

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES
PROPOSED DISTRICT PLAN**

UNDER

the Resource Management Act 1991

IN THE MATTER

The Inclusionary Zoning Variation to the
Queenstown Lakes Proposed District
Plan

LEGAL SUBMISSIONS ON BEHALF OF SUBMITTERS:

**QIANLONG LIMITED; TUSSOCK RISE LIMITED; LATITUDE 45
DEVELOPMENT LIMITED; CLASSIC DEVELOPMENTS NZ LIMITED;
EXCLUSIVE DEVELOPMENTS LIMITED; ERNEST JOHN LESLIE
GUTHRIE; BANCO TRUSTEES LIMITED RICHARD MORRIS NEWMAN
MCCULLOCH TRUSTEES LIMITED; ROGER LINDSEY DONALDSON;
MARLIESE KARIN DONALDSON; TROJAN HOLDINGS LIMITED**

Dated: 1st March 2024

MAY IT PLEASE THE COMMISSIONERS

Introduction

[1] These legal submissions are presented on behalf of the following submitters in respect of Council's proposed variation to introduce chapter 40 (**Inclusionary Housing** or **Variation**) into the Proposed District Plan (**PDP**):

- (a) Qianlong Limited;
- (b) Tussock Rise Limited;
- (c) Latitude 45 Development Limited;
- (d) Classic Developments NZ Limited;
- (e) Exclusive Developments Limited;
- (f) Ernest John Leslie Guthrie;
- (g) Banco Trustees Limited;
- (h) Richard Morris Newman McCulloch Trustees Limited;
- (i) Roger Lindsey Donaldson; Marliese Karin Donaldson; and
- (j) Trojan Holdings Limited.

Collectively referred to as '**the Submitters**'.

Background

[2] The Submitters represented in these legal submissions have not independently called expert evidence, however Counsel draws on collective evidence tabled by a number of submitters in respect of the Variation.

[3] There are significant commonalities among expert evidence called by submitters, largely in opposition to the Variation.

[4] These submissions attempt to assist the Panel on key points of law relevant to determining the Variation and draw on key conclusions from the evidence, while not repeating matters addressed by other Submitters' Counsel.

[5] The outline of these submissions will address:

(a) **Lawful taxation under the RMA**

(i) The *vires* issues of whether the Variation (as a form of tax¹) is within the ambit of a financial contribution regime under the RMA, and the novel / untested concept of imposing conditions of consent on new developments to float Queenstown Lakes Community Housing Trust (**Housing Trust**), rather than to offset an adverse environmental effect.

(b) **Section 32 analysis**

(i) Consideration of the Variation in accordance with section 32 of the RMA, including whether the financial contribution rules are the most efficient or effective method to achieve the stated objective, being the provision of affordable housing to market.

(c) **National policy direction and section 31 functions**

(i) Whether the variation achieves, or is otherwise contrary to, the National Policy Statement Urban Development Capacity (**NPS-UDC**) in particular the direction to support competitive land and housing markets.

(d) **Council's defective economics and planning case**

(i) The misconception of treating anticipated development of already zoned land as a 'planning windfall gain';

¹ Evidence in Chief of Robin Oliver, at [75] – [76]; Evidence in Chief of Mr Colegrave, at [36]. It is noted that Counsel for QLDC similarly submitted in opening the issue of categorizing the Variation as a tax is not disputed.

- (ii) Fundamental issues with the Council's lack of cost benefit analysis to assessing the Variation under section 32;
 - (iii) The failure to adequately assess and cost reasonably practicable alternative options such as the use of the Local Government Rating Act 2002 (Rating).
- (e) **Penalising the solution**
- (i) Whether the Variation is otherwise inequitable in targeting a very small sector of new, PDP-zoned, residential land development to assist with a community-wide issue, where that sector is part of the solution to the provision of affordable housing supply, not the problem.
- (f) **Multi-faceted issues with a singular response**
- (i) The issues raised in the purpose statement for the Variation are much broader than the supply of housing through the Housing Trust's eligibility criteria – the Variation does not address broader issues in its purpose statement relevant to worker turnover, visitor accommodation, and constraints on urban growth.

[6] Overall, the Submitters commend the Queenstown Lakes District Council (**Council**) for its innovation and strategy to support the provision of affordable housing through a partnership with the Housing Trust. The Submitters agree that further local and national policy and regulatory responses could be implemented to contribute to the provision of affordable housing. However, the Variation in its current form is not considered to achieve the objective of increasing affordable housing supply or ameliorating 'homelessness' felt in the District. Rather, there is clear expert and corporate evidence, that it will result in increased costs of homes to the majority of the housing market, will not benefit a large proportion of the short term workforce in the District (and therefore not assist with worker turnover issues), and will result in a number of potential unintended consequences, including a delay or reduction in supply.

Lawful taxation under the RMA

- [7] The Council's opening submissions provide the following case theory:
- (a) Section 31(aa) RMA, and the NPS-UD allows for, and expressly contemplates, a targeted approach to address differing requirements; and territorial authorities are to ensure that development capacity is sufficient to meet the particular demands of the District.
 - (b) Part 2 of the Act is sufficiently broad to contemplate targeted planning approaches to preventing the occurrence of, or at least mitigating, the past, current, and future effects of the development of land (the undersupply of affordable housing) on the economic conditions (unresponsive housing supply / increased house prices).
 - (c) There is nothing objectionable in a resource management policy being redistributive.
- [8] The Submitters' case theory is that:
- (a) Section 31(aa) RMA and the NPS-UD provide for a supply driven / incentivised market competition response to affordable housing. That national direction, and statutory function, has already particularised the affordable housing components within Part 2 of the Act in a complete way, such that no further Part 2 'gloss' is necessary.
 - (b) The Council's legal case reads into the NPS-UD and section 31(aa) a strained interpretation of the direction for provision of affordable housing. It ignores clear evidence from experts and corporate submitters, that the Variation will be in conflict with the national direction. The merits and law are closely entwined in terms of whether the financial contribution serves an RMA purpose and is lawful.
 - (c) This Variation is fundamentally different from the PC24 proposition in that it does not anticipate an effects assessment of a consenting

proposal on the supply of affordable housing. On the evidence, it is also unclear whether and when the tax translates to actual supply of affordable housing.² It is submitted therefore that the effect of the Variation rules is therefore entirely to achieve a redistribution of wealth / a tax, rather than being able to achieve a resource management outcome. The Submitters question whether this is the anticipated purpose of the financial contribution regime under the RMA.

- [9] The evidence does not seem to dispute that the Variation introduces a new taxation regime. There is no conflicting economics, planning, or tax evidence from Council, that the taking of money from new residential subdivision and development, and the funnelling of the same to the Housing Trust, is a form of non-corrective tax.³
- [10] Equally, there is no dispute that the deployment of a tax under the financial contribution provisions of the RMA is a 'novel' concept in the sense no operative planning instrument or national direction has this current approach:
- (a) Mr Colegrave considers that the Variation does not fit the typical definition of a financial contribution under the RMA⁴;
 - (b) Mr Mead's rebuttal evidence accepts that financial contributions have (in the history of the RMA regime in place) generally been used to address the direct environmental impacts of a particular development. (Acknowledging the distinction as with the Variation, which is not a corrective tax responding to adverse effects)⁵;
 - (c) Mr Oliver's evidence discusses that the Variation is, on the face of it, inconsistent with the government's tax policy settings and

² Counsel notes the uncertainty of oversight of the Trust's use of contributions, and the JWS Economics at page 7 – which states: *the experts do not have sufficient information to comment on whether the variation may or may not result in net more affordable houses under the control of a community housing provider than would otherwise been created*. Furthermore, in response to questions, Ms Bowbyes could not state how much (quantified) additional affordable housing would actually result from the Variation.

³ Evidence in Chief of Mr Colegrave at [45] – [48]; Rebuttal evidence of Mr Mead at [4] also acknowledges that whether the Variation is a tax or not is not fundamental to the issue of determination under s32 (at [4.1]).

⁴ Evidence in Chief of Mr Colegrave, at [23].

⁵ Rebuttal evidence of Mr Mead, at 4.1.

Revenue Strategy, and that it would be a narrowly based hypothecated tax.⁶ He also notes that the contributions required will far exceed the costs to the Council directly relating to the development itself, thus indicative of an unrequited charge that amounts to a tax⁷;

- (d) Mr Yule, local government expert, also comments that: QLDC is attempting to use financial contribution mechanisms to fund a solution for a social issue and is not aware of another Local authority successfully implementing such a scheme in New Zealand⁸. He further notes it is highly unusual for a Charitable Trust to be given long term funding without normal public accountability requirements around democracy and reporting.⁹
- (e) Mr Serjeant states: There are no other examples in New Zealand resource management planning instruments where a private resource is being managed so as to effect a direct transfer of that resource from one resource user to another private user.¹⁰

[11] Council's case appears to be that the levying of a tax to float the Trust, which then has a mandate to provide affordable housing, is within the purpose of the RMA, because affordable housing is within the purpose of section 5. Council's opening submissions address that it is open to Council to set a planning approach which remedies the 'effect' of the development of land (the undersupply of affordable housing) on the economic conditions (unresponsive housing supply / increased house prices)¹¹. However, this ignores the following issues:

- (a) There is no evidence in this process determining that there is an adverse effect from land development housing supply / housing prices.¹²

⁶ Evidence in Chief of Mr Oliver at [76].

⁷ Evidence in Chief of Mr Oliver, at [74].

⁸ Evidence in Chief of Lawrence Yule, at [8].

⁹ Ibid, at [25]. Counsel also notes the concerns raised by Submitters as to effective oversight of the Trust's operations and governance, as compared to the previous practice of developer agreements achieved under ODP rezonings and HASHAA.

¹⁰ Evidence in Chief of Mr Serjeant, at [13].

¹¹ Opening legal submissions for QLDC, at 6.2(a) and (b).

¹² JWS Economics at [6] sets out a range of causes to the shortage of affordable housing, none of which are the development of residential land.

- (b) Council's own legal submissions accept that the issues exacerbating housing supply and price are multi-faceted (i.e. not just the result of land development).
- (c) There is no causal nexus established between anticipated land development in urban zones, and adverse effects to be ameliorated or prevented by the Variation, even when considering cumulative effects.

[12] The Submitters therefore consider the key legal questions to be tried are:

- (a) Whether the levying of financial contributions to float the Trust is, in and of itself, a rule for a resource management purpose;
- (b) Whether the financial contribution regime under the RMA was introduced, or intended, to authorise the levying of taxes to support a charitable Trust's mandate;
- (c) Even if the financial contribution regime anticipates levying taxes which are not to offset an adverse effect, do the provisions of this Variation in and of themselves serve a resource management purpose?
- (d) Would subsequent conditions of consent under s108AA RMA which levy the new tax meet the common law principles of *Newbury*?

[13] The issue of Housing Affordability in Queenstown Lakes District is not new to the area. The HOPE (Housing Our People in our Environment) Strategy was prepared in 2005, to set out a range of actions for Council and the community to take to address housing affordability. Through this, the Housing Trust was established, and the affordable housing policy Plan Change 24 (**PC24**) was introduced.

[14] In 2009 QLDC promulgated PC24 to address a shortage of affordable and community housing within its district. In 2010 a preliminary question of law was referred to the Environment Court¹³ and then, on appeal to

¹³ *Infinity Investment Groups Holdings Ltd v Queenstown Lakes District Council [2010] NZEnvC 234*

the High Court,¹⁴ as to whether PC24 falls within the scope of the Act. The Environment and High Courts held that it did. Subsequently an application for special leave to appeal the High Court's decision to the Court of Appeal was granted¹⁵. The matter has therefore not been finally determined by a higher court.

[15] PC24 as previously proposed sought to impose a requirement on discretionary and non-complying activities, to be assessed in terms of their impact on the supply of affordable housing, and for new zones – the provision of affordable housing to be made via the plan change process. If the assessment of discretionary / NC activities determined there would be a greater demand for affordable housing over a certain threshold, then PC24 would operate so as to mitigate the effect of the development on housing affordability.

[16] That is fundamentally different from the approach proposed in this Variation.

[17] Since the High Court's decision in *Infinity*, section 77E(2) and 108(10)) has been amended and provides for the ability to set a rule requiring financial contributions in a plan as follows:

77E

A rule requiring a financial contribution must specify in the relevant plan or proposed plan—

(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); and

(b) how the level of the financial contribution will be determined; and

(c) when the financial contribution will be required

[18] While s77E(a) suggests that outcomes-based financial contributions, rather than effects-based ones (or mitigations) may be possible by the

¹⁴ *Infinity Investment Groups Holdings Ltdv Queenstown Lakes District Council [2011] NZRMA 321*

¹⁵ *Infinity Investment Groups Holdings Ltdv Queenstown Lakes District Council [2012] NZHC 750*

‘inclusive’ wording used, it remains that any such rule must serve a resource management purpose.¹⁶

[19] Justice Chisolm’s decision in the High Court *Infinity* case provided:

[46] at a broad level PC24 promotes the sustainable management of land and housing, enabling people to provide for their wellbeing while also **remediating or mitigating the effects of constrained land use**. In other words, he was satisfied that PC 24 came within the statutory concept of sustainable management. Significantly in the present context, the statutory concept of sustainable management expressly recognises that **the development of physical resources, such as land, might have an effect on the ability of people to provide for their social or economic wellbeing**. The concept of social or economic wellbeing is obviously wide enough to include affordable and/or community housing.

[20] That consideration was in the context of PC24 requiring an effects assessment of a development on affordable housing supply, and a consequential response. However, as set out below, this Variation provides for no effects assessment of a proposed new residential development on housing affordability, and then a setting of a tax to respond to the same¹⁷.

