

Before the Independent Hearings Panel

Under the Resource Management Act 1991 (**RMA**)

In the matter of Submissions on the Inclusionary Housing Variation to the
Queenstown Lakes Proposed District Plan

Statement of Evidence of Chris Ferguson

(Planning)

19 December 2023

Introduction

- 1 My full name is Christopher Bruce Ferguson.

Instruction

- 2 I have been instructed by Russell McVeagh, Brookfields, and Anderson Lloyd jointly to prepare evidence on behalf of their respective client submitters on the Variation (the '**residential development consortium**').¹

Qualifications and Experience

- 3 I hold the qualifications of a Bachelor of Resource and Environmental Planning (Honours) from Massey University. I hold the position of Partner with the environmental consultancy firm Boffa Miskell Limited (Boffa Miskell), based in the Queenstown office. I have been employed by Boffa Miskell since April 2015, and am a director of the company. I reside in Arrowtown and have been practicing as a planner in the Queenstown Lakes District (**QLD**) since 2000, with some short periods overseas and in Christchurch (refer below).
- 4 I have 27 years' experience as a resource management practitioner and am a full member of the New Zealand Planning Institute. I have held positions as a Planner in both local government and private practice within Selwyn District Council, Christchurch City Council, and Queenstown Lakes District Council (**QLDC**), as well as in London, England.
- 5 Prior to commencing employment at Boffa Miskell, I was employed by AECOM New Zealand Limited as a Principal Planner, based in Christchurch. My work experience in Queenstown has included employment with Civic Corporation Ltd from Feb 2000 to Nov 2001, planning manager at Clark Fortune McDonald & Associates Ltd from 2003 to 2010 and then as Director of planning consultancy company Ferguson Planning Ltd. My work in Christchurch involved a secondment position with the Canterbury Earthquake Recovery Authority providing planning support on several anchor projects as well as submissions for private clients on the proposed Replacement Christchurch District Plan.
- 6 I have been involved throughout the Environment Court process and hearings relating to the Queenstown Lakes Proposed District Plan Review for a range of entities, providing planning advice, evidence, and court-

¹ Darby Planning Limited Partnership, Glenpanel Developments Limited, Maryhill Limited, Station at Waitiri, Silverlight Studios, Gibbston Highway Limited, Macfarlane Investments Limited, Remarkables Park Limited and Winton Land Limited.

directed expert witness conferencing. My involvement includes Topic 1 (Strategic Directions), where I was involved in the preparation of evidence and presentation of evidence at the Environment Court and participated in Environment Court directed conferencing on development provisions relating to the role of the Strategic Objectives and Strategic Policies; Topic 2 (Rural Landscapes). I also prepared evidence, rebuttal and supplementary statements, participated in Court directed conferencing leading to the formulation of a Joint Witness Statement and presented these at the Court hearing in relation to various other zone chapters of the PDP.

Code of Conduct

- 7 I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2023. I have complied with the Code of Conduct in the preparation of this evidence and will follow it when presenting evidence at the hearing. Unless I state otherwise, this assessment is within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

- 8 My evidence will address the following matters:
- (a) The nature of the Inclusionary Housing Variation (**Variation**), its relationship to the regime for financial contributions under the RMA, functions of territorial authorities, the operation of the Variation within the context of the staged Queenstown Lakes District Plan review and an analysis of issues of workability with the proposed Variation provisions.
 - (b) Analysis of the relevant statutory planning documents, including the relevant national and regional directives and the objectives of the PDP.
 - (c) An analysis of the proposal under s32 of the RMA, including an examination of the appropriateness of the objective to achieve the purpose of the RMA, the reasonably practicable options to achieve the objective, the effectiveness and efficiency of the proposed methods and the risks of not acting.
- 9 In preparing this evidence, I have reviewed the s32 documentation together with the Council s42A Report, including the evidence of Mr Mead, Ms Bowbyes, Mr Equb and Ms Lee, along with the evidence prepared on behalf of my clients, including:

- (a) The evidence of Lawrence Yule on Local Government issues.
- (b) The evidence of Philip Osborne on Economic issues.
- (c) The evidence of Dave Serjeant on Planning issues.
- (d) The evidence of Berin Smith, Ted Ries, Lauren Christie, Mark Tylden and Kristan Stalker on behalf of various development interests.

Executive Summary

- 10 My evidence is the second part of the planning evidence for the submitters. The first part is provided by Mr Serjeant, who addresses the relevant background and history of affordable housing issues in Queenstown, considers the affordable housing resource as a public or social good, examines what can be learned from the overseas experience, and provide a review of some matters addressed by the Social Impact Assessment. My evidence follows Mr Serjeant's definition of the issue and the proposed objectives of the Variation.
- 11 The QLD has high levels of housing unaffordability. The Variation proposes to introduce a new SO 3.2.1.10 as a way to provide a further focus on housing for low to moderate income households. Subject to small changes (proposed in Mr Serjeant's evidence), I consider this objective is the most appropriate way to achieve the purpose of the RMA. However, I do not consider the provisions proposed by the Variation are the most appropriate way to achieve the objective.
- 12 The higher-order planning instrument and legislative provisions provide consistent and well aligned direction to address housing affordability through sufficient supply of residential land and housing choice. The imposition of further costs on subdivision and residential building development (as a result of the Variation) is considered contrary to the national direction that, planning decisions, at a minimum, support, and limit as much as possible adverse impacts on the competitive operation of land and development markets.
- 13 There is evidence that the existing policies within the PDP encouraging greater housing choice through land supply, density and reduced lot sizes are beginning to translate into building outcomes, which over time, are expected to positively influence average market values.
- 14 Of the reasonably practicable options available to implement the objectives of the Variation, two broad options are considered to be more effective and

efficient than the methods as currently proposed in the Variation, having least costs:

- (a) Local Government Rating, (in particular, application of a targeted rate), by QLDC, as that provides greater scope for funding a wider section of the community; or
- (b) A combination of measures that continue to provide for increased land supply, including intensification, and formulation of a policy to capture any uplift in plan enabled capacity through out of zone activity, plan changes or variations, or where density / lot sizes exceed plan standards.

15 Both options could be developed in combination.

The Proposal

- 16 The Variation proposes to include an additional Strategic Objective, insert three Strategic Policies, and to insert a new Chapter 40 within the PDP, establishing a new objective, policies and rules. The stated purpose of the new Chapter is to make provision for housing choices for low to moderate income households in new neighbourhoods and in redevelopments of existing neighbourhoods.
- 17 The proposed rules establish a requirement for residential subdivision and residential development to pay a financial contribution (which may be a monetary contribution or a land contribution). In the most recent version of the provisions set out in Appendix 1 of the s42A report, the financial contribution would become payable for subdivision before the issue of the s224(c) RMA certificate; or for a land use activity no more than 3 months after issue of code compliance certificate under the Building Act 2004.
- 18 The rate of contribution varies between subdivision and building development, as follows:

Subdivision

New subdivisions that create vacant residential lots within existing urban areas	5% of the additional serviced lots created, to be provided to the Council as either a transfer of land (subdivision resulting in 20 or more additional lots) or as an equivalent monetary contribution (for subdivision resulting in more than 1 but less than 20 additional lots)
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Residential subdivisions in a Settlement Zone, Rural-Residential Zone, Wakatipu Basin Rural Amenity Zone Lifestyle Precinct or Special Zone	1% of the estimated sales value of the additional lot(s)
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Building development

- (a) 2% of the estimated sales value of each additional unit, or
 - (b) A set rate of \$150 per square metre of the net increase in residential floorspace.
- 19 Proposed Rule 40.6.1 establishes the method and rate of the proposed contributions, with any subdivision or residential development failing to comply becoming a discretionary activity. For residential building development that otherwise complies with the relevant zone and district wide rules the new standard would enable a pathway for such development to remain as a permitted activity. Most forms of subdivision are at least a restricted discretionary activity and the requirement to pay the financial contribution would be imposed through a condition of consent, prior to the issue of s224c) certification.
- 20 Exemptions are provided (proposed Rule 40.6.1.3.) for the following:
- (a) Residential flats.
 - (b) Social or affordable housing delivered by Kāinga Ora, a publicly owned urban regeneration company, QLDC or a registered community housing provider.
 - (c) A managed care unit in a Retirement Village or Rest Home.
 - (d) A residential lot or residential 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 of the PDP and their associated policies.
 - (e) Contributions do not apply to development or replacement of a single residential unit on a lot.
- 21 The policies within Chapter 40 are very directive in seeking to “*ensure that residential subdivision and development*” provide a financial contribution for housing and to “*avoid subdivision or development for residential activities*”

... that does not provide a contribution”, as stated within Policy 40.2.1.3 below.

