

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991 (the **Act**)

AND

IN THE MATTER submissions on the Inclusionary Housing Variation to the Queenstown Lakes Proposed District Plan (**Variation**)

LEGAL SUBMISSIONS FOR REMARKABLES PARK LIMITED

Dated: 6 March 2024

Rowan Ashton
ashton@brookfields.co.nz
Telephone No. 09 979 2210
P O Box 240
DX CP24134
AUCKLAND

BROOKFIELDS
LAWYERS

1. INTRODUCTION

- 1.1 These submissions are made on behalf of Remarkables Park Limited (**RPL**). RPL is the developer of the 150ha Remarkables Park Special Zone.
- 1.2 RPL is a member of the Residential Land Development Consortium group of submitters who jointly engaged the following expert witnesses:
- (a) Philip Osborne (economics);
 - (b) Lawrence Yule (local government);
 - (c) David Serjeant (planning and economics);
 - (d) Christopher Ferguson (planning and statutory assessment).
- 1.3 RPL respectfully adopts and supports the submissions made by Anderson Lloyd dated 1 March 2024 regarding the merits and *vires* of the Variation. We do not unnecessarily repeat those submissions and instead emphasise the key points from RPL's perspective.
- 1.4 Mr Alastair Porter, a director of RPL, is in attendance today and will also speak to the RPL submission from a corporate perspective.

2. SYNOPSIS OF SUBMISSIONS FOR RPL

- 2.1 RPL acknowledges that the provision of affordable housing, as in 'rental housing' (as opposed to ownership), is a pressing issue for the District and generally supports actions which positively address increasing the supply of affordable rental housing. An integrated and well considered package of actions is required to properly address this multifaceted issue.
- 2.2 The work of the Queenstown Lakes Community Housing Trust is to be commended, albeit their solutions are heavily subsidized. However as set out in the evidence of Mr Serjeant¹, even if the Trust meets its 15-year housing provision targets, "*this will do little to reduce the affordable housing shortage.*" The private sector therefore has a critical role to play in the development and provision of affordable housing in our communities

¹ Evidence of Mr Serjeant at paragraph 12.

including by significantly increasing supply. Solutions need to work with the private sector, not against it.

- 2.3 The Variation seeks to impose a ‘financial contribution’ on residential subdivision and development. This ‘financial contribution’ is automatically incurred and does not address any adverse effect on the environment associated with the subdivision and development on which it is imposed. In reality, the contribution is a tax due to the lack of a causal nexus between the activity which attracts the tax and the end to which the contribution is to be applied. In this sense, the Variation is fundamentally distinct from Plan Change 24 and the *Infinity* case.²
- 2.4 The imposition of a tax on the provision of residential sections and housing:
- (a) Is *ultra vires* the RMA (for the reasons set out in the annexure to the Anderson Lloyd submissions and in RPL’s original submission); and
 - (b) Is not the most appropriate method to achieve the stated objective in terms of section 32 RMA as its costs outweigh its benefits³ and there are other reasonably practicable options (e.g. general rates) which are more appropriate.
- 2.5 By reference to international examples, the Variation is not true ‘inclusionary zoning/housing’ because there is no planning gain associated with the provision of affordable housing i.e. there is no benefit to the developer to offset the cost of the tax. Simply put, this additional cost will act as a disincentive to the supply of housing, which in turn will adversely affect affordability.
- 2.6 The Variation is counterproductive and does not give effect to the National Policy Statement on Urban Development 2020 ("**NPS UD**"), including for the reasons set out in the submissions of Anderson Lloyd and the evidence of Mr Serjeant and Mr Ferguson. With respect, the Council’s case misreads the functions of territorial authorities in section 31(1)(aa) RMA which relate to “*sufficient development capacity in respect of housing and business land to meet the expected demands of the district*” rather than housing *per se*. While the NPS-UD does mention “price” in Policy 1 which defines well-functioning

² *Investment Group Holdings Limited v Queenstown Lakes District Council* [2011] NZRMA 321

³ Evidence of Mr Osborne and Mr Colegrave.

urban environments, a fair reading of the instrument as a whole makes it clear that price outcomes are to be achieved through ensuring sufficient “development capacity”, which is defined to mean “*the capacity of land to be developed for housing or for business use*”. Put another way, there is nothing in the NPS-UD which expressly contemplates the method used by the Variation at all.

- 2.7 Council has a clear power to levy rates, both general and targeted, including for the purposes of developing affordable housing. ⁴ QLDC has apparently discarded consideration of this option out of hand as not being ‘politically expedient’, but without taking the step of quantifying the revenue that it anticipates receiving from the Variation and comparing that to the rates increase that would be required to achieve the same outcome. It is concerning that Council has neglected to undertake this basic level of analysis. Equally concerning is the Council’s failure to take strong action to regulate Residential Visitor Accommodation (which is clearly having an adverse effect on housing affordability).
- 2.8 The Variation is also inequitable as it targets one sector of the community who (ironically) are a key part of the solution to the problem (through the provision of housing supply). By contrast, a rating option would be more equitable as the cost of provision of affordable housing would be spread more evenly across the community who are the broad beneficiaries of the flow on social benefits of adequate affordable housing. A rating option also has the benefit of providing a certain revenue stream, rather than one tied to the level of development which occurs.

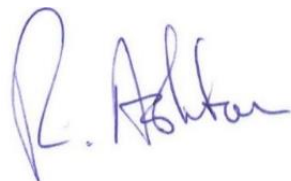
3. CONCLUSION

- 3.1 While the Council’s aim is laudable to the extent it seeks to increase the supply of affordable rental housing, the method is deeply flawed and, in our submission, unlawful. There are significant shortcomings in the analysis which underpins the Variation and insufficient consideration given to reasonably practicable alternatives.
- 3.2 For the reasons set out above, in RPL’s primary submission, and the evidence for the Residential Land Development Consortium, RPL says that the Variation should be rejected in its entirety. The Council should return to

⁴ Under the Local Government Act 2002 and the Local Government (Rating) Act 2002.

the drawing board and work with the private sector to develop solutions that will positively contribute to the supply of affordable rental housing.

Dated the 6th day of March 2024



R H Ashton
Counsel for the Remarkables Park Limited