[21] Furthermore, *Infinity* was a case determined in a pre-*King Salmon* era¹⁸, and prior to promulgation of the 2016 (and current) NPS direction for urban development. Justice Chisolm’s consideration of affordable and/or community housing being, conceptually, a fit within the wide meaning of ‘economic wellbeing’ contained in Part 2 of the Act now needs to be considered in light of more specific and directive national policy on the

¹⁶ As set out in Mr Ferguson’s Evidence in Chief: [34] *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*. See also s18A RMA – that policy statements and plans must only include those matters relevant to the purpose of the Act.

¹⁷ As above, the Submitters do not agree with Council’s opening legal position, and there is no evidence to support, that land development is part of a cumulative (adverse) effect resulting in unresponsive supply / affordability issues. To the contrary, Mr Hocking, Mr Williams, and the JWS Economics provide examples of other contributing factors.

¹⁸ The evaluation under s 32(1) must now be considered in the light of *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, where there are clear directive higher level planning provisions these will be deemed to be in accordance with part 2 of the RMA and there may be no need to for further resort to pt 2 provided the proposed lower level provisions “give effect to” the higher level provisions.

issue. Government’s subsequent promulgation of the NPS-UD particularises further those economic wellbeing principles of Part 2 in the context of urban development and including affordable housing issues¹⁹. No suggestion from planning evidence has been made that the NPS-UD is incomplete, invalid or unlawful on this issue. Rather, it is submitted that the NPS-UD provides a clear and intentional direction to respond to housing affordability through ensuring market competition and feasible development capacity (i.e. a supply driven response).

[22] The section 32 assessment supporting introduction of the NPS-UD clearly establishes the reasoning supporting objectives and policies which particularise the affordable housing components within section 7 (Part 2 RMA) and S31(aa) - (functions of territorial authorities):

Objective O2: Planning decisions improve housing affordability by supporting competitive land and development markets.

Relevance

This objective relates directly to a specified resource management issues: the ability of people to provide for their social and economic well-being through access to housing and through appropriate management of land resources (urban capacity and land supply) to address issues of housing affordability for people and communities. As such, it has the potential to contribute to people’s well-being by addressing the issue of housing affordability by requiring that local authorities make decisions that provide for competitive land and development markets.

This objective has direct relevance to Part 2, Section 5(2) of the RMA, in relation to promoting the sustainable management of natural and physical resources (in this case urban capacity and land supply). The objective will assist local authorities to “manage the use, development, and protection of natural and physical resources” (being housing and urban land), while also having particular regard to the efficient use and development of these (section 7(b) of the RMA) by making decisions that reflect the importance of competitive land and development markets as an issue that impacts on housing resources.

Usefulness

This objective clearly states the expectations on local authorities to improve housing affordability, by ensuring that land supply is appropriate to enable housing and land and development markets to remain competitive. The objective acknowledges that local authorities cannot address all issues of housing affordability and is useful as it focuses the requirements on them in this regard.

The objective will enable local authorities to carry out their statutory functions under sections 30-31 of the RMA as well as under sections 62 (contents of Regional Policy Statements) and 75 (contents of District Plans), by requiring them to provide sufficient development capacity to support competitive land and development markets.

[23] In light of this clear and mandatory national direction complete on the issue of affordable housing, there is no further need to seek support for a new tax within the broader economic or social wellbeing references in part 2 of the Act. Submissions below address evidence as to how the Variation does not give effect to the NPS-UD and is actually contrary to it.

¹⁹ The s32 report for the NPSUD specifically considers affordable housing as an outcome of certain objectives and policies, including for example Obj 2.

[24] Further explanatory material around the introduction of the NPS-UD can be found in the Productivity Commission’s Final Report on its inquiry into ‘Using Land for Housing’ published in 2015. The subsequent promulgation of the NPS-UDC 2016 was part of Government’s response to that inquiry. In my submission, the differences between the 2016 and 2020 NPSs are immaterial to the following submission points.

[25] The Final Report from the Productivity Commission specifically evaluated the role of inclusionary housing policies, looking at both the PAUP example, as well as the currently operative approach in the QLDC ODP, plus international experiences. It commented:

Impacts New Zealand inclusionary housing policies are relatively new and have not yet been evaluated. However, international evidence on the experience of such policies suggests that they have little impact on the overall supply of lower-priced housing. They can also have a number of other, undesirable effects, including uncertainty and delays, higher prices for non-targeted dwellings and significant administrative costs.

Inclusionary housing policies tend to have a limited impact on the overall supply of lower-priced dwellings²⁰

...

Inclusionary housing policies can increase the price of non-“affordable” housing, although the likelihood and size of the effect depends on the nature of the policy, the state of the property market and price elasticities.

Such results are not surprising, in that some types of inclusionary housing policies effectively require developers to produce lower-price units than they would have without regulation. To maintain their expected profit margins, developers may seek to increase the price of non-regulated dwellings, perhaps by improving their specifications²¹

...

if the planning system and its impacts on the supply of land for housing are the proximate causes of declining affordability, then the logical

²⁰ <https://www.productivity.govt.nz/assets/Documents/6a110935ad/using-land-for-housing-final-report-v2.pdf> at page 155.

²¹ Ibid, at page 157.

response is to ease the planning system's restrictiveness rather than tackling a symptom of that restrictiveness through inclusionary housing policies. This approach was recommended by the Commission in the Housing affordability inquiry (2012a), and the Commission continues to see this as the priority... The risk with inclusionary housing policies is that they can draw the focus away from ensuring that the overall planning system is as efficient and enabling as possible²².

[26] The final recommendation from the report to Government concludes:

Rather than pursuing inclusionary housing policies, the Government and councils should promote a greater supply of lower-cost housing by:

- removing planning controls that limit the supply of development capacity and housing; and
- supporting or establishing institutions that lower barriers to the supply of lower-cost housing (eg, urban development authorities)²³

[27] This chapter and the recommendations from the Productivity Commission report are attached as **Annexure A** to these submissions.

[28] In my submission, a number of those risks cited in the Commission's inquiry hold true, as set out in the Submitters evidence, for this Variation.

[29] In summary, it is clear that the Productivity Commission specifically considered which policies would be appropriate for targeting lower cost housing, specifically, the international and national examples and Literature on inclusionary housing policies – and concluded its recommendations to Government to not adopt an inclusionary zoning type policy. The Government's reply through the NPS-UDC, and then changes to the current NPS-UD adopted those recommendations and specifically did not introduce this method.

[30] Council therefore cannot hang its hat on the NPS-UD as providing support, or a mandate for, inclusionary housing taxes.

²² Ibid, at page 158.

²³ Ibid, at page 159.

- [31] Council's legal submissions also draw support from s31(1)(aa) to the effect that: inclusionary housing affects the capacity of land for urban development by effectively increasing the amount of land available for affordable housing. However, this ignores the fact that this section of the Act was amended by the Resource Legislation Amendment Act 2017 and was termed a 'minor / consequential' amendment, to clarify the functions of territorial authorities matched what was in the NPS-UDC 2016. As above, that national direction specifically considered and did not adopt, an inclusionary housing tax approach.
- [32] In and of themselves, the methods are a tax, and they achieve a shift of wealth, not a resource management purpose such as the actual supply, or increase in the provision of, affordable housing²⁴. The Variation methods are not therefore necessarily within the remit of the RMA and how financial contributions are anticipated to deliver RMA outcomes.
- [33] Even if, conceptually, the proposal for requiring a tax to float the Housing Trust were considered to be *vires s77E and s108AA*, and there being an acceptance that the contributions are not a mitigation to adverse effects, the proposal will be a first of its kind in New Zealand.
- [34] This being a test case of any such regime since over 30 years of the RMA being on force, and in light of the public importance,²⁵ there needs to be a very strong evidential base for its approval in a section 32 sense.
- [35] In terms of what other Councils have done for similar proposals:
- (a) As cited in Council's opening legal submissions, Auckland Council declined to include an affordable housing financial contribution in its unitary plan. Counsel for Council however down-plays this decision from the Chair, Chief Environment Court Judge Kirkpatrick noting it is not binding and there is no conceptual issue with planning frameworks being redistribution in effect.

²⁴ Economics JWS, at 23d "*Other than the above, the experts do not have sufficient information to comment on whether the variation may or may not result in net more affordable houses under the control of a community housing provider than would otherwise been created.*"

²⁵ Counsel also refers to the statements made by Mr Garner-Hopkins in respect of the public importance noted by the High Court in granting leave to appeal the *Infinity* decision.

The Panel was persuaded by the submissions of the Ministry for Business, Innovation and Employment and Housing New Zealand Corporation, among others, that the affordable housing provisions as proposed by the Council would likely reduce the efficiency of the housing market due to effectively being a tax on the supply of dwellings and be redistributive in their effect. The Panel is of the view that the imposition of land use controls under the Resource Management Act 1991 is not an appropriate method for such redistributive assessments and policies.

.....

For these reasons the Panel considers that housing affordability is best addressed in the Plan as primarily housing supply and housing choice issues and that consideration of housing affordability needs to permeate the provisions throughout the Plan. This is in contrast to the retained affordable housing provisions in the notified Plan that treat affordability separately from other land use provisions. **Furthermore these provisions would effectively be a tax on the supply of housing and therefore would tend to impede rather than assist an increase in that supply.**

- [36] QLDC's submissions omit the last paragraph of that decision, underlined above, being the critical assessment that a tax on supply of housing was essentially an impediment to increased supply (i.e. the antithesis of the NPS-UD and section 31(1)(aa) functions).
- [37] Moreover, it is submitted that there is a distinction between policies redistributing wealth, as opposed to natural and physical resources, through planning decisions²⁶.
- [38] Wellington City Council considered the draft QLDC Variation in its section 32 assessment for its current District Plan Review, but by distinction, limits the scope to only new housing developments, and new commercial floor area above ground floor, in identified growth areas of the city where additional height and density has been enabled through the same plan review. The reasons cited for this are:

²⁶ Evidence in Chief of Mr Serjeant.

To reduce the risk of these contributions adversely affecting the overall supply of market housing and commercial floorspace, the contributions requirement is tied to areas with height bonuses and without other significant land use constraints (e.g. heritage, sites of significance to Māori, SNAs)²⁷.

[39] In summary, there are key differences between this Variation and PC24 since the High Court considered the issue in *Infinity*. This includes the Variation regime not requiring any evaluative component as to adverse effects on housing supply from new development not applying to a rezoning (planning uplift scenario). The promulgation of national policy direction responding to this issue, which on the evidence is contradicted by the Variation, and the question as to whether the methods actually are for a resource management purpose, when there is no evidence to suggest they will in and of themselves increase the provision of affordable housing supply.

[40] I disagree with the submission that Parliament could have legislated for a different outcome than *Infinity*, but instead the introduction of s31(1)(aa) further supports the Variation's approach. Rather, in my submission, s31(1)(aa) and the NPS-UD provides a clear and complete response to the issue of affordable housing by a supply and competition based response. The national direction specifically considered, and decided not to introduces a tax on land development which is not proven to have an adverse effect (even cumulative) on affordable housing. Instead, that national direction and s31 function refers to increasing supply (generally) with the consequent outcome, being an effect on affordability²⁸.

Section 32 analysis

[41] Section 32 of the RMA requires an evaluation of:

- (a) Whether the objectives of the particular proposal are the “most appropriate” way to achieve the purpose of the Act; and

²⁷ Section 32 – Assisted Housing, pages 21, 49.

²⁸ Referring to Resource Legislation Amendment Bill 2015 (101-1) (explanatory note) at 3.

(b) Whether the provisions of the proposal are the most appropriate for achieving the objectives of the proposal, including identifying other reasonably practicable options and assessing the efficiency and effectiveness of the provisions.

[42] The objectives and policies of the Variation seek to achieve the 'provision' of affordable housing supply (i.e. result in an increase of the supply of that product to the market.²⁹

[43] Policy 40.2.1.7, requires that financial contributions received by the Council must be used for the purposes of providing affordable housing for low to moderate income households.

[44] This policy and associated methods which formulate the taking of the new tax, are a step removed from what the higher order objectives of the Variation seek to achieve. The methods create a shift of wealth (i.e. a tax) from the private sector to the Council, and then to the Housing Trust.

[45] In and of itself, that shift of wealth does not create or contribute to the 'provision' of affordable housing, and it is unclear how the methods achieve the objectives and policies without Council proposing to undertake affordable housing development itself.³⁰ The effective oversight of the Trust has been addressed by other Counsel.

[46] There is no evidence that quantifies when, or by how much, additional affordable housing will be created as a result of the Variation:

the experts do not have sufficient information to comment on whether the variation may or may not result in net more affordable houses under the control of a community housing provider than would otherwise been created³¹.

[47] Counsel notes the emphasis from Council's witnesses on the qualifiable benefits rather than quantifiable, and it is accepted that, case law under s32 has adopted an approach for wider exercise of judgment where economic evidence is one thread of consideration contributing to sustainable management. However, it is submitted that this particular case of setting a tax or a redistribution of wealth (as opposed to physical

²⁹ SO 3.2.1.10 and 40.2.1.

³⁰ Evidence in Chief of Mr Giddens, at [7.26].

³¹ Economics JWS, at 23d.

resources through a zoning change, for example), potentially sets a different bar for consideration of quantifiable costs and benefits / stricter economic theory.

[48] The High Court in *Contact Energy Ltd v Waikato RC*³² considered competing economic approach from the Environment Court (a strict economic theory proposed in *Marlborough Ridge Ltd v Marlborough DC* (1997) 3 ELRNZ 483; [1998] NZRMA 73 (EnvC), contrasted with the more holistic approach adopted in *St Lukes Group Ltd v North Shore CC* [2001] NZRMA 412 (EnvC). At [92] the High Court expressed that:

[92] ...The depth of reasoning that must be expressed will vary depending on the subject matter...

[49] The High Court ultimately went with the more holistic approach, and considered the more detailed marginal cost benefit analysis approach was not required in this case having regard to the full extent of the entire inquiry and decision-making process.

[50] The High Court case suggests that context and subject matter is important to the approaches to analysis of costs under s32. In the context of the Variation seeking to levy a tax, a more classic CBA approach may be warranted³³.

