

Full Council

1 August 2024

report for Agenda Item | Rīpoata moto e Rāraki take [4]

Department: Planning & Development

Title | Taitara: report and recommendations of the Independent Hearing Panel for the Inclusionary Housing Variation to the Proposed District Plan

Purpose of the report | Te Take mō te Pūroko

The purpose of this report is to provide the Independent Hearing Panel (IHP, Panel) recommendation report ('the report') on the Inclusionary Housing Variation ('Variation') to Council and seek decisions on the Variation. The IHP report is provided as Attachment A (and is a separate attachment).

Executive Summary | Whakarāpopototaka Matua

The IHP has recommended to reject or accept the submissions received on the Variation, detailed within the body of the report and in the submission point spreadsheet appended to the report, and that Council withdraws the Inclusionary Housing Variation. The Panel was not satisfied in terms of section 32 of the Resource Management Act (RMA) that the Variation was the most efficient and effective way of achieving its objectives. It considered other reasonably practicable alternatives warranted more evaluation.

The report concludes that the housing affordability issue should be the subject of a mix of regulatory and non-regulatory options and that a package of targeted measures is preferable to the Variation progressing alone.

This agenda report sets out three reasonably practicable options for Council's decisions on the Variation. While Council officers do not necessarily accept the reasoning and conclusions of the IHP, the recommendation makes it impracticable to progress the Variation any further at this time. In all the circumstances, it is recommended that the Council determine to withdraw the Variation under clause 8D of the First Schedule of the RMA because of that impracticability.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;
2. **Note** the recommendation to withdraw the Inclusionary Housing Variation; and

3. **Withdraw** the Variation under cl 8D of Schedule 1 of the RMA for the reasons generally expressed in this report;
4. **Authorise** the General Manager Planning & Development to summarise those reasons for the purpose of giving public notice of the Withdrawal.

Prepared by:



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Title: Principal Planner – Resource
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25 July 2024

Reviewed and Authorised by:



Name: David Wallace
Title: Planning & Development General
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25 July 2024

Context | Horopaki

Background

1. The purpose of the Inclusionary Housing Variation is to amend the Proposed District Plan (PDP) to insert objectives and provisions to address in part housing affordability issues by requiring a contribution of either land or money towards retained affordable housing. The contribution requirement would be triggered by subdivision or development activity specified in the planning provisions. It was pitched as a means of assisting in providing some affordable housing within the short to medium term given that the housing market within the district is unresponsive. It was not attempting to address the causes of the shortage of housing more generally.
2. Queenstown Lakes District Council (QLDC) is the first council in Aotearoa New Zealand to propose Inclusionary Housing provisions in its district plan. As identified when it was developed, consulted on, and then notified, the variation faced a number of significant uncertainties, including:
 - a) Its lawfulness under the RMA;
 - b) Whether it implements the national direction set in the National Policy Statement on Urban Development; and
 - c) Whether or not it is the most appropriate option for providing a funding mechanism for affordable housing, and therefore meets the statutory tests for variations set out in s32 of the RMA.
3. In August 2022¹, the Variation was approved by Council to be notified using the process set out in the First Schedule of the RMA. The submission process commenced on 13 October 2022 and 181 submissions were received, comprising 1,153 submission points. In response to notification of the Summary of Decisions Requested, 3,334 further submission points were received on the original submissions.
4. The Council made formal resolutions at the 10 August 2023 Council meeting² to appoint a Hearing Panel of four Independent Commissioners to conduct the hearing and write a recommendation on the submissions received on the proposal. The Panel's composition included two legal professionals, one economist and one planner/planning academic.
5. In appointing the Panel, the Council delegated the IHP the authority to hear, deliberate and make recommendations on all submissions and further submissions received on the Variation (under section 34A(1) and (2) of the RMA)³.
6. The public hearing ran from 27 February – 7 March 2024 and the recommendation report was issued by the IHP on 5 June 2024.