40.2.1.3 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.

(Section 42A version)

- 22 Despite being identified as a discretionary activity the effect of the policies in support of the rule means that it will be challenging to obtain resource consent for non-compliance with the financial contribution rules. The framework of Chapter 40 in effect, mandates payment of the financial contribution.

Financial Contributions under the RMA

- 23 Section 77E(1) of the RMA provides an ability for local authorities to make a rule requiring a financial contribution for any class of activity other than a prohibited activity. Pursuant to s77E(2), where a rule requiring a financial contribution is adopted, the rule in the proposed plan must specify:
- (a) the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect);
 - (b) how the level of the financial contribution will be determined; and
 - (c) when the financial contribution will be required.
- 24 The application of the proposed rules in the Variation would apply the financial contribution to all classes of activity, from permitted to non-complying.
- 25 The purpose of the financial contribution is not explicitly stated within the rule. The purpose of Chapter 40 is to

“make provision for housing choices for low to moderate income households in new neighbourhoods and in redevelopments of existing neighbourhoods”, with provision being “made for affordable housing by imposing a standard requiring a financial contribution to be made”.

- 26 The purpose of Chapter 40 is not solely to impose a financial contribution for affordable housing and the broader purpose flows into the framing of the objective, which is:

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

Policy 40.2.1.3 establishes the direction to ensure residential subdivision and development provide a financial contribution for affordable housing. This particular method for achieving the objective is a matter subject to the requirements of s32 of the RMA, as discussed further below.

- 27 Although there is a purpose section included in Chapter 40, as well as objective and policies which illustrate a purpose, in order to satisfy s77E(2), the rule itself must specify the purpose for which financial contribution is required, in this case that its purpose is to impose / levy a financial contribution for Affordable Housing.

- 28 The chapeau to Rule 40.6.1 states *"An Affordable Housing Financial Contribution shall be provided to Council as follows..."*. There is a definition of "Affordable Housing" which means:

“residential activity that maintains long term affordability for existing and future generations through the use of a retention mechanism, and whose cost to rent or own is within the reasonable means of low and moderate income households”.

- 29 The two options to satisfy the rule are to pay a financial contribution to QLDC, of money or land. Rule 40.6.1 does not create a framework for applicants to develop housing that includes a retention mechanism, designed to be rented or owned by low and moderate income households by which to satisfy the purpose of “Affordable Housing”.

- 30 Policy 40.2.1.8 and assessment matter 40.8, however, contemplate a situation where financial contributions are not provided for by an applicant, and an alternative solution proposed. The assessment matters specify the form of a retention mechanism, eligibility criteria and affordability, which would meet the definition of "Affordable Housing", but only in cases where the activity fails to comply with Rule 40.6.1 and payment of a financial contribution is not being made.

- 31 Rule 40.6.1 determines how the level of financial contribution will be determined by setting out a formula applying to subdivision and building development according to the zone in which those activities are occurring.

- 32 Provisions 40.4.1 and 40.4.2 (Interpreting and Applying the Rules) determine when the financial contributions will be required, being:
- (a) for subdivision activity, the financial contribution must be paid to the Council before the issue of a certificate under section 224(c) of the RMA; and
 - (b) for land use activity, the financial contribution must be paid to the Council no later than 3 months after the issue of the necessary Code Compliance Certificate under the Building Act 2004. My evidence examines further the application of these exemptions to landowners who have land use or subdivision consent issued prior to these rules taking legal effect and questions relating to implementation of consents already granted, variations to existing consents and replacement consents.
- 33 As currently drafted, the affordable housing financial contribution rules do not establish any transitional arrangements either in relation to granted consents or broader subdivision and land use development. The implication being that the rules would apply immediately to activities not lawfully established or with an issued resource consent upon them taking legal effect.
- 34 While the purpose of the financial contribution is not explicit within the rule, especially in relation to compliant activities, I acknowledge that through a relatively small edit this could be rectified. Subject to any wider questions of the lawfulness of this approach, the structure of the proposed financial contributions satisfies the statutory requirements of s77E. However, any financial contribution created through provisions within a district plan would still need to satisfy the overriding constraints on territorial authorities' functions (s31, RMA) and the obligations under s32 of the RMA. I discuss each of these matters below.

Territorial Authority Functions

- 35 Section 74(1) of the RMA requires a territorial authority to prepare and change its district plan in accordance with its functions under s31 of the RMA. Relevantly, s31 states:
- (1) *Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
 - (a) *the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*

(aa) *the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district. (My emphasis).*

36 Whilst s31 does not fetter the ability of QLDC to establish financial contributions through s77E, the statutory focus for Council in relation to housing is on ensuring there is sufficient development capacity. This higher order purpose flows into the relevant national and regional directions and ultimately the provisions of the PDP, as outlined below.

Section 108AA Requirements

37 Section 108AA of the RMA imposes limitations on a consent authority's ability to impose conditions in a resource consent for activities. However, the RMA expressly identifies that nothing in s108AA affects s108(2)(a), which enables a resource consent to include a condition requiring a financial contribution.

Structure of the District Plan

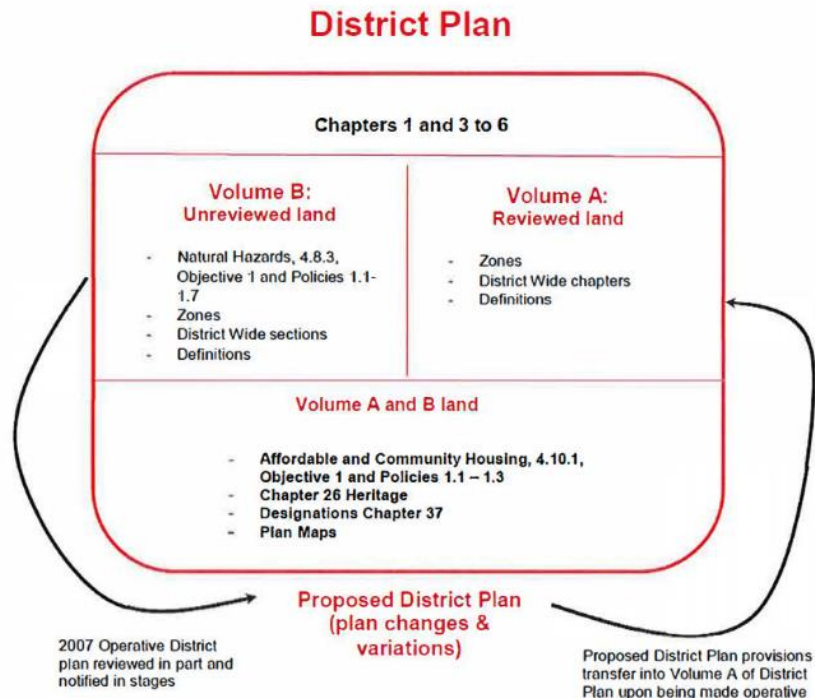
38 The structure of the Queenstown Lakes District Plan is explained within Chapter 1 of the PDP. The District Plan comprises two volumes that are separated by geographic area, with Volume A being the land that has been reviewed (referred to as the PDP) and Volume B being the land that to date has not been reviewed (the Operative District Plan (**ODP**)).