National Policy Direction – NPS-UD

[51] All expert planning evidence from the Submitters considers that the Variation will not achieve, and is inconsistent with, the national direction from the NPS-UD. This is in reliance on the basis of consistent corporate evidence as to the consequential increased costs of housing to the market and potential delay on new residential development, and the distortionary application of the tax across differential zonings in the District.

[52] Mr Mead's rebuttal evidence appears to acknowledge this evidence of impacts on the competitive operation of the land supply market yet

³² *Contact Energy Ltd v Waikato RC* (2007) 14 ELRNZ 128 (HC),

³³ Counsel defers to Mr Colegrave's concerns expressed regarding a lack of CBA presented through evidence in chief and supplementary evidence, as compared to the 2022 CBA prepared for the s32 report.

downplays the role of the NPS-UD in this regard, stating that the remit of Part 2 is 'much wider'. The NPS-UD is the key piece of national direction relevant to this Variation and has clear directive requirements that must be in accordance with.³⁴ Government has elicited the requirements of Part 2 of the Act in determining the NPS-UD, and in doing so, has promulgated clear direction to Councils in how to provide for urban development. Mr Mead has not cited what other elements of Part 2 are missing, or otherwise competing with, the direction of the NPS-UD justifying a Variation which would have contrary outcomes.

[53] The corporate evidence all summarises that the Variation will not achieve the clear 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.³⁵

[54] Mr Mead states in his rebuttal:

The proposed financial contribution is intended to apply to most forms of residential subdivision and development. In this regard, it does not seek to actively reduce the number of 'market participants'³⁶.

[55] This ignores the planning evidence from submitters as to the distortionary effect of the tax applying to just PDP zoned, new residential development, and collective corporate evidence statements confirming that the response for some developments will be delay or inaction (i.e. a clear reduction in market players)³⁷.

[56] Mr Mead acknowledges the NPS-UD is an instrument directed at increasing supply, and supply alone may not deliver the solution of provision of greater affordable housing needs. However, that response does not support a Variation which is in contradiction of the clear policy intent regarding the need to limit as much as possible, adverse impacts on competitive land and development markets. In my submission the

³⁴ Section 74(1)(ea) RMA.

³⁵ Policy 1 (d) – see also Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.

³⁶ Rebuttal evidence of David Mead, at [3.2c].

³⁷ For example, those statements summarised below at para [59].

policy directive to 'limit as much as possible' is a clear directive to be followed, and definitely not to be clearly contradicted.

[57] Additionally, as set out in the economics JWS, Mr Colegrave and Mr Osborne consider it very likely that there will be:

'Potential impacts on the district's ability to meet its obligations under the NPS-UD to provide "at least" sufficient capacity to meet demand "at all times.

[58] And it is agreed that:

There is no evidence to suggest that residential supply will increase nor prices decrease as a result of the variation.

...

[Colegrave and Osborne] also consider it relevant to acknowledge that any additional affordable houses under the control of a Community Housing Provider that the variation may result in, should not necessarily be regarded as net additional affordable houses that may have been achievable. FC and PO also cannot separate from this issue the potential, as they see it, for the variation to result in a reduction in the total district-wide stock of affordable houses (such as dwellings that could have been sold at a qualifying affordable housing price slipping out of that bracket when the contribution required by the variation is added).

[59] There is therefore no evidence to support that the Variation is in line with section 31(aa), the NPS-UD (and therefore Part 2) but is quite possibly, in contradiction with those.

[60] Overall, it is submitted the NPS-UD is about enabling just affordable housing, it is about enabling all forms of housing. The results of the Variation, to increase costs in the aggregate, and to decrease supply (on the Submitters' economic evidence), is contrary to national direction³⁸. Consistent with this submission, is the Government's

³⁸ This is further supported by the Cabinet Paper released 27 February 2024 by Hon Chris Bishop, confirming the next phases of Government reform to address housing affordability will be directed at infrastructure, GST structure, and again – incentivizing greater supply and development. Those approaches are in contradiction to the effect of the Variation, to add more complexity and cost to development.

‘recommendations and decisions report’ published in the making of the NPS-UD, which provided the following on the policy approach to addressing housing affordability:

Housing affordability

The cumulative impact of NPS-UD policies is intended to help improve housing affordability by removing unnecessary restrictions to development and improving responsiveness to growth in the planning system. However, while this is mentioned in the context of the discussion document, it was not outlined clearly through a proposed objective. This omission was raised by some submitters and through agency consultation. As a result, officials now consider that a clear objective on housing affordability would support the intent of the NPS-UD. Because a definition of the term ‘affordable housing’ has not been consistently agreed upon, it is important its use does not create unintended consequences. For example, a local authority may interpret a housing affordability objective to mean it must only be interested in the provision of low-cost homes rather than enabling a competitive land market that will improve affordability in the aggregate. Therefore, officials recommend an objective that clearly states the intent of the NPS-UD is to support housing affordability as delivered through planning decisions that support competitive land markets.³⁹

Council’s deficient economics and planning case

Windfall gains and the planning uplift

[61] The Council’s economic and planning evidence mischaracterises compliant land development and redevelopment generally as a ‘windfall gain’. The Submitters do not agree that development of existing zoned land to an anticipated outcome (i.e. in line with planning provisions) constitutes a windfall gain in and of itself, justifying a tax, just because the resulting land values after subdivision and development will increase.

³⁹ <https://environment.govt.nz/publications/recommendations-and-decisions-report-on-the-national-policy-statement-on-urban-development/>

- [62] International examples of inclusionary housing regulation cited in Council's own evidence⁴⁰ refers to windfall gains in a context where developers obtain an offset / bonus / incentive for development rights over and above what would otherwise be anticipated, in the context of additional 'taxation' to provide affordable / community housing.
- [63] There is a fundamental disconnect between Council's economics and planning evidence assimilating this Variation to both:
- (a) International examples of inclusionary housing which include both a bonus and a taxation component; and
 - (b) The support for the Housing Trust to date from private developers reached through agreements on a case by case basis.
- [64] Both of those examples are fundamentally different from the Variation proposal in that the Variation provides no 'giving' component to offset the additional cost of the tax⁴¹. The resulting likely consequences highlighted in economic and developer evidence include:
- (a) The reality is that the additional cost imposed by a financial contribution, either at subdivision or on land development, will be imposed on developers and will need to be covered either by increasing sales prices or, if the market cannot support the additional increased sales price, then the development will be abandoned.⁴²
 - (b) The only way to recover the cost of Inclusionary Zoning will be to pass the cost on to the end user or, alternatively, shelve unviable projects.⁴³
 - (c) The Variation will not only discourage residential developments from being built (reducing supply and increasing the price) but is

⁴⁰ Mr Serjeant's Evidence in Chief also sets out an assessment of international examples and literature, and the difficulty in applying those in the NZ context, at his [13] – [18].

⁴¹ Mr Colegrave's Evidence in Chief, at [145] onwards discusses the confusing and contradictory approach to characterizing the Variation as capturing a windfall gain, concluding that Mr Eaub: "*frequently muddles the presence or absence of planning gains within the context of the proposed new policy. I am not convinced by his analysis*".

⁴² Evidence in Chief of Michelle van-Kampen, at [5.9].

⁴³ Evidence in Chief of Allan Dippie, at [18].

likely to result in the additional costs being passed on to the purchasers of the property.⁴⁴

- (d) A single rural landowner declining to sell property to a developer, rather than take a 10% 'haircut' on price, could in and of itself significantly reduce overall potential housing stock.⁴⁵
- (e) In practice, the additional cost from the tax will be factored into the sale price or will otherwise impact development profit/viability and disincentivise further development in the district.⁴⁶
- (f) Transaction costs of proposed levies set on estimated future sales values, which requires valuation advice, and the need to revise key policy parameters over time in line with inflation. This all introduces difficulty, cost, and delay, which will further reduce the desire and motivation to develop in the first place.⁴⁷
- (g) Imposition of a financial contribution will create an additional cost i.e. adversely impact, the operation of the land market, contrary to the NPS-UD objectives 1,2, and policy 1.⁴⁸

[65] All of these costs and consequences of the Variation are summarised in the economics JWS at 24, by Mr Colegrave and Mr Osborne – and these do not appear to have been rebutted further by Mr Eaquab's rebuttal evidence. This summary includes the consequential reduction in affordability for homes other than those assisted by the Housing Trust, the reduction in total supply of housing, delay in construction and supply, consequential impact on the inability to provide for at least sufficient development capacity under the NPS-UD.

[66] A key issue to determined is therefore whether the costs of meeting a new tax are likely to be absorbed by development, passed forward to other homeowners, or backwards to landowners of undeveloped land. Passed forward, the Variation may raise house prices, deterring some buyers; passed backwards, the requirement may deter some land supply

⁴⁴ Evidence in Chief of Lauren Christie, at [4.6].
⁴⁵ Evidence in Chief of Ted Ries, at [12].
⁴⁶ Evidence of Mr Giddens, at [6.31].
⁴⁷ Evidence in Chief of Mr Colegrave, at [54].
⁴⁸ Evidence in Chief of Mr Ferguson, at [44] – [47].

options from being actioned. If absorbed by the developer, this may see them not take on more marginal projects. These consequences are all outlined in the evidence statements above.

[67] Mr Eaquib's Appendix 1 from his rebuttal evidence considers the planning windfall gain associated with Arthurs Point (Bullendale SHA) to characterise the increased land value after subdivision and development and infrastructure outlay. The case study is not a relevant comparator for this Variation, because again, that is a context of where the developer did receive a true windfall gain through the special legislative HASHAA process, and in tandem provided for a housing trust contribution. The windfall analogy is not the same for existing zoned land that the Variation will apply to.

[68] The Variation has progressed in isolation from any parallel rezoning process⁴⁹. The future of the separate intensification plan change is highly uncertain, with Council recording significant opposition⁵⁰ to it in some areas (including Wanaka and Arrowtown), this cannot therefore be factored into a windfall gain. Furthermore, it only applies to existing PDP urban zoning, so in terms of Mr Eaquib's comment in the JWS, that costs of the Variation are offset by this 'other' process, that does not hold true because the tax applies to land not captured by the intensification process.⁵¹

[69] Despite clear feedback from Submitters and key industry stakeholders in the pre-notification phase of the Variation, the Council failed to tie together windfall gains in the true sense, with the new tax. The Ministry of Housing and Urban Development and the Ministry for the Environment submitted on options for affordable housing consultation, stating that it would prefer to see some level of 'option 1 included with option 4'. The options consulted on were:

⁴⁹ As accepted in para 20 of the JWS economics, the variation does not propose an increase of urbanization.

⁵⁰ Over 1200 submissions being processed currently.

⁵¹ For example, settlement and special zones.

- (a) Option 1: Update the District Plan to reduce and remove controls that affect affordability, and at the same time, negotiate with developers to provide retained affordable housing when Council is able;
- (b) Option 2: Update the District Plan to provide a bonus/incentive to developers for the provision of retained affordable housing;
- (c) Option 3: Update the District Plan to implement a mandatory requirement for developers to include some retained affordable housing – applied to new developments only;
- (d) Option 4: Update the District Plan to implement a mandatory contribution to include some retained affordable housing – applied to both new development and redevelopments.

[70] Instead, Council has progressed option 4 in isolation.

[71] Examples of a planning windfall gain might include infrastructure upgrades, rezoning / upzoning, density or height bonuses, relief in processing times or consenting pathways, or relief in processing costs. No such advantages are proposed through the Variation, despite international evidence supporting the need for the same, so as to offset costs of a new tax, and despite central government departments submitting to Council suggesting this need⁵².

[72] Council's initial policy formation for the Variation however previously appears to have considered the more standard approach to inclusionary zoning alongside a true planning uplift. But this has not been carried through into the notified Variation:

[73] The QLDC report for agenda item 2: Mayoral Housing Affordability Taskforce Updated, 26 October 2017 cites:

⁵² Evidence in Chief of Mr Colegrave, at [146]: *windfall gains or other incentives can help offset policy costs, thereby improving effectiveness while minimising any unintended consequences.*

20. In respect to recommendation 3.4, further consideration would need to be given to mandatory Inclusionary Zoning provisions. 'Inclusionary zoning' refers to district planning objectives, policies and rules that facilitate a landowner or developer to deliver affordable homes as part of new land development. They can be either on-site (as part of the development), or delivered offsite (in a nearby location), and include the long-term retention of affordability. Value is generated by the change in zoning, which creates a substantial increase in the land value. The principle behind inclusionary zoning is that the community can share in value uplift, as it is the wider community who conferred that benefit of intensification through the policies of the local authority. The Council will need to consider whether Inclusionary Zoning provisions should be developed as part of Stage 3 of the Proposed District Plan to be notified by the first quarter of 2019.

Deficient consideration of the Rating Option

[74] Counsel is conscious that other submitter representations in this hearing address at length the legality, enforceability, simplicity, and comparatively equitable approach that may be afforded through the Local Government Rating Act as compared to the Variation. Those statements are not repeated.

[75] The Submitters represented in these submissions agree with those sentiments and consider it disappointing that no detailed funding analysis appears to have been completed to cost this option as compared to the Variation.⁵³

Specific responses to Council's rebuttal evidence

[76] Mr Mead's rebuttal evidence notes, at para 3.2(d):

The concern raised is that the 'costs' of the proposal may deter some subdivision and development activity, thereby reducing competition. The issues of where the 'costs' fall in the long term is discussed by Mr Eaquib. I note that to date, there is no evidence that the affordable housing measures that have been negotiated by the council (e.g. through Stakeholder Deeds) have slowed the pace of development or reduced competition.

