

Before the Independent Hearings Panel

Under the Resource Management Act 1991

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

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**Statement of Evidence of David Frederick Serjeant**

(Planning)

19 December 2023

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## Introduction

1 My full name is David Frederick Serjeant.

## Instruction

2 I have been instructed by Russell McVeagh, Anderson Lloyd, and Brookfields lawyers on behalf of their respective client submitters to the Variation, collectively referred to as the (the '**residential development consortium**')<sup>1</sup>.

## Qualifications and Experience

3 I hold a Bachelor of Planning from the University of Auckland and a Master in Business Studies (Economics) (Honours) from Massey University.

4 I am an independent planning and resource management consultant. I have 44 years of experience in planning and resource management, the last 17 of which have been operating in sole practice as a consultant and as an MfE accredited independent hearing commissioner. My recent and most relevant work experience to this matter includes:

(a) Presenting evidence in the Environment Court in relation to appeals on the Queenstown Lakes District Council Proposed District Plan (Stage 1) on various topics, including Strategic Topic 1: A Resilient Economy, Topic 2 Rural Landscapes and Topic 4 Indigenous Vegetation and Biodiversity; and

(b) Membership of the Independent Hearing Panel for Hamilton City Council, Waikato District Council and Waipa District Council to hear plan changes in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 which has had to consider matters of housing supply.

5 While I have never worked as an economist, my MBS thesis was a input-output multiplier study of the economic impact of tourism in Taupō, I have undertaken socio-economic impact assessments for major projects such as mining, and in 2018 I advised the Biodiversity Collaborative Group on the utility of Transferable Development Rights relating to enhancement

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

subdivision. On a more enduring basis I have always employed resource economics approaches in my resource management practice.

- 6 I attach a short CV with more general work experience (Appendix 1).

### **Code of Conduct**

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

### **Scope of Evidence**

- 8 This evidence has been prepared to address planning matters relevant to the Inclusionary Housing Variation (**Variation**) to the Queenstown Lakes Proposed District Plan by Queenstown Lakes District Council (**Council**). My evidence addresses the following matters:
- (a) relevant background and history of the affordable housing problem in Queenstown Lakes District (**QLD**);
  - (b) the relationship between inclusionary housing and affordable housing;
  - (c) the RMA and social goods;
  - (d) the overseas experience with inclusionary zoning/affordable housing;
  - (e) inputs from social impact analysis;
  - (f) problem definition and the proposed rules.
- 9 In preparing this evidence I have reviewed the following documents/information:
- (a) the evidence prepared for the Council by Ms Lee and Ms Bowbyes and Messrs Mead and Eaqub;
  - (b) the background Council documents, including the section 32 evaluation dated 18 July 2023, the Inclusionary Housing Variation provisions dated 11 October 2022, and the economic report from Sense Partners dated 13 July 2022;

- (c) the peer review of the Council's economic report by Insight Economics dated 16 November 2022;
- (d) Housing Needs Assessment, Market Economics 2019 and Housing Development Capacity Assessment 2021 by Market Economics for Queenstown Lakes District Council;
- (e) *Infinity Investment Group Holdings Limited v Queenstown Lakes District Council* 16 ELRNZ 460;
- (f) various research materials on overseas examples of inclusionary zoning as footnoted.

### **Executive Summary**

- 10 This evidence is the first part of the planning evidence for the submitters. The second part is provided by Mr Chris Ferguson, addressing the key statutory planning matters for plan preparation as required by the RMA, including a section 32 evaluation. The final section of my evidence considers the objective which is the subject of that evaluation, or in other words, the 'problem' for which a solution is being sought through the plan provisions of the Variation. However, before examining the problem, I traverse the relevant background and history of this problem in QLD, consider the affordable housing resource as a public or social good and what that means for the inclusion of the proposed rules, examine what can be learned from the overseas experience, and provide a review of some matters addressed by the Social Impact Assessment upon which Ms Charlotte Lee's evidence is based.
- 11 My conclusion on the proposed Variation is that it constitutes a totally novel departure from the way resource management has been practiced in New Zealand for over 30 years. This practice provides a rational basis upon which to consider the proposed Variation. Mr Mead concludes that it is reasonable for one sector of the housing/land development market to provide a remedy for a housing shortage that they have no responsibility for. On the basis of 30 years of practice, in my view it is totally "unreasonable", with reference to the term used by Mr Mead, though I note that this is not the statutory test.
- 12 There is no dispute that there is a severe shortage of affordable housing in QLD and that this shortage has adverse effects on the health, safety and wellbeing of not just those persons without housing but the wider