39 Section 1.1B of the PDP explains the relationship between Volume A and B with respect to the district wide chapters, stating:

- a. *... Chapters 3, 4, 5 and 6 apply district wide over Volume A and Volume B land except to the extent that either Chapter 3 or Chapter 6 specifies exclusions or qualifications to that application. The principal role of Chapters 3 - 6 collectively is to provide direction for the more detailed provisions related to zones and specific topics contained elsewhere in the District Plan.*
- c. *Volume B of the District Plan consists of the zone chapters, or specific areas not yet reviewed or notified as the Proposed District Plan, and all relevant parts of the 2007 District Plan district wide chapters that need to remain to regulate district wide issues as they relate specifically to those Volume B provisions.*
- d. *Chapters 3, 4, 5 and 6 have encompassed the 2007 District Plan Section 4 (District Wide Issues) with the exception of the following two objectives:*

- *Natural Hazards Objective 4.8.3(1) and Policies 1.1 to 1.7 (Section 4.8), which still applies as a relevant district wide objective to Volume B zones.*
- *Affordable and Community Housing Objective 1 and Policies 1–1 - 1.3 (Section 4.10), which still applies to both Volume A and B zones (my emphasis)*

40 This relationship is explained in diagrammatic form below:



41 As the Variation has not sought to amend the provisions within Chapter 1 to include reference to proposed Chapter 40, I interpret the above as meaning:

- (a) As set out in the diagram above, Section 4.10 of the ODP applies within Volume A and Volume B land.
- (b) The new proposed Strategic Objective 3.2.1.10 and new Strategic Policies 3.3.52, 3.3.53 and 3.3.54 relating to affordable housing introduced through the Variation apply to both Volume A and B land. This is because these Strategic Objectives and Strategic Policies are set out in Chapter 3 which is stated in Section 1.1B of the PDP as applying district wide over Volume A and Volume B land.
- (c) The new Chapter 40 provisions, including the requirements within Rule 40.6.1 for payment of a financial contribution only apply to the Volume A (reviewed land), but not the unreviewed (Volume B) ODP land. This is because Section 1.1B of the PDP states that Volume B

of the District Plan only consists of the zone chapters, or specific areas not yet reviewed or notified as the Proposed District Plan, and all relevant parts of the 2007 District Plan district wide chapters that need to remain to regulate district wide issues as they relate specifically to those Volume B provisions. Chapter 40 is not a zone chapter. Chapter 40 is set up as "Part 5 of the Proposed District Plan". As the Variation has not proposed an amendment to Chapter 1 to specify that Chapter 40 will apply to both Volume A and B land it appears the Variation is only intended to apply to Volume A land.

42 The exclusion of the Volume B land as a result of the staged District Plan review has not been considered within the s42A Report and is further complicated by some of the information presented on the QLDC website that contains a fuller list where the proposed financial contribution "*will not apply in the following areas*" because of pre-existing agreements, as below.²

- (a) Jacks Point (including Hanley's Farm),
- (b) Bullendale
- (c) Coneburn
- (d) Arrowtown Retirement Village
- (e) Northlake
- (f) Queenstown Country Club
- (g) Longview
- (h) Hikuwai
- (i) Riverside Park
- (j) Peninsula Bay
- (k) Allenby Farms
- (l) Quail Rise
- (m) Shotover Country

² <https://www.qldc.govt.nz/your-council/district-plan/inclusionary-housing-variation/>

(n) Homestead Bay

(o) Tomasi

43 Many of these areas³ have yet to be incorporated into the PDP (Volume B Land). On the basis outlined above that the Variation does not apply to ODP land the financial contributions proposed by the Variation would not apply regardless of the pre-existing agreements. I address this matter in terms of the rules further below.

The Statutory Framework

National Policy Statement Urban Development

44 The section 32 and 42A reports both rely on the National Policy Statement on Urban Development 2020 (**NPS-UD**), referring to Objective 1 and 2, and more significantly, Policy 1 (refer below). Section 75(3) of the RMA requires a district plan to “give effect to” the requirements of any national policy statement.

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.*

Policy 1: *Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

- (a) *have or enable a variety of homes that:*
 - (i) *meet the needs, in terms of type, price, and location, of different households; and*
 - (ii) *enable Māori to express their cultural traditions and norms; and*
- (b) *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) *have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*

³ Including Shotover Country, Quail Rise, Queenstown Country Club, Northlake, Hikuwai, and Peninsula Bay

- (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
 - (e) *support reductions in greenhouse gas emissions; and*
 - (f) *are resilient to the likely current and future effects of climate change. (My emphasis).*
- 45 The NPS-UD is designed to improve the responsiveness and competitiveness of land and development markets. In particular, it requires local authorities to open up more development capacity, so more homes can be built in response to demand. The NPS-UD provides direction to make sure capacity is provided in accessible places, helping New Zealanders build homes in the places they want – close to jobs, community services, public transport, and other amenities our communities enjoy.⁴
- 46 The evidence by Mr Mead points out price as a factor in enabling a variety of houses through Policy 1 but does not otherwise establish the relevance of the NPS-UD to the proposal in the Variation to establish a financial contribution linked to subdivision and development. Funnelling money into the QLCHT would create a source of revenue supporting the development of affordable housing, but that is consequential on the imposition of a financial contribution on initial subdivision and development. In this context, Objective 2 and Policy 1 d) are of particular relevance directing that planning decisions contributing towards a well-functioning urban environment, as a minimum, support, and limit as much as possible adverse impacts on the competitive operating of land and development markets.
- 47 Imposition of a financial contribution will create an additional cost i.e. adversely impact, the operation of the land market. Because the financial contribution is not uniformly targeted across the housing market, it creates distortions within the operation of the land market. In effect, new subdivision or land development capable of growing the land supply is penalised whilst existing residential stock and unreviewed ODP land is not. The evidence for QLDC by Mr Mead acknowledges that a financial contribution will result in costs, including additional transaction / consenting costs for developers, additional administration costs for the Council, and the possibility of some housing being delayed, not proceeding or having to be sold at a higher price to off-set increased costs.⁵

⁴ Page 6, Ministry for the Environment, "Introductory guide to the National Policy Statement on Urban Development 2020" (2020)

⁵ Para 4.19, Page 16, Section 42A Report of David Mead (14 November 2023)

- 48 The evidence of Mr Osborne identifies similar costs (as noted below).
- 49 The evidence of Mr Mead concludes that, in principle, the 'costs' of affordable housing contributions will fall on the land seller rather than the developer or end buyer of finished development product. Additionally, development is considered able to proceed as long as sufficient margin exists. Whilst the evidence for the residential developer consortium strongly refutes this claim, the acknowledgments in the s42A report provide evidence of impacts on the competitive operation of the land supply market. This is not consistent with the directive from the NPS-UD to, at a minimum, support, and limit as much as possible adverse impacts on the competitive operation of land and development markets.
- 50 The policy support for the proposed financial contribution regime effectively mandates payments through a directive to:
- “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”.*
- 51 Financial contributions fall outside of the methods provided through the NPS-UD, setting up potential tensions for non-compliant subdivision or development under the PDP. The NPS-UD sets out a range of methods that local authorities must do to give effect to the objectives and policies of this NPS, including to ensure every local authority provides sufficient development capacity in its district to meet expected demand, setting housing bottom lines, to establish procedures for monitoring (and publishing) of urban environments for the demand and supply of dwellings, prices and rents for dwellings, housing affordability and the proportion of housing development capacity that has been realised, prepare a Future Development Strategy, and to prepare a Housing and Business Development Capacity Assessment.
- 52 The evidence by Mr Mead further diminishes the relevance of the NPS-UD, finding that it 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. His evidence is that despite significant supply, there is continually rising land and house prices, suggesting that housing supply is not a 'complete' answer.⁶

⁶ Para 4.14, Ibid

- 53 The suggestion that housing supply is not the complete answer may be a relevant factor if there is in fact 'sufficient' supply of land for housing. Sufficient, in the context of the NPS-UD must be plan-enabled, infrastructure ready, feasible and reasonably expected to be realised, and inclusive of an appropriate competitiveness margin.⁷ The evidence for QLDC does not address whether there are further matters at play within the Queenstown Lakes District constraining sufficient land supply, beyond plan enablement. The assumption being made is that land supply is both sufficient and unconstrained by the provision of infrastructure. It also fails to factor in the development of recent policy through the PDP increasing housing choices and limiting residential visitor accommodation and homestays.
- 54 The s42A report considers the relationship of this Variation to QLDC's recent intensification variation, finding that this Variation proposes an additional and complementary method to implement the NPS-UD.⁸ The s32 report dismisses the option of facilitating greater supply and greater density, with the s32 report finding that this option has been pursued over the past 10 years and over that time urban land and house prices have increased substantially. I examine the potential role of zone provisions to influence affordability through housing choice further below.

Summary of direction from NPS-UD

- 55 The evidence for QLDC establishes clear impacts on the proposed financial contribution regime on the efficient operation of the land supply market. The NPS-UD is clear in directing that planning decisions, at a minimum, support, and limit as much as possible adverse impacts on the competitive operation of land and development markets. The imposition of further costs on subdivision and residential building development is contrary to this purpose.
- 56 The evidence does not examine the reasons why sufficient plan enabled capacity is not translating to more affordable housing, including potential limitations with infrastructure delivery or the plan provisions themselves not adequately providing sufficient housing choice.