⁵³ Evidence in Chief of Mr Yule, at [18] comments that no financial analysis has been obtained confirming the rating option as unviable due to costs. Mr Colegrave's Evidence in Chief also summarises at [27] that: *Overall, I consider rates to be the best way for to help fund the Trust because they spread costs widely and fairly, while not penalising developers for supplying new homes to meet growth in demand. Rates are also easy to administer and can target specific groups in the community if deemed necessary.*

[77] Again, this mischaracterises the Variation as being a similar replacement policy to the existing developer agreement process in the District. There is no ability to draw a parallel in terms of costs between the existing ODP approach (applied through private plan changes) and the Variation, because the former is a negotiated regime where developers do truly benefit from windfall gains in the form of planning uplift through rezoning, or through the HASHAA regime. The latter is a distortionary tax that will make new housing more expensive, and thus less affordable.⁵⁴

[78] The failure to accept the difference, and the consequential economic costs to, initially, developers, and secondly, the market⁵⁵, is a core failing of the Council's case.

[79] Per the economics JWS at 23b, it is agreed that:

The experts consider that the variation will result in either a decrease in residential supply or an increase in prices.

[80] Section 32 is an exercise of assessing proposed provisions of a variation / plan change under consideration, their effectiveness and efficiency, costs and benefits, of achieving that proposal's objectives. That is an assessment in relative isolation to extraneous or parallel policy projects progressing separately.

[81] Council's own section 32 economic assessment for the Variation (attachment 3g) acknowledges these internal costs of the policy:

IZ is a planning tool to specifically generate affordable housing, the goal. On its own, it can be distortionary. When combined in the context of other policies that facilitate housing supply, these distortions can be mitigated.

⁵⁴ Evidence in chief of Mr Colegrave at [36]. Mr Colegrave's evidence at [145] also addresses the distinction in this Variation applying absent windfall gains, unlike previous IZ policies or agreements.

⁵⁵ Mr Colegrave addresses in his Figures 1 and 2, the consequence of the Variation reducing the future number of district homes available and making them less affordable (other than those assisted through the Housing Trust criteria / waitlist).

[82] The uncertainty of the intensification variation trajectory is summarised in Council’s Spatial Monitoring Report update, November 2023, which provides:

<p>1. Review zoning and other levers to enable higher densities and more flexible use of land within the existing and new urban areas in appropriate locations identified in the Spatial Plan.</p>	<ul style="list-style-type: none"> > The Urban Intensification Variation was notified on 24 August 2023 and submissions remained open until 6 October. > The proposed variation attracted substantial social media, media and community discussion. Specific areas such as Arrowtown and Wanaka attracted significant attention from their communities – specifically in relation to the increased height and smaller lot sizes. Members of the community erected scaffolding to show the scale of 12-metre-high buildings and groups formed to help interested people take part in the submissions process. Due to the high degree of community interest the submission period was extended by 2 weeks, to a total of 6 weeks. > Drop in sessions were held in Arrowtown, Wanaka, Queenstown and Hawea. Arrowtown session was inundated with community members and attracted approximately 150 people. > Submissions are still being processed into our system, but it is understood there are in excess of 1000 submissions, with the majority are in opposition. Elected members are also under pressure to withdraw the whole or parts of the Variation. 	<ul style="list-style-type: none"> > Finalise submissions. > Create a “Summary of Decision Requested” for further submissions. It will be available for the standard 10 working days for anyone with an interest to make a further submission. > A hearing for those who wish to speak to their submissions is anticipated to be held in the third or fourth quarter of 2024. > Work is also underway to review the remaining Operative District Plan zones (Special Zones) and bring them into the Proposed District Plan, at that time will give effect to Policy 5 and undertake intensification where appropriate. 	<p>Red</p>	<p>QLDC led</p> <p>Other parties: HUD, Kainga Ora, Kai Tahu</p>
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[83] As set out in Mr Ferguson’s evidence, there are a number of residential development areas within operative zones. Once those become reviewed into the PDP, and then the inclusionary zoning Variation eventually applies, there is no certainty or assurance that those newly reviewed zones will obtain the benefit of a similar intensification regime to that being progressed for PDP zones currently (or that covenants restricting height and density uplifts would not otherwise bar access to a ‘windfall gain’).

[84] Mr Mead’s rebuttal at 3.4-3.5 appears to suggest that Submitters seek a solution of more supply to result in affordable housing. That is a misconception of the planning evidence from a number of submitters, which actually suggests that a multi-faceted response to increasing supply of affordable housing is needed (including increasing supply) in the context of how the Variation could be considered a more efficient

and effective method to achieve the objectives, not as a silver bullet on its own.⁵⁶

[85] Mr Mead's rebuttal at 6.8-6.10 also defends the Council's 2021 Housing Capacity Assessment as showing that 'there is a large amount of zoned opportunity for feasible development options available to the market within each of the various urban locations, with the constraint instead related to the provision of infrastructure.'

[86] Yet this seems to ignore the fact that Council is currently reviewing its Capacity Assessment, with the inferences that the capacity margins are less than expected. The ORC November 2023 Council Agenda includes a paper updating Council on the delays to progressing the Queenstown Lakes Future Development Strategy, including the reasons in respect of the need to review the Capacity Assessment, as follows:

[11] In February 2023, MRCagney was awarded the contract for the addendum on the basis that a simple assessment could be undertaken without the need of a first principles approach, including a new Housing and Business Capacity and Feasibility model.

[12] Once the work was underway, it became clear that access to the original model, which had been developed by the previous provider, was necessary to account for changes to the background data and assumptions due to:

- a. QLDC's reduced financial capacity to provide infrastructure servicing (due to costs associated with Leaky Homes claims).
- b. uncertainties around three waters reforms, impacting on what projects may or may not be included in the QLDC Long-Term Plan.
- c. higher than anticipated population projections.

[13] These factors, along with the complexities of producing an updated HBA without access to the original model, reduced the robustness of the HBA, which in turn creates legal risk.

[87] Given the uncertainties in the economic costs and consequences of the Variation, if the Variation is to proceed down the track of applying a financial contribution regime, it is submitted that a precautionary

⁵⁶ For example, evidence in Chief of Mr Ferguson in reference to his option 1 and Mr Serjeant, at [19] agreeing on the same. Mr Williams' evidence also summarises his option 3 as a collective of responses including accelerating infrastructure delivery, streamlining consenting, and amending consenting pathways to achieve increased supply outcomes (at [56]).

approach to any such new tax will be needed. Such an approach has been considered appropriate in case law for circumstances where the supporting information is incomplete and the environmental outcomes uncertain. Additionally, transitional effects will be present for those who are PDP rather than ODP zoned⁵⁷. These transitional effects could be addressed through a stepped phase in period and/or delayed implementation. For example, any IZ policy could start with a small IZ contribution, rising to a larger contribution in five years' time. Alternatively, the provisions could become operative after a set date. Either approach may account for markets to adjust and for sites which are currently in pre-development consenting stages to proceed without delay.

- [88] For the avoidance of doubt, the Submitters do not necessarily support these approaches. They remain concerned as to the fundamental legality, equity, and merits issues set out in these submissions.

Penalising the solution

- [89] A number of experts called by submitters have raised issue with the inequity of the Variation in taxing a small portion of the community who are taking on the risk and cost of new residential development, and are in effect, a large part of the solution – to providing for increased supply of housing to market.
- [90] While equity is not literally referenced in the RMA, it does in this case go towards considering whether the proposal is efficient and effective – and the costs and benefits – in a section 32 analysis.⁵⁸ The Ministry for the Environment's guide to section 32 of the Act provide the following statements on equity considerations;

Considering equity and distributional issues

Equity generally revolves around who bears the negative impacts 'who pays and who benefits?' where payment may be in dollar terms, or through bearing negative impacts. An outcome where costs (negative effects) are distributed in or close to the same way as benefits (positive

⁵⁷ Evidence of Mr Ferguson at [136].
⁵⁸ Evidence in Chief of Mr Ferguson, at [105].

effects) is generally seen as fair and equitable, while a materially different distribution is deemed unfair/inequitable. To look at equity considerations, sufficient information is needed to identify effects at an appropriate level of detail (disaggregation), and decisions are needed about how equity considerations may be applied in RMA decision-making. To identify how both costs and benefits are distributed, effects across the following should be understood:

- between major sectors, including the business, household and farming sectors
- within those sectors, to understand whether benefits or costs are concentrated on specific groups or distributed evenly
- across locations
- across important segments of the population (for example, economically vulnerable groups, older age groups, and so on) or industries within the business sector (for example, those which are critical in the local economy).

Equity and fairness is an important aspect of social well-being. However, the level of detail will depend on what matters are important to specific councils. The plan objectives and policies are the base point of guidance for these matters, but more specific guidelines will usually be required, including:

- the rationale for how and why the distribution of effects matters
- the aspects of distribution which address equity and fairness considerations
- identification of specific groups, sectors, locations to be accorded priority. The significance these priority groups should be accorded in the decision-making process, including s32 evaluation.⁵⁹

⁵⁹<https://environment.govt.nz/assets/Publications/Files/guide-to-section-32-of-resource-managemnt-amendment-act-1991.pdf> (at pages 63-64).

[91] The inequity concern is shared by a number of experts, including:

- (a) Mr Yule comments that: QLDC through this variation is seeking to fund a significant social issue through charging some new residential development. This approach is not equitable as it only targets new developments. And considers that a more equitable approach would be to share costs across all (or targeted) ratepayers as opposed to a select sector of new development⁶⁰;
- (b) Mr Colegrave considers that: The proposed IZ FC levy, however, is neither efficient nor equitable, because it imposes a tax on new development for a problem that it has not caused, and for which that new development is instead a vital part of the solution.⁶¹
- (c) Ms Hoogeveen considers applying a specific development contribution across all sectors in the District would also be a more equitable application of some sort of targeted fund-raising exercise.⁶²
- (d) Mr Giddens notes: the improved labour market outcomes would inevitably benefit sectors other than land developers, effectively resulting in a transfer of wealth from developers to other businesses within the district. This is inequitable in my view and does not sit well against the purpose of the RMA⁶³.

[92] Furthermore, it seems the inequity of which 'developers' will be taxed does not appear to have been considered in detail by Council. In particular:

- (a) The differential application of the tax across different residential zones (unreviewed vs reviewed), 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.⁶⁴
Some landowners may consequently be disincentivised for further

⁶⁰ Evidence in Chief of Lawrence Yule, at [11] – [13].

⁶¹ Evidence in Chief of Mr Colegrave, at [45].

⁶² Evidence in Chief of Ms Hoogeveen, at [4.13].

⁶³ Evidence in Chief of Mr Giddens, at [6.32].

⁶⁴ Evidence in Chief of Mr Ferguson, at [47].

residential development in terms of timing and release of land to market.

- (b) The tax does not apply to any other non-residential (such as commercial activity throughout the District) whether contributing to the problem or benefiting from the relief of it this could be included in rules to 'spread the tax load'. The inclusion of other commercial sectors would reduce the current inequitable economic outcome, which only burdens the residential supply sector.⁶⁵ Mr Ferguson also notes the issue of whether mixed use zone development, which anticipates residential floorspace development, would be captured or not.⁶⁶
- (c) Already consented development will not be captured by the Variation (save for potentially future variations which trigger additional uplift). Already consented development will continue to move forward, untaxed, whereas new development becomes captured – again creating market distortions.⁶⁷
- (d) No exemptions are included for worker accommodation development (which falls into the class of standard residential development).⁶⁸

[93] The catchment of those who are subject to additional tax, and the costs to build into their development planning, are therefore relatively narrow compared to the broader community benefits cited (which could be more equitably captured by targeted rates).

Multi-faceted issues with a singular response

[94] As set out in the evidence of Mr Colegrave⁶⁹, the Housing Trust serves only a very small component of the housing market, and the Variation seeks to (purportedly) increase the provision of 'affordable housing'

⁶⁵ Evidence in Chief of Berin Smith, at [28].

⁶⁶ Evidence in Chief of Mr Ferguson, at [127].

⁶⁷ Evidence in Chief of Mr Ferguson, at [135].

⁶⁸ Evidence in Chief of Mr Giddens, at [7.27].

⁶⁹ Evidence in Chief of Mr Colegrave, at [96] – [97].

through the transfer of wealth from new residential land subdivision and development to fund the Trust's objectives.

[95] However, the issues that Council are seeking to address seem to be much broader than floating the Housing Trust and its eligible recipients of housing. The broader issues cited throughout Council's evidence, section 32 Analysis, and as cited in the proposed Chapter 40 purpose include:

- (a) Worker turnover;⁷⁰
- (b) High rates of residential visitor accommodation and holiday home ownership⁷¹;
- (c) Geographic constraints on urban growth.⁷²
- (d) Delays in the provision of infrastructure and necessary consents to translate zoned land into supply.⁷³

[96] As highlighted in the Planning JWS, there is insufficient evidence to quantify these issues and their contribution to under-supply of affordable housing.

[97] Mr Williams, Mr Giddens, and Mr Colegrave, all cite the limited eligibility criteria for the Housing Trust will not necessarily mean that short term and seasonal workers will benefit from Variation.

[98] There appears to be no clear issue statement or problem definition in terms of what is exacerbating housing affordability most acutely⁷⁴, and therefore there is no evidence of how the Variation is the most appropriate way to ameliorate those effects. As addressed by Mr Williams, the issues recited in the purpose statement of the Variation as to vacant home ownership, short-term letting, and constraints on urban growth, are not addressed by the Variation provisions. The Housing

⁷⁰ Council's Section 32 economic assessment – conclusions.

⁷¹ Chapter 40, purpose statement;

⁷² Ibid.

⁷³ Evidence in Chief of Mr Williams at [26-27].

⁷⁴ Of the long list of exacerbating factors in para 2 of the Planning JWS, new residential land subdivision and development is not a contributing factor to unaffordability (yet it is being targeted or penalized by this new tax).

Trust (under current criteria) is only a vehicle for addressing affordable accommodation for longer term residents.⁷⁵

[99] For example, the section 32 economic assessment provides:

The key source of economic benefits arises from secure and proximate housing leading to better labour market outcomes, both through improved employment prospects and reduced turnover.