community.<sup>2</sup> The efforts of the Queenstown Lakes Community Housing Trust (**QLCHT**) are laudable, however the data demonstrates that, even without the uncertainties recognised in the economic evidence by Mr Osborne, if QLCHT meet their 15-year housing provision targets, which are funded by the contributions derived from the proposed rules, this will do little to reduce the affordable housing shortage. The Variation Strategic Objective 3.2.1.10 seeks a high, if not complete, level of remediation of the current state of unaffordability. As the proposed rules do not come close to meeting that objective, they fall at the first hurdle.

- 13 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. Such transfers as they exist are always for the benefit of the public at large and are generally to avoid, remedy or mitigate the adverse effects of the resource user.
- 14 Inclusionary zoning/affordable housing programmes have been widely used overseas, originally in the United States, where inclusionary zoning was used to counter the effects of exclusionary zoning that was racially and ethnically targeted. Care must be exercised in making comparisons with such programmes, as the characteristics of each are highly variable in terms of whether they are mandatory/voluntary, whether an on-site contribution is preferred or a payment in lieu option is available, whether incentives are offered, what the development threshold (unit numbers) is before a contribution is required, the level of contribution sought, and whether the contribution is linked to residential or non-residential development, or both. In addition to these characteristics is the important factor of the overall delivery of affordable housing within the particular jurisdiction and the proportion of affordable housing that the programme is seeking to deliver.
- 15 Focusing on the United States, where sufficient programmes exist to undertake a wide comparative survey, and in the context of the variability described above, I note that the federal Low-Income Housing Tax Credit programme accounts for 90% of all newly created affordable rental housing units, with inclusionary zoning programmes making a very minor contribution. The majority of inclusionary zoning programmes are mandatory and offer incentives and virtually all programmes seek on-site

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<sup>2</sup> It is relevant to observe at this point that there is a certain symmetry in shortage or sufficiency of affordable housing in that if most persons have access to a reasonable standard of housing, then other public goods such as health, safety and wellbeing also improve, as noted in Mr Osborne's evidence para. 56,

development (to address previous exclusionary practices), with payment in lieu being offered by about half of the programmes as an alternative.

- 16 For general inclusionary zoning with on-site development, residential developers are naturally the target contributor. However, resort area programmes can be differentiated. These programmes parallel the QLD experience for the causes of the affordable housing shortage with employee housing for resort type businesses being a significant driver. In resort areas, non-residential contributors are more common, as linkage contributions from the creators of the housing shortage (i.e. housing for employees) are sought.
- 17 The Australian literature on affordable housing demonstrates similar variability in programme characteristics where such programmes also sit within broader federal and state housing programmes. On-site development is common, including building on government land, and other incentives such as provision at the time of up-zoning when local environmental plans are changed (comparable to the proposed QLD intensification variation), floorspace (density bonuses) and parking concessions are needed to make the programmes viable. The Sydney West programme, referred to by Mr Mead, is largely an on-site programme which targets both residential and non-residential land developers, thus spreading the contribution target over a larger part of the economy than compared to the Variation which targets only some residential land developers of proposed district plan-zoned land. As with the United States experience, the programmes make a very minor contribution to the overall affordable housing problem. Australian commentary also highlights the uncertainty of relying on contributions from developers.
- 18 QLD does not have the benefit of state assisted social and affordable housing. It also lacks the legacy of Council-owned housing that has been built up in some of New Zealand's larger cities over the years. This affordable housing stock has been paid for by taxpayers and ratepayers over many years and thus spreads the burden of affordable housing over most of the community. The provision of affordable housing by taxpayers and ratepayers parallels the conventional resource management approach of ensuring the shortfall of a social good is to be provided by all parts of a community responsible for that shortfall.
- 19 If an RMA option is to be pursued then I support a much broader approach, similar to Mr Ferguson's Option 1, where the contribution target is broader, where incentives are provided, and where the Variation is linked to other strategic initiatives such as the intensification variation. Failing such

modifications to the proposed Variation, I support a general rating approach.

