 2023 at [4.22].

contributions would not result in increased housing prices (and further reductions in housing affordability).

- (c) The Section 32 Report and Mr Mead's evidence takes a misdirected view of the intent of Objectives 1 and 2 (and Policy 1) of the NPS-UD, and in doing so relies too heavily on the NPS-UD to justify a high level of regulation. I consider that the tenet of Objectives 1 and 2 of the NPS-UD is to improve housing affordability through greater supply of plan enabled residential zoning, and supporting competitive land and development markets.
- (d) Mr Mead and Ms Bowbyes' evidence rely on other PDP variations underway (i.e. the UI variation and LM variation) as part of the overall planning regime, and that despite there being sufficient housing capacity, and that these variations will bring additional flexibility and development opportunities to land which is subject to the IZ provisions, this alone is not enough to alleviate housing affordability and the IZ provisions are necessary. I consider that with particular regard to the UI variation, there is no certainty that the provisions will be confirmed as notified, noting this variation remains subject to changes through submissions and appeals. Further, I note the UI variation is proceeding independently of, and not linked with, the present IZ variation.

2.3 I also consider that the IZ financial contribution rules do not fit well in a planning context. Generally, financial contribution rules are assigned as a compensatory measure to mitigate or offset the effects of development, and are used as an alternative to development contributions taken under the Local Government Act 2002. The synergy is clear that the new development creates a burden/adverse effect on a resource, and this is alleviated through the financial contribution (i.e a roading upgrade contribution, or a contribution to offset the loss of ecological habitat etc). In this case however, the notion that new housing or sites for housing incurs a financial contribution to support additional housing is counterintuitive. Additionally, because of the large amount sought (i.e \$16,000 for a new 150m<sup>2</sup> home (based on a value of \$800,000)) the IZ variation effectively treats the creation of existing plan enabled residential land as though it were an adverse effect that warrants a financial contribution.

2.4 Overall, based on the evidence of Mr Colegrave and Mr Dewe, I am of the view that the costs of the IZ variation will exceed the benefits, and there are a range of more appropriate alternatives that should be considered. In this

regard, I consider that there are a number of more effective and efficient approaches to supporting the provision of affordable housing, including through less restrictive land use controls, supporting infrastructure provisions (or financing mechanisms), general or targeted rates, and/or other methods that incentivise affordable housing provision within the market.

- 2.5 I recommend that if the IZ financial contribution rules are retained, there are compensatory provisions included in Chapter 40 to offset the costs of providing an affordable housing contribution, and incentivise engagement with affordable housing provisions. In this respect, I consider that such provisions could include additional density and bulk/height allowances, and that all developments which engage the IZ provisions but meet the PDP density/minimum or average lot size requirements are processed without public or limited notification.

### 3. **STATUTORY FRAMEWORK**

- 3.1 I agree with the Council's Section 32 Report, which identifies the relevant evaluation steps as required by section 32 of the RMA, and Mr Mead's evidence where he identifies Objectives 1 and 2, and Policy 1 of the NPS-UD as the key relevant national policy direction.

- 3.2 Objectives 1 and 2 of the NPS-UD are as follows:<sup>2</sup>

*"Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*

*Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets."*

- 3.3 Where I discuss and recommend potential amendments to the proposal in Section 5 below, I also provide an evaluation in terms of section 32AA of the RMA.

- 3.4 On the matter of the NPS-UD and giving effect to Objective 1 and 2, Mr Mead states:<sup>3</sup>

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<sup>2</sup> National Policy Statement on Urban Development 2020 (May 2022), Objectives 1 and 2.  
<sup>3</sup> Section 42a Report of David Mead for QLDC on Inclusionary Housing Variation, 14 November 2023 at [4.13].