[100] As addressed in Mr Colegrove's evidence, statistical analysis showed that the district's high worker turnover was largely unrelated to housing affordability and instead reflected the district's seasonal economy plus its young and highly transient international workforce.⁷⁶ He also points out the contradiction in Mr Eaquib's evidence at [4.24] where he seems to back away from the proposition that worker turnover is a key consideration for the Variation's response.

[101] As pointed out in Mr Williams' and Mr Giddens' planning evidence, the Variation will not ameliorate effects of homelessness for a large portion of the District's workforce who do not comply with the Housing Trust's criteria⁷⁷. If there is no clear benefit to address effects of worker turnover and short term / seasonal worker demand for accommodation, it is difficult to understand how the economic benefits from the 2022 CBA remain true. As concluded by Mr Williams:

[64] The focus of the contribution framework is directly to provide for home ownership options whereas there is an identified need to address supply of worker/rental accommodation.

[102] Furthermore, the rationale for providing benefits to worker supply / easing worker turnover are moot when it comes to resort and special zones which include and provide for worker demand they are creating.⁷⁸

[103] QLDC has prepared A3 slides to summarise the Joint Housing Action Plan and the Queenstown Lakes housing story, recently presented to the Planning and Strategy Committee meeting in February 2024. This is

⁷⁵ Evidence in Chief of Mr Williams, at [12].

⁷⁶ Evidence in Chief of Mr Colegrave, at [130].

⁷⁷ See also, Evidence in Chief of Mr Colegrave, at [97].

⁷⁸ Evidence in Chief of Mr Giddens, at [7.6].

included in **attachment B** to these submissions, again highlighting that impacts of concern from a lack of housing availability are fundamentally linked to the worker turnover issue, as cited by the Sense Partners 2022 report.

Summary

[104] In summary of the Submitters' case:

- (a) The Variation is potentially ultra vires in that it imposes methods which serve a tax purpose rather than a resource management purpose;⁷⁹
- (b) If not ultra vires, the Variation is novel and a test case for any such regime in New Zealand and must be robustly supported by evidence that it is the most appropriate method to achieve objectives;
- (c) The NPS-UD and section 31(aa) RMA are Parliament's clear responses to the issue of affordable housing in the RMA and have completely particularised this issue within Part 2 of the Act already. The Variation is not only not giving effect to that national direction and statutory function, but is inconsistent with it;
- (d) The Variation otherwise fails to meet fundamental requirements of any section 32 assessment overlooking or not taking into account clear market distortions / consequences that will flow from the Variation;
- (e) The issues / problem statement for the Variation are not well defined or quantified, and therefore not well addressed by the methods in response;

⁷⁹ There was no clarity provided from Council's witnesses as to how far this Variation goes in terms of the solution sought, to the total issue – i.e. how much new affordable housing will be delivered relative to a shortage identified from the HBA.

[105] The Submitters support mechanisms to deliver on the provision of affordable housing supply and support the outcomes that the Housing Trust has delivered to date, but do not consider the Variation will assist in those objectives.

Dated 1st March 2024



.....
R E Hill
Counsel for the Submitters

**Attachment A – Productivity Commission Report 2015 extracts on
inclusionary housing and Government’s policy response**



Using land for housing

7 Policies targeting lower-cost housing

Key points

- Inclusionary housing policies refer to requirements or incentives in the planning process to provide “affordable” or lower-cost housing as part of a development. Such policies are common in overseas jurisdictions. In New Zealand, only Auckland Council and Queenstown Lakes District Council have inclusionary housing provisions in their current or proposed District Plans.
- Special Housing Areas (SHAs) and Housing Accords have created opportunities to introduce new policies intended to improve “affordability”. Cities and high-growth areas with Housing Accords have taken different approaches, with some requiring developments in SHAs to provide a proportion of housing at specified price thresholds, and/or for people at specified incomes. Others have preferred to negotiate with developers on a case-by-case basis.
- International evidence suggests that inclusionary housing policies have a very small impact on the overall supply of lower-priced housing, and can have a number of other, undesirable effects. There is not a strong case for their expansion in New Zealand.
- Inclusionary housing policies tackle the symptoms of the reduced supply of lower-priced housing, rather than the causes. These causes include restrictive planning controls and the high-cost nature of New Zealand’s building industry. To increase the supply of lower-priced housing, the Government and councils should focus instead on easing planning controls and establishing or supporting institutions that can reduce barriers to supply such as the lack of land parcels that are sizeable enough to make large-scale development economically-feasible.
- One important contribution that governments can provide to support the development of lower-cost housing is land. Central government and local government own large amounts of land in our growing cities, although information about the quantity and state of this land is patchy. Available information suggests that significant amounts of public land may be bare, vacant or substantially unimproved, and suitable for residential development. The Government and local authorities should make an inventory of their land holdings to identify sites that could be freed up for housing.
- The Government has recently announced a tender to use more than 400 hectares of Crown land in Auckland for housing, and has taken early steps to use public land in Christchurch to increase the supply of affordable housing. There are likely to be opportunities to use surplus public land in other high-growth cities to help offset the shortfall of lower-priced housing, especially through partnerships with other landowners to achieve scale.

7.1 Introduction

One distinctive feature of New Zealand housing markets over the past thirty years has been the shift in new housing production towards more expensive dwellings (see Chapter 3). As a result, concerns have been expressed about the future provision of lower-cost dwellings and the existing supply of such housing. Some local authorities have taken steps through their planning provisions to encourage the provision or retention of lower-cost housing through rules or conditions attached to rezoning or development applications (also known as inclusionary zoning or inclusionary housing policies).

This chapter:

- considers examples of inclusionary housing policies overseas and in New Zealand;
- analyses the impacts of such policies; and
- explores alternative options to promote the provision of lower-cost housing.

7.2 Inclusionary housing policies

Inclusionary housing policies cover a wide range of tools and approaches but, broadly defined, refer to requirements or incentives in the planning process to provide “affordable” or lower-cost housing as part of a development. They are common in a number of other jurisdictions similar to New Zealand. Three examples are noted below.

- Section 106 of England and Wales’ Town and Country Planning Act 1990 makes the provision of affordable housing a “material consideration” for the provision of planning approval. Under this law, local authorities that have identified a need for social or low-cost housing in their area can require that a proportion of housing on a development is, by some measure, affordable (Whitehead, 2007, p. 33). The proportions sought vary between local authorities and are subject to negotiation between councils and developers. The affordable housing provided is then transferred to independent social landlords (Austin, Gurran & Whitehead, 2014, p. 463).
- Inclusionary housing policies have been a feature of US planning since the 1970s (Murphy & Rehm, 2013, p. 7). US governments apply a range of policies, which Gurran et al. have described as falling into two broad camps: efforts by state and federal governments to reduce local planning barriers to denser and affordable housing, and voluntary or mandatory developer contributions for affordable housing (Gurran et al., 2008, p. 65).
- South Australia introduced a requirement in 2005 that 15% of all new dwellings in significant development projects are affordable (defined in terms of a price point for the housing, and income levels for the purchasers/renters). The policy was initially implemented through government land releases on the urban fringe, but is now being applied to urban redevelopment projects (Davison et al., 2012, p. 48).

A large number of submitters and other stakeholders argued that New Zealand’s planning and development system should make greater use of inclusionary housing policies (subs. 17, 18, 27, 34, 39, 69, DR81, DR90, DR99, DR114, DR121, DR124, DR128, DR131 & Registered Master Builders Association of New Zealand Incorporated & the Construction Strategy Group, 2015).

New Zealand practice

Provisions in Resource Management Act plans

Both the Environment Court and the High Court have concluded that affordable housing policies and rules fall within the scope of the Resource Management Act 1991 (RMA) and can be legitimately addressed through District Plans (*Infinity Investment Group Holdings Ltd et al. v Queenstown Lakes District Council*[2010] NZEnvC 234 & *Infinity Investment Group Holdings Ltd et al. v Queenstown Lakes District Council*[2011] NZHC 74).

Yet only two territorial authorities within the scope of this inquiry have inclusionary housing policies in their current or proposed RMA plans.

Auckland

In Auckland, the Proposed Auckland Unitary Plan (PAUP) seeks to “improve the affordability of dwellings for households on low to moderate incomes” by:

- encouraging “residential development to provide a range of dwelling types and sizes that help meet the housing needs of households on low to moderate incomes, including social housing and lower cost, market rate housing”; and
- requiring “new large-scale residential development within the RUB [Rural Urban Boundary]” and encouraging “all other development to provide a proportion of dwellings that are affordable for the intermediate housing market” (Auckland Council, 2013b, B2.4).

The PAUP proposals would be implemented by requiring developers to provide 10% of their total production as “retained affordable housing” in new greenfield and brownfield developments of 15 or more

lots or units (Auckland Council, 2013b, Chapter H, section 6.6). “Retained affordable housing” must be sold or rented below specified price points (see the discussion of Special Housing Areas below for more detail).

Queenstown Lakes

The Queenstown Lakes District Council (QLDC)’s District Plan includes an objective of ensuring “access to Community Housing or the provision of a range of Residential Activity that contributes to housing affordability in the District” (QLDC, 2012a, Section 4, p. 59). This objective was only made operative in 2013, following appeals from developers to the Environment Court and the High Court and changes made to the proposed District Plan policy through consent orders. The community and affordable housing objective is implemented through:

- assessments of resource consents for developments in the low-density residential zone;
- assessments of resource consents for developments that would breach density, height, minimum lot size or coverage rules; and
- proposed plan changes (QLDC, 2012a, Section 4, p. 59).

Housing Accords

At a national level, the Housing Accords and Special Housing Areas Act 2013 (HASHA) permits the responsible Minister and local authorities to agree Housing Accords, through which both parties agree to “work together across a range of housing issues, according to the matters that they may identify as relevant to improving housing supply and affordability” (s. 11 (2)(a)). There is no statutory definition of “affordability” in the Act, and the Government does not appear to have a policy definition.

The eight Housing Accords signed to date take different approaches to the matter of affordable housing, although most focus on reducing the time taken to subdivide and prepare land and encouraging greater land supply. The affordable housing objectives in many Housing Accords are ambiguously drafted, making monitoring of performance difficult (Table 7.1).

Table 7.1 Affordable housing provisions in Housing Accords agreed to date

Housing Accord with the New Zealand Government	Affordable housing provisions
Auckland Council	<ul style="list-style-type: none"> • Increase housing supply. • All developments that qualify for the accelerated approvals process are required “to give consideration to the provision of affordable housing and/or first home buyer purchase”. This may be included in conditions of consent.
Tauranga City Council	<ul style="list-style-type: none"> • “To deliver smaller dwellings at a more affordable price point.” • Maintain sufficient supply of land to ensure “a healthy degree of competitive pressure amongst developers”.
Western Bay of Plenty District Council	<ul style="list-style-type: none"> • “Council and Government additionally agree to coordinate their efforts on other issues impacting the provision of affordable housing.”
Wellington City Council	<ul style="list-style-type: none"> • Increase housing supply and speed of development. • “Ensure housing developments provide a mix of house types and include more compact affordable homes to be sold at different price points.”
Tasman District Council	<ul style="list-style-type: none"> • “Encourage developers to subdivide, prepare their land and build houses following release of serviced residential zoned land more quickly than has been the case over the last three years.” • “Encourage housing developments to provide for a mix of house types and include more affordable homes to be sold at different price points.”

Housing Accord with the New Zealand Government	Affordable housing provisions
Nelson City Council	<ul style="list-style-type: none"> • “Maintain an appropriate supply of undeveloped zoned and serviced land for residential development to ensure a healthy degree of competitive pressures amongst developers.” • “Encourage developers to subdivide, prepare their land and build houses following release of serviced residential zoned land more quickly than has been the case over the last three years.” • “Encourage housing developments to provide for a mix of house types and include more affordable homes to be sold at different price points.” • “Maintain an appropriate supply of undeveloped zoned and serviced land for residential development to ensure a healthy degree of competitive pressures amongst developers.” • “Encourage the redevelopment of suitable residentially zoned land to yield greater density of new dwellings that may be more affordable.” • “Review planning provision for residential living in Nelson to provide greater flexibility around housing choices.”
Christchurch City Council	<ul style="list-style-type: none"> • “Develop, or facilitate development by private developers, [of] medium density affordable housing.” • “Seek private sector partners to develop innovative mixed tenure housing on Government-owned land on Carrs Road.” • “Identify surplus Crown and Council owned land that may be appropriate for residential development.” • “Establish a housing entity or entities capable of meeting the requirements of being registered as a Community Housing Provider, to redevelop Council owned social housing assets and to develop social and/or affordable housing to better meet [the] future housing needs of the city.” • “Monitor the progress of the housing related actions in the Land Use Recovery Plan, and take action to address any issues that are impeding the supply and affordability of residential development.”
Queenstown Lakes District Council	<ul style="list-style-type: none"> • “Encourage developers to prepare their land and build houses more quickly than has been the case over the last three years.” • “Ensure housing developments provide a mix of house types and include more compact affordable homes which can be sold at different price points.”

Source: Auckland Council / New Zealand Government, 2013; Tauranga City Council / New Zealand Government, 2014; Western Bay of Plenty District Council / New Zealand Government, 2014; Wellington City Council / New Zealand Government, 2014; Tasman District Council / New Zealand Government, 2015; Nelson City Council / New Zealand Government, 2015; Christchurch City Council / New Zealand Government, 2014; QLDC / New Zealand Government, 2014.

Most Housing Accords do not define “affordability”. The exception is Christchurch, which defines affordability in its “aspirational targets” as:

- “[a] 10% reduction in the number of households at the 40th percentile of household income paying more than 30% of household income on housing”; and
- “[a]n increase in the proportion of new build consents with a value of less than \$250 000” (CCC / New Zealand Government, 2014, p. 7).