Otago Regional Policy Statement

- 57 In changing the district plan, QLDC is required to “have regard to” any proposed regional policy statement⁹. The proposed Otago Regional Policy

⁷ 3.3(2), Ministry for the Environment, “National Policy Statement – Urban Development 2020”

⁸ Para 4.10 Page 14, Section 42A Report of David Mead (14 November 2023)

⁹ s.74(2), Resource Management Act 1991

Statement 2021 (**PORPS**) provides direction for housing affordability through the objectives and policies relating to urban form and development.

UFD–O2 – Development of urban areas

The development and change of Otago’s urban area improves housing choice, quality, and affordability ...

UFD–P2 – Sufficiency of development capacity

Sufficient urban area housing and business development capacity in urban areas, including any required competitiveness margin, is provided in the short, medium and long term by:

- (1) undertaking strategic planning in accordance with UFD–P1*
- (2) identifying areas for urban intensification in accordance with UFD–P3,*
- (3) identifying areas for urban expansion in accordance with UFD–P4,*
- (4) providing for commercial and industrial activities in accordance with UFD–P5 and UFD–P6*
- (5) responding to any demonstrated insufficiency in housing or business development capacity by increasing development capacity or providing more development infrastructure as required, as soon as practicable, (my emphasis).*

58 The planning system can accommodate affordability and price by improving housing choice. With land price being a significant factor in the development equation, a district plan can facilitate greater choice through zoning outcomes and rules that increase density, increase yield, and lower the proportion of land cost relative to built form. This is recognised through the direction provided within UFD-O2 to improve housing choice, quality and affordability.

59 The direction provided within attendant policy UFD-P2 is to respond to any demonstrated insufficiency in housing development capacity by increasing development capacity or providing more development infrastructure as required, as soon as possible.

60 Mr Mead refers to Policy UFD-P10, as raised through the submission by Otago Regional Council, and considers this policy aligns with the proposed Variation. The full text of Policy UFD-P10 is stated below.

UFD–P10 – Criteria for significant development capacity

‘Significant development capacity’ is provided for where a proposed plan change affecting an urban environment meets all of the following criteria:

- (1) *the location, design and layout of the proposal will positively contribute to achieving a well- functioning urban environment,*
- (2) *the proposal is well-connected to the existing or planned urban area, particularly if it is located along existing or planned transport corridors,*
- (3) *required development infrastructure can be provided effectively and efficiently for the proposal, and without material impact on planned development infrastructure provision to, or reduction in development infrastructure capacity available for, other feasible, likely to be realised developments, in the short-medium term,*
- (4) *the proposal makes a significant contribution to meeting a need identified in a Housing and Business Development Capacity Assessment, or a shortage identified in monitoring for:*
 - (a) *housing of a particular price range or typology, particularly more affordable housing;*
 - (b) *business space or land of a particular size or locational type, include;*
 - (c) *community or educational facilities, and*
- (5) *when considering the significance of the proposal's contribution to a matter in (4), this means that the proposal's contribution:*
 - (a) *is of high yield relative to either the forecast demand or the identified shortfall;*
 - (b) *will be realised in a timely (i.e. rapid) manner;*
 - (c) *is likely to be taken up, and*
 - (d) *will facilitate a net increase in district-wide up-take in the short to medium term.*

61 Policy UFD-P10 is designed to give effect to Policy 8 of the NPS-UD.¹⁰ Policy 8 of the NPS-UD concerns the responsiveness of plan changes affecting urban environment from unanticipated RMA planning documents or out of sequence planned land release.

Policy 8: *Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*

- (a) *unanticipated by RMA planning documents; or*
- (b) *out-of-sequence with planned land release.*

¹⁰ Page 105, s42A Report – Proposed Otago Regional Policy Statement 2021, Chapter 15 (27 April 202)

- 62 Given the scope and intent of Policy UFD-P10, I do not consider it to be of relevant to the proposed variation.
- 63 In summary, there is no direction provided within the PORPS in support of the imposition of a financial contribution for affordable housing. The provisions are much more directive in addressing housing choice, quality and affordability through sufficiency of development capacity. In this regard the provisions of the PORPS are entirely consistent with and flow from the direction provided within the NPS-UD.
- 64 A district plan can facilitate affordability and price through zoning and related provisions, including in relation to residential density, building height and building coverage. The evidence for QLDC fails to examine this option, despite the impact that a financial contribution would have on the efficient operation of the land supply market.

Proposed District Plan

- 65 Chapter 3 (Strategic Direction) of the PDP identifies a range of overarching strategic issues for the District, as follows:
- a. *"Strategic Issue 1: Economic prosperity and equity, including strong and robust town centres, and the social and economic wellbeing and resilience of the District's communities may be challenged if the District's economic base lacks diversification and supporting infrastructure.*
 - b. *Strategic Issue 2: Growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding natural features and outstanding natural landscapes.*
 - c. *Strategic Issue 3: High growth rates can challenge the qualities that people value in their communities.*
 - d. *Strategic Issue 4: Some resources of the District's natural environment, particularly its outstanding natural features and outstanding natural landscapes and their landscape values, require effective identification and protection in their own right as well as for their significant contribution to the District's economy.*
 - e. *Strategic Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.*
 - f. *Strategic Issue 6: Tangata Whenua status and values require recognition in the District Plan."*
- 66 This list of issues is not intended to be exhaustive and represents the matters warranting addressing at the present time and during the lifetime of

the Plan. Growth pressures are expressed as being an issue potentially impacting on the functioning and sustainability of urban area, and as a risk to landscape values. The rate of growth is seen as a challenge to the qualities that people value in communities, and the design of developments is identified as a factor in the safety, health, social economic and cultural wellbeing. Surprisingly, the unaffordability of housing is not in itself identified as a strategic issue; falling into or under a consideration of well-functioning urban areas, and of the qualities that people value in communities.

67 Affordable housing falls within the ambit of the Strategic Objective SO 3.2.2, as below.

3.2.2 Urban growth is managed in a strategic and integrated manner. (addresses Issue 2)

(SO 3.2.1.9 also elaborates on SO 3.2.2).

3.2.2.1 *"Urban development occurs in a logical manner so as to:*

- i. promote a compact, well designed and integrated urban form;*
- ii. build on historical urban settlement patterns;*
- iii. achieve a built environment that provides desirable, healthy and safe places to live, work and play;*
- iv. minimise the natural hazard risk, taking into account the predicted effects of climate change;*
- v. protect the District's rural landscapes from sporadic and sprawling urban development;*
- vi. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;*
- vii. contain a high quality network of open spaces and community facilities; and*
- viii. be integrated with existing, and proposed infrastructure and appropriately manage effects on that infrastructure." (My emphasis).*

68 In the context of SO 3.2.2.1 housing affordability is a part of the directive to ensure there is a mix of housing opportunities. This goal would seem unrelated to the proposed method of creating a financial contribution for affordable housing purposes because it does not as a method have any direct impact on the built environment, including the creation of a mix of housing opportunities. The direction provided within SO 3.2.2.1 is consistent with national and regional directives about housing affordability. The other important factor to acknowledge is that the provisions within the

PDP are relatively recent and positively address housing choice through increase of densities and zoning options within urban areas. These provisions will need time to translate into outcomes on the ground.

- 69 Further reference to affordable housing is included within Chapter 4 (Urban Development). The PDP adopts a strategic approach to urban growth management based on containment. It achieves this through the identification of Urban Growth Boundaries (**UGBs**) around urban areas and dual Strategic Objectives that promote compact, well designed and integrated urban form;¹¹ and to avoid urban development outside of the UGBs.¹² This is relevant as one factor contributing to the high costs of housing.
- 70 For the land within UGBs, Policy 4.2.1.4 requires UGBs encompass, at a minimum, sufficient, feasible development capacity for urban development opportunities consistent with:
- (a) the anticipated medium-term demand for housing and business land within the District assuming a mix of housing densities and form; and
 - (b) ensuring the ongoing availability of a competitive land supply for urban purposes.
- 71 Strategic Objective 4.2.2B recognises the relationship of the UGBs to the environment, amenity, landscapes and the natural environment. Each of these elements are an indication in themselves as to why housing affordability within the QLD is a problem.
- 72 4.2.2B Objective - Urban development within Urban Growth Boundaries that maintains and enhances the environment and rural amenity and protects Outstanding Natural Landscapes and Outstanding Natural Features, and areas supporting significant indigenous flora and fauna.