## **Background and history**

20 The background to the Variation has been well documented in the Council section 42A report and supporting evidence. For the purposes of my evidence, I summarise the key points as follows:

- (a) QLD has a significant housing shortage, particularly at the more affordable end of the price range (dwellings in price bands below \$500,000). As at September 2021, QLD was short of 2,350 affordable dwellings<sup>3</sup> (1093 on the QLCHT waitlist)<sup>4</sup>, with this shortage predicted to rise to 7,000 by the year 2050.<sup>5</sup>
- (b) This shortage is set within a context of a housing supply to the year 2050 of 64,500 plan enabled dwellings, of which 51,400 are current feasible development options.
- (c) QLCHT has a focus on the provision of affordable housing. Over the 2013 – 2022 period it has produced 109 dwellings, with a further 147 dwellings in progress for completion in the period 2023 – 2026. It is unclear to me the extent to which all of these dwellings are to be retained as affordable housing.
- (d) A major source of funding for the QLCHT has been use of Special Housing Areas and individually negotiated agreements to secure affordable housing contributions from developments as part of private plan change proposals. These contributions have totalled \$43.6 million since 2003<sup>6</sup>. I understand that QLCHT also receives other funding such as from the previous government’s Progressive Home Ownership Scheme. There are no other significant providers of affordable housing in QLD.
- (e) The Council has existing affordable housing provisions in the Operative District Plan, however these comprise objectives and

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<sup>3</sup> Queenstown Lakes District Council. (2021c). Housing Development Capacity Assessment 2021 page 5

<sup>4</sup> Social Impact Assessment Beca Limited 13 November 2023 section 4.2.2

<sup>5</sup> From *Housing Needs Assessment* Market Economics 2019 “The analysis suggests that the focus on policies relating to housing needs would be on approximately 3,000 households by 2028, and around 4,000 by 2048, compared to just over 2,050 in 2018”.

<sup>6</sup> Under both negotiated developer agreements and the HASHAA Lead policy (para 3.14 and 3.17, Evidence of Ms Bowbyes.

policies, with no rules supporting mandatory contributions. These provisions were finalised following the High Court decision in the *Infinity* appeal on Plan Change 24 in 2010 that proposed to introduce affordable housing provisions to the Operative District Plan.<sup>7</sup> The decision found that the proposed change was within the scope of the RMA. However, it did not make a finding on the specific rule to be introduced. The appellant was subsequently granted leave to appeal, however the appeal was settled by consent order, resulting in the inclusion of only objectives and policies [ODP 4.10.1]. The Variation is a similar proposal to the initially proposed Plan Change 24. However, a notable distinction with the Plan Change 24 approach is that it provided for all plan changes, discretionary activities (in the rural zone) or non-complying activities to be assessed to determine their impact on the supply of affordable housing and accordingly whether a contribution was necessary. No such assessment is proposed under the Variation and the contribution is, in effect, mandatory.

- (f) The section 42A report states that section 108AA does not require a condition of a resource consent to be directly connected to an adverse effect of an activity on the environment. That is correct, but section 108AA nevertheless requires a direct connection to a district rule, the non-compliance with which would require a resource consent (proposed Rule 40.5.2). I defer to legal counsel in terms of the legality of this approach to financial contributions. Irrespective, this hearing is about the appropriateness of the proposed rules which seek to remedy housing affordability, as an adverse effect of urban development in QLD, through contributions by one sector of the community.

### **Inclusionary Housing v Affordable Housing**

- 21 The Variation adopts the term inclusionary housing. I find this term to confuse the meaning of what is being sought by the Variation. The application of the term “inclusionary” derives from the United States where it was used in response to the “exclusionary” zoning practices first applied in the early 1900s to prevent racial and ethnic minorities from moving into middle and upper class neighbourhoods. The exclusion was often achieved by limiting the supply of housing units, including by prohibiting multi-family residential units or the setting of a minimum lot size.

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<sup>7</sup> *Infinity Investment Group Holdings Limited v Queenstown Lakes District Council* 16 ELRNZ 460



- 22 I do not perceive any suggestion that the Variation is seeking to address racial or ethnic exclusion, nor is the introduction of higher density at issue throughout most residential zones in QLD. I note that the Objective and Policies of the Variation all refer to “affordable housing”. The problem is one of affordability, not of any specific group be excluded or included. In this evidence, where it makes sense to refer to affordable housing I will do so, but I consider them the same thing (in the context of the Variation).
- 23 Notwithstanding the above, inclusionary zoning is usefully defined and described as follows in the Australian context:

*Inclusionary zoning is a land use planning intervention by government that either mandates or creates incentives so that a proportion of a residential development includes a number of social or affordable housing dwellings.*

*The benefits of inclusionary zoning include supporting the development of affordable and social housing in good locations, and ensures presence of essential and key workers on lower incomes in places where property prices and rents might be otherwise prohibitive.<sup>8</sup>*

- 24 An important aspect of this definition is the reference to incentives as being an integral part of the intervention. I return to this point below in considering overseas examples of inclusionary zoning.