Special Housing Areas

Auckland’s Special Housing Areas (SHAs) have detailed affordability criteria for qualifying developments. Developments with more than 15 dwellings must ensure that:

- 10% of the total dwellings are “relative affordable” (defined as “sold for no more than 75 per cent of the Auckland region median house price”); or
- 5% are “retained affordable” (defined as “sold at a price where the monthly mortgage payments ... do not exceed 30 per cent of the Auckland median household income”).³⁹

Purchaser eligibility criteria exist for the affordable houses within Auckland SHAs. A purchaser of a “relative affordable” dwelling must have a gross household income that does not exceed 120% of the Auckland regional median, be a natural person, a first-home buyer and intend to own and occupy the dwelling for at least three years. For a “retained affordable” dwelling, the purchaser must be a registered community housing provider or Housing New Zealand Corporation.

The Order in Council establishing the Western Bay of Plenty’s SHAs requires that a

minimum of 25% of the dwellings in each qualifying development must have a maximum land and house price of \$350,000, [and]

minimum of 25% of the dwellings in each qualifying development must have a maximum land and house price of between \$350,001 and \$400,000. (Housing Accords and Special Housing Areas (Western Bay of Plenty District) Order 2015)

The remaining SHAs throughout the country do not have affordability criteria explicitly laid out in their founding Orders in Council. To the extent that councils in these areas wish to pursue inclusionary housing goals through their SHAs, they are likely to negotiate with developers. For example, Tauranga City Council’s Housing Accord policy states that the Council “will negotiate affordable housing outcomes for each special housing area and/or qualifying development on an individual basis” (Tauranga City Council, 2014a, p. 4). Negotiations will cover dwelling sizes, section sizes, the general price of dwellings in relation to Tauranga medians, the nature of any covenants, purchaser types, the potential to target specific housing needs, the spread and mix of housing types, and the ability to secure affordability outcomes through “an appropriate, legal mechanism” (Tauranga City Council, 2014a, pp. 4–5).⁴⁰

Impacts

New Zealand inclusionary housing policies are relatively new and have not yet been evaluated. However, international evidence on the experience of such policies suggests that they have little impact on the overall supply of lower-priced housing. They can also have a number of other, undesirable effects, including uncertainty and delays, higher prices for non-targeted dwellings and significant administrative costs.

Little impact on the overall supply of lower-priced housing

Inclusionary housing policies tend to have a limited impact on the overall supply of lower-priced dwellings. A RAND Corporation technical paper on inclusionary zoning (IZ) commented that

IZ policies are intended to add to the supply of affordable housing, but they tend to produce small numbers of homes, potentially at substantial cost. To date, IZ programs have played a relatively small role in meeting the nation’s need for affordable housing. It is estimated that IZ programs nationwide have led to the creation of approximately 150,000 units over several decades (Calavita and Mallach, 2010). In contrast, HUD’s [the US Department of Housing and Urban Development] largest rental assistance program—Housing Choice Vouchers—serves approximately two million households, while the LIHTC [Low-Income Housing Tax Credits] program has created more than two million affordable homes. (Schwartz et al., 2012, p. 7)

Powell and Stringham (2005) note the small contribution made by inclusionary housing policies in California, especially when compared to assessed need:

...in the San Francisco Bay Area, the Association of Bay Area Governments estimated the need for very low-, low-, and moderate-priced units to be 133 195 units , or 24 217 per year during the 2001-2006 five and a half year period. Yet in the thirty-plus years that inclusionary zoning has been implemented in the San Francisco Bay Area, inclusionary zoning has resulted in the production of only 6 836 affordable units,

³⁹ Developers can also combine these two approaches.

⁴⁰ The ‘legal mechanism’ may refer to covenants or other requirements on the owners of affordable houses to ensure that they are not sold on to the general market (eg, such as the requirement in the PAUP that ‘retained affordable’ houses are owned by registered community housing providers.)

or 228 units per year. Controlling for the length of time each program has been in effect, the average jurisdiction has produced only 14.7 units for each year since adoption of its inclusionary zoning requirements...The results are similar in Southern California. Thirteen jurisdictions in Los Angeles County and Orange County have inclusionary ordinances, and controlling for the length of time each of these ordinances have existed, these jurisdictions produce an average of 34 units each year. Yet the estimated need for affordable housing in this area is over 1 600 units per year. The affordable housing mandates in California and elsewhere hardly put a dent in the regional need for affordable housing. (pp. 476–77)

Gurran et al. (2008) said of the England's Town and Country Planning Act 1990 provisions that the "s106 mechanism too has delivered concrete outcomes but at around 700 affordable homes each year, these remain only a small proportion of overall output" (p. 89).

F7.1

International evidence indicates that inclusionary housing policies make a very small contribution to the provision of lower-cost dwellings.

One explanation for the poor performance of inclusionary housing policies may be the lack of other supportive policies. Inclusionary housing policies appear to work best when they are part of a wider suite of tools. Whitehead (2007) concluded that while land use regulation for affordable housing

may be one valuable tool in a government's armoury, the land use planning system alone is very unlikely to be a primary source of additional affordable housing...large-scale government financial support is also necessary if affordable housing provision targets are to be achieved. (p. 41)

A review by the Australian Housing and Urban Research Institute into planning provisions for affordable housing similarly found that

[p]lanning mechanisms alone (either mandatory or voluntary) are generally insufficient to secure a significant supply of affordable housing in high value urban renewal or infill contexts without additional resources in the form of land dedication or government funding. (2014, p. 3)

F7.2

Council policies on inclusionary housing are likely to struggle without a range of other supporting policies, most of which require support from central government (such as land and funding).

Uncertainty and delays

Inclusionary housing policies that involve a high degree of discretion on the part of local authorities create the risk of uncertainty and delays to development approvals. The English system of Section 106 agreements, which involves negotiations between councils and developers to determine the exact form and scale of the affordable housing contribution was criticised in a review commissioned by the UK Deputy Prime Minister for its lack of transparency, potential for abuse and length of the process, which could "take many months, occasionally years, and are costly in both local authority and developer time and resources" (Barker, 2004, p. 67).⁴¹ The review recommended scaling back the scope of the agreements, and providing an alternative of local authorities levying a charge on developments. Davison et al. also emphasise the importance of certainty in affordable housing requirements for developers:

A key message from developers was that certainty is what they want the planning system to deliver, more than anything else. (2012, p. 108)

Uncertainty and discretion can create barriers to entry and inefficiencies. Of the Section 106 agreements, Cheshire et al. (2014) comment:

...developers invest heavily in the expertise to negotiate favourable agreements. This is a fixed cost that new entrants and small firms have difficulty affording. Moreover it is yet another opaque element in the British planning system making it difficult for foreign firms to enter the market. (p. 135)

⁴¹ A later review of land use planning by the same economist found that 45% of Section 106 negotiations took longer than six months to complete (Barker, 2006).

Gurran et al. (2008) similarly note that the inability of developers to “make a price estimate of the ultimate cost of the contribution” under Section 106 is “likely to deter housing development” (p. 107).

F7.3

Inclusionary housing policies that involve high degrees of discretion on the part of local authorities create uncertainty and delay, discouraging development.

Higher prices for non-“affordable” housing

Inclusionary housing policies can increase the price of non-“affordable” housing, although the likelihood and size of the effect depends on the nature of the policy, the state of the property market and price elasticities.

Knaap, Bento and Lowe (2008) reviewed the impacts of inclusionary zoning schemes in California and found that they increased costs in higher-priced markets:

We also found that housing prices in cities that adopted inclusionary zoning increased about 2-3 percent faster than cities that did not adopt such policies. In addition, we found that housing price effects were greater in higher priced housing markets than in lower priced markets... These findings suggest that housing producers did not in general respond to inclusionary requirements by slowing the rate of single family housing construction, but did pass the increase in production costs on to housing consumers. Further, housing producers were better able to pass on the increase in costs in higher priced housing markets than in lower priced housing markets. (pp. 1–2)

Housing in areas with inclusionary zoning was also smaller, with most of the reductions in size occurring in lower-priced housing (Knaap, Bento and Lowe, 2008).

Another assessment of inclusionary zoning in San Francisco and Boston using regression analyses “suggest[s] that IZ does contribute to increased sales prices of existing single-family homes during rising regional markets, and may depress local housing prices when regional prices decline” (Schuetz, Meltzer & Been, 2011, p. 321). In its interim guidance on the PAUP, the Independent Hearings Panel expressed concerns “that the proposed form of retained affordable housing could further reduce housing affordability by increasing the cost of the general supply of housing” (Auckland Unitary Plan Independent Hearings Panel, 2015b, p. 2).

Such results are not surprising, in that some types of inclusionary housing policies effectively require developers to produce lower-price units than they would have without regulation. To maintain their expected profit margins, developers may seek to increase the price of non-regulated dwellings, perhaps by improving their specifications.

Administrative costs

Depending on their form, inclusionary housing policies can create high administrative costs. Examples include policies that require plan-mandated affordable housing to be provided to specified residents (eg, those below certain incomes) or organisations (eg, registered social housing providers) or that require ongoing monitoring to ensure that the housing is not sold on to the general market. High administrative costs can lead to poor enforcement. Research into England’s Section 106 agreements found that in many cases

...the local authority and RSL [registered social landlord] staff were unable to answer the question of how many units had been delivered on a site and whether this was consistent with S106 agreement. There are few systems in place that actually record the details of the S106 and then monitor with reference to the original agreement. (Monk et al., 2006, p. 36)

F7.4

Depending on their design and the state of the housing market, inclusionary housing policies can also increase the price of non-targeted dwellings and involve significant administrative costs.

The need to tackle sources, not symptoms

Some commentators have characterised inclusionary housing policies as a form of compensation for the negative impacts of the planning system:

[P]lanning gain is a way of compensating the poor who disproportionately bear the costs of planning. Planning limits the supply of new homes, especially in tightly constrained areas, but does not limit demand...As a consequence, people go 'unhoused', occupy smaller homes or commute longer distances from areas with less stringent planning constraints. In the longer run the planning system adjusts to housing shortages by releasing more land, but in the short run, the poor, in effect, pay for the wider benefits society enjoys from its planning policies, while landowners of the limited development land that is released enjoy substantial windfall profits. (Crook & Monk, 2011, p. 1012)

The negative impacts of planning – in particular the council's urban containment policy – appear to have been a key motivation for introducing affordable housing policies in Queenstown (*Infinity Investment Group Holdings Ltd et al. v Queenstown Lakes District Council*, 2010).

But if the planning system and its impacts on the supply of land for housing are the proximate causes of declining affordability, then the logical response is to ease the planning system's restrictiveness rather than tackling a symptom of that restrictiveness through inclusionary housing policies. This approach was recommended by the Commission in the *Housing affordability inquiry* (2012a), and the Commission continues to see this as the priority. Elsewhere in this report, the Commission has recommended a number of changes to land use rules that would make it easier to build smaller and lower-cost housing, including removing apartment balcony requirements, minimum parking obligations and density limits, and only introducing height limits where there is a net benefit (Chapter 5). The Commission also recommends changes to the overall planning framework, which would strengthen incentives on local authorities to provide enough development capacity to meet demand. (Chapters 11 and 12) The risk with inclusionary housing policies is that they can draw the focus away from ensuring that the overall planning system is as efficient and enabling as possible.

Another important barrier to the provision of affordable housing is the high-cost nature of the building industry. This cost structure is driven by a number of factors, many of which the Commission explored in its *Housing affordability inquiry*. These include high input costs, a fragmented supply chain, the predominance of small firms and a lack of large-sized land blocks (NZPC, 2012a, pp. 170–95). Any strategy to increase the supply of lower-cost housing will also need to lean against the factors contributing to high building costs.

Some of these factors are more amenable to government intervention than others. One area where government intervention could be beneficial is establishing, or supporting, institutions that can:

- amalgamate land parcels into sites that are sizeable enough to make large-scale development economic;
- attract developers with the experience and systems to innovate and bring costs down;
- coordinate the provision of infrastructure; and
- remove or ease planning barriers to the provision of innovative and lower-cost housing.

One type of institution that can deliver such benefits is an urban development authority (UDA). The Commission discusses UDAs in more detail in Chapter 12.

F7.5

Inclusionary housing policies target the symptoms, not the causes, of a declining supply of lower-cost housing. They do not offset planning controls that limit the supply of land or the other factors that contribute to the high-cost nature of New Zealand's building industry, such as fragmented land holdings that mean developments cannot capture significant economies of scale.

R7.1

Rather than pursuing inclusionary housing policies, the Government and councils should promote a greater supply of lower-cost housing by:

- removing planning controls that limit the supply of development capacity and housing; and
- supporting or establishing institutions that lower barriers to the supply of lower-cost housing (eg, urban development authorities).

7.3 Using public sector land for lower-cost housing

An alternative to encouraging the supply of lower-cost housing through planning regulation is for governments to dedicate their own land holdings for this purpose. The contribution of government land is a core input to strategies in other countries aimed at encouraging the provision of more lower-cost housing, and is particularly important in higher-cost areas and markets with high levels of development activity (Gurran et al., 2008).

Releasing and using public sector land has been a focus of housing strategies in a number of jurisdictions.

- The Mayor of London's recent housing strategy notes:

It is estimated that 40 per cent of brownfield land suitable for development is in the ownership of the public sector, including both central and local government. The Mayor is committed to accelerating the disposal of surplus public sector landholdings to boost the development of homes, and the GLA [Greater London Authority] has put in place a number of mechanisms to enable this. (Mayor of London, 2014, p. 77)

- Similarly, New York City is planning to conduct a "comprehensive survey of all vacant sites in the City", with the intention of encouraging "affordable housing and mixed-use development on underused sites within our own portfolio, as well as in partnership with the State, public authorities, not-for-profit institutions, faith-based organizations, and private owners who have land that could be deployed for affordable housing" (City of New York, 2014, p. 9).
- Turkey's housing agency TOKI assembles land packages by acquiring land from other government agencies, and enters into partnerships with private sector developers. Private developers build housing for the wider market and split the revenue earned with TOKI, which uses the funds to acquire more land and build affordable houses. Between 2003 and 2013, this strategy released more than 160 km² of public land, leading to the development of more than 500 000 units (McKinsey Global Institute, 2014, p. 55).
- In 2010, Australian state and federal governments undertook an audit of surplus government land, which identified 1 150 hectares suitable for "housing and community development over the subsequent one to three years" (Housing Supply and Affordability Reform Working Party, 2012, p. 23). The Australian federal Department of Finance currently maintains a register on its website of surplus Commonwealth land potentially suitable for housing and community outcomes, although the National Commission of Audit noted that this list "is not a full list of surplus Commonwealth land holdings" (2014, p. 225). Making surplus land available for housing is also part of the New South Wales Government's *Plan for growing Sydney* (New South Wales Government, 2014, p. 67).