(From Policy 3.3.13, 3.3.17, 3.3.29)

4.2.2.7 Explore and encourage innovative approaches to design to assist provision of quality affordable housing.

4.2.2.8 In applying plan provisions, have regard to the extent to which the minimum site size, density, height, building coverage and other quality controls have a disproportionate adverse effect on housing affordability.

¹¹ SO3.2.2.1, Chapter 3, PDP

¹² SP3.3.15, Ibid

73 Chapter 6 of the PDP states:

"The landscapes consist of a variety of landforms created by uplift and glaciations, which include mountains, ice-sculpted rock, scree slopes, moraine, fans, a variety of confined and braided river systems, valley floors and lake basins. These distinct landforms remain easily legible and strong features of the present landscape."

74 Such landscapes form the backdrop for all of the urban areas within Queenstown, simultaneously constraining growth and increasing their desirability as a destination to live. This is not to suggest that a policy of containment is inherently bad because it constrains land supply; it is commonly used as a planning tool. The importance of the UGBs and policies supporting growth containment are addressed further below in my analysis of the high-level options as part of my s32 assessment.

75 In summary, the PDP seeks to address housing affordability by:

- (a) provision for the anticipated medium-term demand for housing and business land within the District assuming a mix of housing densities and form (4.2.1.4 a);
- (b) ensuring the ongoing availability of a competitive land supply for urban purposes (4.2.1.4 b);
- (c) ensuring a mix of housing opportunities (SO 3.2.2.1); and
- (d) having regard to the extent planning controls (site size, density, height, and coverage) adversely affect housing affordability. (4.2.2.8)

76 I provide an overview of the planning controls that exist with the main residential zones within the PDP below.

Impact of planning controls

77 The default status for subdivision within urban areas of the PDP is restricted discretionary.¹³ The standards within Chapter 27 (Subdivision), impose minimum a lot sizes for subdivision,¹⁴ which for the three primary residential zones are detailed within Table 1 below.

Table 1: PDP Minimum lot sizes

¹³ Rule 27.5.7, Chapter 27 Subdivision, PDP

¹⁴ Rule – Standard 27.6.1, Ibid

Zone	Minimum Lot Size
Lower Density Suburban Zone	450m ²
Medium Density Residential Zone	250m ²
High Density Residential Zone	450m ²

78 The land use controls that apply to each of these zones are consistent in permitting residential activity, provided the specified density standards are not exceeded. In some zones additional density is available through a further restricted discretionary activity consent pathway, as shown within Table 2 below.

Table 2: Land use controls

Zone	Permitted Activity Standard	RD Standard
Lower Density Suburban Zone	Residential units where the density of development does not exceed one residential unit per 450m ² net area (Rule 7.4.3)	Residential units where the density of development exceeds one residential unit per 450m ² net area but does not exceed one residential unit per 300m ² net area. (Rule 7.4.8)
Medium Density Residential Zone	Three or less residential units per site (outside Arrowtown); one per site in Arrowtown (Rule 8.4.6)	Four or more per site (outside Arrowtown); Two or more per site in Arrowtown (Rule 8.4.10)
High Density Residential Zone	Three or less per site (Rule 9.4.3)	Four or more per site (Rule 9.4.5)

79 Through minimum lot sizes and minimum density standards the PDP incentivises larger sites to accommodate residential activity. With land being a large factor in determining housing affordability it could be argued that the rules and standards of the PDP do adversely impact affordability. I accept that QLDC has to balance amenity considerations in formulating controls, including to increase density, but in terms of housing affordability, the direction provided through Policy 4.2.2.8 is to require QLDC to have

regard to the extent to which such controls have a disproportionate adverse effect on housing affordability.

- 80 QLDC has promoted a variation to the PDP to provide for urban intensification that will provide a review of controls including density and height, as anticipated through Policy 4.2.2.8. This variation was notified after the affordable housing variation and has not reached the stage of hearing submissions, nor the release of a decision. Against a backdrop of increased financial costs that would have a known impact on the housing market, the dual processes underway do not allow for the benefits of the intensification variation to be realised.
- 81 In my view the financial contribution proposed by the Variation is not consistent with national or regional direction or the objectives and policies of the PDP. I address the method of the financial contribution further in an examination of the reasonably practicable options under s32 below.

Section 32 Analysis

The Problem

- 82 The evidence of Mr Serjeant defines the resource management issue being addressed. His evidence concludes that Strategic Objective 3.2.1.10 as proposed to be included by the Variation (with a minor change proposed in the s42A report) identifies the issue and also specifies a solution that affordable housing choices are provided a diverse and economically resilient community, representative of all income groups, is maintained into the future. Whether this objective is the most appropriate way to achieve the purpose of the Act is, however, another matter, which I examine further below.

The extent to which the objective of the proposal is the most appropriate way to achieve the purpose of the Act s.32(1)(a)

- 83 My evidence is that Section 4.10 of the ODP applies to Volume A (reviewed land) and Volume B (unreviewed land) of the district plan. A preliminary issue is, therefore, to determine whether the objective from the ODP, the proposed new PDP objective, or both, are the most appropriate to achieve the purpose of the Act.
- 84 Section 4.10.1 of the ODP has one objective, as follows:

Objective 1 Access to Community Housing or the provision of a range of Residential Activity that contributes to housing affordability in the District.

85 The Variation proposes to include new Strategic Objective 3.2.1.10 and to introduce a new primary Objective 40.2.1 in with Chapter 40 Inclusionary Housing, as follows:

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.

[~~strike through~~ and underline show the changes proposed by the s42A report]

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

86 The ODP objective (4.10.1 Objective 1) and related policies are expected to be applied through an assessment of:

- (a) resource consents that breach zone standards for density, height, building coverage or minimum lot sizes and dimensions; and
- (b) resource consents for comprehensive residential development in the low-density residential zone in accordance with Rule 7.5.3.4(v); and
- (c) proposed changes to this Plan.

87 Apart from plan changes the objective is reliant on advice notes that refer to rules specific to the ODP. The objective also references Community Housing, being a term that is defined within the ODP based on affordability through a retention mechanism (a binding agreement to ensure long term affordability of Community Housing). In my view, Objective 1 from section 4.10.1 of the ODP is no longer fit for purpose as it fails to guide decisions made under the PDP framework, including statutory alignment that exists on the issue of how to address housing affordability within the objectives and policies of the PDP, the PORPS and the NPS-UD.

88 The Council's s32 analysis provides a very brief assessment on whether the objective achieves are the most appropriate way to achieve the purpose of the RMA. This 'analysis' simply finds that the proposed additional objective under Strategic Objective 3.2.2 and new Chapter 40 relates directly to Section 5 RMA and managing resources while enabling social and economic outcomes. I accept that within the context of the QLD urban

land is a relatively finite resource, heavily constrained by landscape values (97% of the district comprises ONF/Ls). Accordingly, greenfield expansion at the periphery of urban areas is very limited. The provision of affordable housing is an important issue for the QLD community, and I agree with the evidence of Mr Serjeant that affordable housing can be considered a resource which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety.¹⁵

- 89 Further relevant factors to consider in terms of the objectives are whether this objective better supports the identified problem / issue and will provide guidance on an issue not otherwise addressed within the PDP. Lastly, does the Council have the functions, powers and tools to realise the stated outcomes.
- 90 The analysis above finds that the following provisions of the PDP address housing affordability:
- (a) through provision of the anticipated medium-term demand for housing and business land within the District assuming a mix of housing densities and form (4.2.1.4 a);
 - (b) ensuring the ongoing availability of a competitive land supply for urban purposes (4.2.1.4 b);
 - (c) ensuring a mix of housing opportunities (SO 3.2.2.1); and
 - (d) having regard to the extent planning controls (site size, density, height, and coverage) (4.2.2.8).
- 91 The proposed Strategic Objective 3.2.1.10 provides a further and particular focus on housing for low to moderate income households so that a diverse and economically resilient community representative of all income groups, is achieved and maintained into the future. This language is broad and allows QLDC to develop a range of mechanisms to implement this goal.
- 92 In my view, the objective with the small changes suggested within the evidence of Mr Serjeant provides more focussed guidance on the issue and is the most appropriate way to achieve the purpose of the Act. Stated in full, the amended Objective is:

3.2.1.10 Affordable housing choices for low to moderate income households are provided in new residential developments and redeveloping residential areas so

¹⁵ Para 25, Evidence of David Serjeant (19 December 2023)

that a diverse and economically resilient community representative of all income groups, is achieved and maintained into the future.