*" the NPS-UD is not especially directive as to what action should be taken where sufficient / reasonable housing capacity is provided, but house prices and rental levels continue to grow and make housing unaffordable for a large sector of the community".*

I understand that Mr Mead is essentially suggesting that despite the Council achieving sufficient housing capacity targets, Objective 1 is not sufficiently specific with regard to pricing's impact on the achievement of well-functioning urban environments that *"enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future"*. As such, I understand Mr Mead to be of the view that the IZ financial contribution rules are the most appropriate way to achieve and give effect to the NPS-UD (and in particular, Objectives 1 and 2, and Policy 1).

3.5 I disagree. The NPS-UD, and in particular Objective 1, is not, in my opinion, designed nor intended to be used as a means to include financial contribution rules levied from allotment creation and home construction. I note that while Mr Mead refers generally to the NPS-UD implementation guidance<sup>4</sup>, I have also reviewed the NPS-UD Regulatory Impact Statement.<sup>5</sup> This has identified that implementation of the NPS-UD was expected to require increased spending, predominantly to be felt by the Council (some though growth-related infrastructure costs and others through plan changes and preparative work for these), but that it was expected that the Council would, in turn, seek funding through rates and development contributions.<sup>6</sup>

3.6 I also note that the Regulatory Impact Statement states the following with regard to affordable housing:<sup>7</sup>

*"Addressing housing affordability*

*Several submissions expressed concern that the proposed NPS-UD did not explicitly signal that the NPS-UD is expected to help improve housing affordability. There is no consistently agreed upon definition of the term "affordable housing", so to avoid unintended consequences resulting from particular interpretations of the term we have included an objective that clearly states the intent of the NPS-UD is to support housing*

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<sup>4</sup> Section 42a Report of David Mead for QLDC on Inclusionary Housing Variation, 14 November 2023 at [4.2].

<sup>5</sup> [Regulatory Impact Assessment - Impact Summary Template \(environment.govt.nz\)](https://www.environment.govt.nz/regulatory-impact-assessment-impact-summary-template)

<sup>6</sup> Regulatory Impact Statement 2020 on the NPS-UD, at 2.

<sup>7</sup> Regulatory Impact Statement 2020 on the NPS-UD, at 29.

*affordability as delivered through planning decisions that support competitive land markets [my emphasis added]."*

- 3.7 I have also reviewed the Section 32 Evaluation Report for the NPS-UD (March 2020)<sup>8</sup> and none of the evaluation contemplates that the NPS-UD would be used as justification for financial contribution rules that are levied off realised housing capacity. The Section 32 Evaluation Report characterises the intent of the NPS-UD as:<sup>9</sup>

*"Making room for growth in RMA Plans – requires local authorities to allow for growth up and out in a way that contributes to a well-functioning urban environment, and to ensure their rules do not unnecessarily constrain growth."*

- 3.8 The Section 32 Evaluation Report for the NPS-UD does not refer to additional RMA plan intervention in the form of financial compensation rules to assist with affordable housing. In implementing the NPS-UD parliament anticipated reasonable related costs on local authorities associated with reporting and compliance<sup>10</sup>, such as the creation of Future Development Strategies, however, it did not foresee district plans promulgating additional regulatory and financial intervention to achieve Objective 1.
- 3.9 The overarching theme of all the above documentation, which is synthesised into Objective 1 of the NPS-UD, is that its design and intent are to address the fundamentals of land supply, development capacity and infrastructure. I do not consider that it was contemplated that Objective 1 of the NPS-UD would be used to justify further transaction and development costs through measures such as IZ financial contribution requirements.
- 3.10 While I agree that Objective 1 of the NPS-UD recognises the importance for local authorities to provide better well-being outcomes for people and communities by seeking that New Zealand has well-functioning urban environments, I do not consider this is sufficient justification to impose additional regulatory intervention through financial contribution rules, levied against residential housing and development to provide affordable housing.