How much public land is available for housing?

Information about public land holdings across New Zealand cities, and their availability for residential use, is not readily available. A survey of total public land holdings in Auckland conducted for the Ministry of Business, Innovation and Employment (MBIE) found that central and local government agencies hold more than 43 000 parcels of land in Auckland, totalling 70 571 hectares (Table 7.2).

Table 7.2 Publicly owned land in Auckland

Organisation/entity	Number of land parcels	Sum of area (hectares)
Central government		
Housing New Zealand Corporation	21 265	1 557.81
Reserves and other gazetted land	5 845	12 546.46
Her Majesty the Queen ¹	3 519	4 393.87
Schools	1 253	922.05
State-owned enterprises and Crown agencies	288	651.34
District Health Boards	64	70.68
Tertiary education institutions	51	152.15
Local government		
Auckland Council	10 737	27 197.27
Watercare Services	329	2 901.56
Auckland Waterfront Development	168	34.00
Ports of Auckland	113	133.43
Auckland Transport	46	9.96
Total	43 678	70 570.58

Source: MBIE, personal communication.

Note:

1. 'Her Majesty the Queen' includes land held in the conservation estate, prisons and some education land.

Data from the Office of the Valuer-General suggest that significant amounts of this publicly owned land in Auckland and some land in Wellington is suitable for residential development:

- Table 7.3 shows the amount of publicly-owned land in these two cities that has been classified by valuers as residential, bare, unimproved and large enough that it "is likely to be subdivided into dwelling house sites" (LINZ, 2010, p.64).
- Table 7.4 shows the publicly-owned residential land in the two cities that is "vacant or substantially unimproved land [and] on which it is likely a single dwelling house will be built" (ibid).

Similarly, Auckland Council's previous property arm (Auckland Council Property Limited) identified that "in sites on its 'books'...approximately 2,500 houses can realistically be built over a period of years by development partners" (ACPL, 2014, p. 4).

Table 7.3 Publicly owned bare land in Auckland and Wellington (RB classification)

	Auckland		Wellington	
	Total land area (hectares)	Total land value	Total land area (hectares)	Total land value
Core Crown	50.42	\$103.0m	3.36	\$1.0m
Local authority	51.89	\$58.5m	21.38	\$3.1m
Non-core Crown	55.05	\$86.8m	0	
Total	157.36	\$248.3m	24.74	\$4.1m

Table 7.4 Publicly-owned vacant land in Auckland and Wellington (RV¹ classification)

	Auckland		Wellington	
	Total land area (hectares)	Total land value	Total land area (hectares)	Total land value
Core Crown ¹	20.79	\$113.0m	1.76	\$8.95m
Local authority	33.12	\$105.0m	11.33	\$14.70m
Non-core Crown ¹	9.22	\$35.9m	0.16	\$0.86m
Total	63.13	\$253.9m	13.25	\$24.51m

Source: Productivity Commission analysis of Valuer-General data.

Note:

1. Land value for Auckland is from 2014. Land value for Wellington is from 2012. 'Core Crown' includes government departments, 'non-core Crown' includes Crown entities and state-owned enterprises.

Under the Housing Accord signed between the Government and Christchurch City Council, both parties agreed to identify "surplus Crown and Council owned land that may be appropriate for residential development" (CCC / New Zealand Government, 2014, p. 5).

Beyond Auckland and Christchurch, as far as the Commission could determine, neither central nor local government appear to have assessed public land holdings suitable for residential development. What information is publicly available on government-owned land designated for disposal provides little guidance on its size, zoning or servicing. MBIE, in conjunction with relevant local authorities, should make an inventory of public land holdings in all high-growth cities to clearly identify surplus sites that could be used for housing.

Any assessment of 'surplus' land would have to take into account the need to hold land for Treaty of Waitangi settlements, any obligations established by existing settlements to offer a right of first refusal, and any obligations under the Public Works Act 1981 (PWA) to first offer land back to the original owners before it can be sold on the open market. Recent controversy, including possible court action, over plans to develop Crown land in Auckland for housing has highlighted the importance of clear and effective consultation with iwi and other stakeholders prior to any decisions to release public land.

The public sector currently has processes to meet the government's Treaty and PWA obligations, such as the Office of Treaty Settlements' Land and Property Protection Mechanism, and internal departmental systems for the disposal of land. The government has also established the Crown Property Centre of Expertise within Land Information New Zealand to assist agencies with land disposal projects.

F7.6

With the exception of Auckland and Christchurch, neither central nor local government appears to have undertaken a stocktake of public land holdings in high-growth cities to identify land that could be released for residential development.

R7.2

The Ministry of Business, Innovation and Employment, in conjunction with relevant councils, should make an inventory of public land holdings in all high-growth cities to identify surplus sites that could be used for housing.

The Government has recently announced plans to develop housing on more than 400 hectares of Crown land in Auckland. This is a positive step, and should help to meet some of the city's housing shortfall, especially if building can take place at higher densities than in the past. Some early steps in this direction have also taken place in Christchurch (Box 7.1). Opportunities may exist to use public land holdings in other cities to help fill the shortfall of new, lower-priced housing.

Box 7.1 Use of public land in Christchurch to achieve affordable housing goals**Welles Street and Colombo Street**

In 2008 the Christchurch City Council bought properties at Welles Street and Colombo Street because the sites were considered necessary to realise the Council's vision for the inner city (van Beynan, 2010).

In the 2014 Housing Accord, the Council agreed to make the properties available at fair market value with deferred payment; and the Government agreed to establish a \$75 million Christchurch Housing Accord Fund to develop these and other suitable sites that may be identified in future.

Following a tender process, the Government has contracted with Fletcher Living to build 191 new dwellings on the properties over the next two years, including apartments and terraced houses. Of these homes, 38 will cost less than \$450 000 – the local threshold for the Government's KiwiSaver HomeStart subsidy scheme. As an incentive, payment for the land has been deferred until the development is complete.

Awatea

The Government has contracted Fletcher Building to build 237 standalone and terraced homes at Awatea/Carrs Road. The site is Crown-owned and the properties will remain in Crown ownership until construction is completed. Of the homes, 89 will have a purchase price of less than \$400 000; 50 will involve shared-equity ownership with the New Zealand Housing Foundation, a not-for-profit charitable housing trust.

The process of contracting the development of surplus public land for housing could be managed centrally, through a dedicated unit within a public service department (such as MBIE), or through joint ventures with local government or private landowners. A number of local authorities signalled a willingness through their submissions to partner with central government in developing publicly held land (subs. DR95, DR102 & DR118). Auckland Council has recently established a UDA (Panuku Development Auckland) to regenerate brownfield sites, putting "underutilised [Council-owned] land and new infrastructure alongside another partners' land (Housing Corp, iwi, private developer) to give enough scale" (Town, 2014). The Government could look to contribute land to Panuku Development Auckland projects that lead to the supply of more lower-cost housing (see Chapter 12).

R7.3

Once an inventory of public land holdings is complete, the Government should seek opportunities to partner with local authorities and private landowners to achieve scale sites for lower-cost housing development.

Ensuring a continued supply of public land

Given the contribution public land can make to strategies to increase the supply of lower-priced housing, it is important that stocks of public land can be replenished. This matters for two reasons. First, without the ability to acquire more land, a strategy focused on releasing public land will be a "one-shot" solution, leaving future governments and councils with fewer tools. Second, the current stocks of spare public land were not acquired with housing objectives in mind and are likely to be arbitrarily distributed. There may be large amounts of public land in one city facing affordability challenges, and little in another. The ability of central or local governments to address housing affordability issues should not be determined by historical land purchase decisions.

This has a number of policy implications. For example, local authorities establishing, or considering the establishment of, UDAs should:

- allow the organisations to trade in land;
- permit the UDAs to retain and recycle the receipts from land sales; and

- ensure that the institutions have the tools, such as compulsory acquisition powers, necessary to amalgamate land and create new large-scale sites.

This last point is likely to require assistance from central government. Chapter 12 discusses compulsory acquisition powers in more detail.

7.4 Conclusion

The relative decline in the production of new, lower-cost dwellings is a source of concern and has led many parties to call for stronger tools to retain and encourage 'affordable' housing. One response is 'inclusionary housing' policies, which are used to some degree in the United States, the United Kingdom and Australia but are not very prominent in New Zealand. Such policies involve requirements or incentives to provide a certain number or proportion of lower-cost units as part of a development. The Commission does not see a strong case for the expansion of such policies, as they tend to have a limited impact on the overall supply of lower-cost housing and can have a number of undesirable effects, such as uncertainty and delays for developers, upward pressure on the prices of other housing, and high enforcement costs.

Inclusionary housing policies tackle the symptoms, rather than the causes, of a reduced supply of lower-priced housing. Restrictive planning controls and the high-cost nature of the building industry are two key sources of this reduced supply. Rather than pursuing inclusionary housing policies, the government and local authorities should focus on making the planning system work better, easing planning controls in District Plans, and supporting or establishing institutions that remove barriers to the supply of lower-cost housing, such as the lack of land parcels that are sizeable enough to make large-scale development economic.

One important contribution that governments can provide to support the development of lower-cost housing is land. Central and local governments in New Zealand are significant landowners. They should inventory their stocks to identify suitable surplus sites, seek opportunities to partner with others to achieve scale sites for lower-cost housing development, and ensure that they have processes and institutions in place to replenish stocks of public land. Early steps have been taken in Auckland and Christchurch to use surplus public land to promote more lower-cost housing, and similar opportunities in other high-growth areas are likely.

F6.14 The benefits of nationally standardised land use rules and zones, such as occur in many Australian states, are unlikely to outweigh the costs.

F6.15 Little information is available on the proportion of land use activities that are “permitted” under existing District Plans. However, the experience of the Queenstown Lakes District Plan review suggests that scope exists for further liberalisation of residential land use requirements in current RMA Plans.

Recommendations

R6.1 The Government should introduce amendments to the RMA, allowing councils to only notify directly affected parties of proposed plan changes that are specific to particular sites. The amendments should mirror the 2009 amendments to section 95 of the RMA.

R6.2 The Ministry for the Environment should review whether the current Schedule 1 requirements provide enough room for innovative consultation processes, while also protecting the rights of affected parties.

R6.3 Councils should publish and consult on draft plan changes of interest to the wider community ahead of notification, unless compelling reasons exist for not doing so.

R6.4 Councils should limit the use of special purpose zones. They should only be used for large facilities with particular land use requirements that are unlikely to move sites.

R6.5 In reviewing their District Plans, local authorities should move more residential land-use activities into “permitted” or “restricted discretionary” status.

Chapter 7 – Policies targeting lower-cost housing

Findings

F7.1 International evidence indicates that inclusionary housing policies make a very small contribution to the provision of lower-cost dwellings.

F7.2 Council policies on inclusionary housing are likely to struggle without a range of other supporting policies, most of which require support from central government (such as land and funding).

F7.3 Inclusionary housing policies that involve high degrees of discretion on the part of local authorities create uncertainty and delay, discouraging development.

F7.4 Depending on their design and the state of the housing market, inclusionary housing policies can also increase the price of non-targeted dwellings and involve significant administrative costs.

F7.5

Inclusionary housing policies target the symptoms, not the causes, of a declining supply of lower-cost housing. They do not offset planning controls that limit the supply of land or the other factors that contribute to the high-cost nature of New Zealand's building industry, such as fragmented land holdings that mean developments cannot capture significant economies of scale.

F7.6

With the exception of Auckland and Christchurch, neither central nor local government appears to have undertaken a stocktake of public land holdings in high-growth cities to identify land that could be released for residential development.

Recommendations

R7.1

Rather than pursuing inclusionary housing policies, the Government and councils should promote a greater supply of lower-cost housing by:

- removing planning controls that limit the supply of development capacity and housing; and
- supporting or establishing institutions that lower barriers to the supply of lower-cost housing (eg, urban development authorities).

R7.2

The Ministry of Business, Innovation and Employment, in conjunction with relevant councils, should make an inventory of public land holdings in all high-growth cities to identify surplus sites that could be used for housing.

R7.3

Once an inventory of public land holdings is complete, the Government should seek opportunities to partner with local authorities and private landowners to achieve scale sites for lower-cost housing development.

Chapter 8 – Planning and delivering infrastructure

Findings

F8.1

Infrastructure accounts for a significant share of the cost of new dwellings. Costs are location-specific and consist primarily of costs incurred by the developer in constructing on-site infrastructure, development contributions paid by the developer to councils, and connection fees for private utilities.

F8.2

Most inquiry participants suggested that higher-density urban developments are less costly to service with infrastructure, particularly when existing infrastructure assets have not yet reached capacity. International research examining the relationship between urban form and infrastructure costs generally supports this proposition.

F8.3

Councils are required to undertake relatively rigorous infrastructure planning processes, a reflection of the fact that councils are asset-intensive organisations.

F8.4

Councils tightly control the supply of trunk infrastructure to support urban growth. This is a prudent approach from the perspective of managing costs and risks. However, if the supply of infrastructure is too conservative, it can constrain the supply of land for housing. In turn, this can contribute to higher land prices by reinforcing expectations among investors of a scarce supply of serviced land for housing.