[Green indicates amendments proposed by Mr Mead in the s42A report, blue indicates the amendment proposed by Mr Serjeant]

Identification of other reasonably practicable options for achieving the objectives s.32(1)(b)(i)

- 93 Accepting the objective as being the most appropriate way to achieve the purpose of the RMA, s32(1)(b)(i) of the RMA requires an examination of whether the methods proposed within the Variation are the most appropriate way to achieve this objective by identifying other reasonably practicable options for achieving the objective.
- 94 QLDC's s32 analysis identifies high level RMA and non-RMA options, and then a range of further 'operational options' that provide increasing levels of detail. For ease of reference, I will adopt the same structure as QLDC's s32 report, which in terms of considering reasonably practicable options, considers the following high-level policy options:
- (a) **Option 1:** Greater supply of zoning capacity and voluntary agreements or adequate capacity and active intervention; and
 - (b) **Option 2:** RMA methods versus non-RMA

Option 1

Statutory Analysis

- 95 My analysis of the relevant higher order statutory provisions finds that:
- (a) **NPS-UD:** A proposed financial contribution regime will have impacts on the efficient operation of the land supply market. The NPS-UD is clear in directing that planning decisions, at a minimum, support, and limit as much as possible adverse impacts on the competitive operation of land and development markets. The imposition of further costs on subdivision and residential building development is contrary to this purpose.
 - (b) **PORPS:** the provisions are more directive in addressing housing choice, quality and affordability through sufficiency of development capacity.

(c) **PDP:** the PDP seeks to address housing affordability through: provision for the anticipated medium-term demand for housing and business land within the District assuming a mix of housing densities and form (4.2.1.4 a); ensuring the ongoing availability of a competitive land supply for urban purposes (4.2.1.4 b); ensuring a mix of housing opportunities (SO 3.2.2.1); and having regard to the extent planning controls (site size, density, height, and coverage) adversely affect housing affordability. (4.2.2.8).

96 In my view the high-order statutory provisions are well aligned. These provisions strongly support mechanisms relating to Option 1 that would increase sufficiency of housing supply, including the anticipated mix of housing types.

Analysis

97 Since commencing Variation process QLDC has notified a further variation to provide for intensification within urban areas in response to Policy 5 of the NPS-UD. This will address Option 1 by increasing supply and housing choice. QLDC has sought to impose further constraints on the erosion of housing supply through changes to the district plan imposing standards on residential visitor accommodation and homestays. The Environment Court issued a consent order¹⁶ on 30 January 2023, restricting residential visitor accommodation to between 42 to 90 nights, depending on the zone. The impact of this form of accommodation is commented on within the evidence of Mr Osborne.¹⁷

98 There is evidence that the existing policies within the PDP encouraging greater housing choice through density and reduced lot sizes are beginning to translate into building outcomes. Mr Osborne identifies Apartments and Terraces as making up 50% of non-retirement village dwelling consents in 2023, whereas they previously made up only 10% of dwellings consents in the early 2010's.¹⁸ Should this trend continue, I would expect the increased proportion of higher density housing options to start having a greater influence on average market values.

99 The effectiveness of the QLCHT is limited to the income it receives. The approach taken to the district plan review has uncoupled capture of uplift from affordable housing contributions. Agreements made through previous

¹⁶ Decision number [2023] NZEnvC 11 (30 January 2023)

¹⁷ Paras 23 and 45, Evidence of Philip Osborne (19 December 2023)

¹⁸ Para 20, Evidence of Philip Osborne (19 December 2023)

plan changes and the Housing Accords and Special Housing Areas Act (HASHAA) have been effective in funnelling approximately \$43m of income to the QLCHT. The reason for their effectiveness is that they are linked to planning uplift where contributions are not impacting on the efficient delivery of the zoned outcomes.

- 100 Within Option 1, proposed Strategic Objective 3.2.1.10 would be well supported by continued use of voluntary agreements at the time of any uplift in plan enabled capacity through out of zone activity, plan changes or variation or where density / lot sizes exceed plan standards. Additional policy support could be developed to signal the circumstances where QLDC may seek to capture uplift and the general policy approach for a negotiated approach to affordable housing. This mechanism provides the capacity to capture additional greenfield growth nodes, as signalled through the Spatial Plan, and intensification proposals such as that recently notified in the intensification variation.
- 101 I agree with QLDC's s32 assessment that a supply driven approach has potential environment costs where that results in the rezoning of rural land, together with potentially negative landscape impacts and pressure on QLDC infrastructure services. QLDC can take considerable reassurance from its robust approach to growth management established by the UGBs and the strong policy support in place for this, and in the more sophisticated approach now in place to identify and protect the values of outstanding natural features and landscapes, compared to the ODP.
- 102 In addition to the PDP framework QLDC is taking a more strategic and forward-looking approach to growth management through the adoption of a Spatial Plan for the district, the formulation of a Future Development Strategy, and the development of further structure plans for key growth corridors as a precursor to eventual plan change processes.
- 103 In summary, those parts of Option 1 that provide for increased supply, including intensification and continued developer agreements at the time of uplift, rank highly and on an equal footing with the non-RMA option 2 below. They are considered effective and efficient because:
- (a) They are aligned with the higher order statutory provisions.
 - (b) Have relatively low transaction costs because they draw on statutory mechanisms already in use.
 - (c) In the case of previous affordable housing agreements are demonstrated as being very efficient with a range of potential future options to extend their use.

- (d) There is evidence of increased housing choice being realised and this is expected to place downward pressure on average prices over time.

Option 2

- 104 The high-level non-RMA options considered by the Council in its s32 Report include the provision of direct support to the QLCHT, rates or targeted rates and development of council owned land. I have not considered the option of using development contributions under the Local Government Act 2002 on the understanding that affordable housing does not fit the definition of community or network infrastructure.¹⁹
- 105 The evidence by Mr Yule and Mr Serjeant considers the matters of fairness and equity associated with charging one sector of the community for a social problem that they are not responsible for creating. While I note that fairness and equity are not components of a s32 analysis, this goes directly to the question, in this case, of considering the efficiency and effectiveness of the provisions in achieving the objectives.
- 106 The evidence of Mr Yule assesses the approach of using rates as a funding option and considers this could be used to directly invest in the provision of affordable housing, or in partnership with the QLCHT. Although, as set out in Mr Yule's evidence, the terms of any long-term funding relationship with the QLCHT may need further examination.
- 107 The rates option avoids the equity issue whereby the much broader rate paying community are invested in solving the problem.
- 108 Rating is an efficient and effective option to achieve the objective. I defer to Counsel and the evidence of Mr Yule in terms of the lawfulness of applying rates on a targeted basis. As I understand it, these are, reviewed annually and could be applied differentially across a range of commercial and visitor accommodation activities that are more closely linked as generators of employment and the need for affordable housing. I understand this system can be spatially defined to recognise those areas that have previously contributed towards affordable housing. This option has the most flexibility also as it provides the foundation for direct investment by QLDC into the provision of affordable housing, or to enter partnerships with community housing organisations that can be contracted to deliver affordable housing. Because it sits outside of the PDP higher order policy direction is not applicable. There is no reason why rating could not be utilised in

¹⁹ Para 18, Evidence of Lawrence Yule (19 December 2023)

combination with other Option 1 land supply enhancement mechanisms, including capturing uplift.

109 I agree with QLDC's s32 report that non-RMA options, such as rating, have administration costs involved overseeing the required expenditure. I consider that cost relatively small given QLDC has an established system in place for setting and collecting rates, with the only extra cost being the allocation of the funding. These extra costs would be considerably less than that needed to administer the affordable housing financial contributions regime. The financial contribution regime spans resource management and building services for its administration and, as pointed out above is complicated to operate, requiring:

- (a) Independent land valuations.
- (b) Various forms of exemptions.
- (c) Complex processes to record the payment of the financial contribution and then track it through subsequent process.
- (d) Formulation of an independent system of monitoring land use activity permitted by the plan where new residential activity establishes (or disestablishes) within mixed use zones.

110 The evidence of Mr Osborne identifies a range of economic costs with the proposed Variation, that include:

- (a) Potential supply decrease.
- (b) Potential price increases, further supported by the evidence for the development interests.
- (c) Inequitable distribution of costs, (not only restricted to new development, but inequitably allocated there also).
- (d) Administrative costs, including costs associated with RMA legality testing.