### **RMA and Social Goods**

- 25 The purpose of the RMA is to promote sustainable management which means “*managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety...*”.
- 26 Affordable housing can be considered a resource which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety. Housing, per se, in New Zealand is typically a market good, provided by the market in locations enabled by a

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<sup>8</sup> *What is Inclusionary zoning, and how does it help deliver affordable housing* Australian Housing and Urban Research Institute 29 August 2023

district plan. However, in Queenstown and other places in New Zealand, the market fails to provide enough housing that is affordable.<sup>9</sup>

- 27 Affordable housing is a social good or public good. The literature varies on the definition of these two goods, the shortage of each potentially resulting from market failure. However, the defining characteristic of a public good is that it is 'non-rivalrous' – consumption of the good by one individual does not reduce availability of the good for consumption by others, and 'non-excludable' – goods that are difficult or impossible to keep non-payers from consuming. Clean air is a recognised example of a public good. Affordable housing does not have these rivalry/excludability characteristics and falls more comfortably into the social good category because it typically requires the intervention of governments.
- 28 The RMA and district and regional plans address a wide range of public and social goods relating to virtually all natural and physical resources including the quality and quantity of water and air, the appreciation of a quiet environment and other aspects of residential amenity, and the identification and protection of landscapes, natural and built character, and biodiversity as addressed in section 6.
- 29 Most public goods are naturally present, and it is human agency or development that has adverse effects on them in terms of reducing their abundance and quality. The RMA establishes a framework for managing them at levels and quantities that addresses the concerns identified in clauses (a), (b) and (c) of section 5(2). That framework identifies national environmental standards and regional and district rules and standards that specify these levels and quantities.
- 30 The rules and standards are implemented in different ways. Some require that a resource user is limited in the amount of the resource that can be consumed (water quantity, space within a residential property which affects amenity, etc.). Others limit emissions to the environment in order to safeguard the life-supporting capacity of air, water, soil and ecosystems. Another category of rules and standards protect and manage values relating to heritage, both natural heritage and cultural/historic heritage.
- 31 All of these rules and standards have two identifiable characteristics. Firstly, they place limitations on private rights that have the effect of protecting the resource, public good or social good for the benefit of the 'commons' so that it can be enjoyed by all of society, or the community at

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<sup>9</sup> P Osborne evidence para. 14

a local level. None of the rules or standards create a transfer of one person's private property right to become another person's private property right.

- 32 Secondly, all of the rules and standards address an adverse effect or the potential for an adverse effect. The resource user responsible for the adverse effect is required to avoid, remedy or mitigate the adverse effect.
- 33 There are no rules that I am aware of that do not exhibit these characteristics. That is not to say that there are not circumstances where financial contributions are made in order to make up shortfalls in an existing development contributions regime (which generally address the growth related infrastructure demand of activities), or where an applicant makes a direct (*Augier*) offer to a third party to address concerns with a development (these are typically outside of district plan rules).
- 34 I also acknowledge that there have been recent regulations that have introduced requirements to enhance or achieve gains in specific resources. For example, *Te Ture Whaimana o te Awa o Waikato – the Vision and Strategy for the Waikato River*, which has the status of a National Policy Statement in the Waikato, goes beyond 'avoid, remedy and mitigate', seeking the restoration and protection of the resources of the Waikato River catchment and enhancement of significant sites, fisheries, flora and fauna. Another example is the National Policy Statement – Freshwater Management's effects management hierarchy and the more recent biodiversity offsetting requirements of the National Policy Statement – Indigenous Biodiversity, which require a net biodiversity gain from offset compensation measures.
- 35 However, both these examples have the public good characteristic I have referred to above in that if an environmental enhancement results, then this is available for all of society.
- 36 In summary, the management of natural and physical resources under the RMA has followed a consistent course for over 30 years, adopting the reasoned framework for avoiding, remedying, mitigating adverse effects and potentially enhancing positive effects so as to ensure that public goods continue to be available for current and future generations.
- 37 At paragraph 4.16 of his evidence Mr Mead concludes that because there is a shortfall in the stock of affordable housing, it is "reasonable" for one sector of the housing/land development market to provide a remedy for this situation. With respect, the conclusion of "reasonable" is not the test set by section 32 of the RMA.

