

Relationship Framework Agreement

governing how the parties will work together to deliver affordable housing

Queenstown Lakes District Council

Queenstown Lakes Community Housing Trust

**MEREDITH
CONNELL**
—
THE LAW FIRM.

PO Box 90750, Victoria Street West,
Auckland 1142, New Zealand
DX CP24063
T: +64 9 336 7500
www.mc.co.nz

Parties

Queenstown Lakes District Council (QLDC)

Queenstown Lakes Community Housing Trust (QLCHT)

Introduction

- A QLCHT was originally established in 2007 to advance the community's goals for the provision of affordable housing in the Queenstown Lakes District. Those goals were expressed through the development of the HOPE (Housing Our People In Our Environment) Strategy adopted by the Council.
- B QLDC and QLCHT entered into memoranda of understanding relating to affordable housing objectives in the District.
- C On 29 October 2015 QLDC and QLCHT signed the most recent memorandum of understanding. In that document the parties recognised each other as partners in addressing housing issues in the Queenstown Lakes District, documented areas where QLDC would support QLCHT, and clarified the respective roles of QLDC and QLCHT.
- D In October 2017 the Mayoral Housing Affordability Taskforce reported to QLDC, proposing various strategies to improve housing affordability in the Queenstown Lakes District. The strategies were adopted by QLDC and included:
- a. setting a target to deliver 1000 affordable homes with secure tenure by 2028 across specific programmes in the assisted rental and assisted ownership areas;
 - b. building a range of community affordable market offerings including an affordable ownership programme with QLCHT delivering secure tenure housing using leasehold land;
 - c. recognising the importance of developing solutions for the long-term by building a community asset that delivers quality, affordable housing in perpetuity to achieve a stable, well-balanced community; and
 - d. investing in scaling up QLCHT, with QLDC confirming QLCHT as its preferred partner for receiving any Contributions, and as the primary delivery organisation for affordability product offerings to the residents of the Queenstown Lakes District.
- E QLDC and QLCHT wish to work together to devise and implement these and other strategies to improve affordable home offerings in the Queenstown Lakes District. It is intended that this Agreement will facilitate the development of a long-term relationship between the parties to enable the achievement of housing affordability objectives.
- F To do that, this Agreement replaces all previous memoranda of understanding and sets out a framework that will govern the parties' relationship, their respective roles and

responsibilities, and the manner in which they will work together to enable delivery by QLCHT of affordable housing generally.

- G It is intended that separate written protocols will be entered into from time to time that will form part of this Agreement and which will address the roles, rights, and responsibilities of the parties in relation to specific affordable home offerings.
- H QLDC and QLCHT have performed a periodic review on or around 29 March 2022 pursuant to clause 7.2 of this Agreement. As a result of that review, Schedule 1 (Secure Home Programme Protocol) and Schedule 2 (Rental Programme Protocol) have been updated in this version of the Agreement.

Agreement

1 Interpretation

- 1.1 In this agreement, unless the context requires otherwise:

Affordable Housing Records mean all information relating to the establishment and on-going provision and management of affordable housing offerings by QLCHT including, but not limited to, information prescribed by protocols agreed between the parties from time to time;

Agreement means this agreement;

Contribution means a gift or transfer of land (including by way of long-term lease) and/or funding, obtained from a range of sources, from QLDC to QLCHT (including where the land or funding is provided to QLCHT directly by a third party but the transfer results from a Council-imposed requirement on that third party);

QLCHT includes its successors, administrators and permitted assigns;

QLDC includes its successors and permitted assigns;

Regulatory Function means QLDC's mandatory statutory role as a local authority, including as a consent authority, separate to its role as a party to this Agreement; and

Trust Deed means the Queenstown Lakes Community Housing Trust deed dated 1 April 2015 between the settlor and the trustees named in the Trust Deed.

2 Partnering concept

- 2.1 The parties will work together with openness, promptness, consistency and fairness in all dealings and communications.
- 2.2 Notwithstanding clause 2.1, nothing in this Agreement shall be construed to constitute a partnership or joint venture between the parties or the relationship of principal and agent.
- 2.3 For the avoidance of doubt, QLCHT is an independent entity, established by the Trust Deed. The Trust Deed governs its operation.