¹ 11 August 2022 Full Council, Item 6: Inclusionary Zoning Plan Change Notification

² 10 August 2023 Full Council, Item 11 (Public Excluded): Appointment of Commissioners to the Independent Hearings Panel for the Inclusionary Housing Variation to the Proposed District Plan

³ 10 August 2023, Item 11 (Public Excluded) Appointment of Commissioners to the Independent Hearings Panel for the Inclusionary Housing Variation to the Proposed District Plan

Analysis and Advice | Tatāritaka me kā Tohutohu

IHP's Recommendations and Findings

7. The IHP report confirms the Council's position that the Variation is lawful, consistent with, and within the scope of the RMA,⁴ and is a method that is possible to be used in a district plan. It found that the Variation would implement the National Policy Statement on Urban Development.⁵ This is the first time an inclusionary housing proposal has been found to be lawful substantively.
8. The Panel also generally found in favour of the Council's economic case for the Variation⁶.
9. However, the Panel was not satisfied that inclusionary housing is the most appropriate option to address the identified resource management issue. It found that more information and analysis of alternative options is needed for it to be satisfied that the Variation is the most appropriate option.
10. Alternatives highlighted by the Panel⁷ as needing further evaluation include development contributions, partnering with other agencies to deliver affordable housing, addressing Residential Visitor Accommodation, and the use of rates which was a particular focus for the Panel through the hearing.
11. The Panel has recommended that Council withdraw the Variation principally on the basis that, in its view, the Variation does not meet the tests in s32 of the RMA in regard to the assessment of reasonably practicable alternative options.
12. The Panel has made recommendations on submissions within the body of the report and in the submission points table appended to the report, where it has stated its recommendation to accept or reject submission points.
13. As an alternative to withdrawing the Variation, Council can adopt the IHP's recommendations on submissions and further submissions as a decision pursuant to cl 10 of the First Schedule of the RMA and Council would still have the ability to withdraw the Variation at a later date⁸, if desired. However, withdrawal of the Variation without a Council decision on submissions would mean that the Operative District Plan affordable housing provisions would remain in effect. These provisions would still be required to be reviewed in the future via the Plan review process.

⁴ IHP report paras 282 – 343; conclusions at para 343

⁵ Ibid paras 562 – 589; conclusions at para 588

⁶ Ibid paras 190 – 278; findings at paras 272 - 278

⁷ Ibid para 671

⁸ Up until a notice of hearing is issued by the Environment Court, in the event that an appeal process occurs.

14. The IHP report concludes by suggesting that the housing affordability issue should be the subject of a mix of regulatory and non-regulatory options and that a package of targeted measures is preferable to the Variation.

Key areas of discussion during the hearing

15. The following is a general summary of the key areas of agreement, disagreement and alternatives put forward in submissions and discussed during the hearing. This a general summary only and is provided to assist Councillors with some context of key matters raised by submitters and discussed during the course of the hearing.

General agreement of the parties with Council's position:

- The district has a lack of housing in the affordable price range (affordability being determined by the cost of housing (price/rent) relative to household income)
- The methods that have been previously used to gain developer contributions for affordable housing (Stakeholder Deeds leveraged through the Private Plan Change process and Special Housing Area ('SHA') consents) have been successful in providing an income stream for the delivery of affordable housing via the Queenstown Lakes Community Housing Trust
- Housing supply is important to meet demand, and having sufficient plan-enabled infrastructure-ready capacity is an important component of the Council's work relating to housing

General disagreement of the parties:

- Legal basis for using the RMA to require a financial contribution to fund affordable housing
- That the s32 analysis underpinning the Variation did not sufficiently assess alternative reasonably practicable options (e.g. using rates to fund affordable housing)
- That the proposal isn't directly tied to property-specific planning gains/windfall gains/value uplift enabled by the district plan, so is not directly comparable to overseas examples of inclusionary zoning
- The proposal is a tax and is therefore not legal
- The proposal will increase the cost of housing
- The proposal is contrary to the National Policy Statement on Urban Development, which focusses on achieving competitive market conditions through addressing constraints on housing supply, which will theoretically improve housing affordability over time