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8 National Policy Statement for Urban Development: Section 32 Evaluation Report Prepared for the Ministry for the Environment and Ministry of Housing and Urban Development Prepared by Beca Limited March 2020 ([NPS UD s32 evaluation report.pdf \(environment.govt.nz\)](#)) ("**Section 32 Evaluation Report**")

9 Section 32 Evaluation Report at 3.

10 Section 32 Evaluation Report at 20.



- 3.11 In relation to Objective 2 of the NPS-UD, the Section 32 Evaluation Report<sup>11</sup> focuses on local authorities being required to provide sufficient development capacity to support competitive land and development markets. The Section 32 Evaluation Report does not contemplate the implementation of Objective 2 by local authorities to impose rules on affordable housing. The costs contemplated and associated with Objective 2 of the NPS-UD were in relation to the achievability of local authorities to maintain sufficient and appropriate capacity of urban development land, including the inputs required (such as housing capacity assessments, plan changes and infrastructure provision) to ensure short-term development capacity is plan enabled and infrastructure ready.<sup>12</sup>
- 3.12 I acknowledge Objective 2 of the NPS-UD sits within the theme of 'housing affordability' and requires councils to contribute to housing affordability through planning decisions that support competitive land and development markets. However, the Council evaluation does not thoroughly explore how IZ rules alone will support competitive land and development markets. The IZ provisions are effectively removing 5% of lots from the market, and essentially applying an additional financial imposition on new builds and subdivision, none of which appear to support competitive land and development markets. The NPS-UD focuses on land supply to go 'out', and flexibility by buildings going 'up' as the primary means of achieving Objectives 1 and 2.
- 3.13 For these reasons, I do not consider the IZ variation to be the most appropriate way to achieve or give effect to the objectives of the NPS-UD, and I consider the section 32 evaluation and overall justification of the IZ variation to be predicated on an approach to the NPS-UD which is not reasonable or appropriate.
- 3.14 In any event, the IZ variation and its financial contribution rules will provide additional intervention and costs to any household in the District which undertakes a subdivision or new home construction on a vacant site and engages proposed Chapter 40 of the PDP. This is directly through that household being subject to the IZ financial contribution rules if they were to build a new home on a vacant site, or undertake a subdivision, and indirectly as identified in Mr Colegrave's evidence, where the costs of the regime will act to increase land and new home prices. In this respect, I note my understanding that the Queenstown Lakes Community Housing Trust serves

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11 Section 32 Evaluation Report at 21.

12 As defined in NPS-UD Subpart 3.4.

only a very small component of the housing market, such that for the vast majority of the community, the costs of housing will increase.

- 3.15 Mr Eaquab's evidence states [at 5.9 to 5.11] that inclusionary housing is a single mechanism for proportionate affordable housing levied on those who will receive or have received planning windfall gains. In my view, Mr Eaquab appears to be making an incorrect assertion that all development which is subject to the IZ rules have benefitted from a rezoning of land or resource consent from a rural zone (or zone with a relatively low associated financial value) to urban (relatively high associated financial value), and the instant uplift in land value means that any financial contribution imposed by the IZ rules is proportionate. I note this matter is further elaborated on by Mr Dewe.
- 3.16 Additionally, the Council's Section 32 Report and supporting information refer to instances where there has been a private plan change to the ODP or a resource consent under the HASHA. I understand that all projects approved under HASHA that have progressed were on rural zoned land with affordable housing agreements negotiated and agreed prior to any Council decision and recommendation to confirm the establishment of a special housing area. Through this process, there was the ability for the Council to negotiate affordable housing contributions as there was an uplift in land value through the implementation of the special housing area, which meant that any financial contribution imposed was proportionate.
- 3.17 Unlike where affordable housing contributions have been negotiated previously however, where the proposed IZ rules apply to urban residential land and that land has been purchased after the initial planning related development entitlement, the ability for the land to be developed under the respective zone provisions or resource consent is already factored into the purchase price, and cannot offset a new financial contribution being imposed.
- 3.18 I consider that this assumption as to the costs of the IZ provisions being appropriate as a result of the 'planning windfall gain' has had a heavy influence on how the Section 32 Report has evaluated the costs of the proposal. I consider this to be a flawed/misdirected approach, which flows into an insufficiently reasoned conclusion to the section 32 evaluation undertaken by the Council. As a consequence, I do not consider the IZ provisions to be the most effective or efficient way to help more people in the District access affordable housing.