3 Operation of QLCHT and appointment of trustees

- 3.1 The primary objects and purposes of QLCHT are recorded in clause 3 of the Trust Deed and include the relief of housing poverty by the provision of social and affordable housing in the Queenstown Lakes District. QLCHT agrees that the objects and purpose of QLCHT will not be materially varied without QLDC's written consent.
- 3.2 Under clause 6.1 of the Trust Deed, the trustees of the QLCHT will always include one trustee appointed by QLDC. QLCHT agrees that it will not materially vary the Trust Deed to reduce the number of trustees appointed by QLDC or increase the maximum number of trustees on QLCHT's board without QLDC's written consent.
- 3.3 QLCHT's selection panel for the appointment of any new Chair of QLCHT shall include at least one Councillor.
- 3.4 Two representatives of QLDC will be entitled to attend meetings of the Board of the QLCHT (not including Trustee-only time), and for that purpose will be provided with notice of any scheduled meetings and the relevant Board papers for consideration prior to meetings, as well as any minutes taken at meetings. QLDC representatives do not have rights to participate in any vote of the Trustees of QLCHT.
- 3.5 QLCHT will carry out its activities in accordance with accepted principles of good governance for similar community organisations.
- 3.6 Without limiting clause 3.4, QLCHT will maintain its status as a registered Community Housing Provider and meet the performance standards and guidelines prescribed from time to time by the Community Housing Regulatory Authority or any successor organisation.
- 3.7 QLCHT will amend clause 20.2 of the Trust Deed to provide that, unless agreed otherwise at the time, on the winding up or other liquidation of the QLCHT any land owned by QLCHT which was provided by QLDC under this Agreement and/or a written protocol shall be distributed back to QLDC. The proposed change of wording shall be devised by the Trust and approved by QLDC.
- 3.8 QLDC will continue to provide the following support services to QLCHT, on the same terms as exist at the date of this Agreement or as otherwise agreed between the parties:
- (a) IT services, in that QLDC hosts, as agent or for the sole purpose of safe custody, on its server QLCHT's information;
 - (b) Administrative services;
 - (c) Provision of an annual operating grant.
- 3.9 The parties will, over time, work together to reduce the support services that QLDC provides to QLCHT.
- 3.10 QLDC support may, from time to time, be necessary to support the Trust's activities, including by way of written assurances or security in the form of guarantees of QLCHT's performance of obligations it incurs to third parties. QLDC may continue to provide performance guarantees on terms and conditions agreed in relation to any request by QLCHT that QLDC do so.

- 3.11 QLCHT may request QLDC support as provided for in clause 3.10 by providing to QLDC a proposal showing:
- (a) Why the support will advance QLCHT's aims;
 - (b) The potential exposure, financial and/or reputational, to the Council;
 - (c) What steps have been or will be taken to mitigate risks to QLDC;
 - (d) How QLCHT will indemnify QLDC;
 - (e) When and how the need for support will be ended, or the performance guarantee lifted.
- 3.12 QLCHT acknowledges that consideration by QLDC of a request for support may require consideration and ratification by the Governing Body of the Council.

4 Reporting and audit requirements

- 4.1 QLCHT will:
- (a) keep, store and maintain Affordable Housing Records in accordance with proper business/accounting practice and all applicable laws;
 - (b) make sure the Affordable Housing Records clearly identify specific criteria and/or information prescribed by agreed protocols; and
 - (c) report to QLDC in accordance with requirements and milestones agreed between the parties in respect of any affordable home offering.
- 4.2 Subject to applicable laws relating to privacy and protection of information, QLCHT will provide copies of Affordable Housing Records to QLDC as QLDC reasonably requires in order to assess progress of any affordable home offering. This may include, without limitation, Affordable Housing Records relating to progress on the parties' mutual objectives as set out in the Introduction. All information provided by QLCHT must be delivered within a reasonable time of the request.
- 4.3 QLCHT will co-operate with QLDC to provide information immediately if the information is required by QLDC to comply with its statutory reporting obligations.

5 Development of Affordable Home Offerings

- 5.1 QLCHT provides affordable home offerings within the Queenstown Lakes district through a range of mechanisms and ownership models. The parties will work together to develop a range of affordable home offerings in accordance with this Agreement.
- 5.2 QLDC proposes from time to time to make Contributions to be used by QLCHT in the provision of affordable housing offerings.
- 5.3 The parties will enter into written protocols to this Agreement recording the terms of any affordable home offerings developed by the parties for which it is anticipated that Contributions may be used.