111 The economic costs will inevitably manifest as social and environment costs as they negatively impact housing delivery (supply). This is a critical policy conflict with the NPS-UD. There are wider implications that may not be intended, where the affordable housing financial contribution would act as a significant disincentive for landowners to include land into the PDP, resulting in conflict with QLDC over implementation of the staged plan review. Over time this may create a policy disconnect.

- 112 The s32 Report by QLDC was formulated prior to notification of the Intensification Variation. This variation seeks to increase supply within most brownfield urban areas and is designed to respond to Policy 5 of the NPS-UD. Creation of an affordable housing financial contribution would apply to these areas and act as a constraint to the intensification opportunities and the realisation of Policy 5 of the NPS-UD.
- 113 On the basis of this analysis, I consider non-RMA options such as rating as highly effective and efficient, with QLDC's proposed RMA based financial contribution regime ineffective and inefficient because it would provide a further disincentive for land supply, will exacerbate unaffordability by increasing the price of affected land and carries a very high administration cost.
- 114 The scale of the potential economic benefits of QLDC's preferred option to adopt an RMA financial contribution regime has not been assessed but will be limited to those areas of urban land that have not already been the subject to a previous affordable housing contribution and have been included within Volume A of the district plan. The significant nodes of development underway in the district at present including all parts of the Jacks Point Zone (Hanley Farm and Homestead Bay), Shotover Country, Northlake, and Remarkables Park would all fall outside of the regime.
- 115 When coupled with the disincentive the regime would create for the staged district plan review, I consider QLDC's RMA based affordable housing contribution within the high-level Option 2 as being the least preferred. In summary, I consider that the Variation provisions are not the most appropriate way to achieve the objectives.

Assessment of efficiency and effectiveness of provisions s.32(1)(b)(ii) and s.32(2)(a)

- 116 In the event the Variation was accepted as the preferred approach to achieving the objective, I provide a broad overview of the effectiveness and efficiency of the proposed methods to achieve the Objective and identify a range of specific issues with the drafting of the provisions that impact on the effectiveness and efficiency of this method. I address these below.

Pre-Existing Agreements

- 117 The exemptions stated within proposed Rule 40.6.1 provide for areas subject to pre-existing agreements, as below.

For the purposes of this standard, the following types of residential activities shall not be counted as contributing to the

total number of residential units in a development, nor be counted towards fulfilling the requirement of 40.8.1:

(d) ... where previous agreements and affordable housing delivery with Council have satisfied objective 3.2.1.10 and 40.2.1 and their associated policies

- 118 There are several planning issues that arise through both the wording within the preamble and the intended exemption for areas subject to pre-existing agreement.
- 119 The preamble text is stated in a such a way to apply to certain “types” of residential activity that shall not be “counted as contributing to the total number of residential units in a development”, creating uncertainty with the application of the exemptions generally, but particularly in relation to areas where previous agreements on affordable housing apply (proposed clause (d)).
- 120 It is unclear whether through the preamble wording that the exemption provided for pre-existing agreements is qualified in some way to the number of residential units within that area subject to a previous agreement or is an internal reference to those parts of Rule 40.6.1 applying different standards to less than or more than 20 lots. Given this uncertainty and should the Variation be accepted, I would suggest the exemptions are redrafted to rectify the vagueness in the preamble with a simple statement to the effect that “the following activities are exempt from this rule: ...”
- 121 In terms of the specific exemption applying where previous agreements have been made, this worded is also problematic in that it requires an exercise of discretion to “*satisfy objective 3.2.1.10 and 40.2.1*”. It is well established planning practice to avoid rules or standards conferring discretion. As noted below, there is further uncertainty over the application of the rules to unreviewed land contained within Volume B of the District Plan.
- 122 I suggest that a more effective and efficient approach to recognise pre-existing agreements, would be to spatially identify those areas of the PDP within a series of maps or a list of zones where they are discretely identified, included within a new Schedule 40.2 of “non-contributing areas”. This method would then allow for updates of the schedule to occur as qualifying areas of Volume B land are incorporated into Volume A. Using this approach, the exemption with Rule 40.6.1 could simply state:

(d) a residential lot or residential unit located in a Zone that already contains affordable housing provisions in the district plan, or occurs on land where previous agreements

~~*have been made and which is identified within Schedule 40.2 and affordable housing delivery with Council have satisfied objective 3.2.1.10 and 40.2.1 and their associated policies.*~~

Recognition of previous payments for financial contributions

- 123 The proposed application of the rules to land subject to pre-existing agreements appears to be designed to address two situations:
- (a) Land subject to prior agreements for payment of affordable housing; and
 - (b) Alternative forms of contribution, such as the sale of lots directly to the Queenstown Lakes Community Housing Trust (**QLCHT**).
- 124 The structure of proposed Rule 40.6.1 is to apply an initial contribution upon subdivision within residential zones, either 5% cash or land (depending on yield of subdivision), with a further contribution being paid at the time of land use development for lots that have not already been subject to a financial contribution at the subdivision stage. Top up payments to the contribution at subdivision stage may be required for new land use creating new residential floorspace, in addition, and depending on value of the build versus the already paid contribution.
- 125 As mentioned within the evidence of Mr Smith, the provisions do not anticipate and provide for a tiered approach to subdivision occurring on land that has paid a financial contribution pursuant to Rule 40.6.1. It is not unusual for larger scale developments within Queenstown to create larger development parcels as a precursor to finer grained land use. In these situations, initial subdivision into development parcels, often related to structure plan or zone boundaries, would be subdivision attracting a 5% monetary contribution (assuming less than 20 lots), with further residential subdivision occurring within those lots subject to a further contribution of land or cash, depending on yield. The provisions, as currently drafted, do not recognise previous payment of financial contributions, outside of the current transition from subdivision to development.
- 126 There is no obvious solution as to when and what stage financial contributions occurring on tiered subdivision would be required, that is for initial or subsequent stages. The approach set out within Rule 40.6.3 for staged land use development would only be applicable for subdivision that is staged and not tiered where the outcome of each subdivision is discrete.
- 127 A further complication arises within areas accommodating mixed use land use outcomes that do not trigger a requirement for subdivision, or land use

consent. The development clauses within proposed Rule 40.6.1 relate to any new residential floorspace and capture, in theory, a change in land use. In practical terms, however, if the residential use occurring within a building is anticipated, and provided for through a mixed-use zone, there is uncertainty as to whether that is eventuality captured at the time of development, even if residential floorspace is not initially anticipated. This raises issues of practicality and enforceability.

Application of the rules to Volumes A and B of the District Plan

128 Without specific acknowledgement or explanation within the text of Chapters 1 and/or 40 it is assumed that the application of the rules within Chapter 40 automatically apply to Volume B land once added into the PDP, at which time the exemption framework would apply (or not) under the exemptions to proposed Rule 40.6.1.3 depending on the nature of the pre-existing agreement. The relationship between the rules in Chapter 40 to the Volume B land of the district plan may be better addressed in the form of an additional interpretation note within 40.4, as follows.

40.4 Interpreting and Applying the Rules

40.4.3 The provisions of this chapter, including the requirements within Rule 40.6.1 for payment of a financial contribution apply to Volume A (reviewed land) of the PDP, but not the Volume B (unreviewed ODP land). Refer 1.1B of the PDP.

[to replace the former 40.4.3 recommended for deletion within the s42A Report]

Subdivision or development having a residential purpose

129 Proposed Rule 40.5.1 identifies as a permitted activity “*subdivision or development that is proposed to contain or is capable of containing residential lots or units*”. The affordable housing financial contributions required within proposed Rule 40.6.1 are further premised on “*residential subdivision*”, or “*residential floorspace*”. This form of drafting, yet again, requires discretion to determine compliance. There is no definition under the PDP for “*residential subdivision*” although I accept that residential activity is often a driver for subdivision.

