

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

Supplementary Evidence of Robin Oliver

8 March 2024

Applicant's solicitors:

Maree Baker-Galloway | Laura McLaughlan
Anderson Lloyd
Level 2, 13 Camp Street, Queenstown 9300
PO Box 201, Queenstown 9348

p + 64 3 450 0700
maree.baker-galloway@al.nz | laura.mclaughlan@al.nz

**anderson
lloyd.**

Introduction

- 1 My full name is Robin Moncrieff Oliver
- 2 I prepared a Statement of Evidence on the Inclusionary Housing Variation dated 19 December 2023 (My Statement) and a Summary of Evidence dated 5 March 2024. I appeared at the hearing on 5 March 2024 where I was requested to provide further information on how Statistics New Zealand categorises local authority development and financial contributions and whether that is consistent with my Statement and evidence. This supplementary statement responds to that request. I note that the recording of the relevant part of the hearing malfunctioned, so I have not been able to obtain a transcript of the specific question as asked. I also note that while I have made enquiries of Statistics New Zealand, I was advised that the issue is a technical one, will, if it is to be pursued, will need to be referred to them in writing, and will then be put before their relevant experts. This will not be possible within the timeframe requested, and I will leave it to the submitter to determine whether they will follow up on this line of enquiry.
- 3 My qualifications and experience are set out in my Statement.
- 4 I reconfirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023.

Supplementary Evidence

- 5 As an initial comment, I do not claim to have special expertise in Statistics. My Statement addressed the issue of how Parliament and government - specifically Parliament's Regulatory Review Committee, the Auditor General, Parliamentary Counsel the Legislation Design and Advisory Committee, The Treasury and the Public Service Commissioner categorise a charge as a tax or not. I explained that they do so by adopting the same analysis as is adopted by international statistical bodies. That is a charge should be categorised as a tax if it is:
 - Levied or authorised and enforced by government
 - Mandatory
 - Unrequited.
- 6 I provided my opinion that the proposed QLDC Variation in my view met all these criteria and thus should be categorised as a proposed tax.
- 7 My understanding is that Statistics New Zealand follows international statistical standards including the described criteria for distinguishing taxes

from other charges. This is used in its main annual local authority financial data publication - The Local Authority Financial Statistics (LAFS) and consequentially in other data sets.

- 8 As publicly stated on Statistics New Zealand's webpage, LAFS is the core publication resulting from its Local Authority Census:

The Local Authority Census is an annual survey sent to all city councils, district councils, and non-market council-controlled organisations. The survey topics include income, expenditure, and assets. The Local Authority Financial Statistics (LAFS) is the core publication resulting from this survey. LAFS publishes information on income and expenditure, operating income and expenditure by activity, and financial position. These outputs are produced at the total level and by individual council."

- 9 Included in the Local Authority Census and thus LAFS are development and financial contributions received by local authorities. These are defined as:

"Development and financial contributions: development contributions are charges developers pay for development work (such as subdivisions or buildings) to cover additional infrastructure costs incurred by councils. Financial contributions are charges that fund local authorities' management of natural and physical resources."

- 10 I note that these definitions could be considered simplistic, but no doubt they identify what those involved in the Local Authority Census had in mind when considering development and financial contributions.

- 11 "Development and financial contributions" (as so defined) are then included in the category of "capital transactions" which are defined as:

"Capital transactions: relate to establishing or owning an asset. Capital transactions must be linked to a particular purpose. For example, charges for development work (such as building new subdivisions or buildings) to cover additional infrastructure costs incurred by the local authority."

- 12 From the above it is evident that New Zealand local government development and financial contributions (as defined) are not classified as a tax in the LAFS data that Statistics New Zealand publishes.

- 13 However, this seems dependent on how those terms are defined. As I attempted to make clear in my Statement, what is categorised as a tax and what is not comes down to the specific detailed features of any particular charge. An example provided in my Statement was how visa fees in the UK are sometimes classified as a tax and sometimes not by the UK Office of National Statistics.

- 14 I consider it as reasonable to view charges developers pay for development work (such as subdivisions or buildings) to cover additional infrastructure costs incurred by councils (the Statistics New Zealand definition of a development charge) as not a tax. The reasoning is that reasonable requirements for developments can be set by regulation in the same manner as health and safety requirements. Such regulatory requirements do result in costs that must be borne by those producing the regulated goods or services. Such costs cannot and in my understanding are not viewed as a tax on the producer. If the costs are borne by the regulator who then charges the producer so that the desired requirements are met, then that charge should logically not be categorised as a tax (provided it is not in excess of the costs of meeting the desired requirements). The charge is to pay for the inevitable costs of infrastructure and, in an in substance sense, the charge is required and not a tax. That is, the developer benefits from meeting its regulatory requirements.
- 15 Charges that fund local authorities' management of natural and physical resources (Statistics New Zealand's published definition of financial contributions) seem on the face of it less likely to provide a direct and commensurate benefit to the person paying a charge – the indicia of a charge that is not a tax. That said, I understand that financial contributions are often considered to be related to the effects of a proposal, rather than wider management of resources. As per my Statement what should and should not be categorised as a tax can be nuanced at the margin.
- 16 I assume the rationale for Statistics New Zealand not categorising development and financial contributions (as they define them) as a tax is that, as I understand it, financial contributions are there to allow local authorities to charge for work required to mitigate the wider impact of a development beyond the infrastructure work required for the development specifically – the wider community impact such as extra pressure on the surrounding infrastructure. Defined in this way a financial contribution can be viewed as, in substance, the same as a development contribution.
- 17 I accept the validity of these arguments that can support categorising development and financial contributions (so defined) as a non-tax charge. This would seem consistent with the views on what is a tax and what is not as set out in my Statement.
- 18 However, as emphasised above and in my Statement, the categorisation of a charge as a tax or not a tax is always dependent on the detailed feature of the charge. In the case of the proposed QLDC Variation, the contribution does not seem to be based on an assessment of the impact of any particular development on the level of affordable housing (assuming the

provision of more affordable housing is in fact a legitimate objective of measures under the Resource Management Act). It is a charge that seems to be intended as a levy on most residential property developments. It seems that the intention is to use the revenue from this charge to fund (indirectly) the provision of housing via the Trust, with the objective of providing more affordable housing in the QLDC area.

- 19 Providing affordable housing is a laudable goal but the proposed method of funding this is in my view well beyond the tight definitions of development and financial contributions used by Statistics New Zealand in their LAFS data. The charges under the Variation would not, as I understand it, relate to an estimate of the impact of that specific development in increasing or decreasing the availability of affordable housing in the area. The developer and the development seem to obtain no greater benefit from the proposal than the general QLDC community. The proposed funding mechanism thus has all the characteristics recognised in a tax as per my previous Statement
- 20 Whether Statistics New Zealand would categorise charges under the proposed Variation as a tax or not seems dependent on:
 - Whether the proposal is adopted.
 - How QLDC responds to Statistics New Zealand's Local Authority Census.
 - The materiality of the issue in term of the overall accuracy of Statistics New Zealand's LAFS data.

Robin Oliver

8 March 2024