#### 4. **EVALUATION OF REASONABLY PRACTICABLE OPTIONS AND ALTERNATIVES**

- 4.1 The Council's Section 32 Report evaluates the efficiency and effectiveness of a range of higher order, broad level methods and more detailed methods to implement the preferred general direction. The preferred general direction is understood to be a supply plus intervention approach, and this approach will be more efficient and effective than a voluntary approach to affordable housing. It considers that while maintaining an adequate supply of land for housing is important, it is not by itself a sufficient strategy to ensure a supply of affordable houses<sup>13</sup>.
- 4.2 What I consider this evaluation to miss is that it has been undertaken without sufficient knowledge of how the supply will be realised, in particular, what the supply would look like in terms of available new undeveloped allotment sizes and locations. Further, the evaluation relies too heavily on what the Council hopes will happen through the UI and LM variations, and assumes that the UI variation and housing capacity projections will be realised. However, both these variations are subject to submissions to reduce the development yields (and activity outcomes) relative to what the Council have notified, and remain subject to determination by hearing panels.
- 4.3 I consider an option available which has been overlooked in the IZ variation, and largely left to be realised in the UI variation (which was unknown at the time the Section 32 Report was prepared) is to create further potential for a variety of housing at a variety of price points through additional flexibility in PDP provisions. This includes for example incentivisation to landowners to engage the affordable housing provisions where there is the ability to provide more flexibility in allotment sizes, and achieve greater residential densities / typologies with a higher degree of certainty. From my experience, smaller houses on smaller sites in a variety of locations would directly help provide a variety of housing at a wider range of prices.
- 4.4 I acknowledge that the IZ rules provide a resource consent pathway if contributions are not provided in accordance with the requirements. However, I consider that the resource consent pathway is inefficient, in that it is unlikely to be supported by the Council given the clear intent of the IZ variation and directive policies. Further, I consider the IZ rules are ineffective in so far that the costs are high and as noted by Mr Colegrave, will likely discourage development and further reduce housing affordability.

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<sup>13</sup> Section 32 Evaluation Report at 33.

- 4.5 For these reasons, I recommend that if the IZ rules are retained there are associated compensatory rules added to Chapter 40. In this respect, I consider that appropriate compensatory rules could include additional height and density provisions commensurate with the UI variation, and new rules providing for resource consents for land use and subdivision (that engage Chapter 40 but comply with density controls) to be processed without public notification or limited notification. This in my mind would temper some of the costs and risks associated with the IZ variation.
- 4.6 The Council's Section 32 Report discusses alternatives and refers to Appendix 3C to the Section 32 Report<sup>14</sup> which is a memo prepared by Meredith Connell lawyers to the Council. This memo identifies a range of options to deploy affordable housing provisions including District Plan rules, general or targeted rates, development contributions, and the NPS-UD (noting that this document is a policy document and not a tool itself to levy charges or any type of financial contribution).
- 4.7 The memo identifies that rating is an available mechanism, including using revenue to fund community housing, but identifies that given the shortfall of affordable housing in Queenstown, this would require a significant level of investment.<sup>15</sup> It identifies the problem that there is sufficient residential land available for development within the District, but the development community is not using that land to build houses in the affordable bracket, as larger and more expensive dwellings are more profitable. With this issue in mind, I am of the view that apportioning the costs of affordable housing provision across the District, and across all sectors of the local economy through a general or targeted rate is a preferable outcome, as opposed to imposing all costs on the one sector that actually delivers residential housing.
- 4.8 The memo also identifies that QLDC could use a proportion of its general rates to build, or to subsidise developers through contracts to build housing in the affordable price bracket to ensure a number of housing typologies that meet the needs of the District. In relation to this matter, I note that the ability to develop smaller sites, which naturally result in smaller dwellings, or the ability to fast track infrastructure provision, can assist with the issue identified (that is the delivery of a more affordable housing typology in efficient timeframes).
- 4.9 The memo concludes that the best option available is that affordable housing/inclusionary zoning would help implement the NPS-UD, and

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<sup>14</sup> Section 32 Report, Appendix 3C.