38 In my opinion, the consistent and time-tested approach to resource management I have described above presents a framework for considering the proposed contributions system. On that basis I would conclude that the system is 'unreasonable'. Mr Ferguson provides a section 32 evaluation and I agree with his conclusions that the methods are not the most appropriate way to achieve the objectives, having regard to other reasonably practicable options, and the efficiency and effectiveness of those methods.

**Overseas Experience with Inclusionary Zoning/Affordable Housing**

39 The Council evidence refers to overseas experience with inclusionary zoning/affordable housing.<sup>10</sup> The literature is extensive and I have by no means undertaken what could be called a comprehensive literature review on the matter. Nevertheless, I have undertaken sufficient review of various meta-analyses that are available to provide some commentary for the Panel and to draw tentative conclusions.

40 As I noted above, inclusionary zoning arose as a 1970s reaction to the widespread exclusionary zoning practices in the United States. The literature demonstrates the application of inclusionary zoning/affordable housing programmes in North America, the United Kingdom, some countries in Europe, and Australia, at least.

41 What is immediately apparent from the literature is that a critical aspect of the analysis is the political, statutory and administrative framework within which the various programmes exist. These factors determine the political acceptability, statutory division of responsibility for housing, and various levels of government (federal, state, local) involved in the delivery of solutions. The delivery of the solutions in turn involves a wide range of variability in the inclusionary zoning/affordable housing programme being designed and delivered.

42 Table 1 conveys the various factors considered in the design of such programmes. I note that the Council section 32 evaluation has considered some of these factors.

<b>Programme factor</b>	<b>Detail/Options</b>
Requirement	Mandatory/voluntary
Tenure type	For sale or rental

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<sup>10</sup> D Mead evidence para. 3.15; C Lee evidence Appendix 1 SIA section 5.1.1

Contribution option	On-site provision/payment in lieu
Incentives	Connection to up-zoning, density bonuses, design flexibility, time and cost of fees reduction
Development threshold	e.g. No. of units proposed
Contribution level	No. of units/% of value
Development type (linkage)	Residential/non-residential
Household income threshold	Median income relationship
Affordability term/resale conditions	Years and mechanisms to maintain affordability

**Table 1: Inclusionary zoning/affordable housing programme factors**

43 A very recent and broad meta-analysis of inclusionary zoning/affordable housing programmes was that by Wang and Balachandran (2021), also referred to in the evidence for Council by Ms Charlotte Lee.<sup>11</sup> The analysis in this review was based on 685 programmes in California, Massachusetts and New Jersey and revealed the following results:

- (a) the majority of programmes are mandatory (70%) and offer both for-sale and rental dwellings;
- (b) incentives are offered in 57% of the total programmes, with density bonuses being the most common;
- (c) for the contribution, 99% of programmes included on-site development, while payment in lieu (49%) and off-site development (42%) also being common;
- (d) for 38% of programmes, the on-site development contribution was at or above 20% of proposed housing units, for the remainder this percentage varied below the 20% level. Payments in lieu varied widely, but the for-sale development contribution was between \$5000 and \$8000 per unit.
- (e) 62% of programmes had a set development threshold (before a contribution was required) of between 2 and 10 dwelling units;

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<sup>11</sup> Wang, R., & Balachandran, S. (2021). Inclusionary housing in the United States: dynamics of local policy and outcomes in diverse markets *Housing Studies*, 1–20.

- (f) there were 94 programmes generating fees from non-residential development types, with contributions averaging over these types from \$5.01/ft<sup>2</sup> for retail/service to \$7.90/ft<sup>2</sup> for office space;
  - (g) 75% of the for-sale programmes set the maximum income for eligible households at 50% - 80% of the Area Medium Income (U.S. definition of a low income household); and
  - (h) the affordability term was for at least 30 years.
- 44 The data analysed by Wang and Balachandran for the three states was from a national data set for which the characteristics and the success of the programmes was highly variable. They provide some insight to the size of the problem in the United States and the contribution that these programmes make nationwide amongst other measures. Their review commences with the following statement:

*The affordable housing crisis in the U.S. is severe and persistent, with nearly 38 million cost-burdened households — 31.5% of all households — paying more than 30% of their incomes on housing in 2017.<sup>12</sup>*