- 5.4 The agreed protocol for an initial affordable home offering, the Secure Home Offering, is as set out at Schedule One.
- 5.5 Any future written protocol shall:
- (a) state the basis and operation of the affordable housing offering;
 - (b) once agreed, be executed by the parties and attached to this Agreement; and
 - (c) will be subject to the general provisions of this Agreement.

6 Limitations on Use of Contributions

- 6.1 Whenever QLDC proposes to provide a Contribution, the parties shall discuss the proposed use of the land and/or funding and record any agreement about its use in the agreement or other documentation used to record the Contribution.
- 6.2 Any Contribution must be used exclusively by QLCHT for the purposes for which the land and/or funding is provided.
- 6.3 QLDC expects that land provided by QLDC to QLCHT will be used by QLCHT for the affordable home offering under the relevant written protocol and will be retained by QLCHT notwithstanding any changes in relationship between QLCHT and QLDC or any internal or external restructuring or other changes to either QLCHT or QLDC. QLCHT may not sell, transfer or otherwise alienate such land without the written consent of QLDC.
- 6.4 All land acquired by QLCHT either by way of Contribution from QLDC or developed using funding procured or provided by QLDC will, at QLDC's election, be subject to an encumbrance in favour of QLDC on terms to be agreed in an applicable protocol.
- 6.5 Without limiting clause 4.2, QLCHT will provide copies of any Affordable Housing Records relating to the provision and use of land and/or funding described in clause 6.1, as QLDC reasonably requires.

7 Termination

- 7.1 The parties intend the relationship governed by this Agreement to be a long-term relationship, given the nature of the affordable housing issue that they intend to work together to improve.
- 7.2 The parties shall conduct periodic reviews of the operation of the Agreement and written protocols from time to time on an agreed, reasonable timeframe, in order to ensure that the Agreement remains fit for purpose having regard to its objectives and the objectives of the parties. The first review shall take place within three years of execution of the Agreement.
- 7.3 Either party may serve notice that it wishes to terminate this Agreement, but this Agreement may only be terminated by agreement and on terms agreed by the parties which ensure to the Council's satisfaction that any property transferred to the Trust under the Agreement will continue to be used for the purpose for which it was transferred. To reach agreement the parties shall hold good faith discussions for a period of three months from the date of the notice of proposed termination. Should

the parties fail to agree on such terms within that time, the Dispute Resolution process in clause 8.2 will apply.

8 Dispute Resolution

- 8.1 Should any dispute arise under this Agreement, whether concerning the construction or performance of this Agreement, or the rights and liabilities of the parties, the parties shall use their best endeavours to resolve the dispute within three calendar weeks through good faith discussions.
- 8.2 If the parties fail to resolve the dispute through good faith discussions, the dispute shall be referred to a mediator acceptable to both parties on terms acceptable to both parties.
- 8.3 In the event of the dispute or difference not being resolved by mediation within three months, then it shall be determined by a single arbitrator. That arbitrator shall be agreed between the parties, or failing agreement shall be appointed by the President for the time being of the Otago branch of the New Zealand Law Society. The arbitration shall be conducted in accordance with the Arbitration Act 1996.

9 General

- 9.1 On execution of this Agreement, all previous memoranda of understanding are terminated.
- 9.2 Both QLDC and QLCHT may from time to time be seen as individually or collectively the appropriate body to speak on community housing matters. Both parties therefore agree to communicate with the other in advance of any significant issue related to community housing. Wherever reasonably possible, a joint view on the matter in question will be a goal, but failing agreement, both parties will strive not to publicly criticise or undermine the position of the other party. Any challenges, problems, or criticisms of community housing may be directed to either QLDC or QLCHT. Each party's obligation is that all matters of complaint or issues that have the potential to reflect on policies or the wider community are to be alerted to the other party at the earliest possible time when they arise.
- 9.3 While it is the intention of each organisation to observe the confidentiality of information that may be shared in the normal course of the relationship, QLCHT recognises that QLDC is a statutory body and may have obligations to disclose information to other parties and to the wider public if requested.
- 9.4 If either party is required by law to disclose any information which has been obtained by them through undertaking the services they shall immediately notify the other party by telephone and in writing.
- 9.5 Both parties to this Agreement shall at all times act in accordance with the Privacy Act 1993, or any relevant codes of practice.
- 9.6 QLCHT acknowledges that QLDC is obliged to and shall act in accordance with its Regulatory Function. QLCHT shall have no right or claim against QLDC in its capacity as a party to this Agreement as a result of any lawful action or decision made by QLDC in the performance of its Regulatory Function.