<sup>15</sup> Section 32 Report, Appendix 3C at [8(b)].

considers that the direction provided by the NPS-UD makes taking an inclusionary zoning approach the best of all options, and states:<sup>16</sup>

*"Our view is that the NPS-UD appears to expressly authorise, and perhaps even require, a planning approach that ensures houses are built with certain typology or price (ie affordable) characteristics and which target different household needs. Inclusionary zoning can be used as a tool to provide homes of different types and prices. So inclusionary zoning can be seen as a mechanism for giving effect to the NPS-UD."*

4.10 For the reasons I have discussed above, the NPS-UD encourages a variety of housing and prices through less regulation and an increase in housing capacity and competitive land markets. The conclusionary statements contained in Appendix 3C which inform the section 32 evaluation draw, at best, a tenuous thread between the most appropriate way to give effect to the NPS-UD, and the way in which the IZ financial contribution rules have been proposed.

4.11 For these reasons I consider the section 32 evaluation takes a conclusionary approach to alternatives and determination of the preferred approach, which is creating rules in the PDP to levy a financial contribution. As identified by Mr Colegrave in his evidence, I consider the costs of the preferred approach have been understated in the Council's evaluation.

## 5. **THE MOST APPROPRIATE METHODS TO ACHIEVE THE OBJECTIVES**

5.1 The proposed objectives of the IZ variation (as per Mr Mead's amendments outlined in his Section 42A Report) are:

*"Proposed Strategic Objective: 3.2.1.10*

*Affordable housing choices for low to moderate income households are provided in new ~~residential developments~~ and redeveloping residential areas so that a diverse and economically resilient community representative of all income groups is maintained into the future.*

*Proposed Chapter 40:*

*Objective 40.2.1 Provision of affordable housing for low to moderate income households in a way and at a rate that assists with providing a range of house types and*

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16 Section 32 Report, Appendix 3C at [22].

*prices in different locations so as to support social and economic well-being and manage natural and physical resources, in an integrated way."*

- 5.2 The provisions and methods to achieve the objectives are the IZ financial contribution rules and related implementation methods are set out in proposed Chapter 40. I do not consider the Section 32 Report evaluation to properly evaluate the potential costs of the financial contribution, and as identified in Mr Colegrave's evidence, the increased financial costs that this will bring to the housing market in the District.
- 5.3 I interpret the Council's economic advice and support for the IZ variation to be in part because the financial contribution levy would be applied in a fair, uniform and consistent way, and the cost spread broadly and widely<sup>17</sup>. Based on the evidence of Mr Dewe and Mr Colegrave, I consider that these assumptions are not well founded in that the reliance is placed on the planning provisions being applied fairly and consistently, and the costs appear focused and limited on a single sector of the community (i.e. residential developers).
- 5.4 The rules in proposed Chapter 40 require that for a development to achieve a permitted activity status it must comply with the standards in Rule 40.6, these require a financial contribution or handing over of land. Where these standards are not met a discretionary activity resource consent is required (Rule 40.5.2). While the provisions are framed in a way that provides a consent pathway where the financial contribution/land is not supplied, I have doubts as to the utility of this given that the clear policy direction of the IZ is that a contribution is provided by all developments.
- 5.5 Policy 40.2.1.3 (as per Mr Mead's amendments outlined in his Section 42A Report) is a key policy to guide a resource consent application and is:

*"Ensure that residential subdivision and development set out in Policy 40.2.1.1 and 40.2.1.2 provides a financial contribution for affordable housing. Avoid subdivision or development for residential activities and Residential Visitor Accommodation that does not provide a contribution, or otherwise does not make appropriate provision to help meet the affordable housing needs of the District."*

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<sup>17</sup> Evidence Of Shamubeel Equb for QLDC on Inclusionary Housing Variation, 14 November 2023 at [5.12, 5.15, 5.19 and 6.7].