Alternatives put forward by submitters:

- Use rates (general or targeted) to fund affordable housing
- Further limit Residential Visitor Accommodation (RVA), and/or more strictly enforce the current RVA rules
- Enable more housing

- Pare back the Variation to strategic level Objectives and Policies, which would in effect be a similar outcome to that achieved by Plan Change 24 (Affordable and Community Housing) to the Operative District Plan

Scope of the IHP's delegated authority

16. The IHP was formally delegated authority to hear, deliberate and make recommendations on submissions and further submissions (under section 34A(1) and (2) of the RMA). Given the specific scope of that delegation, the Panel's recommendation to withdraw the Variation is unusual, and is considered to exceed the scope of the Panel's delegation.
17. A decision to withdraw the Variation may nonetheless be made by the Council at any time, and may be made now either in general reliance on the reasoning of the Panel as expressed in the report or because the nature of the recommendation makes it impractical to progress inclusionary housing through the Variation. If that is the decision, it would be a separate decision of the Council rather than the adoption of a formal recommendation on submissions that is able to be recommended by the IHP.
18. Clause 8D(2) of Schedule 1 of the RMA includes a requirement to give public notice of any withdrawal, including the reasons for the withdrawal. The key reasons set out in the IHP report are, in summary:
 - a) That there are a number of reasonably practicable alternative options before the Council that have not been assessed, or which have been inadequately assessed; and
 - b) Due to the inadequate assessment of reasonably practicable options, the Variation is not the most efficient and effective means of delivering affordable housing; and
 - c) Consequently the risks of acting on this Variation outweigh the risks of not acting.
19. Council officers do not necessary accept the reasoning of the Panel, in particular as to (a) and (b) above.
20. This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

Option 1:

21. **Adopt** the IHP Recommendation report recommendations on submissions and further submissions as a Council decision pursuant to cl 10 of the First Schedule of the RMA; and **Direct** staff to notify the decision in accordance with the First Schedule of the RMA.

Advantages:

- It would support the recommendation regarding submissions in the IHP report. The IHP's authority is limited to making recommendations on submissions and further submissions per

the IHP's terms of engagement, whereby the Council (under section 34A(1) and (2) of the RMA), delegated to the IHP the authority to hear, deliberate and make recommendations on all submissions and further submissions received on the Variation⁹. Whilst the IHP has specifically recommended withdrawal of the Variation, it has also made recommendations on each submission in the table appended to its report. For this option the Council decision would in effect reject the Variation by adopting the IHPs recommendations on submissions that sought this outcome.

- Making a decision on the Variation under cl 10 would provide an opportunity for the decision to be appealed.

Disadvantages:

- Submitters may appeal this decision diverting Council resources towards being a party to any appeal made. The Council would be expected to defend the IHP's recommendations, which would require briefing new witnesses given the evidential position of its existing experts, and in circumstances where it does not necessarily accept the conclusions and reasoning of the Panel.
- The existing Objective and Policies relating to affordable housing in the Operative District Plan would not be retained or replaced with other provisions.

Option 2:

22. **Adopt** the IHP Recommendation report recommendations on submissions and further submissions as a Council decision pursuant to cl 10 of the First Schedule of the RMA; and **Direct** staff to notify the decision in accordance with the First Schedule of the RMA; and **Withdraw** the Variation under clause 8D of the First Schedule of the RMA.

Advantages:

- Would adopt the recommendation from the IHP report and would be an efficient method to conclude the Variation process. This option would mean that there would be no opportunity for Environment Court appeals, and therefore no further budget or resources required to be allocated to the Variation.
- Council resources can be directed to undertake further work such as that outlined in the IHP recommendation to support the provision of affordable housing in the District.
- It would mean potential appellants were not put through the cost of appealing the Council's decision when there remains a possibility that the Variation would subsequently be withdrawn at a later date.