Execution

**Signed by and on behalf of Queenstown
Lakes District Council**

Authorised signatory

Queenstown Lakes District Council

**Signed by and on behalf of Queenstown
Lakes Community Housing Trust**

Authorised signatory

Queenstown Lakes Community Housing Trust

Schedule 1 – Secure Home Programme Protocol

- 1 Where the Council and the Trust agree that a Contribution to be provided by the Council to the Trust is to be used by the Trust for the Secure Home Programme, this Protocol will govern the form of the transactions to be entered into.
- 2 The transactions set out in this Protocol may be subject to amendment from time to time to enable the Trust to continue adapting to circumstances and conditions but subject to agreement by the Council.

Registered Encumbrance

- 3 If the Contribution consists of land, the land shall be subject to an encumbrance in favour of the Council containing Council's rights to resume ownership of the land in the event of insolvency of the Trust.
- 4 The Council's encumbrance shall be first ranking over any other security provided if the Trust needs to use the Land as security for finance purposes then Council agrees to work with the Trust to facilitate the same so as to protect the interests of the Council and the institutional funder.

Secure Home Agreement/Registered Lease

- 5 The Trust will enter into an agreement with the intended occupant(s) of the land/home on the following terms (list is not exhaustive):
 - a. The occupant(s) have a right of exclusive possession of the land/home for 100 years or they have leasehold title;
 - b. The Trust has rights of inspection etc consistent with its interest in the reversion of the leasehold interest granted;
 - c. The occupant(s) pay an upfront payment and periodic rent at 1.5% of the land market valuation to the Trust with subsequent rent reviews indexed to CPI (All Indices);
 - d. On any event triggering transfer of the land/home back to the Trust, the Trust must implement the transfer and pay a reversion price.
- 6 On acquiring the reversion the Trust will enter into a new agreement with new occupant(s) with the occupant(s) paying an upfront payment no more than the reversion price. The periodic rent may be reset to 1.5% of the current market value and will be subject to subsequent rent reviews indexed to CPI.
- 7 On acquiring the reversion, the Trust may only use the land/home for any other affordable home offering if the basis of that offering has been documented as a protocol attached to this Agreement.

Mortgagee Deed

- 8 The Trust will enter into a Deed with any mortgagee of the occupant(s) for the upfront payment ensuring:

- a. The mortgagee will notify the Trust of any circumstances that mean lead to an event triggering transfer of the land back to the Trust;
- b. The mortgagee will notify the Trust if it issues any Property Law Act notice to the occupant(s).

Schedule 2 – Rental Programme Protocol

- 1 For contributions provided by the Council to the Trust for rentals, this Protocol will govern the form of transactions to be entered into.
- 2 The transactions set out in this Protocol may be subject to amendment from time to time to enable the Trust to continue adapting to circumstances and conditions but subject to agreement by the Council.

Registered Encumbrance

- 3 If the Contribution consists of land, or land and dwelling(s), the contribution shall be subject to an encumbrance in favour of the Council containing Council's rights to resume ownership of the land and dwellings(s) in the event of insolvency of the Trust.
- 4 The Council's encumbrance shall be first ranking over any other security provided if the Trust needs to use the Land as security for finance purposes then Council agrees to work with the Trust to facilitate the same so as to protect the interests of the Council and the institutional funder.

Rental Terms

- 5 The Trust will enter into an agreement with the intended occupant(s) of the land/dwelling on the following terms (list is not exhaustive):
 - (a) The occupant(s) can live at the Property in accordance with a separate Residential Tenancy Agreement, and QLCHT agrees not to terminate the lease in the first 5 years;
 - (b) The rent will be set at a fair market rate and an income based subsidy may be applied, discounting the rent to allow households to achieve savings and/or debt reduction goals;
 - (c) The Trust and the household will review their financial situation and goals regularly.

Qualifying Households

- 6 Households which qualify for an income related rent subsidy through a New Zealand government agency may also be approved for an agreement to rent a Trust Property under the Trust's Public Housing Rental Protocol.

Schedule 2 – Rental Programme Protocol (this document) is to be signed and added to the Relationship Framework Agreement (RFA) and Protocol 1, signed on 22 March 2019.

Date:

Signed on behalf of Queenstown Lakes District Council

Name:

Position:

Signature:

Signed on behalf of Queenstown Lakes Community Housing Trust

Name:

Position:

Signature:

Relationship Framework Agreement (Rental Protocol) – Final Version for Signing