- 45 On a nation-wide basis, inclusionary zoning/housing (**IH**) policies make only a minor contribution to affordable housing, with the major federal policy measure being the Low-Income Housing Tax Credit (**LIHTC**) programme accounting for approximately 90% of all newly created affordable rental housing units in the United States. Nevertheless, for jurisdictions where IH policies are supported, the programmes appear to almost match units from the LIHTC programme and can contribute approximately 9% of total permitted units per year.<sup>13</sup>
- 46 The authors note in relation to IH policies:<sup>14</sup>

*IH can be a complicated and controversial policy approach — complicated in a sense that the efficacy of IH is subject to both ever-changing market dynamics and vagaries of local and state political landscapes; and controversial because leveraging market activities to meet local affordable housing needs for public good often raises opposing viewpoints on the roles of the private sector.*

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<sup>12</sup> Wang, R., & Balachandran, S. (2021)

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

- 47 The focus of IH policies in the United States is emphasised in the following statement:<sup>15</sup>

*Through IH, local jurisdictions require or encourage developers to contribute to the creation of affordable housing for lower income households when market-rate development takes place, usually on-site as part of the development project. As such, increasing the supply of affordable housing and fostering economic and racial integration are the two principal objectives of IH.*

- 48 It is clear from this statement that the focus of IH programmes as applied in the majority of jurisdictions in the United States can be differentiated from the QLD focus in this Variation. An economic and racial integration objective which is then addressed by an on-site development focus sets the majority of programmes apart from the QLD problem. However, there is a subset of urban areas with affordable housing problems in the United States that are very similar in their specific focus and objectives to QLD, and that is in the resort areas such as Whistler, Lake Tahoe, Sun Valley, Aspen and Vail. The housing affordability problem besetting these towns has little to do with being exclusionary or inclusionary but everything to do with the following factors:
- (a) the general attractiveness of these areas as a place to live;
  - (b) high proportions of seasonally vacant homes;
  - (c) short-term rentals (e.g Air BnB) consuming otherwise available rental housing;
  - (d) remote work becoming a viable option for knowledge sector workers (particularly since Covid onset) who can out-compete service workers for purchase or rental payments; and
  - (e) developable land constraints in mountain areas.
- 49 These factors drive a problem definition that is different from the typical US housing problem. The housing affordability 'crisis' for these areas, and QLD, is influenced by the very success of the area as a place for tourism, recreation and lifestyle.
- 50 Resort areas are characterised by high population growth and related rezoning for both residential and commercial development. The literature I have reviewed suggests that in these areas the use of linkage zoning

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<sup>15</sup> *ibid.*

contributions for both types of development, thus spreading the incidence of the contribution burden, and the use of incentives, is more prevalent than in the standard IH programme, due to the economic opportunities to take advantage of 'up-zoning' land value changes and to offer density bonuses. In this regard I note that the Variation applies to only some areas of urban development land in the district and that there appears to be little in the way of a strategic connection between this Variation and the proposed urban intensification variation to implement Policy 5 of the NPS-UD.

51 Australian experience with inclusionary zoning has developed over the last 20 years, with programmes in the major urban areas of South Australia, and New South Wales. Victoria and Australian Capital Territory have more recent programmes. The Australian experience represents a similar mix of factors in the various programmes as described above for the United States. A summary of this experience is as follows:<sup>16</sup>

- (a) In South Australia, over the 10 years to 2015, 5485 affordable homes were delivered, accounting for around 17% of new housing supply. The majority of these homes were built on government land or with some other government incentive or subsidy. Participants generally agreed that build to rent projects by the for-profit private sector cannot provide affordable housing without additional subsidy, which includes provision at the time of up-zoning, floorspace or parking concessions.
- (b) Voluntary planning incentives in NSW have delivered a smaller proportion of affordable homes (an estimated 0.5–1% of Sydney's housing supply in the years 2009–2017). A more recent mandated scheme is operating in some parts of Sydney, as referred to by Mr Mead.<sup>17</sup> This scheme targets about 80 new units per annum where residential developers in Ultimo-Pyrmont must provide social housing at the rate of 0.8 per cent of total floorspace, while non-residential development attracts a contribution obligation of 1.1 per cent of floorspace.