⁹ 10 August 2023, Item 11 (Public Excluded) Appointment of Commissioners to the Independent Hearings Panel for the Inclusionary Housing Variation to the Proposed District Plan

Disadvantages:

- Withdrawal would mean that there would be no opportunity for submitters to appeal the decision on the Variation.
- The existing Objective and Policies relating to affordable housing in the Operative District Plan would not be retained or replaced with other provisions.

Option 3:

23. **Withdraw** the Variation under clause 8D of the First Schedule of the RMA and make no decision on submissions.

Advantages:

- The findings of the IHP recommendation are such that it is considered being party to an appeal on a decision to reject the Variation would not be a prudent use of resources.
- The existing Objective and Policies on affordable housing in the Operative District Plan would remain in effect until reviewed in the future.
- A revised variation that addresses the matters raised in the IHP report, including additional assessment of alternative reasonably practicable options could be notified at a future date.
- Time and resources would be preserved for continuation of other Council work related to improving housing outcomes, including the Urban Intensification Variation and other actions outlined in the Joint Housing Action Plan 2023.

Disadvantages:

- Withdrawal would mean that there would be no opportunity for submitters to appeal a decision on the Variation.
- Withdrawal would mean that the Operative District Plan provisions would remain unreviewed and would require review at a later date.
- This decision would not respond directly to the submissions made during the process.

24. While the conclusions and reasoning of the Panel are not necessarily accepted by Council officers, the recommendations of the Panel make it unrealistic and impracticable to continue to progress the Variation. Accordingly, this report recommends **Option 3** for addressing the matter as it is considered to provide the most beneficial advantages with the least disadvantages.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

25. This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy 2021 because affordable housing is an issue which has high level of community interest.
26. The persons who are affected by or interested in this matter are residents/ratepayers of the Queenstown Lakes district community, community members, the building and development sector, community agencies and groups which are concerned with housing equity and access in the district and within housing system in New Zealand, and submitters on the Variation.
27. The Council has undertaken significant public consultation on this work through the process of the plan variation, including prenotification consultation under the LGA and a full public submission and hearing process set out in the First Schedule of the RMA.

Māori Consultation | Iwi Rūnaka

28. The Council has consulted with iwi through the Variation process, and Rūnaka submitted on the variation, engaged in evidence exchange and appeared the hearing.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

29. This matter relates to the Environmental risk category. It is associated with RISK10056 Ineffective provision for the future planning and development needs of the district within the QLDC Risk Register. This risk has been assessed as having a moderate residual risk rating.
30. The approval of the recommended option will allow Council to retain the risk at its current level. This will be achieved by approving the recommended option, which includes the ability to notify a revised variation in the future, if appropriate.

Financial Implications | Kā Riteka ā-Pūtea

31. The preferred option would include the opportunity for Environment Court appeals, which would require funding for legal and consultant costs provided through the PDP budget.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

32. The following Council policies, strategies and bylaws were considered:
- Vision Beyond 2050
 - The Joint Housing Action Plan (JHAP)
 - HOMES Strategy
 - Spatial Plan

33. The recommended option is consistent with the principles set out in the policies listed above in that the work explored affordable housing for the community through attempting to implement inclusionary housing in the district plan.

34. This matter is included in the Long Term Plan/Annual Plan through the PDP budget.

Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture

35. Legal advice on the options available to council the recommendation report position have been provided and appended to this agenda item.

Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kiaka

36. Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. This decision of council will confirm the democratic process undertaken through schedule one of the RMA and as such, the recommendation in this report is appropriate and within the ambit of Section 10 of the Act.

37. The recommended option:

- Can be implemented through current funding under the Long Term Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the Council or transfer the ownership or control of a strategic asset to or from the Council.

Attachments | Kā Tāpirihaka

A	Hearing of Submissions on Inclusionary Housing Plan Change – report and Recommendations of Independent Commissioners, 5 June 2024 (circulated separately)
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