130 “Subdivision” is a term defined within the PDP to mean:

- a. *the division of an allotment:*
 - i. *by an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of the allotment; or*

- ii. *by the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or*
 - iii. *by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or*
 - iv. *by the grant of a company lease or cross lease in respect of any part of the allotment; or*
 - v. *by the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of a unit on a unit plan; or*
- b. *an application to the Registrar-General of Land for the issue of a separate certificate of title in circumstances where the issue of that certificate of title is prohibited by section 226.*

131 The rules of the PDP establish standards based on where subdivision occurs, including with reference to zones, but as an activity it is, by definition, independent of current or subsequent land use. It is possible for subdivision to span multiple zones or be located within a zone that accommodates multiple activities, or potentially for applicants to adopt covenants ensuing lots are confined to non-residential use. In this context I have significant concerns with how this rule will operate and therefore its efficiency and effectiveness. There is uncertainty in whether QLDC would seek to impose a financial contribution for affordable housing purposes simply because all or part of the land subject to that application “could” contain residential activity.

132 This is best illustrated by using an example. On 25 March 2022 the Council issued a decision approving subdivision consent RM210213 on land at the northern side of Frankton – Ladies Mile, as shown in the scheme plan within **Figure 1** below.

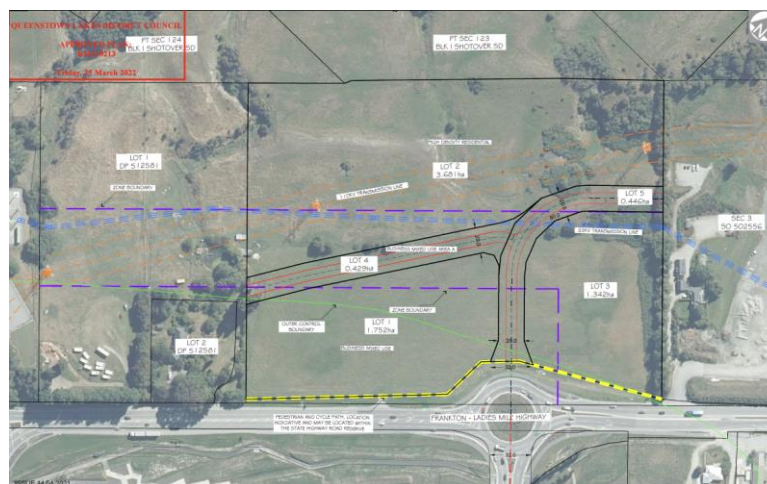


Figure 1: Subdivision RM210213 Scheme Plan

- 133 As shown, Lots 1, 2 and 3 span three zones, with the primary determinant of lot design being the road corridors that are required to comply with the Frankton North Structure Plan. Lot 2 contains land within the High-Density Residential Zone (**HDRZ**) and the Business Mixed Use Zone (**BMUZ**). The objective for the BMUZ is for “*an area comprising a high intensity mix of compatible residential and non-residential activities is enabled*”. This is reflected within the rules permitted a wide range of activities²⁰.
- 134 Using this land as an example, would it be the intent of proposed Rule 40.6.1 to apply the affordable housing financial contribution of 5% across each lot on the basis that each is capable of accommodating residential activity? Would there be a distinction between the BMUZ and HDR land, and if so, how would that apply, given the layout of the lots spanning both zones? Equally, once building development has occurred, there are no consent triggers for a change of land use. In these instances, I do not understand how the rule would be applied.

Consented Activity

- 135 The provisions also fail to address the application of the financial contribution to land where resource consent has been previously consented. Where a land use consent has been granted by QLDC for residential development prior to the rules of the Variation having legal effect, that use of land would be protected under s9(3) of the RMA from non-compliance with the new rule. Any residential development that is permitted by the PDP would not necessarily have the same protection (unless a Certificate of Compliance was gained) and would be subject to the requirement to pay the financial contribution from the date the rules take legal effect.
- 136 Additionally, the provisions do not cater for landowners who may wish to vary the conditions of a granted consent in relation to residential yield, or replacing an existing consent. In addition to the matters recommended below, it would be more efficient if the rules were to establish transitional provisions to guide the outcomes for existing consents.
- 137 The application of the rules to consented activity, including permitted land use that has received Building Consent would benefit from more explicit guidance. I have considered potential drafting options that could be used to solve this problem, but none that work within the current rule structure that

²⁰ Rule 16.4.1, BMUZ, PDP

refers to subdivision having a 'residential purpose'. This suggests that either the rule is unsuitable, or a more fundamental redraft is required.

Residential Floor Space

138 The required contributions for subdivision within Rule 40.6.1 1. are identified as relating to:

- (a) Residential subdivisions within UGBs or other residential zones outside UGBs; or
- (b) Residential subdivisions in a Settlement Zone, Rural-Residential Zone, Wakatipu Basin Rural Amenity Zone Lifestyle Precinct or Special Zone.

139 The wording of Rule 40.6.1. 2. relates to residential floorspace within development, capturing new residential floorspace that has not been subject to a financial contribution under the subdivision standard (Rule 40.6.1 1.). This form of drafting broadens the areas and zones to which the contributions for residential floorspace relate to all areas that are not subject to a contribution for subdivision. This is possibly not the intent and requires re-drafting to correct.

Land Contributions

140 Subdivision that results in 20 or more lots requires a contribution of land comprising 5% of the additional serviced lots, transferred for no monetary or other consideration to the Council. Rule 40.6.1 provides no parameters in relation to what lots within the subdivision are to be transferred to the Council. It is not difficult to conceive of situations where applicants create 'affordable housing' lots that:

- (a) Are not of a sufficient size to cater for their intended purpose, including making decision in relation to whether the Council would prefer one larger lot or multiple smaller lots.
- (b) Provide lower levels of amenity, due to aspect, views and access to sunlight,
- (c) Are the most difficult to develop because of terrain or other geotechnical considerations.

141 As a permissive standard the wording of the rule must anticipate and address this situation because neither the policies nor assessment matters are engaged.

Summary of effectiveness and efficiency of the provisions

- 142 In my view the Councils preferred method is not the most effective or efficient to achieve the objective. My evidence identifies a range of problems in the drafting that lead to uncertainties and therefore inefficiencies. I have proposed draft solutions that seek to remedy some of the identified problems, but significant concerns remain in relation to key matters of interpretation including subdivision or development having a residential purpose, recognition of tiered subdivision, recognition of previous arrangements for affordable housing contributions, the areas to which the residential floorspace relates, and the application of exemptions.
- 143 Considering the policies and methods together, I don't consider those to be the most appropriate way to achieve the objectives of the Variation, or relevant higher order PDP objectives, having regard to their efficiency and effectiveness, because:
- (a) Of the issues identified with a number of the rules as currently drafted.
 - (b) Of the economic evidence that there is a higher likelihood that the quantified economic impact will be materially negative.
 - (c) There are significant uncertainties in the extent of potential economic benefits quantified by QLDC, based upon peer review by Insight Economics, and economic evidence from Mr Osborne.
 - (d) There is no clear evidence that the taking of contributions will achieve the objective of provision of affordable housing, particularly in the short term. Rather, there is evidence that the financial contribution will create a further disincentive for residential development, particularly in the short term, and will adversely impact on the efficient operation of the land supply market, based upon corporate evidence cited above.
 - (e) The variation fundamentally fails to consider other reasonably practical alternatives, and which would on the face of it appear more efficient and effective, namely either / or a targeted rating approach and a contribution based upon commensurate planning uplift.
- 144 I consider the more effective and efficient alternative with less costs and greater benefits to achieve the objective as being a combination of RMA and non-RMA methods, including:
- (a) The application of a targeted rating regime.
 - (b) Plan changes providing for intensification.

- (c) Continued use of developer agreements targeted at uplift and supported by the objective and supporting policy to guide application.

Risks of acting or not acting s.32(2)(c)

145 The risk of not proceeding with the Variation are low given:

- (a) The provisions with the PDP establish housing bottom lines, expand supply, provide greater housing choice within urban areas and there is evidence of greater choice beginning to translate into building outcomes.
- (b) A plan variation is underway to provide for further intensification within urban areas with a Future Development Strategy currently in preparation.
- (c) The Variation will create a range of economic costs that potentially decrease supply, increase prices, result in the inequitable distribution of costs and increase administrative costs.
- (d) The economic costs will impact on housing delivery, which is a critical conflict with the provisions of the NPS-UD
- (e) The scale of the economic benefits of the Council's preferred option have not been quantified but are limited to Volume B (unreviewed land) of the PDP. This would act as a disincentive for Volume A landowners to be included within the PDP, discouraging some landowners within that PDP zoned land to develop ahead of settling any appeals on the Variation, and in the meantime no application of financial contributions to Volume A development.

Chris Ferguson

19th December 2023