- 5.6 While the policy requires an avoid approach, the direction is in the context of the balance of the policy which is to make an *'appropriate provision to help meet the affordable housing needs of the District'*. What this means is that the amount of contribution is open for consideration and subject to the exercise of discretion. While there are detailed assessment matters provided, there is the risk, as is the case with consenting and plan administration across the country, that there will be variable outcomes in determining what is an 'appropriate' contribution in the particular circumstances of any proposal.
- 5.7 Overall, the premise of the section 32 evaluation is that the IZ financial contribution rules are not a planning framework with a consent pathway, but rather, are the end outcome to be achieved. This further reinforces my view that irrespective of the rules being theoretically 'legal', their practical use is not well suited to an effects-based planning regime.
- 5.8 Although I do not disagree with Mr Mead's analysis of the mechanisms which allow financial contribution rules to be included in the PDP, I consider that the proposal does not sit comfortably with the PDP and its role as a regulatory tool to achieve Part 2 of the RMA. This is because the provision of housing is essentially recognised and provided for as a positive activity, subject to adverse effects on the environment being appropriate. The IZ provisions seemingly turn this concept on its head by rendering housing an adverse effect, with the avoidance, remediation or mitigation of adverse effects being alleviated or offset through a financial contribution. In short, the IZ provisions reconstruct housing, and in particular housing in urban environments as an adverse effect which is alleviated through financial compensation.
- 5.9 As I see it, the District Plan is a regulatory document but is being used as a relatively blunt tool to correct what the Council identifies as a broader market failure<sup>18</sup>. This in my mind illustrates that the use of a district plan framework to implement affordable housing provisions is not the most appropriate way to achieve the purpose of the RMA.

## 6. **COUNCIL'S EVIDENCE**

- 6.1 I have reviewed the recommendations from Mr Mead in his Section 42A Report and I have considered his recommended amendments to the IZ text.

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18 Evidence Of Shamubeel Eaqub for QLDC on Inclusionary Housing Variation, 14 November 2023 at [2.2].

I do not consider the amendments resolve the issues I have identified in my evidence.

- 6.2 I note that Mr Mead has, in an attempt to provide an exemption and clarification, potentially unintentionally excluded the Lower Density Suburban Residential Zone ("LDSRZ") from the provisions. Mr Mead's recommended amendment is (underline and strikethrough text are his recommended amendments):

*"Policy 40.21.1.4*

*Recognise that the following forms of residential development either provide affordable housing or do not generate pressure on housing resources and should not be subject to the affordable housing contribution:*

*a) social or affordable housing delivered by Kāinga Ora, a publicly owned urban regeneration company, the Council or a registered community housing provider;*

*b) managed care units in a Retirement Village (as defined by the Retirement Villages Act 2003) or Rest Home (under the Health and Services Disability Act 2001); ~~and~~*

*c) Residential Flats: and*

*d) A residential lot or unit located in a Zone that already contains affordable housing provisions in the district plan, or where previous agreements and affordable housing delivery with Council have satisfied objective 3.2.1.10 and 40.2.1 and their associated policies."*

- 6.3 Recommended limb (d) refers to 'zone', but the problem is the matter more likely relates to a suburb or area within a wider zone. For instance, parts of the Lake Hawea South LDSRZ and Medium Density Suburban Residential Zone ("MDRZ") are subject to an affordable housing agreement under the HASHA when a previous resource consent was granted for the area on rural zoned land, and this land is now zoned a mix of LDSRZ, MDRZ and Local Shopping Centre Zone. The way in which the addition is drafted suggests the entire LDSRZ and MDRZ would be exempt, and I do not believe this to be the intent. I also have reservations about the term "satisfied objective 3.2.1.10 and 40.2.1 and their associated policies" within limb (d). I consider that this phrasing introduces a degree of discretion, and that the exemption should be clear in its scope and application.