52 Inclusionary zoning/affordable housing programmes in comparable western countries typically exist as supplementary programmes to broad state provided social and affordable housing, such that their proportional contribution is limited. The characteristics of programmes is also highly variable. In the United States 'resort towns' the programmes have similar

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<sup>16</sup> *What is Inclusionary zoning, and how does it help deliver affordable housing* Australian Housing and Urban Research Institute 29 August 2023

<sup>17</sup> Mead EiC para 3.15



drivers for housing unaffordability as QLD. In these towns, the contribution programmes tend to be spread more widely amongst the land development sectors and the rates of growth allow the application of incentives through up-zoning or density bonuses. The Australian reviews of inclusionary zoning programmes record the highest successes in South Australia, but the access to government land and other incentives support these schemes.

### **Inputs from Social Impact Analysis**

- 53 The evidence provided by Ms Charlotte Lee is based on the Social Impact Assessment survey that she led and the subsequent report. I note that the purpose of the report was to “*understand the potential social impacts (...) of the Plan Variation*”. The report usefully collates many of the key facts and figures that describe the affordable housing shortage in Queenstown, some of which I have referred to above. I also note the high proportion of the population usually resident overseas (7%) and Ms Lee’s references to the QLCHT eligibility criteria (SIA section 4.2.2), which effectively excludes such people from the QLCHT programmes. The social impacts of the shortage are described in terms of various ‘domains’ and in paragraph 5.2 Ms Lee concludes:

*Overall, I conclude, based on the SIA, that, as a result of the Inclusionary Housing Variation and an increase of retained affordable housing, there are likely to be low positive impacts on people’s way of life, political systems, the quality of the environment, and health and wellbeing. A moderate positive impact is likely for people’s personal and property rights, community cohesion and character, and people’s fears and aspirations due to the likely increase in affordable housing, providing opportunities for residents of all ages, backgrounds, and income levels to remain, contribute to and feel a sense of belonging to the district. This can contribute to the vibrancy and wellbeing of the community.*

- 54 With respect, these overall predictions about the social impacts of the provision of affordable housing by QLCHT provide fairly lukewarm support for the Variation. Some of the predictions are also reliant on the economic findings of Sense Partners that are disputed by other economists. For example, the Insight Report contests the Sense Partners conclusions,

repeated in Mr Eaquab's evidence,<sup>18</sup> that the contribution will fall on land developers who are experiencing a windfall gain.

55 However, a more important conclusion, as stated in paragraph 7.5, for the purposes of the section 32 evaluation is:

*“...the high demand for this housing and the QLCHT eligibility criteria as it stands means that the extent of the impact (i.e., the number of people impacted) will be relatively small, compared to the QLD community as a whole. This has been considered in describing the scale of the impact. Revisions to the eligibility criteria may alter the extent of impacts.”*

56 The effectiveness of the Variation is measured in terms of how effective it will be in making a significant reduction in the affordable housing waiting list. This is achieved by matching the actual housing needs of the homeless and under-housed population, whatever their demographic situation, with the housing supply produced by the Variation rules.

57 I agree with Ms Lee that the eligibility criteria may need to be revised. However, this does not address the disparity between the affordable housing shortage and the QLCHT affordable housing target.

58 The social impacts of a resource management intervention, such as the Variation, are an important part of the section 32 analysis. However, while the SIA provides more detail on the potential impact of the Variation, it fails to provide any insight into alternatives, such as a broader application of the proposed contribution rules to other development sectors, or the adoption of a non-RMA alternative such as a rating approach, which is more certain and has an even greater effectiveness for the QLD community to address the housing shortage.

59 Finally, while I respect the findings of the social impact assessment generally, I understand that within the social impact assessment professional body, it is accepted that such an assessment does not substitute for public consultation or, in the RMA context, the public submissions which are part of a Schedule 1 plan change process.

### **Problem Definition and Proposed Rules**

60 Mr Ferguson addresses section 32 matters. However, a critical element in any statutory planning provision, including a plan change or variation, is the

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<sup>18</sup> S. Eaquab para. 5.9

definition of the problem being addressed. Section 32 refers to the “objectives of the proposal” to be evaluated. While section 7 of the Council’s section 32 evaluation is titled “Defining the Problem and Current Policy Response”, it does not actually define the problem in a way that enables measurement of options to address the problem.

61 In the Social Goods and the RMA section above I have identified the conventional approach to the sustainable management of public goods. The statutory planning provisions, whether this be a national environmental standard or a regional or district plan rule or standard, for many of these refer to bottom line standards such as concentrations of contaminants in water or air, ambient environmental conditions against which discharges are managed, identified areas (quantities) of historic heritage, or increases in biodiversity within a given area. For those resources with qualities less able to be quantified, the standards are nevertheless clear in specifying activities required to be avoided or effects to be mitigated that might further detract from the quantity or quality of a resource, or in identifying future states to be attained in remedying existing (poor) states of the environment. The standards have all been through section 32 evaluation to demonstrate that they address the defined problem.