Response to the Productivity Commission’s *Using Land for Housing* recommendations

August 2016

1. Defining expectations and monitoring performance

RECOMMENDATION	GOVERNMENT RESPONSE
National Policy Statement on Urban Development Capacity	
<p>That planning system be improved to provide clearer expectations and monitoring frameworks for the provision of development capacity:</p> <ul style="list-style-type: none"> • To introduce common terminology regarding land supply and its readiness for building and councils use and report on this (R8.2) • That councils should be required to make use of land price information in their planning decisions (R11.5). • To explore the potential to develop an Urban Feasibility Model (R5.14). • To develop a process to regularly monitor and report on the land prices for developable and non-developable land (R12.8). 	<p>The Government agrees that it is important to set clear expectations for councils in providing land for housing. The Minister for the Environment recently released a proposed National Policy Statement on Urban Development Capacity (NPS) for public consultation. This will provide explicit requirements for councils to provide sufficient land for housing, and a way of benchmarking council performance in response to those requirements. The proposed NPS:</p> <ul style="list-style-type: none"> • Puts in place a tiered set of different requirements targeted to different housing markets, some are targeted to all local authorities, while some are targeted to ‘medium growth’ urban areas and all of the requirements are targeted to ‘high growth’ urban areas. • Requires all councils to provide ‘sufficient development capacity’. ‘Sufficient’ is defined as enough development capacity to meet residential and business demand (including the demand for different types, locations and price-points of dwellings), plus additional margin to take account of the likelihood that not all capacity will be developed. This is intended to ensure enough development capacity is provided to create competitive tension between land owners and developers to keep prices in check. • Has a consistent theme of requiring local authorities to better understand the market, and respond to market activity, including requirements for medium and high-growth councils to: <ul style="list-style-type: none"> – Seek to enable land and development markets to operate competitively. – Monitor a range of indicators of market activity, including resource consents and building activity, and pricing signals (including the ratio of land values between rural and urban zoned land at the periphery, and the ratio of the value of improvements to the value of land within the urban area). – Assess the commercial feasibility of development capacity enabled in plans, and to assess the cumulative impact of all the rules and development controls in enabling development.

Further regulatory barriers to growth	
<p>The Government should ensure that future legislative proposals that restrict land use near cities are assessed for their impact on housing supply and cost (R5.2)</p>	<p>The Government agrees and expects that the explicit requirements under NPS would ensure that any future local bills that remove or limit development in certain areas take account of the impact on housing supply and costs.</p> <p>Although the Regulatory Impact Statement process does not apply to local Bills, the Department of Internal Affairs is generally appointed to advise a Select Committee considering a local Bill. They provide advice to the Committee on whether to support the Bill and on the impacts the Bill is expected to have, which would include any impact on development capacity.</p>
<p>The Government should review foreign investment screening provisions to assess the potential for an exemption for foreign developers purchasing land that will be developed into housing in an acceptable timeframe (R5.5).</p>	<p>The Government agrees that the foreign screening regime can place a New Zealand based developer with foreign ownership at a disadvantage to domestic developers. The Government considered introducing an exemption of this kind as part of current changes to the Overseas Investment Regulations 2005, but concluded such an exemption, in a form that would have the desired impact, would require legislative change. The Government has no plans to review the Overseas Investment Act 2005 at this stage. The Government is working with the Overseas Investment Office to identify where process improvements can be made to reduce the cost and time associated with approvals, including for residential property developers.</p>
<p>The Government should review the legislative provisions for covenants with a view of introducing a sunset period on restrictive covenants and reducing the proportion of landowners required to change a covenant (R5.12)</p>	<p>The Government agrees that covenants can constrain land use and prevent redevelopment that might otherwise occur. The need for unanimous approval of all covenanters means that covenants can be unresponsive to changes in land use over time. Even where a change in use is in the interests of most parties there can be hold outs. The Government has directed officials to identify the scope of the problem and to consider the merits of a sunset clause, allowing change by super-majority, and other mechanisms that ensure covenants do not unreasonably inhibit the provision of housing.</p>
Policies to require lower cost housing	
<p>The Government and councils should promote the supply of lower-cost housing by loosening planning controls and institutional arrangements, rather than inclusionary housing policies (R7.1).</p>	<p>The Government agrees that general application of inclusionary zoning policies is undesirable. The Government has submitted against this type of provision within the AUP.</p> <p>Inclusionary zoning policies that apply across the board to all developments should be distinguished from developments involving Crown land where as part of the development the Crown requires a certain proportion of affordable or social housing. In those cases the cost of the requirement is likely reflected in the land price, and therefore met by the Crown.</p>

Attachment B – February 2024 JHAP update

The Housing Challenge in Queenstown Lakes

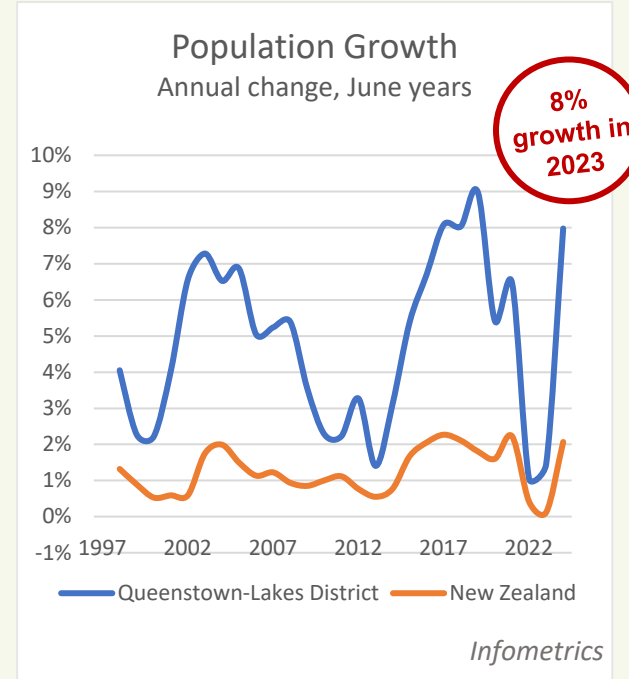
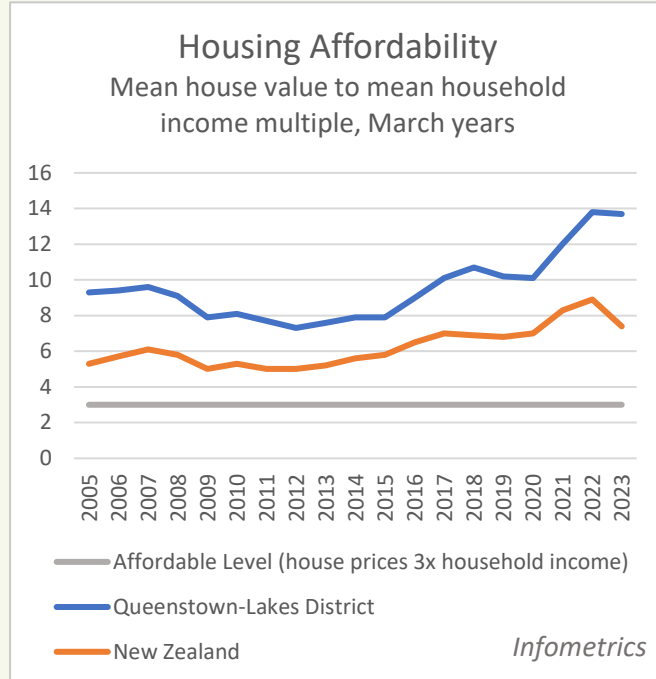
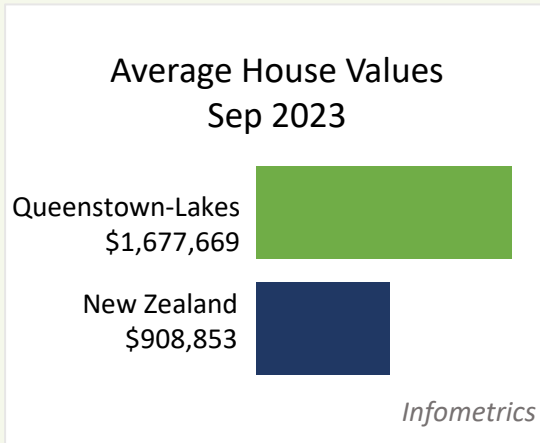


Jan 2024

The Problem

Housing is critical infrastructure, and fundamental to wellbeing, sustainable well-functioning urban areas, and development. Yet:

1155 households are on the Queenstown Lakes Community Housing Trust waitlist (Jan-24)

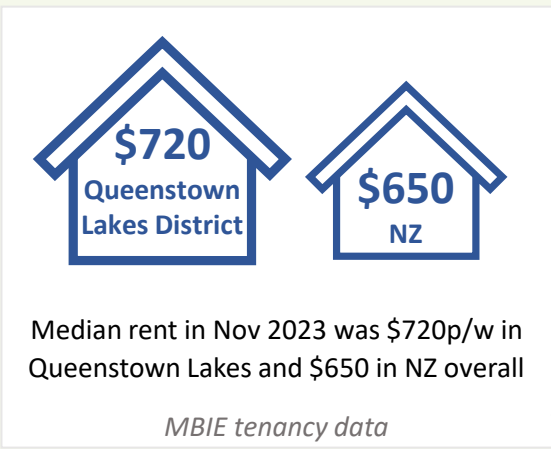


3.3 million unique visitor arrivals to the district (year ending June 2023), 63 visitors per resident, puts pressure on services funded by ratepayers

Destination Queenstown

- ### Drivers
- High demand from across NZ and overseas, supported by wealth not just local incomes
 - The tension between protecting the character of the district and the landscape, and providing more and higher density homes
 - Holiday/second homes left empty when not in use
 - Short-term rentals have fewer regulations and higher returns than long-term tenancies
 - High building costs due to scale and location

In 2022, Queenstown Lakes District Council granted the highest number of building consents per 1000 residents of any territorial authority in the country (Statistics NZ). However, the market mostly delivers bigger, more expensive homes, and there are **not enough new affordable homes or rentals.**



While the district has enough plan enabled housing capacity both short and long term (shown through the Spatial Plan) there is still insufficient capacity in the lower price bands

Queenstown Lakes District Housing Development Capacity Assessment 2021

Impacts

- Essential workers leave and businesses **struggle to attract and retain the right staff**: the higher labour turnover rate is costing the local economy \$105m-\$200m a year (3-6% of QLD's GDP)
Sense Partners 2022: The economic case for Inclusionary Zoning in QLDC
- When long term residents are **forced to leave** the district, it **separates friends and families** and disrupts social cohesion
- Detrimental impacts on personal wellbeing, from **financial stress** and **inability to leave unsafe housing**
- Migrants / ethnic communities report **discrimination** in the rental market
- People are **living in cars** and campgrounds
- Mana Whenua **struggle to house whanau** in the district and are unable to exercise their traditional practices e.g. mahinga kai
- Some demographic groups can't afford to live here, impacting **diversity** and resilience
- People are **forced to live further away**, creating car dependency, long commutes, more driving emissions, higher travel costs, and less safe roads
- Employees who are **financially and housing stressed** are more **disengaged and less productive**, sometimes holding more than one job to make ends meet

The Housing Challenge in Queenstown Lakes

Jan 2024



Gaps in the data

Public housing (subsidised by MSD): anecdotal evidence suggests many more households are eligible than the housing register suggests

Homelessness: How many people, including longer term residents, are living in cars and campgrounds?

Short-term letting: How many homes are being used for short-term letting instead of longer-term rentals?

Empty homes: census data is 5-yearly and imprecise. How many potential rentals are vacant and why?

Migrants: QLD has a large migrant population. How many are struggling and ineligible for support?

Relocation: How many people are forced to leave because they can't find and retain suitable housing?

Mana Whenua: How big is the challenge to house whanau in the district?

What we're doing

Implementing the **Joint Housing Action Plan:** Working with central government partners and the local community, including:

Queenstown Lakes Spatial Plan: ensuring future proofed best use of priority development areas

Inclusionary Housing: a proposal that new subdivisions and developments provide an affordable housing contribution to community housing providers

Intensification and upzoning: to enable more housing capacity, including a special purposes zone for Te Pūtahi Ladies Mile

Supporting **Queenstown Lakes Community Housing Trust:** with funding, land and other ways to provide affordable housing

Advocacy: highlighting the changes we need to effectively address the housing crisis

Improving our data: to build the case for new funding and policy support from central government and our community

Short-term letting

The shortage of longer-term rental properties is exacerbated by homes being used for short-term letting/holiday rentals

QLDC has tried to restrict short-term letting, but there are limits to what can be done through the Resource Management Act

The rules require everyone to register and require resource consents above a certain threshold, but this is very difficult to enforce

We don't have good data on who is letting out properties and whether they are following the rules

(see box below)

Legislative change would help us limit short-term letting

What else could help

Increasing the supply of long-term rentals:

Alongside signaled changes to tenancy legislation:

Stronger short-term letting controls: to boost rental supply and to monitor compliance with the rules:

- Enable stronger restrictions and/or a levy for using whole houses for short-term letting
- Require short-term letting companies to require proof of registration and provide data
- Healthy homes compliance for all visitor accommodation

Investigate higher rates/levy for underutilised land, short-term letting, or empty homes: to boost housing supply and help fund housing initiatives

Capturing value with 'beneficiary pays':

A key challenge is the cost of infrastructure.

Visitor Levy:

- 3.3 million unique visitor arrivals to the district (year ending Jun 2023) equals 63 visitors per resident
- In a 2019 referendum, over 80% of locals supported a 5% levy on visitor accommodation to help pay for services and infrastructure used by visitors

Infrastructure for residents:

- To unlock further housing supply, commitment from all stakeholders to help fund enabling infrastructure e.g. in a City Deal or IFF Act process

Inclusionary Housing:

Inclusionary Housing provides a sustainable funding stream for retained affordable housing. Continued Government support and national enabling legislation could streamline this process considerably

Private investment and community support:

- Local businesses have a role to play in supporting workers accommodation initiatives and/or directly providing housing for staff
- Community support (from individuals, community groups and businesses) is critical, e.g. for increased housing density, and everyone has a role to play in helping to address the housing challenge