- 6.4 This to me identifies the uncomfortable fit of attempting to impose financial contribution rules around activities that are otherwise anticipated and permitted activities in the District. If adopted, I consider that greater certainty and clarity should be provided in relation to the areas of land that are exempted from the IZ rules, either through listing or mapping.
- 6.5 Mr Mead has outlined an addition to Rule 40.6.2, that requires affordable lots to be provided in accordance with Rule 40.6.1.1 (a)(ii), and shall be unencumbered by covenants or consent notices that limit the number, size or design of buildings on the lots. I understand the intent of this addition is to avoid instruments that restrict the number and types of units,<sup>19</sup> however, in my experience, it is common place for new subdivision developments to have relatively standard design covenants, with these specifying particular architectural styles, materials and features. I consider such 'design' controls do not necessarily provide an impediment to the numbers and type of units able to be established, but rather, ensure a consistent design, character and amenity outcome for a development. To this end, I consider this addition should be clearer in its application, and remove reference to 'design'.

## 7. **THE RECOMMENDED AMENDMENTS**

- 7.1 Section 32AA(1)(a) of the RMA requires a further evaluation in respect of the amendments sought to the existing proposal since the Section 32 Report evaluation was completed. In this context:
- (a) The 'existing proposal' is applying the Council's notified IZ provisions and amendments to the PDP; and
  - (b) The 'amending proposal' is:
    - (i) Not amending the PDP to include the IZ Provisions;
    - (ii) Inserting the new Chapter 3 Strategic Direction objective and PDP Chapter 4 policy; and/or
    - (iii) The alternative relief I describe below which is a modified form of the IZ provisions.
- 7.2 Section 32AA(1)(b) states that the further evaluation must be undertaken in accordance with sections 32(1) to (4), while section 32AA(c) requires that

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<sup>19</sup> Section 42a Report of David Mead for QLDC on Inclusionary Housing Variation, 14 November 2023 at [9.33].

the level of detail must correspond to the scale and significance of the changes.

7.3 Under section 32(1) of the RMA, the evaluation must:

*"(a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*

*(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*

*(i) identifying other reasonably practicable options for achieving the objectives; and*

*(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*

*(iii) summarising the reasons for deciding on the provisions; and*

*(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal."*

7.4 My evaluation of the Council's IZ variation, including the Section 32 Report and the Council's evidence have identified that the potential alternative methods have not been sufficiently evaluated, and it is more likely that the costs of implementation outweigh the benefits. This position is informed and supported by Mr Colegrave's evidence.

7.5 For 'amending proposals', section 32(3) requires that if the proposal (an amending proposal) will amend a change that is already proposed or that already exists, the examination under subsection 32(1)(b) must relate to:

*"(a) the provisions and objectives of the amending proposal; and*

*(b) the objectives of the existing proposal to the extent that those objectives —*