62 Objective 3.2.1.10 is expressed in broad terms consistent with other Strategic Objectives in the PDP as follows:

*3.2.1.10 Affordable housing choices for low to moderate income households are provided in new and redeveloping residential areas so that a diverse and economically resilient community representative of all income groups is maintained into the future.*  
[section 42A version]

63 I note that the objective embodies an existing state of housing affordability that is maintained into the future. I doubt that the current state is intended to be maintained into the future? Perhaps an amendment with the following addition is what is intended?

*3.2.1.10 Affordable housing choices for low to moderate income households are provided in new and redeveloping residential areas so that a diverse and economically resilient community, representative of all income groups, is achieved and maintained into the future.*

64 If it is agreed that the objective is aspirational, as objectives should be, then I interpret the objective as seeking a high, if not complete, level of remediation of the current state of unaffordability. Objective 3.2.1.10, as reworded, embodies the problem and specifies a solution in identifying that

affordable housing is to be provided at a level so as to achieve and maintain into the future a diverse and economically resilient community, representative of all income groups. However, the section 32 analysis does not interrogate the ability of the Variation rules and the programme administered by QLCHT to address the type of community envisaged by the objective or the sub-sectors of the community referred to in NPS-UD Policy 3.23 in relation to different types of low-income groups.

- 65 The current state I have summarised above is predicted to worsen, with the QLCHT 15 year target and other known sources of affordable housing failing to stem the rising numbers of persons without housing. The extent to which the Variation can meet the objective and the certainty of meeting the objective must be a key matter for the section 32 analysis.
- 66 Further, the objectives and policies envisage the provision of affordable housing in “new and redeveloping residential areas”. I consider that might be a difficult objective to meet when the clear preference of the later Policy 40.2.1.6 is to take financial contributions for spending elsewhere.<sup>19</sup> The difficulty arises in that the likely contributors will control most of the land in new and redeveloping residential areas. As I have noted in the overseas experience above, 99% of programmes prefer on-site provision over in-lieu contributions, but this is not the approach taken in the Variation. While the Variation does not control where QLCHT locates its affordable housing, it would seem inefficient for the contribution to be taken and then the funds spent back in the very areas from which the contribution is derived.

David Frederick Serjeant

19<sup>th</sup> December 2023

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<sup>19</sup> Most of the contribution scenarios in Rule 40.6.1 envisage money not land.

## Appendix 1: Dave Serjeant Short CV



*Dave Serjeant is an environmental planner and independent hearings commissioner with a nationwide practice in plan making and large, complex projects. Dave's experience spans a wide range of environments, from inner urban Auckland to the outstanding landscapes of Central Otago, and from mining operations to marinas.*

*His experience has included being both a regulator and consultant adviser to parties on resource consents and policy matters. This experience has included:*

- Advising clients on many urban, infrastructure, and natural resource development matters including structure plans and new suburban development, retail developments, energy, water and wastewater treatment, hazardous materials management, solid waste management, mining, dairying, forestry, aquaculture and marina developments in relation to both resource consents and policy submission matters;*
- Acting as reporting officer for both territorial authorities and regional councils on resource consent applications and plan preparation matters.*

*Dave holds the qualifications of Bachelor of Town Planning from Auckland University (1979) and Master in Business Studies (Economics) from Massey University (1985). He is a full member of the New Zealand Planning Institute and a member of the Resource Management Law Association, with 44 years professional experience.*

In addition to the broad range of experience in resource management matters as a result of involvement in hearings as a commissioner and chair during the last contract period, he has built specific expertise in the following matters:

Air quality – member of the Panel for Glenbrook Steel Mill 2022 air discharge application, and in a Tauranga CC plan change for discharges of particulate within the Mount Maunganui Polluted Airshed;

Historic heritage and special character – member of the IPI Panel for Hamilton City, Waipa District and Waikato District required the consideration of these matters as qualifying matters under the introduction of the Medium Density Residential Standards to their respective District Plans; and

Medium density housing – as a Commissioner and Duty Commissioner for housing intensification proposals in Auckland and the above MDRS plan changes in the Waikato; and

Notices of requirement – as a Commissioner on five notices of requirement for arterial roading provision in South Auckland.