*(i) are relevant to the objectives of the amending proposal; and*

*(ii) would remain if the amending proposal were to take effect."*

- 7.6 My recommended further amendments are set out below, on the basis the IZ variation is retained in some form by the Independent Hearing Panel (“IHP”). Additionally, the overarching principles of section 32 must also be considered, namely:
- (a) Are the objectives the most appropriate to achieve the purpose of the RMA?
  - (b) Are the policies the most appropriate way to achieve the objectives?
  - (c) Will the policies be an effective and efficient way to achieve the objectives (by assessing benefits and costs - in a quantifiable way if possible - including the opportunities for economic growth and employment)?
  - (d) Will there be a risk of acting or not acting (ie. including policies or not including policies) if there is uncertain or insufficient information?
- 7.7 For the reasons I have identified above, I do not consider the IZ variation to be the most appropriate way to achieve the PDP, the NPS-UD and Part 2 of the RMA. I consider that the amendments to the PDP, including the version of provisions filed as part of Mr Mead’s evidence would be more likely than not to result in greater costs than benefits, and they should not be implemented.
- 7.8 I consider that there is a greater risk of acting than not acting. The provisions unlike typical district plan rules, are not required to manage activities that otherwise left unchecked may result in adverse effects on the environment, such as earthworks or gold mining, for instance. Despite the large amount of information provided by the Council it is somewhat conclusionary, and in my view, does not address, or seek to clearly or accurately identify the costs of the proposal, as seemingly acknowledged by Mr Eaqub.<sup>20</sup>
- 7.9 On the basis the IHP recommends confirming the introduction of IZ provisions into the PDP in some form, then I consider there needs to be greater synergy with other PDP rules providing enablement for additional residential density, and a more direct connection to the compensatory measures for persons undertaking residential subdivision and land use. I do not consider it appropriate or reasonable to rely on separate, and at present,

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20 Evidence Of Shamubeel Eaqub for QLDC on Inclusionary Housing Variation, 14 November 2023 at [5.26].

uncertain, Schedule 1 processes such as the UI and LM variations to ensure that collectively, the PDP is properly giving effect to the NPS-UD.

7.10 I recommend that if PDP Chapter 40 is confirmed then the following provisions (or similar compensatory or offset measures) are added to Chapter 40 as part of the IZ financial contribution rule framework. These provisions include:

- (a) That the LDSRZ enable a density of one residential unit per 300m<sup>2</sup> calculated as an average across the site and building height of 8m (this is consistent with the notified UI Variation PDP amendments);
- (b) The MDRZ enable building height commensurate with the UI variation;
- (c) That any application for resource consent under the IZ financial contribution rules is processed without public notification or limited notification; and
- (d) That the activity status for any non-compliance with the IZ financial contribution rules is a Restricted Discretionary activity, with the matters of discretion restricted to the provision of affordable housing.

7.11 I consider that the benefits of the above will help temper the significant costs of the proposal. Further, the costs of the above are considered low because they are already evaluated and supported by the Council as part of its UI variation.<sup>21</sup>

7.12 The exceptions to this are the non notification pathway, for which I note the following:

- (a) A 'complying' Controlled activity or Restricted Discretionary activity subdivision is generally treated as a non-notified activity (PDP Subdivision and Development Chapter 27 Rule 27.10). In this case, the rule incentivises applicants to otherwise ensure their subdivision or land use complies with the density outcomes (and if introduced, the IZ financial contribution provisions).
- (b) LDSRZ Chapter 7 Rule 7.4.9 (under the UI variation) is a Restricted Discretionary activity which is designed to assess the bulk and location and urban design effects of infill development and residential activity on lots smaller than 450m<sup>2</sup>, but not smaller than a 300m<sup>2</sup>

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21 [National Policy Statement-Urban Development \(District Plan Amendments\) | Queenstown Lakes District Council \(qldc.govt.nz\)](#)

average site area. Rule 7.4.9 (under the UI variation) is subject to Rule 7.6.1.1, which identifies that activities shall be processed without public or limited notification and without the written approval of persons.<sup>22</sup>

- 7.13 The above rules are supported by the Council already, however they may be subject to submissions via their own processes without consideration of their potential compensatory benefits associated with the IZ rules. Therefore, I consider the rules are appropriate to be co-located in Chapter 40, should the IHP recommend the implementation of the IZ provisions into the PDP.

A handwritten signature in blue ink, appearing to read 'Daniel Thorne', written in a cursive style.

**Daniel Thorne**

**21 December 2023**

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22 NB: Except where the site has a vehicle crossing off a State Highway, or where Aurora Energy may be affected.